

Parliamentary Audit Scrutiny: Innovative and effective?

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A note on sources

Many parliaments publish most of their official proceedings and reports, but not all may be as transparent as the Parliament in

- publishing background papers, including internal procedural guidance or committee briefing papers, or
- providing up-to-date version of all these and more on a public website.

Further, not all sources of other relevant bodies—including Auditors, Audit Offices, governments, audit or PAC associations, and international agencies—are either published at all, or easily available on websites. Time constraints meant that we have had to be selective as to what comparative sources we could reasonably expect to access. Some sources used were incomplete ‘works in progress’.

For all these reasons, much of this report which is based, to whatever extent, on such sources may not always be accompanied by full citation or attribution. We are extremely grateful for all those—within parliaments, audit services, universities and elsewhere—who were so willing to assist us at such short notice with their advice, references to relevant sources, published or otherwise, and for permission to use their work. Particular mention should be made of the substantial contribution, especially on the New Zealand situation, of Professor Elizabeth McLeay of the Victoria University of Wellington.

All views expressed in this report, and any errors of fact, are the authors’ responsibility. For the sake of brevity, we have not individually cited every reference derived from a response to our questionnaire, or from relevant statutes or standing orders.

Foreword

This report was prepared for the Scottish Parliament's Audit Committee. It had commissioned The Constitution Unit in November 2002 to undertake comparative research on how parliamentary audit or public accounts committee operate, so as to assist it in assessing how well it has been performing in its first 4 years, and what lessons its successor committee in the second session of the Parliament could learn from its fellow committees' experience. Because of the imminent end of the parliamentary session, the research was to be submitted by the end of January 2003. The report was discussed by the Audit Committee in February 2003 and formed part of its 'Legacy Paper', published in March.

We are grateful to the Parliament for permission to publish this research as a Constitution Unit report. Notwithstanding the necessarily limited scale of the research, we believe that the issues and questions it raises will be of interest to all those interested in how democratic parliaments undertake one of their most important functions, that of scrutinising the proper spending of public money. This was a particular challenge for a parliament such as the Scottish Parliament, which was created with a commitment to innovation and an operating culture of power-sharing, accountability, openness and public participation, and equal opportunities.¹ How could it operate a robust and effective system of parliament audit, based substantially on the Westminster PAC model, while remaining true to the distinctive ethos of its parliament and its fellow committees?

This research was greatly assisted by the cooperation of the Parliament's staff, especially those its clerking and research services who were responsible for this commissioned research project. We were also encouraged by the support from the convener and members of the Audit Committee itself, who bravely initiated this form of self-examination. We received much assistance and cooperation, often at extremely short notice, from parliamentary staff around the world, and from academics and others in the UK and elsewhere. It goes without saying that any errors are our own.

Oonagh Gay and
Barry K Winetrobe
April 2003

¹ See the major report by the Parliament's Procedures Committee, published in March 2003, *The founding principles of the Scottish Parliament*, SP Paper 818, 5 vols, and B Winetrobe, *Realising the vision: a parliament with a purpose*, Constitution Unit, 2001.

Summary

The audit function forms a vital part of the work of a parliamentary body. The parliamentary audit process closes the circle of the parliamentary accountability of public money, which begins with the granting of funds by a parliament to its government. This report assesses the practice of parliamentary audit in comparable jurisdictions, using a set sample of comparators.

Two themes should underpin parliamentary audit and ensure that the parliamentary body adds some value to the process of public audit. These are:

- Independence – by which is meant the ability to consider and report on any circumstances connected with reports of the Auditor-General, and the preservation of the independence of the Auditor and Audit Service, especially in terms of their appointment, removal and resourcing.
- Effectiveness – this means a measurement in terms of outcomes, in the extent to which parliamentary audit (as part of the wider public audit process) makes a difference to the public administration goal of improvement

We assessed how far parliamentary audit committees (PACs) ‘add value’ to the public audit function, and to parliamentary governance generally. For the Scottish Parliament, independent and effective audit scrutiny must also be achieved as far as possible within the Parliament’s ethos of accountability, power-sharing, equal opportunities, openness and participativeness. Thus we have concentrated on some key areas, such as the PAC’s

- structure, composition and remit;
- resources, including staffing and sources of information and advice;
- operating procedures and practices;
- relationship with the Auditor and Audit Office;
- relationship with other parliamentary committees, and
- relationship with the public and the media.

Some PACs are, like the Audit Committee, parliamentary committees with a function relating to the audit of public accounts, and some form of ‘value for money’ scrutiny. At the other end of the spectrum are those, outwith the ‘Westminster’ tradition, which, though connected with their parliament in various ways, are not parliamentary committees. These can be regarded as independent public audit bodies, more Audit Office than PAC. In between these extremes are parliamentary committees which have a PAC function, but also have more general public finance or budgetary roles. The main findings are set out below, together with a boxed series of issues for consideration by the Committee, grouped by subject matter.

(i) Structural Issues

There is neither a correct size for a PAC, nor any standard correlation between it and the size of a parliament. While in general, the composition of PACs reflects the party balance within

the parliament, not all 'Westminster' type committees follow the UK convention of an Opposition chair.

Issues for consideration:

Should the Audit Committee be an exception to the general rule on party balance?

Should Standing Orders as to membership of the Audit Committee be amended, to specify some degree of overlap with other committees such as Finance?

Should Standing Orders be more or less prescriptive as to the party allegiance of the Committee's convener and deputy convener?

(ii) Resources and Meetings

PACs do not seem particularly well endowed with staff, other than access to the (often considerable) staff of the Audit Office. They could also buy in expertise from outwith the parliament and the Audit Office, including the use of staff from the executive. In Australia officials from the audit arm act as observers for the committee, preparing questions and briefing both staff and members.

Few PACs dealt directly with policy issues as well as effective implementation and these also were prepared to call ministers as witnesses, rather than exclusively officials. Those PACs which eschew direct policy scrutiny also tend to operate as far as possible on cross-party consensus and unanimity, without resort to frequent voting. However, understanding of policy is clearly necessary to any performance or value for money audit.

No model pattern of planning business emerged from the survey. It is common for PACs to have forward programmes, but they may be dependent on references from the Auditor. Seminars, informal briefings and use of IT to encourage public participation are in use as well as the more formal calls for evidence and hearings. Most committees meet at least weekly, and none surveyed allowed public or press to attend when deliberating on work programmes or line of questioning or discussion with advisers.

Issues for consideration:

Is the extent and nature of the resources available to the Committee adequate for its purposes?

Should Executive civil servants be used more directly as a resource for the Committee?

Are its sources of information and advice adequate for its purposes, and, if they are to be extended (to call more members of the public, interest groups, and government ministers and officials, or to use advisers more frequently for example), to what extent should that take account of any conventions of consensus and unanimity and of the existing relationship with the Auditor General and Audit Scotland?

In so far as the Committee operates within an environment of unanimity and consensus, should that approach be maintained?

Should the Committee have a publicly declared approach on its treatment of policy objectives as part of its audit scrutiny?

Whether or not it makes such a public declaration, should it change its conventions and procedures to accommodate more direct examination of policy?

Will any broadening of the Committee's information-gathering activities require greater frequency of formal and informal meetings?

Will any broadening of the Committee's information-gathering activities require a reconsideration between the proportion of its meetings and other gatherings held in public and in private?

(iii) Outputs and Outcomes

The number of reports produced varies greatly, and is not necessarily a good measure of a PAC's activity or effectiveness. Drafting can be undertaken either by Audit Office staff or by committee staff. Unlike most parliamentary committees, the publication of the outcome of a PAC inquiry has to take account of an external body, the Auditor, whose initial report to the parliament and its PAC may well have already been more generally published. Most PACs require a formal response to their reports, and acceptance rates for recommendations in our comparators ranged from 45 per cent (Denmark) to 90 per cent (British Columbia, UK). Specific follow-up procedures, to monitor progress on implementation, have been developed, with the most systematic found in British Columbia.

Some PACs provide far more than the Audit Committee in some respects, such as annual reporting and promulgation of relevant information and guidance material. The Committee can most easily take on board these particular comparative lessons, as they fit in with the Parliament's own ethos.

Wider changes, such as the broadening of the witness pool; the use of external advisers; less emphasis on consensus and unanimity; explicit consideration of matters of policy and so on,

would almost certainly have a wider effect on the operation of the Audit Committee. It may then have to address whether it wishes to retain the essence of its existing ways of operating or whether it regards a fundamentally different model as potentially more effective and appropriate for devolved Scotland.

Issues for consideration

Could the output of reports be greater, without affecting their quality or the scope for public notice of them or action to be taken on them?

Would the publication of the Committee's routine practices, such as its follow-up procedures, and the dissemination of its reports, enhance public awareness of its work?

Should the Committee's annual report be more substantial and informative, notwithstanding any parliamentary guidance on the standard format of committee annual reports?

Are the Committee's arrangements for tracking progress on the implementation of its recommendations, either itself or in conjunction with the Auditor General, as robust and transparent as they could be?

(iv) Key Relationships

The central relationship in parliamentary audit is that between the PAC on the one hand and the Auditor and Audit Service on the other. Far from them being independent of each other, it is the degree of their interdependence that characterises a particular parliamentary audit system. It is that interdependence which, if operating positively and effectively, which is a necessary pre-condition for the independence and effectiveness of the public audit process itself. If not so positive, it can restrict a PAC's autonomy, development and effectiveness.

Some jurisdictions regard matters of the appointment, resourcing and scrutiny of the Auditor and Audit Service as proper matters for the PAC itself, unlike the conventional Westminster and Scottish view. As much of this is covered by statute (both Westminster and Scottish), the Committee cannot make any such changes itself. The Australian PAC has conducted a three year review of its Auditor-General Act 1997, recommending a series of changes in the light of experience of the new statutory framework.

Changes to the operational relationship between a PAC and its Auditor and Audit Service are likely to affect its basic approach and ethos. Its relationship with the parliament's other committees may also retain similar issues of principle, especially if it wishes to develop a different model of wider financial scrutiny within the parliament. This could be through the Audit Committee sharing the audit function with other committees, especially subject committees, or even the creation of a new Audit & Finance Committee, for example.

How far a parliament's other committees can make use of the audit office's expertise and resources is often a sensitive issue. New Zealand has adopted a detailed code of practice on assistance from the auditor to other committees and MPs.

Issues for consideration:

Should the split between the Audit Committee, the SCPA, the Parliament and, indirectly, the SPCB, in the appointment, resourcing and scrutinising the Auditor General and Audit Scotland, be retained?

If there was some reallocation of functions, which should belong with the Audit Committee itself, or with other parliamentary bodies on which it was, directly or otherwise, represented?

To what extent should the Committee regard itself as the 'parliamentary champion' of the Auditor General and Audit Scotland?

How much scope is there for other committees to access the resources and expertise of the Auditor General and Audit Scotland?

Why has the parliamentary audit function not been shared between the Audit Committee and subject committees, as recommended by FIAG?

Should the Parliament create some form of broader Financial Affairs Committee, which would include the functions of the Audit Committee?

Does the Parliament's experience since 1999 with the Auditor General suggest that it should devise standard arrangements for dealing with it and other 'parliamentary officers' (including those royal appointments made on the Parliament's nomination, and the Standards Commissioner)?

The Audit Committee could, if it wished, take the initiative in the formation of a 'UK PAC Liaison Group'.

(v) Overall assessment

This short study can offer only a preliminary comparison of parliamentary audit. Nevertheless, we can conclude that the Scottish Parliament's Audit Committee fits into the generality of PACs, especially those based on a 'Westminster model', and those which have a narrow 'audit' remit rather than one with other financial functions.

Within that context, it appears to be as effective as its comparable PACs, in ensuring the proper conduct of the parliamentary audit function. Underpinned by the Parliament's unique culture and ethos, it is a more open and participative PAC than the others, in many particular respects, though we have identified scope for some development here.

More radical change would involve change to the essence of the Committee's current model, which it and the Parliament should consider very carefully. This could conveniently be done

by a thorough review of the Parliament's financial scrutiny role, by way of a review of the 2000 Act system, within which the parliamentary audit function operates.

Issue for consideration:

The Audit Committee could seek the conducting of a fundamental review of the parliamentary audit function, within the context of a 5-year review of the Public Finance & Accountability (Scotland) Act 2000 held during the next Parliament. Such a review could include further comparative research, which would take more directly into account the perspective of the audited bodies and their own 'customers'

PART 1: INTRODUCTORY

A Introduction

(i) The aim of this report

This report offers the Audit Committee a brief comparative examination of the parliamentary audit function, as delivered primarily through Public Accounts Committees (PACs²) in comparable countries, so as to assist it in

- assessing how effectively this work is being done in the Scottish Parliament, and
- how this work may be further improved, especially through the Committee itself, in the next Parliament.

The approach and methodology of our research is discussed further below.³ It had to take account of the short timeframe given (approximately 2½ months, including the Christmas/New Year recess period). Briefly, we employed an approach which involved simultaneous

- analysis of the available literature, much of which is unpublished
- discussion with recognised parliamentary and academic experts
- survey of a small core sample of comparative countries, once we had identified them, and devised and distributed a suitable questionnaire to their PACs.

(ii) Context

The Scottish Parliament is a new institution. This may be a statement of the obvious, but the extremely fast pace of change and development of the Parliament in the last 3½ years, and of Scottish devolution generally, is often underestimated or forgotten. For example, even by early 2003, before the first session of the Parliament has been completed, the rate of turnover of personnel—ministerial, committee memberships and parliamentary staff—has been significant. Many of the Parliament's procedures and practices have been amended formally, through Standing Orders changes, Presiding Officer's rulings or otherwise, or developed through protocols, guidance notes or informal practice.

In such circumstances, it is sometimes all too easy for people, even those within the Parliament itself, to know or remember why things are done the way they are. Whether intentionally or otherwise, everything the Parliament does creates a potential precedent for the future. The Parliament's institutional memory is being developed every day. This makes the Parliament's first session perhaps its most important one, and it places a considerable

² A list of acronyms, abbreviations and generic terms used in this Study is at Appendix 4

³ This description constitutes the technical report required by the contract

responsibility on everyone within the Parliament, and those who interact and engage with it, to be aware of their responsibility to parliamentary posterity.

The Parliament's Committees have a particular responsibility, in this respect. They were at the heart of the innovative design that the Parliament's founders wished it to have. They represent the primary way in which the distinctive culture and ethos, as expressed in the key principles of the Consultative Steering Group (CSG)—sharing the power, accountability, access and participativeness, and equal opportunities—is given practical expression in the day-to-day working of the Parliament.

Within this context, the idea that all Committees, and other parts of the Parliament, should draw up 'legacy papers' which can pass on experience and advice to their successors after the forthcoming election, is an excellent one, perhaps even a necessary one. The Audit Committee, as part of its legacy strategy, has commissioned this comparative research, and it is in this spirit, that this research has been undertaken.

The Audit Committee is the lynchpin of the parliamentary audit function, which is generally agreed to be one of the more important roles that any parliament can fulfil. Along with the other mandatory committees, its role and function were examined in some detail, at least in comparison with the subject committees, prior to the establishment of the Parliament in the spring of 1999. Some of this was explicit, especially through the work of the CSG and the Financial Issues Advisory Group (FIAG), but also there was a certain amount of implicit discussion during Westminster's examination of the Scotland Bill in 1998, mainly in the context of the need or otherwise of specifying the mechanics of parliamentary audit on the face of the devolution legislation.

A key aspect to be borne in mind for the purposes of this study, is the centrality of the Westminster-style 'public accounts committee' model in influencing the shape of parliamentary audit in the Scottish Parliament. This can be seen in the CSG and FIAG reports, as well as in the Scotland Bill debates. Crucially, this is demonstrated by the procedures and practices of the Audit Committee itself, especially in its relationship with the AGS, much of which is based on what were initially described by the parliamentary clerks as 'conventions' developed at Westminster. Along with the Scottish Parliamentary Corporate Body (SPCB), the Audit Committee is the one part of the parliamentary architecture that owes its existence and form to a Westminster model.

Another major consideration is the extent to which the parliamentary audit function is undertaken in the Parliament, within the accepted principles of the Parliament's operation. We have already noted the centrality of committees in that respect, and the presumption must be that the Audit Committee is expected to adhere to, and to operate within, these principles.

Yet the parliamentary audit function can be regarded as a unique function, one which is partly quasi-governmental, or even quasi-judicial, in nature.⁴ While many of its individual features may be reflected, at least to some extent, in the work of other committees, its overall mode of operation can be regarded as unique within the Parliament. For example, it operates

- within a more generally non-partisan environment than is the case with almost all other committees,⁵
- through the close working partnership of a parliamentary committee and an external, independent agency – the Auditor General for Scotland (AGS) and Audit Scotland⁶ – and,
- within a context of accepted and objective operational norms, unlike the generality of parliamentary scrutiny and oversight which has, broadly speaking, a ‘policy’ focus.⁷

Much of this uniqueness derives from (and, in some cases, goes further explicitly than) the Westminster PAC model, which itself is predicated on the special constitutional role that the UK Parliament has in relation to public money, and the need to provide a system of public audit that is rigorous and can be relied upon. For example, the Audit Committee is the only committee where Standing Orders require that no minister can be a member and that the convener cannot come from an ‘Executive party’.⁸

One important question for our research is the extent to which this unique role limits the application of the Parliament’s general culture and ethos, in all its respects, including transparency of operation, and innovativeness in public participation and information-gathering. It may be seen from the experience of the Parliament’s first session that the Audit Committee has not used some of the available techniques either at all, or to the same extent as other committees. A more general question is the extent to which the distinctiveness of the role requires things to be done in a way that would not be suitable or even acceptable in other committees, such as the range of potential witnesses, the use of reporters and advisers or the processes of report-writing.

⁴ Perhaps the only other committee functions of this nature are scrutiny of EU documents, subordinate legislation, draft budgets or private bills, by their respective committees.

⁵ Other than ‘internal’ committees, such as Standards and Procedures, perhaps the only other committee types of this nature are Private Bill Committees, and, to some extent, the various special legislative committees, such as Consolidation Committees, specified in Chapter 9 of the Standing Orders.

⁶ The Standards Committee will have such a relationship, albeit of a very different practical sort, when the Scottish Parliamentary Standards Commissioner scheme comes into operation.

⁷ The Subordinate Legislation Committee, and to some extent, the Public Petitions Committee, also operate within specified scrutiny norms of this nature.

⁸ Rule 6.7.2

B The impact of this context on our approach

That the provenance of the Parliament and its audit function is essential to an understanding of the role and function of the Audit Committee underpins our approach to this short research project, especially as it is intended to be part of the Committee's 'legacy' to its post-election successor. That successor may well be composed, wholly or in part, of either new members of the Committee or even of new members of the Parliament, and its support staff may also include those new to the Committee. It is also possible that the new Parliament might wish to revisit the remit of the Committee, either itself or as part of a wider possible restructuring of the committee system. The experience of restructuring in the first session demonstrates how such an exercise risks being driven in part by short-term considerations of political or administrative convenience, as much as by adherence to the Parliament's underlying principles.

The Parliament may even wish to replace the Audit Committee with a different sort of Committee or to transfer its audit functions to another Committee or other body, either within or outwith the Parliament. The Committee is a mandatory committee of the Parliament, and so its existence and remit are enshrined in Standing Orders. However this does not mean that the Parliament itself cannot amend the Committee's remit,⁹ as is sometimes suggested.¹⁰

We assume that the Committee believes that there should be an Audit Committee, with, at the very least, substantially the same remit, following the 2003 elections and beyond. If so, it is essential that there is as comprehensive an understanding of the need for an Audit Committee of the Parliament, fulfilling a necessary function of parliamentary audit. That includes not only a full appreciation of how the Committee is structured and operates, and why it does so, but also an examination of the possible alternatives, and their potential application to the Scottish Parliament.

It includes, in particular, the ways in which there is scope for the application of what is regarded as the usual 'innovative' procedures and practices common to other committees, such as those mentioned in the previous section. Such an exercise uncovers examples of procedure and practice where the Audit Committee may feel that its ways of operating are better or more appropriate than those of its counterparts in other parliaments.

(i) Comparative parliamentary research

In practice, this means that we need to examine other parliamentary audit systems that derive from the Westminster system that gave birth to the current Scottish parliamentary

⁹ As has just happened in relation to the 'laid papers' provision in Rule 6.7.2, following representations by the Committee, and has either occurred or been considered in relation to other mandatory committees.

¹⁰ Those who make this error often do so by describing such committees as 'statutory' committees rather than 'mandatory' committees.

model. Only in this way can we discover how effectively the Audit Committee is operating, and in what ways it could develop and improve. It also accepts that we cannot start with a blank sheet of paper, because much of the context within which the Committee operates is determined by factors outwith the Parliament's control, as expressed in the Scotland Act 1998.

It may be that this short-term comparative research will generate a desire for a much wider study, which can cast its net wider beyond 'Westminster model' systems. We have attempted to dip a toe into these waters by also surveying Scandinavian parliamentary models, and looking at others such as Germany, within our research. A more ambitious study would need to examine the many different types of systems of governance, including those who do not have a 'parliamentary system' as that term is generally understood.

It must be appreciated, however, that the direct comparative survey we have undertaken is not the sole method of comparative research in this study. Our approach has involved direct and as close contacts as possible with academic and practitioner contacts in the various jurisdictions, as well as a substantial literature review (much of which, for this purpose, was through internet sources¹¹). These various approaches complement each other, with the aim of gaining as full an understanding of the comparative parliamentary audit scene as was possible within the given timescale of this project.

Comparative research is always an exercise fraught with potential pitfalls, including that of misunderstanding the true nature of what is being examined, and of making false analogies. Comparative parliamentary research is a particularly difficult area, for a number of reasons. Every parliament operates within, and as part of, the overall system of governance of the state or territory within which it exists. Superficially similar procedures and practices, when examined more closely, may not be as similar as they first appear, even when they use identical or similar terminology¹². Apparently different procedures and practices, using very different terminology, may, in fact, turn out to be similar in their operation and effect. It is tempting to suggest, as a possible reform for one parliament, what appears to be a good, innovative and effective procedure in another. All changes to a living organism, especially such a complex one as a democratic representative parliament, have consequences, and the history of parliamentary reform, at Westminster and elsewhere, is littered with the unintended consequences of apparently well-thought-out changes.

Thus, it is important not just to identify possible procedures and practices which may have lessons for the Scottish Parliament. A proper comparative exercise must also discover, for

¹¹ This in itself was relevant to our study, as the use of the internet by parliaments and their PACs was a useful indicator of their culture and approach.

¹² Some Canadian provinces provide a good example, with their use of the term 'deputy minister' (and variations of this) to refer to their government departments' senior officials and not to their political heads.

example, why things are done the way they are; what gave rise to these ways of doing things, and whether they achieved the results that were intended. Answering these questions can provide valuable lessons for the Parliament, even by suggesting what *not* to do, as much as what to do.

(ii) Choosing our core parliamentary comparators

<p><i>Selected core comparator systems</i></p> <p><i>UK</i></p> <p><i>New Zealand</i></p> <p><i>Canada, and its provinces</i></p> <p><i>Australia and its states</i></p> <p><i>Denmark</i></p> <p><i>Ireland</i></p>
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Of necessity, this study has, as part of its methodology, involved a relatively small sample, which limits the potential utility of a comparative approach. A wider study, building on this research, may provide greater insights and outcomes, by being based on a much broader examination of alternatives. Nevertheless, this study can produce useful results, and we believe that it has done so. This was achieved through a careful selection of suitable comparator parliaments for our more detailed examination, within the tight time and resource constraints, and the need to choose parliaments where we could be reasonably certain of obtaining adequate and timely information.

This proved to be the case, generally speaking, and a brief summary of the parliamentary audit arrangements in each of our core comparators is provided in Appendix 1. Nevertheless, we have made extensive use of information obtained from other PACs, where that has been deemed relevant to the research, some of whom even completed our questionnaire. This means, for example, that many of our results are not restricted to our core sample, especially when they may not have responded substantively to a particular question, and useful data could be gained from PACs outwith the core sample, either from them directly or through their published information. In other words, we are not producing a tightly structured comparative analysis of a set number of PACs, but a comparative overview of relevant PACs and their structure and operation.

Not only have we concentrated on ‘Westminster model’ parliaments, plus a Scandinavian parliament as a wider example, we have chosen our ‘Westminster’ parliaments with some care. This has allowed us to compare and contrast how different parliaments, based largely on a common foundation, have developed in different ways that accommodate their ‘Westminster’ heritage within their own particular governance system. In a sense, this is exactly what the Scottish Parliament itself has been doing throughout its short life.

We have also chosen to look at Westminster itself, not just as the 'parent' of most of the systems being examined, including the Parliament's, but to see to what extent it may have been developing what is recognised as the classical PAC model. In other words, it is instructive to see to how far Westminster itself still adheres to the 'Westminster model' upon which the Parliament's audit arrangements were predicated. We also chose Ireland as a close neighbour with a recent and strong Westminster influence. New Zealand also has much in common with Scotland, including scale and a unicameral system, as well as a reputation for innovative approaches to governance issues. Canada and Australia are instructive because they provide a range of sub-national parliaments, which can be compared and contrasted amongst themselves and with their respective national parliament. Denmark appeared to us to be the most convenient and appropriate example of a non-Westminster parliamentary system, not least because of its apparent innovativeness in public audit.

We considered, but decided not to include in our core sample, more examples of sub-national or small national parliaments, in other parts of the Commonwealth, Europe or elsewhere, for the reasons set out above. Inclusion of one or more of these would dilute the utility of the comparator set we had constructed, without necessarily providing us with much extra in the way of coverage of parliamentary systems worldwide.

In particular, we resisted the temptation to include more of those parliaments, especially within Europe, with which the Parliament has close relations. Not only did we wish to use this study as an opportunity for the Parliament to be acquainted with counterparts beyond what are already at risk of becoming 'the usual suspects' (Catalonia, Flanders, Estonia and so on), but we wished to use our own networks and contacts to obtain our data, so as to ensure that we received as objective a response as possible.

The purpose of a comparative research approach to this study is not to provide the Committee with a narrative of how a number of their counterpart committees happen to operate. In this report, the comparative context has informed our work throughout, so that only appropriate and relevant lessons for the Audit Committee of the Scottish Parliament have been learned and reported here.

This is not a study of the Audit Committee itself, and its operation in the Parliament's first session, but a comparative study of parliamentary audit for the Committee. We have looked at the Committee itself only in so far as it informs our comparative research, so that it can be as focussed and relevant as is possible in this study. As there has been relatively little academic study of the Parliament's audit function¹³, the bulk of published material on the Parliament's audit function, and on the Audit Committee, has come from official sources such as the Committee itself, and Audit Scotland. These include the Committee's regular

¹³ Much of the focus on the Parliament's financial scrutiny thus far has been on the budgetary and revenue-raising aspects

reports, annual reports,¹⁴ and its published response to the recent World Bank Institute questionnaire.¹⁵

C The parliamentary audit function

(i) The nature of the function

We have referred already to what we have termed the ‘parliamentary audit function,’ and identified some of its relevant characteristics. What we sought to identify were those segments of the overall audit function that are performed by, or within a parliament, as this is neither a study of the public audit process itself, or of the role and function of Auditors and Audit Services. This function has a dual focus:

- Internally, it is part of the general network of a parliament’s scrutiny of the executive, the holding of it to account for its policies and actions, and
- Externally, it is part of the public audit process, whereby a parliament and independent auditors seek to ensure that public money is spent properly.

Together, the parliamentary audit process is said to close the circle of the parliamentary accountability of public money, which begins with the granting of funds by a parliament to its government. This is neatly summarised in the Audit Committee’s own description, which it has used at the beginning of its last two annual reports:

“The Audit Committee holds to account those who are charged with spending the taxpayers’ money and ensures that public funds are spent wisely.”

Other PACs use variations of this basic approach. The Australian PAC states that its purpose “has remained unchanged since it was first established in 1913: the JCPAA exists to hold Commonwealth agencies to account for the lawfulness, efficiency and effectiveness with which they use public monies.”¹⁶ The general guidelines for Canadian PACs declare that “the role of the Public Accounts Committee is to hold the government accountable for its spending of taxpayers’ money and its stewardship over public assets.”¹⁷

The public audit process need not necessarily require such a central role for a parliament, if its main aim is simply to provide a full and honest audit of the public accounts, or even an

¹⁴ As this study has found, the Committee’s annual reporting, in line with practice across the Parliament’s committees, is not as comprehensive as many of the PACs we have examined which do publish annual reports.

¹⁵ “The World Bank seeks information on the experience of the Scottish Parliament’s Audit Committee”, Committee press release CAUD 04/2002, 10.9.02 (http://www.scottish.parliament.uk/whats_happening/news-02/caud02-004.html), which also contains a link to the Committee’s completed questionnaire.

¹⁶ Joint Committee of Public Accounts and Audit, *Purpose, objectives and operating framework* (<http://www.aph.gov.au/house/committee/jpaa/purpose.htm>)

¹⁷ Canadian Council of Public Accounts Committees (CCPAC), *Guidelines for Public Accounts Committees in Canada*, 1989, reproduced in CCPAC, *Comparative jurisdictional implementation survey*, March 1991: <http://www.ccpac.ca/jurisdic/> (hereafter ‘CCPAC Guidelines’)

assessment of how efficiently, effectively and economically public money has been spent. Though it could be done within government, it is, in accord with accepted professional principles, undertaken by a person or body independent of the body being audited. However, what is deemed to be required in a democratic society is that this form of accountability should be to the people, through their representatives.

This adds an additional layer of discipline on the government in its use of the public's money, for, after all, the Gladstonian system of public audit devised in the 1860s, comprising the twin pillars of the Comptroller and Auditor General and the Public Accounts Committee, is based on the idea of curbing what Gladstone himself described as 'the spirit of expenditure' by governments (and, at that time by the House of Commons itself). Governments are always keen for there to be, or to be, seen to be external curbs on their own propensity for spending.¹⁸ Parliaments provide a convenient, and politically appropriate, base for such mechanisms, not least in Westminster model systems where majority governments can control them.

It is no coincidence that the parliamentary inputs and mechanisms at the two 'ends' of the cycle of financial control are separate in the classic UK model, or that there is such a strong emphasis on the eschewing of policy scrutiny in parliamentary audit. The Westminster model of parliamentary financial control tends towards minimal meaningful parliamentary involvement in the budgetary aspects (such as the financial totals, their sources and their allocation), where policy is fundamental, in favour of relatively strong ex post financial scrutiny, where policy can be made secondary to more 'objective' forms of scrutiny and audit.¹⁹ A major rationale for the FIAG scheme for the Parliament was an injection of some meaningful parliamentary input at the budgetary end of the cycle,²⁰ while maintaining the perceived strengths of parliamentary audit at the other end.

It is important to appreciate this aspect of the public audit system upon which devolved Scotland's arrangements are ultimately based. This is not to suggest that parliamentary audit is a compliant tool of executive financial policy. It is a perfectly proper function of the assembly comprising the democratically elected representatives of the people for it to ensure that public money is properly spent, in both the accounting and value-for-money senses. One of the three fundamental principles of public audit, as promulgated by the Public Audit

¹⁸ Prices and incomes policies and independent central banks are just two more modern examples

¹⁹ This is sometimes ascribed to different forms of government, in that parliamentary systems of the Westminster type promote a close and interdependent parliamentary-executive relationship that inhibits significant parliamentary questioning of executive financial priorities, whereas systems with a separation of powers, as in the USA, provide much greater scope for legislative involvement in the financial choices and preferences of the distinct executive branch.

²⁰ Subject, of course, to the strict statutory limitations on the Parliament's role in revenue-raising or determining the overall available revenue totals.

Forum,²¹ is “the ability of public auditors to make the results of their audits available to the public, and to democratically elected representatives.”²² The Auditor General expressed this parliamentary role recently:²³

Public audit should play an important role in supporting democratic scrutiny in the Scottish Parliament by providing independent objective information on governance, financial stewardship and performance. Public audit can also support continuous improvement in public services and help to promote the interests of citizens, both as users of these services and as taxpayers.

(ii) The variety of PACs

PACs vary greatly, even among the relatively small number we examined in this study.²⁴ Some are, like the Parliament’s Audit Committee, parliamentary committees with a function relating to the audit of public accounts, and, generally but not invariably, some form of ‘value for money’ scrutiny of public bodies. At the other end of the spectrum are those, outwith the ‘Westminster tradition, which, though connected with their parliament in various ways, including their membership, are not parliamentary committees. These can be regarded as independent public audit bodies, more Audit Office than PAC. In between these extremes are parliamentary committees which have a PAC function, but also have more general public finance or budgetary functions.

The scope and nature of the parliamentary audit function varies in the jurisdictions we examined. For example, of the PACs examined only 3—New Zealand, Ontario and British Columbia—said that they had a role in the legislative process, such as ‘audit scrutiny’ of bills generally, or committee scrutiny of ‘audit-related’ bills. This appears to accord with the results of other surveys, such as those of the CPA and World Bank. The CPA study noted that a PAC “does not usually have legislation referred to it but it is conceivable that a major overhaul of public finance legislation, for example, could be referred to a PAC for its examination.”²⁵ In Ontario, any bill may be referred to the PAC for committee review, and it

²¹ The Public Audit Forum is a consultative and advisory body established by the various national public audit bodies in the UK “to provide a focus for developmental thinking in relation to public audit”: <http://www.public-audit-forum.gov.uk/about.htm>. All quotations from the PAF cited in this report are taken from this website.

²² *The principles of public audit*, PAF (<http://www.public-audit-forum.gov.uk/popa.htm>)

²³ Public audit in Scotland: a strategic statement by the Auditor General, Aug 2001, pp4-5

²⁴ A good summary of the three main types of public audit systems is contained in the extract from a World Bank report, reproduced in Appendix 2.

²⁵ D McGee, *The Overseers: Public Accounts Committees and public spending*, Commonwealth Parliamentary Association & Pluto Press, 2002, p59 (hereafter ‘CPA Study’). The Audit Committee itself demonstrated this, when it was lead committee in the Parliament’s scrutiny of what became the Public Finance & Accountability (Scotland) Act 2000.

considered three Private Members' Public Bills in the last session. One was a bill to amend the Audit Act and two were dealing with public sector accountability issues.

Not all PACs have a remit that is restricted to audit matters, as some of those we have examined have other financial responsibilities, in the areas of, for example, budgetary scrutiny. These are committees which would, in the Parliament's terminology, combine the roles of the Audit and Finance Committees, as well as some or all of the financial remit of the other committees. Because we are examining the audit function, we are not concerned with these wider financial functions in this study, except to the extent to which they influence the structure or operation of the PAC, the Auditor or any other aspect of the parliamentary audit function.

Neither have we concentrated on the exact details of the scope and nature of the remits of the various PACs we surveyed, as much of this is specific to the political and administrative systems of each jurisdiction. This is especially so in the make-up of the 'public sector' or 'quasi-public sector' in each jurisdiction, where each will have its own terminology to describe bodies or activities with varying degrees of state control, financing or regulation. While there has been a strong trend over the last couple of decades towards various forms of 'privatisation', for example, some jurisdictions will still have a significant state-owned or state-operated sector.

The recent Sharman report in the UK²⁶ examined these problems in some detail:²⁷

Sharman's analysis of the changing public sector

1.10 There is every indication that change will continue in public service delivery. Looking ahead, a number of significant trends in government seem likely to continue. These include that:

- the use of a diverse range of mechanisms for the delivery of public services will continue. Government departments and other public bodies will provide fewer services themselves directly;*
- private sector organisations will increasingly play a role in public service delivery. The management of contracts and contractors will thus be of great*
- importance for government bodies;*
- partnerships between public bodies, and between public bodies and private and voluntary sector organisations, will continue to develop. Government recognises that solutions to many problems require combined efforts, and new ways of working together are likely to be tried;*

²⁶ Lord Sharman of Redlynch, *Holding to Account: The Review of Audit and Accountability for Central Government*, February 2001. This was a review, set up by the UK Government in 2000, to examine audit and accountability in central government.

²⁷ The AGS has made similar points; see *Public Audit in Scotland: a strategic statement by the Auditor General*, Aug 2001, p8

- *rapid developments in information technology will make available increasing amounts of data on the performance of public bodies and the quality of services to the public, and make it available more quickly. How this material is presented and its reliability assured will be important for public confidence in the data;*
- *public bodies will continue to use the mechanism of establishing companies to undertake a variety of public services; and*
- *there is likely to be increased customer focus to the delivery of public services, in the face of continuing demands for more personalised public services, and greater expectations about quality provision.*

1.11 All these developments have implications for audit and accountability and, as has been recognised in the United Kingdom and elsewhere, modern arrangements must be able to meet these and other challenges...Developments also look likely to add to the complexity of the ways in which public services are provided and funded. As a consequence...the answer to the question 'What is public money?' has ceased to be straightforward. Similarly, in these circumstances, there is no simple answer to such questions as 'How can Parliament and the public be assured that public funds are being well used?' or 'How can the need to provide freedom to innovate in public service delivery be reconciled with the need for transparency and safeguarding of taxpayers' money?'

Of more relevance here is what are the common problems for public auditing across the various jurisdictions and models, and these have an impact on the parliamentary audit function. These include

- Whether and how to bring within the audit net, bodies which fulfil public functions, but are not state or public entities in a more traditional sense
- Taking full account of new accounting systems, such as resource accounting and budgeting
- How to keep up with the pace of change in the range and make-up of the public sector,²⁸ and
- How to measure and evaluate subjective performance of public bodies and their expenditure, when these measures are subject to constant change and refinement by governments themselves.

Thus, for the purposes of this study, the overwhelming bulk of the work of PACs is audit scrutiny in its various forms, such as the consideration of public accounts, reports from the Auditor and other relevant public expenditure documents (much as in the Committee's own remit), by way of

- ensuring the accuracy of the accounting of public expenditure,
- ensuring compliance with the relevant laws and procedures in the authorisation and use of such expenditure, and

²⁸ This is a common problem for parliamentary scrutiny generally, not just in terms of audit

- performance or value-for-money assessment of the expenditure, in terms of the ‘three Es’ of economy, efficiency and effectiveness.

D Two criteria: independence and effectiveness

We have approached our comparative research with two key concepts in mind, as they appear, from our preliminary reading and discussions, to encapsulate the main attributes of a parliamentary audit scheme. They are *independence* and *effectiveness*. To these must be applied the additional context, for the Committee, of the Parliament’s own unique culture, which, though relevant to independence, is more related, in practical terms here, to the notion of effectiveness. Some explanation of these concepts is given below.

(i) Independence

‘Independence’ is much-used in the context of public audit, but its meaning is rather complex and multi-layered. It is most often applied to the Auditor and the Audit Service, ensuring, in the words of the Public Audit Forum’s principles, “the independence of public sector auditors from the organisations being audited”. This is, as noted above, an accepted professional requirement for auditing generally, whether in the public or private sector. In practical terms, independence applies to factors such as the appointment, terms and conditions and removal of the Auditor, the financing of the Audit Service, and their working programmes, powers and practices. As the Public Audit Forum puts it:

Public audit must be independent of the organisations being audited so that the auditors cannot be improperly influenced by those whose work they audit and so that they can carry out their role freely.

The PAC should also be independent of government, in the sense used above, for similar reasons. Yet this is not such a clear-cut aspiration, as PACs, at least those in parliamentary systems of the Westminster model, exist within parliaments where the executive has a major, often dominant role. This is one of the central problems of parliamentary accountability generally, but is perhaps more important for a PAC, given its particular role. Therefore, for it too, issues of its appointment, composition, chairing, meeting, powers, work programme and resourcing²⁹ are important aspects of its independence and autonomy. For example, in the context of the Australian parliamentary system, the Australian PAC notes that:³⁰

²⁹ An example of formal independence from executive and parliament is the UK Auditor’s salary being charged directly to the Consolidated Fund rather than through the Estimates.

³⁰ JCPAA, *Committee establishment and role* (<http://www.aph.gov.au/house/committee/jpaa/about.htm>)

The ability to consider and report on any circumstances connected with reports of the Auditor-General or with the financial accounts and statements of Commonwealth agencies is one of the main sources of the committee's authority – it gives the committee the capacity to initiate its own references and, to a large extent, to determine its own work priorities. This power is unique among parliamentary committees and gives the committee a significant degree of independence from the executive arm of government.

In addition, the parliament, and to a greater or lesser extent, its PAC, are the means whereby the independence of the Auditor and Audit Service³¹ are institutionally preserved, especially in terms of their appointment, removal and resourcing.

Yet the central relationship in parliamentary audit is that between the PAC on the one hand and the Auditor and Audit Service on the other. Far from them being independent of each other, it is the degree of their interdependence that characterises a particular parliamentary audit system. It is that interdependence which, if operating positively and effectively, is a necessary pre-condition for the independence and effectiveness of the public audit process itself. Thus most jurisdictions proclaim, both in legislation and in parliamentary rules, that the Auditor and Audit Service are independent of both the executive and the parliament, especially in the sense of not being subject to the direction of either. However, PACs we examined have different degrees of power or discretion to influence the Auditor's work programme, from the ability to make suggestions, to the power to require particular inquiries to be undertaken.

(ii) Effectiveness

Effectiveness is another necessary criteria for a parliamentary audit system, yet it too is not a simple concept. From the perspective of this study, what we are interested in is the effectiveness of the parliamentary process, rather than the public audit system as a whole, although one test of the effectiveness of the former is the extent to which it may contribute to the latter. The effectiveness of parliamentary accountability systems generally is a major topic of debate in legislative studies, and this will encompass examination of parliamentary audit scrutiny.

Effectiveness in parliamentary terms can mean public legitimacy and approval. Clearly, the public are not asked specifically to record their views of the parliamentary audit system any more than they are ever officially asked about any other aspect of parliamentary activity. Measuring parliamentary performance is a young and uncertain science, relying on public opinion surveys, voter turnout, public participation in parliamentary activities and so on.

From a more internal perspective, one can look at the effectiveness of the process itself, rather than its outcomes. In other words, does the parliamentary audit system work in

³¹ In this report, these two terms are used generically. For a full list of generic terms employed, see Appendix 4

procedural and practical terms? Does it do what it is supposed to do, within the parliament, and as between the PAC and those with whom it interacts, such as the Auditor and the Audit Service; the executive in general and the audited bodies in particular, and the wider public and media? Will changes in appointment, composition, procedures, powers, outputs or whatever make the process work better, *as a process*?

In the Scottish Parliament context, these measures of effectiveness cannot be simply internal, as the Parliament's culture and ethos, based on the spirit of the CSG principles,³² is predicated on a meaningful engagement between parliament, executive and people in the political process. Therefore one important factor is the extent to which the Scottish Parliament's audit processes, primarily operated by and through the Audit Committee, meet the spirit, if not, in all respects, the letter of that culture and ethos, while still being effective in the other senses described here. The AGS has taken this on board:³³

With the creation of the Scottish Parliament, public audit has taken on a new significance in Scotland, because it has an important role in supporting effective democratic scrutiny. Public audit can provide independent assurance on standards of financial stewardship and governance in public bodies. Audit can also provide objective evidence on the performance of these bodies and the audit process can help to identify scope for improvements in both the management and delivery of public services. Citizens as taxpayers have a right to know whether public bodies are spending public money properly, wisely and well. I am committed to a public audit regime which is objective, rigorous, transparent, open and fair, in order that reports by auditors allow citizens to take an informed view of the management of public money.

Effectiveness may be measured in terms of outcomes, in the extent to which parliamentary audit (as part of the wider public audit process) makes a difference, and we examine that later in this report. In a more political sense, this may be the extent to which a government is discomfited or damaged by parliamentary activities, through revelations of governmental policy failure or waste. The consequences may be parliamentary censure, changes of policy or practice, or even ministerial or official resignations. In parliamentary audit, those PACs, such as Denmark, which operate, openly or otherwise, in a 'political' climate may regard these as valid and appropriate measures of their success.

PACs which operate in a less political environment may equally regard some of these outcomes as indicators of success, though they will not overtly seek resignations or similar sanctions. They are more likely to accentuate the positive side of the outcome of their

³² For an analysis of this 'CSG culture', see B Winetrobe, *Realising the Vision: a Parliament with a Purpose*, Constitution Unit, UCL, 2001, especially chaps 1,2 and 13. The report of the long-running Procedures Committee inquiry into the implementation and operation of the CSG principles, expected to be published shortly, will presumably address this in great detail.

³³ Public Audit in Scotland: a strategic statement by the Auditor General, Aug 2001, pp 2, 9

activities, in terms of helping to ensure that lessons have been learned and mistakes will not be repeated. In other words, there is a public administration goal of improvement, albeit one often expressed mainly in financial terms.

PACs and Auditors will generally claim that they, jointly and severally, have been the catalyst for such gains, as can be seen from some responses from PACs to our questionnaire:

“Recommendations have led to improvements in accountability, transparency of Government operations and in the information provided to the Parliament—ie; changes to the Budget Documents. It has also resulted in improvements to Government Services.” (Victoria)

“The 2002 Spring Report of the Provincial Auditor described PAC's impact in this way: ‘Increasingly the committee's discussions relate to broader issues including strategic plans, key risks to achieving goals and objectives, and performance measurement. We congratulate the committee on its efforts to foster a more open and accountable government and better management of government operations.’” (Saskatchewan)

“Government implements the majority of recommendations of the committee and we believe that this has led to an improvement in the probity and effectiveness of the public service and its finances.” (Queensland)

Other PACs express this in more mundane terms:

“Impact is felt more in media attention and indirect government policy initiatives.” (Ontario)

“Government departments do feel somewhat accountable to the committee.” (New Brunswick)

One conventional approach to measuring effectiveness of audit process is the extent to which recommendations from the PAC and/or the Auditor are (a) accepted and (b) implemented by the audited bodies or those responsible for them, generally the government. This may be a rather crude, quantitative measure, which yields limited results in providing a comprehensive assessment of the performance of an audit service. However, more apparently sophisticated measures, such as estimates of the sums saved by virtue of the audit process, may also be of limited assistance.³⁴

Again, effectiveness is both a factor of and a goal of the relationship between the PAC and the Auditor and Audit Office. In very simple terms, for example, parliaments provide the outlet for the publication of the products of the audit exercises. Parliaments are the appropriate forum for this function, as the Public Audit Forum has noted:

For public audit to be effective, appropriate reporting arrangements are required. Public auditors report the results of their audits to the representatives of the

³⁴ For discussion of such estimates made by the UK NAO, see the minutes of evidence of the UK Public Accounts Commission's 11th report, HC 1251 of 2001-02, November 2002, supplementary evidence by the NAO (<http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmpacomm/1251/125123.htm>).

public responsible for funding the activities concerned or directly to the public themselves where it is in the public interest to do so. This completes the cycle of accountability.

A parliament is also the forum which picks up and takes forward the products of the audit service. In this sense, it should add value to these products. While the UK Auditor did not think it necessary for the UK PAC to take up every Audit Office report, “the Committee's decision to take an NAO report increases its impact. Senior Departmental officials spend a considerable time focusing on the report and preparing for hearings. The generation of a Committee report requires the Government to respond via a Treasury Minute. And the potential threat of a follow-up by the Committee ensures that Departments respond positively to the recommendations made.”³⁵

(iii) What we are examining

To sum up, what this report seeks to do is assess how the parliamentary audit function operates in comparable jurisdictions, and to assess how far they ‘add value’ to the public audit function, and to parliamentary governance generally. We make this assessment by reference to the two criteria of independence and effectiveness, which must be considered both separately and together, as appropriate.

Overlying this assessment is the unique perspective of the Parliament’s culture and ethos, as symbolised by the CSG principles. In other words, what we are seeking to do—and this distinguishes this report from other recent surveys of parliamentary audit—is to look at these other systems through ‘CSG eyes’, to see how they perform in those terms, and what lessons may be learned which reflect and enhance a system of parliamentary audit grounded in a ‘CSG’ parliament.

³⁵ *Op cit*, Correspondence between the Chairman of the Public Accounts Commission and the Comptroller and Auditor General (<http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmpacomm/1251/125107.htm>)

PART 2: ORGANISATIONAL AND OPERATIONAL ISSUES

Introductory note: This Part looks at some central operational aspects of PACs, highlighting those areas of direct relevance to the Audit Committee's existing procedures and practices. As such, it does not purport to cover comprehensively all structural and operational aspects of the PAC models examined.

A Structure and Composition

The size and composition of a committee (including its chair and deputy chair) are essential aspects of its operational effectiveness and of its autonomy, both actual and perceived, not least from the Executive. A PAC needs to be of a size which is large enough to operate effectively, even when there may be vacancies from time to time, or when not all members attend its meetings regularly, while it should not be too large so as to be unwieldy. Traditionally, especially in Westminster systems, it has been regarded as important for the notion of a committee's independence from the executive that the composition should reflect, in some way, the party balance in the parliament itself, and the PAC's size needs to be sufficient to accommodate that arithmetic. From the perspective of the Parliament's key principle of 'equal opportunities', a PAC should also be of sufficient size to accommodate proper representation of both genders and of all ethnic and other minorities represented in the Parliament.

(i) Size of a PAC

There is no 'correct' size of any parliamentary committee. Much will depend on, for example, the relative importance of committee and plenary activity in a parliament; the number and size of other committees in the parliament; the nature and extent of the remit; any rules on who may or may not be a member of a committee and so on. The Audit Committee has a membership of 7 (11 until January 2001) in a Parliament of 129 members. The PACs examined in this study range from 6 in Denmark (in a parliament of 179³⁶) to 17 in Canada (in a parliament of 301), and there seems to be no standard correlation between the size of the PAC and of the parliament. For example, South Australia has a parliament of 47 and a PAC of 7, whereas the figures for Ontario are 103 and 8. At the other end of the spectrum, Westminster has a PAC of 16 in a Parliament of 659, and New Brunswick has a PAC of 14 members in a Parliament of only 55. By comparison, the Indian PAC, a joint committee of both houses) has a membership of 22 in a parliament of 790.

One factor which may be thought to be relevant to the size of a PAC is its ability to establish sub-committees, in that it would, in principle, seem to be easier for a larger committee to divide up its membership in this way, or to form more informal sub-groups, including single reporters. However, there appears to be no such clear or direct correlation among the PACs

³⁶ 'Parliament' refers, in bicameral parliaments, to the House(s) where the PAC operates.

examined in this study. Among the larger PACs, Australia can and does appoint one or more 'sectional committees', as can New Brunswick, whereas the UK PAC, unlike all departmental select committees, has no such power. The Audit Committee, with 7 members, can, as can all parliamentary committees, appoint sub-committees.³⁷ A small PAC like Ontario can, as with the generality of committees, establish subcommittees. India's PAC, with 22 members, can divide itself in a number of ways, such as sub-committees, working groups and study groups.

(ii) Composition and party balance

The selection processes for committee members and chairs can, as has been seen in recent years, at Westminster, be a sensitive and controversial matter, where the formal position may not reflect the realities of party nomination. Generally, the membership of a parliament's PAC will be appointed by the same processes that either apply to all committees, or to all committees of the same category. The source of the appointments process may be statutory (as in Australia and Queensland), in Standing Orders (as in Scotland, UK, New Zealand and others), or even in the territory's constitution, as in Trinidad & Tobago.³⁸ In some parliaments, such as the UK and New Brunswick, the government makes the formal nominations, following consultations between the parties, whereas others use a business committee, as in Scotland and New Zealand, or a special selection committee, as in British Columbia.

As with all committees in the Scottish Parliament, the composition of the Audit Committee reflects the balance of the parties (and others) in the Parliament. The Bureau, when nominating, a member to a committee is required to "have regard to the balance of political parties in the Parliament",³⁹ which has been interpreted as meaning that, as far as is practicable, the committees should have the same political balance as the Parliament as a whole. Initially the Audit Committee had 11 members, with 6 from Executive parties and 5 from non-Executive parties – Labour: 5; SNP: 3; Conservative: 2; Liberal Democrat: 1. When the size of the Committee was reduced to 7, as part of the general committee restructuring in January 2001, the balance became 4-3, in favour of the Executive parties – Labour: 3; SNP: 2; Conservative: 1; Liberal Democrat: 1.

The composition of some PACs is explicitly determined, to some extent, by statute. For example, the JCPAA of the Australian Parliament has to consist of 16 members of the Parliament. 6 members must be members of, and be appointed by, the Senate. 10 members

³⁷ Rule 12.5

³⁸ Though the Ugandan PAC is established by Standing Orders, it is explicitly created to fulfil the requirement in art 164(3) of the Constitution that "Parliament shall monitor all expenditure of public funds" (SO 123(2)).

³⁹ Rule 6.3.4. This derives from a Scotland Act requirement that "standing orders shall 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": sch 3, para 6(2).

must be members of, and be appointed by, the House of Representatives. Members must be appointed according to the practice of the Parliament for the appointment of members to serve on joint select committees of both Houses of the Parliament".⁴⁰ The practice is for committees to reflect party balance in the House, or, in the case of a joint committee, such as the JCPAA, in each House. So the composition of the JCPAA is as follows:

- 6 Members of the House of Representatives nominated by the Government Whip or Whips;
- 4 Members of the House of Representatives to be nominated by the opposition Whip or Whips or by an independent Member;
- 3 Senators to be nominated by the Leader of the Government in the Senate;
- 2 Senators to be nominated by the Leader of the Opposition in the Senate; and
- 1 Senator to be nominated by any minority group or groups or independent Senator or independent Senators.

According to the CPA survey, the composition of a majority of Commonwealth PACs reflects the party balance in the parliament as a whole,⁴¹ and there is no reason to believe that this is not replicated in PACs elsewhere. For example, the Irish PAC, and any sub-Committee which it may appoint "shall be constituted so as to be impartially representative of the Dáil."⁴² The usual justification for a 'party balance' practice, whether explicitly set out in a parliament's Standing Orders or otherwise, is that it protects the interests of the non-governing parties, by guaranteeing them a proportionate share in the composition and activities of parliamentary committees. In relation to committees such as PACs, it is also argued that cross-party participation is of particular relevance, both in terms of the effectiveness of the committee and of its perceived independence and prestige. So, a PAC should not be composed entirely either of government or of opposition members, though examples of each may exist.⁴³

The party balance convention was not always accepted so widely in Australia. During discussion of the Bill which became the Public Accounts and Audit Committee Act 1951, the Labour Opposition proposed equal numbers of Government and Opposition members (as well as the chair being from the Opposition), arguing that, with a Government majority, "nothing will come to light that will be of value to the taxpayers."⁴⁴

⁴⁰ Public Accounts and Audit Committee Act 1951, s5(2)

⁴¹ McGee, *op cit*, pp95-6

⁴² SO 156(9)

⁴³ According to McGee, *op cit*, one PAC in Africa is composed entirely of government members: p96

⁴⁴ Quoted in J Wanna et al, *From accounting to accountability: a centenary history of the Australian National Audit Office*, Allen & Unwin, 2001, p240

A recent questioning of the normal application of party balance requirements appeared in the (Wicks) Committee on Standards in Public Life's report on standards regulation in the UK House of Commons. It examined the case for the Select Committee on Standards and Privileges not having a majority of Government members:⁴⁵

Wicks Committee consideration of party balance on the Standards & Privileges Committee, November 2002

We return to the fundamental point that the Committee on Standards and Privileges should

*be seen as one of the most important committees of the House, fulfilling a unique and highly valuable role in sustaining the reputation of the House. We believe that, to do so successfully, its position would be greatly strengthened by making clear the politically impartial nature of the Committee. We therefore **recommend** that no one party should hold an overall majority membership on the Committee.*

This discussion was in the context of an extremely sensitive committee, with particular 'quasi-judicial' functions. However, its arguments could, the Audit Committee may feel, equally apply to the Audit Committee, in terms of the role and function of the Committee, especially its non-partisan nature, and the importance of its actual and perceived independence from the Executive. The Procedures Committee has been examining the whole question of party balance on committees as part of its current major inquiry on the application of the CSG principles, and it appears from its deliberations published thus far, that it supports the Parliament's current party balance convention. The Audit Committee may wish to consider that it should be regarded as an exception to the Parliament's practice.

Issue for consideration: *Should the Audit Committee consider itself an exception to the general rule on party balance?*

Queensland's PAC is a statutory committee, whose composition is 7 members, 4 nominated by the Government and 3 by the Opposition.⁴⁶ The Danish PAC, being a very different institution, is more in the nature of a 'Board of Auditors', so its 6 members need not all be MPs. They are appointed by the Parliament on the nomination of the political parties, which should provide that the main parties are represented on the PAC. Because Denmark often has minority government, this means that there will be an 'opposition majority' on the PAC, which can have an effect on any practice for consensual operation. The Swedish 'Parliamentary Auditors' are a board of 12 MPs or former MPs appointed by the Parliament.

⁴⁵ *Standards of Conduct in the House of Conduct*, 8th report, Cm 5663, para 7.16. The full discussion is at paras 7.14-7.16

⁴⁶ Parliament of Queensland Act 2001, s81

(iii) Some membership issues

While there were some suggestions during the 1980s and early 1990s that Scottish parliamentary committees could include non-MSPs, perhaps by way of co-option, this was not included in the CSG Report or in Standing Orders. This was apparently on the basis that the devolution legislation did not permit it. It appears to be the norm among 'Westminster parliaments' that committees are composed only of Members, and that it is where the PAC is not a parliamentary committee, but a more independent body (as in Denmark and Sweden), that non-Members are formally members of the PAC. The Scottish Parliament may regard co-option of non-MSPs, even if within its current powers to do so, as not an appropriate or effective way of the Audit Committee gaining a wider and deeper perspective when conducting its audit scrutinies.

If it is assumed that the Audit Committee should always be composed solely of MSPs, then the question arises whether there should be any particular qualification or disqualifications. Standing Orders forbids a minister from being a member of the Audit Committee (the only committee with this explicit prohibition).⁴⁷ As FIAG noted, "since it will be for the Audit Committee to scrutinise the Executive, it would not be logical to permit Ministers to sit on the Committee."⁴⁸ The UK PAC has traditionally included a Treasury Minister (the Financial Secretary), but she does not attend meetings,⁴⁹ and Manitoba explicitly excludes all ministers, and party leaders, except the Finance Minister.⁵⁰ Other PACs tend not to have any ministers as members, though this may simply be following the general committee practice in their parliament. Some, such as South Australia,⁵¹ Ireland and India, explicitly exclude any Minister from membership of its PAC.

In so far as the exclusion of ministers should remain the practice in the Scottish Parliament, for the generally accepted reason of independence from the Executive, maintenance of this explicit Standing Orders provision applicable to the Audit Committee would seem to be a small, but useful, symbol of the particular status and function of the Committee.⁵² Ministers can, as can all MSPs who are not members, participate in a committee to the extent permitted

⁴⁷ Rule 6.7.2.

⁴⁸ FIAG Report, para 3.8

⁴⁹ However, as a member of the committee, she will receive committee papers, and so it can be said that such internal material, though not available in advance to the public, will be available to the UK Government.

⁵⁰ Rule 101. Though the chair comes from the governing party, the Finance Minister is ineligible: Rule 104

⁵¹ Parliamentary Committees Act 1991, s5(2). This provision is replicated for 5 of the 7 other committees established under this Act.

⁵² It could be argued, that the express prohibition for the Audit Committee means that there is no such presumption in respect of any other committee. In practice, no minister has been appointed to a committee, and any committee member has resigned from a committee on appointment as a minister.

in Standing Orders.⁵³ It would seem that it would be contrary to the ethos of the Audit Committee, as well as to general PAC practice for a minister to participate in this routine or regular way in its proceedings, *as a minister*, except when appearing as a witness, participating in the legislative process or the like.

A wider version of such a membership requirement or prohibition, as the case may be, is that an MSP must be, or not be, a member of the PAC by virtue of his or her membership of another committee or other parliamentary office or position. For example, the European Committee is normally to be composed of MSPs who are members of other committees whose remit is relevant to the European Committee.⁵⁴ Such provisions do not seem to be common among PACs we have examined, though Australia's PAC must include, as an additional member (but not in the chair), the Chair of the Expenditure Committee, if one exists at the time, if that person has not already been appointed a member.

The Scottish Parliament has no such requirements for the Audit Committee, although, in practice, there has tended to be a degree of overlap between, for example, it and the Finance Committee (including substitutes). Such overlap may be as much to do with internal party allocations, as with any desire of the Bureau. However, if the Committee thought that such a relationship with the Finance Committee, or any other committee was desirable as a permanent feature, it may wish to recommend an amendment to Standing Orders.

Issue for consideration: Should Standing Orders as to membership of the Audit Committee be amended, to specify some degree of overlap with other committees such as Finance?

The converse of this arrangement is where a member of the PAC is a member of another committee or similar parliamentary body (other than a committee of the Conveners Group type). The Convener of the Audit Committee is a member of the statutory Scottish Commission for Public Audit (SCPA), by virtue of his or her office.⁵⁵ The special committee appointed in 1999 by the Legislature of British Columbia to choose an Auditor General comprised PAC members,⁵⁶ and there may be other such membership overlaps in relevant circumstances elsewhere.

The Parliament's Standing Orders requires the Bureau to take account of the "qualifications and experience" of any Member who has expressed an interest in serving on a committee.⁵⁷

⁵³ The Deputy Minister for Parliament actively participated in Procedures Committee meetings in the early months of the Parliament, apparently as an informal representative of the Executive.

⁵⁴ Rule 6.8.4

⁵⁵ Public Finance & Accountability (Scotland) Act 2000, s12(2)(a)

⁵⁶ See the Report of the Special Committee to appoint an Auditor General, March 2000.

⁵⁷ Rule 6.3.4. The extent to which the Bureau does nominate members on the basis of expressions of interest or on indicated qualifications or experience may be a matter for discussion. Indeed, it is often said, at Westminster and, to some extent, in the Parliament, that the parties (especially on the

Ethical requirements, such as potential conflicts of interests, may even deter or prevent Members with apparently relevant expertise from membership of a PAC, and some of the Parliaments we examined did refer to this in their responses, although we have not come across any explicit disqualification on this basis. A Member with a permanent job in the State administration or in a company financed by the State cannot be a member of the Danish PAC (which, as noted elsewhere, is not a PAC in the usual ‘Westminster’ sense). British Columbia allows Members “who have a particular interest in the work of a Committee”, to attend meetings, and with permission, to participate, but not vote.⁵⁸

(iv) The PAC chair

The chair of a PAC is a particularly sensitive post, and there are various ways in which parliaments allocate it.⁵⁹ Denmark does not allocate the post by party, as it is traditional for the chair to be occupied by the member with the longest experience as a member of the PAC. However, the Westminster tradition has been for it not to be held by a member of a government party. According to the CPA study, 67% of PAC chairs are opposition members.⁶⁰ In some parliaments, including the Scottish Parliament,⁶¹ this is explicit in Standing Orders. In New Brunswick, the PAC is the only committee which is chaired by an opposition member. Where the chair is a government member (which may be the case where, as in New Zealand, the PAC function is part of the wider remit of a committee), it seems to be common practice for the PAC’s deputy chair, if one exists, to be from the Opposition, as in Australia and Queensland. In Canada, where the chair is an opposition member, both vice-chairs come from the governing party.

Ontario is more specific, by requiring the Chair of its PAC to be “a member of the Party forming the Official Opposition.” This is one of only 3 exceptions it has to the rule that its committee chairs be allocated proportionately to party balance, the others being the Estimates Committee and the Finance and Economic Affairs Committee.

government side) may regard such factors as ‘disqualifying’ criteria.⁵⁷ An interesting, ‘insider’ description of how committee selections were made within the Labour Party in the early days of the Parliament is contained in Mike Watson’s *Year Zero: an inside view of the Scottish Parliament* (Polygon, 2001) pp 16-19.

⁵⁸ This practice is not enshrined in Standing Orders, and may, in practice, not be a provision aimed at exploiting the expertise of Members not already on a committee, but more akin to the Parliament’s own Standing Order provisions allowing such participation (Rule 12.2.2-3).

⁵⁹ In practice, as in Westminster and Scotland, the choice of chair may, to a greater or lesser degree, be a formality in that it would be a factor in the consideration of the membership selection itself.

⁶⁰ McGee, *op cit*, p97

⁶¹ Rule 6.7.2

This highlights the different ways in which the Westminster convention can be applied. It can be phrased as a prohibition on government members, as in Scotland,⁶² thereby enabling any non-executive member to be eligible for the post. On the other hand it can be so phrased as to ensure that the chair is held by a member of the main opposition party, as in the Ontario example.⁶³

The Westminster convention is based, to some extent, on the notion, not just on a situation of Government and Opposition, but also on one of two main parties, that of Government and Official Opposition, where a Government with a parliamentary majority also has a majority on committees. It may, therefore, not be entirely appropriate when there is a multi-party situation, perhaps one caused by some form of PR electoral system. This has been the case in New Zealand since it adopted MMP in the 1990s:

A note on the composition of the New Zealand PAC (the Finance & Expenditure Committee)

As the Government formed after the July 2002 general election is a minority administration, it does not have a majority on all the committees. In December 2002 the FEC comprised five government MPs (all Labour), one government-support party MP and six MPs from the opposition parties. At that time, the governing parties comprised Labour (52 MPs) and the Progressive Coalition (2 MPs). United Future (8) supported the government on issues of confidence and supply; and the Greens (9) co-operated with the government on a range of issues but did not guarantee confidence and supply (and therefore the Green MP on FEC is included in the Opposition category). The other opposition parties comprised National (27); ACT (9) and New Zealand First (13). FEC was chaired by a Labour MP – indeed, the committee has always been chaired by a government member – and the deputy chairperson was from United Future. The 2002 PEC Committee is unusually large, as the usual size of a committee was 8.

The Audit Committee has a convener from the largest opposition party, and a deputy convener from the second opposition party. Standing Orders require regard to party balance in the allocation of convenerships and deputy convenerships, and while the Committee’s convener may not be from an Executive party, no such explicit prohibition applies to the

⁶² Rule 6.7.2. FIAG’s view was that the Audit Committee “should be chaired by an individual whose political party is not part of the Executive” (para 3.8).

⁶³ In Prince Edward Island, where 26 of the 27 seats are held by one party, the remaining member is not only designated ‘Leader of the Opposition’, but also chairs the PAC. In Nova Scotia, where the Leader of the Opposition chooses the Chair, when the two opposition parties had the same number of seats until March 2001, the Speaker made a ruling that the PAC would have alternating co-chairmen, chosen by each opposition house leader. The PAC determined that the Chairmanship would rotate on a six-month basis.

deputy convenership.⁶⁴ The Committee may wish to consider whether Standing Orders should be amended to provide more explicitly for the party allocation of its convenership and/or deputy convenership.

It may, on the other hand, feel that the Parliament’s multi-member composition, produced by its electoral system, makes a Westminster approach to these matters less relevant, and could seek the removal of the unique Rule 6.7.2 prohibition. Going further, it may wish to require its convenership or deputy convenership to be held by members who are not members of either an Executive party or the largest opposition, perhaps even by a Member not from a party represented on the Bureau. Such an approach could be said to emphasise more transparently the non-partisan nature of the Committee. This would contrast with the traditional Westminster approach, which may be perceived as entrenching the notion of partisanship, sharing the committee spoils among the parties, especially the two main parties.

Issue for consideration: Should Standing Orders be more or less prescriptive about the party allegiance of the Committee’s convener and deputy convener?

B Resources

(i) General considerations

A PAC clearly needs adequate resources to enable it to do its job. This is neatly expressed in the Standing Orders of the Manitoba parliament relating to its PAC: “The Committee may endeavour to obtain all necessary resources, including research support to efficiently fulfil its mandate in an effective manner.” This accords with the general guidance for a PAC in Canada that it “shall strive to ensure it obtains resources required to efficiently fulfill its role and responsibilities in an effective manner” and that “sufficient staff shall be provided to the Public Accounts Committee to assist its members to carry out their mandate in a productive effective manner.”⁶⁵ Other parliaments may have similar aspirations, even, as in South Australia, within their governing legislation on committees generally:⁶⁶

32 (1) The Presiding Officers of both Houses are responsible for – ...

(b) arranging for each Committee adequate staff and facilities for the performance of its functions;

(c) ensuring the efficient functioning of the Committees generally.

(2) The Presiding Officers of both Houses must, in discharging their responsibilities under subsection (1), consult with the Presiding Members of the Committees.

⁶⁴ See Rule 12.1.20

⁶⁵ CCPAC Guidelines, *op cit*

⁶⁶ South Australia’s Parliamentary Committees Act 1991, s32 (extracts)

There are many issues relevant to a PAC's resources, and some of these are beyond the scope of this short study. Each parliament will have its own systems for obtaining resources (financial and otherwise) for all its operations, including the determination of their allocation among all the functions a parliament undertakes. The degree of a parliament's autonomy from outside influences, especially from its government's treasury, will be relevant. It would be going too far to suggest that a PAC's activities will be a determining factor in how a government responds to a parliament's budgetary requests or demands, in so far as it may have any discretion in these matters. However, this may, from time to time, become relevant, especially if the parliamentary audit process highlights controversial or embarrassing financial issues.

Within the parliament, there will inevitably be competition for limited resources as between its various activities and offices. This means that the systems for determining such allocations (including the extent of 'political' involvement of MPs, or even ministers) will be important, as will the scope for particular committees, such as the PAC, to assess its own resource requirements and to communicate them to those who make the relevant decisions. In so far as resources are allocated according to the 'importance' of a particular function or committee, recognition of the parliamentary audit function and the PAC will be relevant. PACs are often regarded, or at least often regard themselves, as one of the more important committees in a parliament,⁶⁷ and so may have some expectation of a sympathetic response to resources requests.

In addition to resources directed to the PACs themselves, the members of the committee and the parties to whom they belong may well also receive research support from public funds,⁶⁸ as may the chair of the PAC through additional salary or allowances by virtue of that office. All PACs surveyed, except New Zealand and Denmark, replied that they have some form of additional financial package for either their members, chair or staff, though there may be no necessary correlation between such arrangements and their use for PAC purposes.

The reality of support for parliamentary committees, including that of a PAC, may not be such a rosy story. Manitoba, where, as noted, the goal of sufficient resources is stated in Standing Orders, apparently has "very few resources available to it. There is only one Committee Clerk who is responsible for procedural and administrative duties for the PAC and limited research sources are available."⁶⁹ At a discussion of PAC resources during a Canadian Council of Public Accounts Committees (CCPAC) conference in 2000, there was a general view among members and staff of Canadian PACs that PACs were not over-

⁶⁷ The CPA study suggested that "Parliaments regard the PAC as their pre-eminent committee and that any parliamentary steps that reinforce this impression be taken" McGee, op cit, pp60-1

⁶⁸ In responses to a Canadian Council of Public Accounts Committees (CCPAC) survey of Canadian PACs, Alberta expressly referred to such funding.

⁶⁹ Explanatory notes to the CCPAC survey cited above

endowed with staff and financial support. The absence of dedicated PAC staff in some PACs was mentioned as a particular problem. The Irish case-study set out in Appendix 3 is a telling instance of the impact of parliamentary resources in ensuring effective parliamentary financial scrutiny.

(ii) In-house staffing and external support

The resourcing of a PAC is, inevitably, a factor of, amongst other things, the size of the parliament generally, and the scale and form of its committee system and of its PAC in particular. A small parliament like New Brunswick, with a large PAC of 14, has no dedicated PAC parliament staff, as it has only 3 clerks in total. One of these is nominally the committee clerk, though all three can do committee work. South Australia also has a small parliament, and a small PAC, of 7, but has two dedicated PAC staff. At the other end of the spectrum is the larger Australian Parliament, with a large PAC (with a wider financial remit) of 16 members, and a relatively substantial dedicated PAC staff of 9. The UK PAC has 3 clerking staff, but access to the c750 staff of the NAO. India, with a very large PAC of 22 members, has “22 staff and its own libraries equipped with literature and reports.”⁷⁰

As well as clerking/administrative support staff, a PAC may also have other ‘in-house’ support, especially from a parliament’s research and information services. Parliamentary research support for committees can be provided in a number of ways, and this is reflected in the PACs we surveyed. Some like Ontario have a research officer as part of the committee’s own staff; others will use the staff of the parliament’s information service, either on an ad hoc or assigned basis, as in the UK, or seconded to the committee, as in Canada. Where committees do not have dedicated staff, research support may also be given to committees generally, as in British Columbia.

Neither the members nor the staff of most of the PACs examined were provided with what may be described as audit-related training. Only New Brunswick, Denmark and New Zealand responded positively to this question, and the latter two are not PACs in the narrow sense. Victoria explained that its PAC Secretariat usually arranges briefing sessions on the role of the Committee; understanding the Budget Papers; and the role of the Audit Office.

All PACs we surveyed, except the UK⁷¹ and South Australia, responded that they could appoint external advisers, either on a continuing basis or for specific purposes. There are various ways that parliaments, and therefore their PACs, may have for ‘buying-in’ expert assistance, through dedicated budgets, general committee research budgets (as in Scotland), bids to the parliament and so on. Committee budgets, of whatever form, may well have to

⁷⁰ McGee, *op cit*, p68

⁷¹ This is in contrast to the departmental select committees, under SO no. 152.

cover necessary expenses other than information and advice services.⁷² In Ireland, the PAC can engage consultants, that is, persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters, though, like select committees, this requires the consent of the Minister for Finance.⁷³

New Zealand is an interesting example, given its comparable size of parliament (120 members). The Office of the Clerk of the House holds a budget to be used for paying for specialist advice for committees. The PAC (which has a wide financial remit) has a specialist tax adviser who may be appointed to advise the committee on a bill-by-bill basis; and an adviser on Monetary Statements who holds a permanent contract for this task. Other advisers are brought in on a case-by-case basis. It is staffed by the Office of the Clerk of the House: a Clerk, an assistant to the Clerk and one full-time support staff.

As may be expected, some of the PACs which have a broader financial or budgetary remit may well have a relatively larger support base. For example, the German PAC has a support staff of 14, as well as being the primary customer of the 5 staff of the Budget & Finance Division of the parliament's research service. However, much of this support appears to be directed towards the committee's budgetary rather than audit functions, and the level of support is regarded as small, when compared to what is available to the government.⁷⁴

Some PACs rely on assistance from government sources, such as the relevant finance ministry. This is the case in Germany, though, again, this is generally related to budgetary matters. It is also the case in Australia, where "additional advice relating to particular inquiries is obtained from appropriate officers from the Department of Finance...From time to time officials from Government departments are seconded to the secretariat."⁷⁵

This sort of assistance, while understandable⁷⁶, can create potential conflicts of interests and impinge on the perceived independence of the PAC. However, it is understood that the Procedures Committee is addressing the broad question of operational relations between the Parliament and Executive civil servants. In that context, and taking account of the central

⁷² For example, the Australian PAC's 2001-02 expenditure covered "advertising; catering; consultants; conference fees for committee members and staff; publishing; salary, travel and accommodation costs for staff; and miscellaneous expenditure" (annual report 2001-02, appendix B)

⁷³ SOs 81(8) and 156(4)(d). This ministerial consent requirement also applies to a committee, including the PAC, wishing to travel: SOs 81(9) and 156(4)(e).

⁷⁴ J Wehner, "Reconciling Accountability and Fiscal Prudence? A Case Study of the Budgetary Role and Impact of the German Parliament" (2001) 7 *Journal of Legislative Studies*, pp. 58-80.

⁷⁵ Annual report 2001-02, p5. The particular Australian scheme of governmental and Auditor observers is described at the end of this section.

⁷⁶ This may be the case in some relatively small, poor or less well developed jurisdictions, where there may be international assistance available, especially in the context of building up a state's anti-corruption capacity.

role of the Auditor and Audit Service, considered below, the Committee may wish to consider whether there is scope for more direct use of Executive officials as a resource.

(iii) The role of the Auditor and Audit Service

An obvious and much-used resource across PACs is that of the Auditor, and thereby of the Audit Service. In some jurisdictions, it may be the PAC's primary source of information and advice. The UK PAC's access to the NAO is well-known, and often the cause of much envy among other PACs, and among other UK committees.⁷⁷ The German Audit Service has a parliamentary liaison officer who co-ordinates this interaction, attends committee sessions, and is the person to whom any queries to it are addressed.⁷⁸

The relationship between the PAC and the Auditor and Audit Office is, as is noted throughout this report, central to the operation of the parliamentary audit function. Yet it is one that is fraught with potential ambiguity, which has to be handled with care so as to preserve the necessary independence of the various actors involved in the process. In essence, as a PAC resource, it is a question of the Auditor's position at Committee meetings – is the Auditor a part of the PAC team behind the table; a witness on the other side of the table; a participant like non-member MPs, or someone separate from any of these categories of participant?

The CPA study states that the Auditor appears as a witness in 79% of PACs surveyed,⁷⁹ and the Irish PAC described the Auditor as a "permanent witness." The Indian PAC is more descriptive: "The Comptroller and Auditor General is the 'friend, philosopher and guide' of the Committee. He attends the sittings of the Committee and assists it in its labours."⁸⁰ In Queensland, the Auditor normally provides a private briefing to the committee prior to tabling of his reports.

The chair of the Saskatchewan PAC put the dilemma neatly during a CCPAC conference in 2000: "We have limited resources and in fact, when we plan the budget for the PAC committee, we look at where we will be able to spend our funds. There are no additional funds to hire additional researchers so we rely a lot on the staff of the Auditor's office, of course, because they are present at all times..." There is obviously a delicate balance between expert assistance on the one hand and over-reliance and dependency on the other. PACs may feel, from time to time, that, by relying predominately on the Auditor, they may potentially be depriving themselves of access to other perspectives and opinions which may

⁷⁷ This is examined elsewhere in this study in the context of a PAC's relations with its fellow committees.

⁷⁸ Wehner, *op cit*.

⁷⁹ McGee, *op cit*, p98

⁸⁰ Indian PAC webpage: <http://164.100.24.208/committee/p17.htm>

be relevant to their work. In this sense, this issue is relevant to any assessment of the effectiveness of the parliamentary audit model.

Appendix: Observers at Australian PAC Inquiries⁸¹

Introduction

Since the early 1950s the Joint Committee of Public Accounts has been assisted in its work by observers from the Australian National Audit Office (ANAO) and the Department of Finance (DoF).

Observers perform an important role in the work of the Committee: they help ensure that the Committee has before it all necessary information and opinion on the matters under review.

This paper provides background information about the role of an observer.

The Committee's expectations of an observer

At the outset of a Committee inquiry or review, the relevant areas in the ANAO and DoF nominate officers to be observers for the duration of the Committee's work.

The Committee expects observers to be officers:

at the Senior Officer Grade B level or above; and

who are working, or have experience, in an area relevant to the issues being considered by the Committee.

It would assist the Committee in selecting an observer if nominated officers were to provide a brief curriculum vitae.

Observers should be available to attend all of the public hearings conducted during an inquiry or review. At times the Committee may also expect observers to attend private meetings, briefings and...[sic]

The role of an observer

General

The role of an observer is to assist the Committee in its work by providing background information and comment relevant to the subject being considered.

The Committee may request such assistance at any time during the course of an inquiry or review.

⁸¹ Observers for Committee Inquiries: <http://www.aph.gov.au/house/committee/jpaa/observer.htm>

At public hearings

Public hearings are one of the main ways by which the Committee gathers evidence. At public hearings, the Committee formally questions witnesses, usually on the basis of written evidence previously submitted.

Observers are given as much notice as is possible of a public hearing and, in most cases, will be given copies of any publicly available submissions before a hearing commences.

During the course of a hearing observers are expected to:

(a) follow the proceedings;

(b) offer such information and comment to the Committee Secretary as may be of assistance to the Committee; and

(c) provide information and comment in response to questions from Committee members and staff.

An observer may, for example, suggest a possible line of questioning, or offer background information about any of the issues being discussed.

It is possible that the Committee may ask an observer to make formal and public comment on the issues being discussed at a hearing. If so, the observer will be required to swear an oath or make an affirmation.

Transcripts of Committee hearings are usually available within a week of the hearing and copies are sent to all participants, including observers. This is an opportunity for observers to reflect on the evidence taken and suggest areas or issues requiring further attention.

At other times

Committee members or staff may contact observers at any time during the course of an inquiry or review to seek information or comment on particular issues.

On most occasions the request will be for oral advice, although at times a written response may be requested.

C Sources of Information

(i) Witnesses

The main sources of information for a PAC investigation—other than the Auditor and Audit Office, the Committee’s staff and any external advisers—are its witnesses. The term ‘witnesses’ generally applies to those who are summoned or invited to appear before a committee, and it has been used in that sense here. However, a PAC, as with other parliamentary committees, may well invite evidence or submissions from a wider range of

people and bodies than will be its main categories of formal witnesses. This is considered below.

How widely a PAC casts its net to gather its evidence and information is obviously extremely relevant to the criterion of effectiveness of the parliamentary audit process. In principle, the more information that can be gathered, from the widest range of potential respondents and witnesses, the greater the variety and quality of perspectives that a scrutiny exercise can have at its disposal. Assuming a committee has the resources and expertise to assess and evaluate all this information properly, then that should be the ideal situation for an investigatory and analytical process such as those conducted by parliamentary committees.

However, this general proposition might not apply in its entirety in the context of parliamentary audit scrutiny, which is a rather specialised form of scrutiny, set apart from the generality of parliamentary oversight processes. It is a more assessment-based form of inquiry than the usual policy-focussed inquiries of subject committees. If the conventional criteria of consensus and unanimity are to be upheld, then this implies that a PAC should tend to steer clear of 'policy'.

This in turn seems to mean that the scope of those who could be witnesses before a PAC should be restricted to those who do not answer for policy, such as accountable officers. It perhaps should not cover those who are either accountable for policy, especially ministers or policy-focussed officials, or who are thought to be primarily interested in policy, such as representative bodies, interest groups, consumers, shareholders and the like.

We asked the PACs we surveyed about the main categories of witness they tend to call, to see if this relationship between policy scrutiny and witnesses applies. The CPA study found that PACs avoiding policy issues tended to restrict themselves to departmental officials, rather than ministers, and also noted that even those PACs who did involve themselves in policy examination "rely in the main on departmental witnesses."⁸² Within our fairly narrow survey, these conclusions are followed to some degree. Only 3 PACs—Denmark, New Zealand and British Columbia—responded that they dealt with policy issues, and 3—New Brunswick, Denmark and New Zealand—called ministers as witnesses.

Guidance to Canadian PACs states that, though PACs should have the right to call ministers and officials, "Ministers be called as witnesses before public accounts committees only when they have been personally involved in decisions under examination." Saskatchewan incorporates this into its PAC's operating principles and practices: "Ministers should be invited only to the Committee when the Committee decides it is appropriate to do so." The Canadian PAC has called a minister before it only once during the two previous Parliaments.

⁸² McGee, *op cit*, p74

Virtually all PACs will call accountable officers as witnesses.⁸³ The Scottish Executive assumes that this is the case:⁸⁴

It has been assumed for the purposes of this guidance that the Audit Committee would normally require relevant Departmental Accountable Officers to appear as witnesses at any oral evidence sessions in connection with reports initiated by the Auditor General for Scotland

All can, and most will, to some extent, call other departmental officials. New Zealand also reported that it calls MPs, and Ireland specified that it called CEOs of publicly funded bodies audited by the Auditor. New Zealand and Australia were the only PACs which stated that members of the public were a major source of their witnesses, though Victoria did cite interest and community groups as a main source.

(ii) The wider public

As noted above, a PAC may cast its net more widely than those types of people or bodies it tends to call as witnesses, in terms of requesting or inviting information. Some of the PACs we surveyed made a point of stating that they advertised their inquiries and invited submissions from the public. One, Queensland, even pointed out that “some inquiries of the committee have been initiated by a complaint from a member of the public,” and another, Ireland, noted that “many people write in with complaints which are then put before the PAC.”⁸⁵ The Australian PAC’s website sets out its approach:⁸⁶

At the outset of an inquiry, once the terms of reference are settled, the Committee usually advertises its inquiry in the national press. The advertisements call for written submissions from interested individuals and organisations. The Committee also seeks information and comment from people with an expert knowledge of the issues under review.

A more relevant question, though one which would require further research to answer comprehensively, is the extent to which the input from the public and from those beyond a PAC’s ‘usual suspects’ is actually taken into account in the committee’s inquiry. This is an aspect of a PAC’s overall approach to its sense of engagement with the wider world, and some indication can be gleaned from the responses we received. On the positive side were the following comments from New Zealand and Victoria respectively:

⁸³ Those who did not respond positively to this—Ontario, Queensland and South Australia—may have interpreted ‘accountable officer’ in a different way from the other PACs.

⁸⁴ Scottish Public Finance Manual, April 2002, para 8

⁸⁵ The CPA study noted that “PACs do not generally regard themselves as grievance committees taking complaints from individuals who allege that they have been the subject of improper or unfair treatment,” because there are other avenues within and outwith a parliament where such complaints can be more appropriately pursued: McGee, *op cit*, p74.

⁸⁶ JCPAA, *Background information on the Committee*: <http://www.aph.gov.au/house/committee/jpaa/backinfo.htm>

The public places high value on participation, and on outcomes of the process. The committee values public input, especially by interest groups and expert organisations.

And

Public/Community Groups provide a valuable source of information and give a different perspective.

On the other hand, the following comment from Ireland may suggest a more ambivalent perception by both the PAC and the public:

The public have no role as such although many people write in with complaints which are then put before the PAC.... The public might not understand the finer points of actual constraints of the PAC in post audit review of expenditure only but consider it a "watchdog " for the taxpayer nonetheless.

Canada was more succinct:

Public is not generally involved other than as observers.

D Operating Procedures and Practices

(i) Generally

There is no standard way in which all PACs go about their business. Much depends on the rules by which they are required to operate, which may be determined by the laws (and even the constitution) of their jurisdiction, as well as the Standing Orders and other rules and practices of their parliament, and, of course, the scope and nature of their remit. These institutional factors may be important for one or more PACs, but not so relevant for the Audit Committee. Examples of this are the issues a PAC may take up, in terms of whether or not an Auditor's report is presented to the parliament in some way, or whether the PAC has to rely on the initiative of its parliament or others for all or some of its work.⁸⁷ The Audit Committee's remit is relatively 'open' in this respect,⁸⁸ which means that it is not as limited as some PACs in what it can do. All the PACs examined can undertake urgent or emergency inquiries, though not all can do so entirely at their own discretion.

The nature of a PAC's formal powers may well be a factor of the powers of all committees, or of all those of the same 'category' of committee, in the parliament. So for example, in relation to a PAC's powers to require the production of information, including documents, what is relevant to this study is that all the PACs we surveyed replied that they have such power, not the exact nature of these powers, or how they can and do use them in practice. Such an analysis is, in any case, beyond the scope of this short study.

⁸⁷ As in Victoria, the PAC may have greater autonomy than any other committee in the parliament in initiating its own work.

⁸⁸ One particular limitation in its remit, in respect of 'laid reports', has been addressed very recently.

A research exercise in relation to the Audit Committee's powers, for example, would have to take account of not just the formal position as set out in ss23-27 of the Scotland Act 1998, but also the practices which have evolved

- by agreement between the Parliament and the Executive, such as the Parliament's resolution of 1 November 2000, or the *Protocol between committee clerks and the Scottish Executive*;
- by Executive practice and internal guidance, as in its Scottish Executive Evidence and Responses to Committees of the Scottish Parliament, and
- by internal Parliament guidance for committees, such as those produced early in its life, like *Guidance for the operation of committees*, and *The role of committee convener*.

All these factors, among others, mean that it is difficult for a short study of this nature to analyse comprehensively the ways in which PACs actually go about their business, from the perspective of learning lessons for the Parliament. This applies to important areas such as determination of a PAC's work programme, both in the long-term and short term. While, as we have noted, PACs have relatively little 'legislative' work—a common source of external pressure on a parliamentary committee's ability to determine its own agenda—they are dependent, to a greater or lesser extent on external factors such as references from the parliament or the Auditor. The guidelines for PACs in Canada refer to the desirability of forward planning for a PAC's work in each parliamentary period. The UK PAC, for example, considers its forward programme in advance of each 'parliamentary term'. The programme of hearings is agreed before a press notice is issued, giving the subjects of all committee hearings for the forthcoming term.

(ii) Particular techniques

One source we consulted set out some examples of what may be regarded as basic components of the PAC process. These are the supply role of the Auditor, hearings as principle mechanisms of scrutiny in action, the preparation of PAC reports based on evidence given at hearings, and follow-up procedures.⁸⁹ Many of a PAC's operation aspects are considered elsewhere in this report, in terms of meetings, information-gathering, reporting and so on. Here we are looking at some particular aspects that are not covered elsewhere and are potentially relevant to the Audit Committee.

When asked whether they used techniques such as public or private seminars, informal briefings and 'awaydays', 5—Australia, New Brunswick, Denmark, UK and Ireland—replied positively, and 6—Queensland, South Australia, New Zealand, Ontario, Canada and British Columbia—said no. Australia uses inspections⁹⁰ and questionnaires in addition to inviting

⁸⁹ Joachim Wehner, "Public Accounts Committees in the Commonwealth: Financial Scrutiny in the Aftermath of Gladstone" (unpublished)

⁹⁰ The Audit Committee made a point, in its first annual report, of noting that it used this technique of site visits, where "Members had a chance to see at first hand the experiences of staff in the field, which

evidence and holding public hearings. The Danish PAC makes annual inspections (in Denmark and abroad) of enterprises and establishments, fully or partly financed by public funds. In India:⁹¹

“if it appears to the Committee that it is necessary for the purpose of its examination that an on- the-spot study should be made, the Committee may, either in its entirety or by dividing itself into Study Groups decide to undertake tours to make an on-the-spot study of any project or establishment. All discussions held during tour by the Committee/Study Groups, with the representatives of the establishment, Ministries/Departments, non-official organisations, Labour Unions etc. are treated as confidential and no one having access to the discussion, directly or indirectly is to communicate to the Press or any unauthorised person, any information about matters taken up during the discussions.”

In terms of use of IT, for techniques such as on-line consultations or discussion forums; provision of evidence by e-mail; webcasting of activities; video-conferencing and so on, 6— Australia, Queensland, Denmark, New Zealand, Ireland and UK—said yes, and 4—New Brunswick, South Australia, Ontario, British Columbia—replied in the negative. It is assumed that all will use computers and the like as part of their basic administrative operation, and that the negative responses relate to the more innovative technique options we suggested. Exploitation of IT will also depend on the availability of resources within the parliament generally, and the PAC in particular. For example, while Saskatchewan’s PAC makes use of computer presentations, it does not appear to use IT for processes such as video-conferencing because of resource constraints, though some other committees do so.

Subject to these provisos, the Australian PAC’s description of its standard process is probably a good indication of the standard parliamentary audit process:⁹²

The Committee normally advertises its inquiries in the national media and on the Internet and invites interested individuals and organisations to make written submissions. Oral evidence is taken at public hearings (although in certain circumstances witnesses may request that evidence be given in camera). The majority of hearings are open to the public and interested parties can obtain verbatim transcripts of the public hearings free of charge or access them on the Internet.

complemented the report of the auditors”, and hoped that “this innovation will become a feature of the way the Audit Committee works in the future.”

⁹¹ Indian PAC webpage: <http://164.100.24.208/committee/p17.htm>

⁹² JCPAA annual report 2001-02, p4-5

The Committee presents the findings of its inquiries in reports, which are tabled in both houses of Parliament. Copies are distributed to all witnesses and Commonwealth agencies with a responsibility for matters raised in the reports. The reports are also available to the public through the Commonwealth Bookshop and the Internet.

E. Unanimity and Consensus

(i) Generally

As is noted throughout this report, most PACs seek to operate on the basis of consensus and unanimity. This is exemplified by the guidance to the PAC in Manitoba's Standing Orders that "in the spirit of a non-partisan approach, Committee members should strive to reach a consensus in their deliberations." All the PACs we surveyed responded affirmatively to the proposition that "the committee operates as far as possible on the basis of unanimity and cross-party consensus." Only 4—New Brunswick, South Australia, Saskatchewan and New Zealand—said that formal voting was a frequent practice. The UK PAC generally resorts to a formal vote less than once a year. The Australian PAC notes on its website, with obvious pride, that "traditionally the Committee adopts a cooperative and bipartisan approach to its work. This is demonstrated by the fact that of the 359 reports tabled since 1953, all but six have been unanimous."⁹³ However, a consensual approach may not necessarily preclude regular formal voting, as Canada indicated that its PAC was characterised by both.

The Danish PAC, which is a very different animal from the traditional Westminster model, responded:

Even though the PAC members represent different political attitudes, the PAC attaches great importance to expressing their audit opinion on a consensus basis. The weight of the PAC audit statements to Parliament, to the ministers and to the public very much depends upon the presence of mutual agreement (it must be noted that the law does not oblige the PAC members to reach an agreement).

The Clerk of Canada's PAC said at a conference in 2000:⁹⁴

"Depoliticize? In 26 years I have had over 10 committees, I have had the Public Accounts Committee for the last eight years. It is the most non-political identity that I have ever had to work with at the House of Commons. I attribute that to two things: to the committee sticking to the Office of the Auditor General—who has gone out of his way to avoid politics and policy questions—if the committee sticks to the area covered by the Auditor General it will avoid getting into policy areas; the other thing is members sometimes suggest inviting a minister to appear before a committee and that is judged non-acceptable in all cases for the Public Accounts Committee to have a minister appear. As soon as you have a

⁹³ JCPAA, *Background information on the Committee*: <http://www.aph.gov.au/house/committee/jpaa/backinfo.htm>

⁹⁴ CCPAC Conference, 19.9.00

minister there, you will go beyond the administrative and financial questions. So if you want to stay out of politics, don't have the minister appear before the committee."

Of course, any parliamentary committee, even a PAC, operates in a political environment, and consensus and unanimity may well mean negotiation between members, especially those of different parties. As an Australian delegate to the same Canadian conference noted, "We work very hard to get those reports with everybody in agreement. Sometimes it means taking a softer line which is not always a bad thing."⁹⁵

(ii) Dissent and minority reports

As consensus in a PAC is regarded as important, it is relevant to note whether minority reports or other forms of dissent are permitted or used in PACs' reports. Most PACs will probably be able to reflect any minority views, even if that is by way of recording such views and any alternative draft text or amendments and divisions in committee transcripts or minutes, which may or may not be attached to reports.

German committee reports must "contain the recommendations of the committee responsible together with the reasons therefor, the opinion of the minority, and the comments of the committees concerned." Members of Australian committees can add a 'protest' or a 'dissenting report' to the main report,⁹⁶ and in South Australia, "if requested to do so by a member of the Committee, a Committee must include in a report a minority report on behalf of that member."

Ontario's Standing Orders prohibit any minority report to be presented to or received by the House, as a report is deemed to be that as determined by the committee as a whole or a majority of it. However "every member of the Committee, other than the Chair, shall be permitted to indicate that he or she dissents from a particular recommendation or comment. The Committee shall permit a member to express the reasons for such dissent in an appendix to the report." The Chair can "establish a reasonable deadline for filing any dissenting opinion with the Clerk of the Committee."⁹⁷ New Brunswick has a similar arrangement, though the inclusion of "any dissenting opinions" in its report is at the discretion of the Committee.

Standing orders in New Zealand enable a select committee, such as its PAC, to "indicate the differing views of its members" in its reports. This has been interpreted as follows: "There is no such thing as a minority report, there is only one report presented to the House by a select committee. The minority or differing views of members may be indicated in a report. These

⁹⁵ Tony Fletcher, chair of the Tasmanian PAC.

⁹⁶ These two terms are not defined, but the *House of Representatives Practice* suggests that 'protest' relate to procedural matters, and 'dissents' to "opposition to a committee's conclusions or recommendations": (p666).

⁹⁷ SO 129

differing views, if accepted by the committee for inclusion in its report, become an integral part of the report.”⁹⁸

The standard view of PACs on expressions of dissent is well expressed in the Australian PAC chair’s foreword to its 2001-02 annual report:⁹⁹

The Committee had a very productive year in 2001-2 despite the break between Parliaments. Towards the end of the 39th Parliament the Committee experienced an unprecedented period of disharmony leading to the tabling of three dissenting reports, where there had been a total of only three such dissents in its 89 year history. Happily the 40th Parliament and the 90th year of the Committee has seen a return to a spirit of constructive co-operation with attempts to achieve shared outcomes.

F Dealing with ‘Policy’

“In theory we are not supposed to concern ourselves with policy, but policy and economy merge into each other with such subtle gradations that it is quite impossible to decide a clear-cut line between what is policy and what is not”

– *Sir Osbert Peake, chairman of Westminster PAC, 1945*¹⁰⁰

The Audit Committee adheres to the ‘Westminster convention’ that it does not deal with matters of policy, and this is apparently reinforced by the statutory injunction that the examiner of a value for money (VFM) audit “is not entitled to question the merits of the policy objectives of the body or office-holder in question.”¹⁰¹ In its first annual report, the Committee said that it “is not concerned with policy matters—that is a matter for subject committees. Instead the Committee has focused on the economy, efficiency and effectiveness of the way these policies have been implemented.” On the other hand, the Executive appears to cover the possibility that the Committee might stray into policy areas:¹⁰²

“Officials should not attempt to justify policy objectives or ministerial decisions. This reflects the principle that the merits of Government programmes and projects are primarily a matter for political debate and ultimately for Ministers rather than civil servants to explain. The Audit Committee should address any such questions directly to the responsible Minister.”

This approach is generally adopted in ‘Westminster model’ PACs, especially those which have a narrow ‘audit’ function. Those bodies with a different structure and wider financial remit, as in Denmark, or part of the general committee system, such as in New Zealand, may not apply such an injunction. The limitation sometimes appears explicitly in Standing

⁹⁸ New Zealand House of Representatives, *Supplement to Speakers’ Rulings* (2002, p. 11)

⁹⁹ JCPAA annual report 2001-02, October 2002, p v

¹⁰⁰ Evidence to the Procedure Committee, HC 189 of 1945-6 Q4008

¹⁰¹ Public Finance and Accountability (Scotland) Act 2000, s23(9)(a). The examiner “may consider the appropriateness of any criteria used by the body or office-holder to assess use of resources”: s23(9)(b)

¹⁰² Scottish Public Finance Manual, April 2002, para 10

Orders, as in Manitoba¹⁰³ and Ireland,¹⁰⁴ or adopted as a matter of parliamentary convention.¹⁰⁵ It may be applied through procedural practice within the committee. For example, the Alberta PAC passed a motion at an organizational meeting to limit the scope of questions, and the Chair endeavours to limit questions away from policy,¹⁰⁶ and many PACs will confine themselves to hearing from departmental witnesses, rather than ministers.¹⁰⁷

The standard operational reason for PACs not to deal directly with matters of government policy is the need to maintain consensus and non-partisanship within the Committee, so that it, and its reports, are taken seriously, not least by the government or other body to whom they are addressed. As the Saskatchewan's PAC's mandate from its parliament, adopted in 1992, explains it:¹⁰⁸

The PAC is not fundamentally concerned with matters of policy. The Committee does not call into question the rationale of government programmes, but rather the economy and efficiency of their administration. Although the PAC hopes to have a continuing influence on the quality of provincial administrative processes, its prime orientation is after-the-fact, or post-audit, to understand, assess and correct (through recommendations in its reports to the Assembly) inadequacies, and issues that the Committee and the Provincial Auditor have raised. The resulting "non-policy" orientation of the Committee should enable the development of a non-partisan spirit within the Committee in order to get at problems and seek solutions to them.

The CPA study concluded that, generally, those PACs which do not involve themselves in policy scrutiny expect to achieve consensus in their reports, whereas those who have no such limitation are more likely to produce reports which contain minority or dissenting views.¹⁰⁹ One way in which an element of partisanship, though generally of a non-contentious kind, can manifest itself is when members from the governing party ensure that there will be some

¹⁰³ SO 95: "The PAC shall not concern itself with policies of the Government or with the rationale of Government programs. The PAC shall focus on administration of Government policy and ensure that public money for the policies and programs of government is expended in an efficient and economic manner."

¹⁰⁴ SO 156(7): "The Committee shall refrain from—...(b) enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies."

¹⁰⁵ "In line with tradition, the committee does not comment on the economy, efficiency and effectiveness of government policy": Queensland PAC Annual Report for 2001-02, para 5

¹⁰⁶ As reported in the CCPAC's *Comparative Jurisdictional Implementation Survey* 1991 on its 'Guidelines for Public Accounts Committees in Canada', notes to guideline 6

¹⁰⁷ McGee, *op cit*, pp69-70

¹⁰⁸ An Irish PAC sub-committee report in 2001 on a highly sensitive matter commented that it, as a parliamentary committee, was able to remain cohesive and function effectively, "in part due to the non-involvement of the Committee of Public Accounts in policy assessment." See further Appendix 3

¹⁰⁹ McGee, *op cit*, p69

balance in a report between criticism for administrative failings and praise for things done well or properly.¹¹⁰

The policy limitation derives from a view of the audit function itself, and so it may appear in the remit of the Auditor, as in Scotland. Thus the issue is one of the nature and purpose of audit, and the importance given to independence and objectivity, something which is often discussed in terms of the Auditor rather than the PAC.

This raises the question of the position of the PAC in relation to parliament on the one hand and the Auditor on the other. If a PAC is to be regarded as part of the public audit process, as the parliamentary partner of the Auditor, then there is a case for it adhering to the same or similar jurisdictional and operational criteria that are applied to the Auditor. On the other hand, if the PAC is seen essentially as part of the wider parliamentary scrutiny apparatus, then there may be grounds for some distinction between how it and the Auditor apply criteria such as policy scrutiny. In this sense, the PAC and the Auditor have different tasks, as part of the overall audit function, which may enable, or even require, them to use different techniques. The PAC may be protecting the Auditor by undertaking the 'policy' aspects of the audit function itself.¹¹¹

Even where there is a statutory injunction on the Auditor questioning the merits of policy objectives, as in the UK and Scotland, that will not mean that the Auditor will not look at policy documents, as an understanding of the relevant policy is necessary to any performance or VFM audit. Whether Auditors should comment directly on matters of policy has exercised Australian auditors (and PACs¹¹²) for decades, as there is no express statutory injunction on these auditors. While some national Auditors have claimed to steer clear of policy comment in their work, others have seen it as part of their job as an independent public official to comment on government policy, so as to emphasise the autonomy of their

¹¹⁰ At the CCPAC conference in 2000, the Canadian PAC's researcher described this as ensuring that credit is given where credit is due.

¹¹¹ That a PAC may adhere to the policy limitation does not, of course, mean that it ignores all policy aspects as part of its overall information-gathering, training or outreach functions. For example, the Victorian PAC conducts a series of members' seminars annually for MPs and their staff on important issues. One in 2000 was on emerging issues in health, which the Chair described as "talking policy in the broad sense" (ACPAC 2001 Conference, transcript pPA19)

¹¹² See, for example, the remarks of the Chair of the NSW PAC at the Australian Council of Public Accounts Committees' (ACPAC) 2001 conference, on the arguments between the PAC and the Audit Office in that State as part of its triennial statutory review of the Office and its activities: "The committee sought to try to resolve the conflict that New South Wales has consistently with the Audit Office on the issue of policy. We had many debates with our former Auditor-General about whether the Audit Office was actually straying into policy, and we asked Professor Craswell to try and help us resolve that, and in the end he was not able to help us resolve it. It is quite a grey area, and it is sort of changing the relationship between the Audit Office and the New South Wales PAC, but still the issue of whether an audit, particularly a performance audit, strays into the area of policy has still not been resolved and continues to be a source of conflict from time to time between the PAC and the New South Wales Audit Office" (transcript pPA17).

post and their duty to contribute to informed public debate. To do otherwise would, it was argued, marginalize an important public official.¹¹³ Doubtless, there was also a tactical element to the Auditors' views, and a desire to 'keep their powder dry', so that their rare incursions into the public policy debate would have the greater impact. An effective Auditor will also be able to avoid overt comment on the face of any public pronouncement, while getting across his or her perspective on the policy more subtly 'between the lines'.

(i) What is policy?

It is impossible to examine this issue properly without dealing with its fundamental definitional problems. 'What is policy?' remains an unresolved issue, and is generally tackled as a distinction between 'policy' and 'administration'. For example, the Australian Auditors tend to talk of the 'results' or 'effects' of policy. One recently insisted that while it was not appropriate not to comment on "the political good sense or otherwise of policy", he should assess and report upon "the administration of that policy and testing of its effectiveness, efficiency and economy for the stated purposes and for any side effects."¹¹⁴ The CCPAC guidelines are in similar terms, and underline the essential ambiguity of the split between policy and administration.¹¹⁵

The Public Accounts Committee should not concern itself with the policies of government or whether they are good or bad. The Committee should be concerned with ensuring that the policies and government are implemented in an effective, efficient and economical manner, and that the taxpayer is value for monies spent.

As the CPA study notes, a distinction between 'policy' and its 'implementation' is difficult to define, as it can depend on "the level of generality at which the policy is described."¹¹⁶ This can be the case where general, even vague, phrases are used in a public policy context. The Australians debated the application of a concept such as 'the public interest' at their 2001 ACPAC conference and the Western Australia Auditor neatly summed up the problem:

The topic is defining the public interest, and one would think that would be quite a simple task, given that such a concept is critical and core to our system of democracy in pursuit of the common good. But the background to my paper is that I found it is very much a term taken for granted, though it is an oft-used term...It is used but never defined, so when I come at it from the perspective of the role of an Auditor-General, I have decided to approach it as to how as an Auditor-General I operationalise this concept in my office. That is a challenging task, as I have tried to set out in the paper, because of it not being precisely defined. It is a very value- laden term and that is a dangerous area for Auditors who are not entitled to delve into the policy area.

¹¹³ Wanna *et al*, *op cit*, pp281-4

¹¹⁴ Quoted in Wanna *et al*, *op cit*, p281

¹¹⁵ *op cit*, Guideline 6

¹¹⁶ McGee, *op cit*, p69

This dilemma can be most pronounced in areas where state activity or intervention is undertaken in different ways, such as nationalisation, privatisation, ‘contracting-out’, PFI/PPP, public subsidy, service standards and targets and the like.¹¹⁷ At the Australian 2001 conference, the Tasmanian PAC Chair, when asked if he was in favour of PACs’ looking at policy in areas such as ‘community service obligations’, said:¹¹⁸

I do not think we are actually going as far as being involved in policy but, if we are going to throw around terms like ‘value for money’ – and it cannot just be ‘so many of those for so many dollars’; ‘those’ have to be of a certain quality and standard – then, when it comes to community service, the standard is more important, effectively, than the quantity, I have to say.... The delivery had to be done efficiently. We have to be able to understand and appreciate service standards. I do not think that is policy because we know we need community services. So it is not policy, at least at the deep end, but it certainly is service level and it needs to be defined. I believe there is a gap there, at least on my patch and I understand on other patches, for government to be more involved in the setting out of the program that they have, the mapping exercise of services they want delivered, and what they want achieved.

The question of whether the Audit Committee should address policy issues directly as part of its parliamentary audit function can be answered by reference to the two attributes of independence and effectiveness which have informed this study. Any answer must take account of the two key roles of a PAC:

- its role in the public audit process and
- its role as part of the parliament’s general scrutiny machinery.

Balancing the independence and the effectiveness of both the audit process and parliamentary scrutiny is not a simple matter, and may not be capable of a ‘zero sum’ solution. A PAC delving openly into areas of policy may result in more informed, well-rounded committee reports, but this may be at the cost of ‘politicising’ the parliamentary audit process (in so far as politicisation is regarded as a cost), potentially altering the nature of the sensitive tripartite relationship between the Parliament, the Executive (and other auditees) and the Auditor. On the other hand, policy matters may be left to subject committees, or be tackled by the PAC in conjunction with these committees.

The CPA study appears to favour a pragmatic approach to these sensitive issues, by addressing them in terms of what is appropriate for a PAC to question departmental officials about as witnesses. This assumes that anything that would require a response from a minister or other ‘political’ witness would be a matter of policy rather than administration.¹¹⁹ From this could be developed an approach which, in effect, asserts the maintenance of the conventional Westminster convention, while devising ways in which policy matters can be

¹¹⁷ McGee, *op cit*, p70

¹¹⁸ Transcript, pPA66, 5.2.01

¹¹⁹ McGee, *op cit*, pp69-70

addressed as and when they are deemed appropriate or necessary for the integrity of any particular scrutiny.

How far a committee of a parliament underpinned by openness and transparency should operate on the basis of what might be seen by some as ‘convenient fictions’ is a more general matter for the Committee and the Parliament. This is part of a central question of how a PAC operates, a wide issue which is examined further at the end of this Part of the report.

G Meetings

(i) Frequency

As the CPA study noted, there are huge variations in the frequency of PAC meetings. While frequency is, in itself, a limited indicator of committee activity or effectiveness, those who meet frequently “have a better opportunity of promoting consensual working practices than committees whose members come together infrequently.”¹²⁰ Some PACs may meet only once or twice annually, or even not at all, while others meet more than once a week, especially when their parliament is sitting.

Of those PACs we surveyed, only the Danish PAC responded that its usual frequency of meeting was monthly. Four PACs (Australia, New Zealand, Ireland, Ontario) said that they met weekly, those both Australia and Ontario expressly added that this applied only when parliament was sitting.¹²¹ The British Columbia PAC meets bi-weekly when the parliament is in session, and monthly otherwise.¹²² The Canadian and UK PACs meet twice a week, the latter generally for three hours on a Monday and Wednesday. Manitoba has a specific rule that its PAC must meet at least 4 times a year “to discharge [its] responsibilities.” In none of the PACs surveyed was attendance by its members compulsory.

MPs who are not members of the PAC can attend and/or participate in, its proceedings in most jurisdictions surveyed (Australia, Queensland, New Zealand, South Australia, New Brunswick, Ontario, British Columbia and UK). In Australia, they must withdraw when the committee is deliberating or taking evidence in camera, though in Queensland and Uganda they can attend a private meeting by express invitation of the committee. New Zealand is rather more restrictive, where they may attend any meeting, but (other than a minister or member in charge of a bill) may participate only by leave of the committee.

¹²⁰ McGee, *op cit*, p72

¹²¹ The parliaments’ rules may, as in Scotland, provide whether or not a committee can sit when the parliament is sitting or in recess.

¹²² The Trinidad & Tobago Parliament website states that its PAC meets “fairly regularly, on average, twice per month, as the need arises.”

(ii) Public or Private?

Assessing the extent to which PAC meetings are held in public is subject to some definitional problems, such as what constitutes a ‘meeting’ or ‘hearing’. For example, some respondents may say that all its sessions are open to the public and media, but then distinguish these from other gatherings, especially those for deliberative, briefing or housekeeping purposes, which may often be in private. None of the PACs surveyed allowed the public or press to attend when they are deliberating on matters such as its forward work programmes, draft reports, lines of questioning and discussions with advisers, the State Auditor or others.¹²³

In addition, some parliaments may adopt the practice, as in Scotland, of holding meetings in public, but which may go into private session for some agenda items. PAC practice is generally in line with general committee practice in the particular parliament, and much will depend on the prevailing culture, such as whether there is, as in Scotland, a presumption that meetings should be in public,¹²⁴ or, as in Germany, that meetings should not be open to the public. The culture of the UK Parliament in this respect is neatly summed by the relevant Standing Order: “A select committee shall have power, if it so orders, to admit strangers during the examination of witnesses.”¹²⁵

Discussions between the PAC and the Auditor, whether in terms of briefings by the Auditor or otherwise, will tend to be in private, as noted in the Queensland PAC’s recent annual report:¹²⁶

The Auditor-General met with the committee to discuss key aspects of each audit report and this provided the members with an opportunity to clarify issues. These meetings are not recorded which enables the Auditor-General to speak candidly on the audit findings and other financial administration issues.

The CPA study reported that 55% of PACs held their meetings in public, though there is usually provision for in camera hearings.¹²⁷ Roughly half of our respondents said that all their meetings were open to the public and media, but analysis of the responses suggests that this proportion may be misleading, for the definitional reasons described above. For

¹²³ However, according to a member of the Nova Scotia PAC, the press can attend most of its ‘strategy sessions’, and a clerk from British Columbia said that, as with most committees, the PAC considered its reports in public (transcript of CCPAC 2000 conference, 19.9.00)

¹²⁴ Formal rules on public meetings are not the whole story, as there needs also to be, for example, adequate provision for the public to attend meetings. The Canadian guidelines for PACs recommends that “the Public Accounts Committee shall have meeting space provided suitable for public hearings and meetings.”

¹²⁵ SO no. 125(1). The UK PAC’s practice of taking evidence in public, unless there are considerations of national security or commercial confidentiality, dates only from 1978.

¹²⁶ Annual report 2001-02, July 2002, para 22

¹²⁷ McGee, *op cit*, pp99. Bangladesh’s Standing Orders, for example, require all committees to meet in private, and for all except members of the committee, and relevant staff, to withdraw when a committee is deliberating: SOs 199 and 201

example, Australia replied ‘yes’, but refined this by saying that all inquiry hearings are public, but deliberative meetings are private, and that there are statutory provisions allowing in camera hearings. This can be explained by reference to the relevant legislation and prevailing parliamentary practice, where the requirement for public meetings relates to the taking of evidence, and there is provision for a witness to request a private session.

This distinction between ‘meetings’ – which are for deliberative or other purposes,¹²⁸ and are held in private – and ‘hearings’ – which are for the taking of evidence, and are held in public, but with provision for some to be taken in camera – is central to an understanding of the Australian approach. Its PAC’s published material suggests an open and positive approach to public attendance. Public hearings are extensively advertised, and the latest annual report states that “oral evidence is taken at public hearings (although in certain circumstances witnesses may request that evidence be given in camera). The majority of hearings are open to the public...”. However, the statistics in the annual report reveal only 4 public hearings held during the year in question, with none by the full committee, and 2 each by two of its sectional committees. There were 13 private hearings during this period. Two of the sectional committees had held public hearings in the previous year relating to their remit.¹²⁹

The practice in South Australia appears to be similar, though it is interesting to note that the relevant legislation, while allowing the public to be present during the examination of witnesses, actually prohibits their attendance “while the Committee is deliberating.”¹³⁰ These provisions are explicitly mentioned to witnesses as part of its general information pack,¹³¹ and in the Chair’s opening statement to them. The information pack also explains the ‘degrees of privacy’ open to the committee when taking evidence:¹³²

Most oral evidence is heard in an open meeting of the Committee at which members of the public and the news media may be present. Provision can be made for the taking of oral evidence in camera, that is in the absence of a gallery but with a transcript that may or may not constitute part of the reported evidence. Evidence in exceptional circumstances can be taken off the record, that is without a gallery and no transcript. Committees are often reluctant to allow such evidence as the lack of record makes the evidence difficult to cite and any conclusions based on it are difficult to substantiate in the subsequent report.

¹²⁸ A parliamentary public information leaflet states that “committees meet in private in order to discuss the progress of their inquiries, consider evidence, reach decisions and take votes, and to agree on their reports”: House of Representatives Infosheet 4, *Committees*, Apr 2002, p3

¹²⁹ JCPAA, annual report 2001-02, Report 392, October 2002, appendix A

¹³⁰ Parliamentary Committees Act 1991, s26

¹³¹ Economic & Finance Committee, *General Information*, Dec 2002, paras 11 and 14

¹³² *op cit*, para 11

In its latest annual report, the South Australian PAC referred to the statutory provision for the taking of evidence in public: “The Committee believes this to be a most important aspect of its role and encourages an open examination of matters of public interest.”¹³³

Guidelines for PACs in Canada are on similar lines to the practice of Australian PACs,¹³⁴ in that

- evidence-taking hearings should be public, subject to in camera provisions at the discretion of the Chair, which should only be held in instances when evidence of a particularly sensitive nature is given, but
- meetings of a PAC’s Steering Committee (whose role is to review sensitive documents and to monitor the progress of Committee work) should be in camera, as should meetings of the full committees when dealing with the following business:
 - brief members on the subjects the Committee will review;
 - draft and approve the Committee's Reports;
 - discuss personnel matters; and
 - plan strategies regarding Committee relationships with other committees and key leaders in the Legislature. (10.2)

The relevant Standing Order in Ireland is rather intriguingly phrased:

91. (1) Subject to paragraph (2) of this Standing Order, authorised representatives of the Press may be introduced by members of Dáil Éireann to meetings of Standing, Select or Special Committees.

(2) A Standing, Select or Special Committee may at any time, by order, meet in private and all visitors and authorised representatives of the Press shall be excluded for the duration of such order.

The Irish PAC is required to refrain from “enquiring into in public session .. confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned.”¹³⁵

H The basic approach of parliamentary audit

This Part has examined a number of operational issues which, jointly and severally, help to create and reflect the parliamentary environment and ethos within which a PAC operates. They also go to the heart of the relationship between the PAC and the Auditor and Audit

¹³³ Annual report for 2001-02, 40th report, October 2002, preface para (f).

¹³⁴ See, for example, Manitoba SOs 114-115, relating to meetings of its PAC.

¹³⁵ SO 156(7)(a)

Service. As such it is difficult, and probably counter-productive to attempt to treat many of them in isolation. These issues are of particular relevance to a 'CSG Parliament', which seeks to operate in an open, transparent and participative way, and has to consider to what extent it can operate in this way and still be an effective PAC in other respects.

Because of the inter-relationships between many of these operational and conceptual aspects, it is important that for any comments or suggestions not to be presented in a 'tick box' fashion, or in a way that allows them to be 'cherry-picked. Bearing this in mind some issues for the Committee's consideration are listed here.

Issues for consideration:

Is the extent and nature of the resources available to the Committee adequate for its purposes?

Are its sources of information and advice adequate for its purposes, and, if they are to be extended (to call more members of the public, interest groups, and government ministers and officials, or to use advisers more frequently for example), to what extent should that take account of any operational conventions of consensus and unanimity and of the existing relationship with the Auditor General and Audit Scotland?

In so far as the Committee operates, as much as is practicable, within an environment of unanimity and consensus, should that approach be maintained, with all its conventions and procedures devised to support it?

Should the Committee have a publicly declared approach on its treatment of policy objectives as part of its audit scrutiny?

Whether or not it makes such a public declaration, should it change such conventions and procedures it may currently operate, so as to accommodate more direct examination of policy?

Will any broadening of the Committee's information-gathering activities require greater frequency of formal and informal meetings?

Will any broadening of the Committee's information-gathering activities require a reconsideration between the proportion of its meetings and other gatherings held in public and in private?

PART 3: OUTPUTS AND OUTCOMES

A Reporting

(i) Reports

Measuring a PAC's output by the number of reports it issues annually is of limited value, as this will depend on factors such as workload and changing parliamentary and internal rules. For example, prior to 1973, the UK PAC usually issued only 3 reports annually, two on aspects of the public accounts and one covering all its other examinations. Since then, its practice has been to issue a report on each subject it has examined.

Some PACs appear to publish only an annual or sessional report, covering all its activity during the year/session (the CPA study reported 17% did this¹³⁶), though it is more common for PACs to report to their Parliament as and when they choose, covering one or more inquiries. Some may take the view that they only need to make a report when there is something they believe the parliament should be made aware of, such as a financial problem, or a refusal or failure of an audited body to respond satisfactorily. On the other hand, other PACs may, or be required to report on all their inquiries or on all Auditor reports. The Canadian PAC's chair apparently took the view that reports should be tabled on government responses, by insisting that

“for every meeting that we have on something, if it is important enough for the committee to see to something and to have officials come before the committee, it should be important enough to have a report to the House, even if we agree with everything we heard so it would be a very short report, but usually it contains very specific recommendations that go beyond what the Auditor General's chapter would contain.”¹³⁷

While a report is the standard outcome of a PAC inquiry, this may not invariably be the case. In addition to cases where a PAC may regard a formal report unnecessary, there may be reasons of confidentiality which make a report an impractical or inappropriate medium for it conveying its views to those concerned. For example, the UK PAC takes the view that, if an inquiry is so closely concerned with confidential matters that a public report cannot be made, it will address a letter to the responsible Government minister instead. A PAC may also believe that the publicity generated by its public hearings itself constitutes adequate ventilation of the issue.

The number of reports that PACs produce annually varies a great deal, from 2-3 in the case of New Brunswick to 12 in New Zealand, 18 in the very different PAC in Denmark, and 25 in Canada. The Westminster PAC publishes around 50 in a normal calendar year, and in the long post-election session of 2001-02 it agreed 68 reports, 63 of which were published during

¹³⁶ McGee, *op cit*, p100

¹³⁷ CCPAC annual conference, 19.9.00

that session, along with 4 agreed the previous session. The average across PACs tends to be towards the lower end of this spectrum, which would equate roughly with the Audit Committee's output thus far.¹³⁸ There may even be statutory or Standing Orders requirements on the frequency of publication of reports.¹³⁹

(ii) Preparation and distribution of reports

One important practical issue is who takes the initiative and primary role in the drafting of a PAC report. Practice varies in this respect. In the UK, the Audit Service staff will draft the report. In Ontario and in Canada, the committee's research staff drafts the initial report. In Nova Scotia, as in Scotland, it is drafted by the committee's clerk (called the coordinator in that parliament):¹⁴⁰

All reports from the Public Accounts Committee are compiled and written by the Committee's Coordinator. Once the Co-Chairmen and Vice Chairman have approved the initial draft, it is then sent to the individual Committee members for consideration. The draft review complete, the report is tabled with the Clerk of the House.

The chair of Ontario's PAC has provided a revealing account of the report-writing process there:¹⁴¹

So the writing of the report is done at an in camera session and usually what happens is that once the hearings are completed the researcher will draft a report and when we are reviewing that draft, the Auditor is there, the researcher is there, the clerk is there and all of the committee members are there and it sometimes can get quite hot and heavy as to what kind of wording is to be used when describing particular sections or what have you and the same thing with recommendations. It may take a couple of sessions to actually complete a report or it may go back for a re-draft and then we might see it back, let's say a couple of weeks later. Once it is completed and once it is tabled it becomes public, not before it is tabled in the House.

Disseminating and publicising a PAC report was not something we could examine in great detail in this study. Again PACs may follow whatever the practice may be for committee reports generally within their parliaments, and this may involve publication in electronic as well as hard-copy form. They will also employ techniques such as press conferences, and advance, embargoed publication. Guidelines for PACs in Canada recommend that reports be

¹³⁸ In his letter to the *Scotsman* on 20 September 2002, explaining the role and function of the Committee, the Committee's convener noted that the Committee had published 17 reports up to that date: "Audit committee 'is challenging and effective'", *Scotsman*, 20.9.02 (<http://www.thescotsman.co.uk/letters.cfm?id=1044992002>)

¹³⁹ The Ugandan PAC is required by Standing Orders to report to parliament at least twice a year: SO 123(3)

¹⁴⁰ Annual report 2000-01, piii

¹⁴¹ CCPAC Conference 2000, 19.9.00

distributed widely, as can be seen from the following extract from a recent Nova Scotia PAC annual report:¹⁴²

As recommended by the Guidelines for Public Accounts Committees, distribution of the report will be as follows: to the Speaker, all members of the Legislature, all witnesses that appeared before the Committee, the Legislative Library in Nova Scotia and in all other provinces and territories, Deputy Ministers, Chairmen of all Canadian Public Accounts Committees, and the Media. This report is also available to the general public upon request through the Legislative Committees Office.

Manitoba's Standing Orders require the PAC's clerk, on the Committee's request, to send a report to all MPs; the administrative head of each entry which was the subject of a PAC review; the media; the Auditor and any other person or organization that the Committees deems appropriate.

Unlike most parliamentary committees, the publication of the outcome of a PAC inquiry has to take account of an external body, the Auditor, whose initial report to the parliament and its PAC may well have already been more generally published. Quite how and when the outcome of a particular audit exercise reaches the public consciousness generally, is a complex matter, beyond the scope of this brief study, and involving factors such as the relationships between, and the personalities of, the PAC, the Auditor and the media, as well as the nature and context of any particular audit inquiry. Reports which contain criticisms of apparent failure or wasteful expense, or which relate, however indirectly, to issues of current public and political concern, are likely to be more widely reported than others.

While it is generally the case that the bulk of any significant media coverage would follow a UK PAC, rather than an NAO, report—even though the latter may not only have been published well in advance of the former, and both may contain substantially similar content—this does not seem to be the case in Scotland thus far. Media coverage seems to be as much derived from the reports of the AGS as from the Audit Committee, even though the Scottish parliamentary audit process is regarded as a more substantive and meaningful one than its Westminster counterpart. Analysing whether this is true, and what it means, would require more detailed study, which may produce some valuable insight into the effectiveness of parliamentary audit arrangements in devolved Scotland.

(iii) Annual reports

The requirement on the PAC to produce an annual report varies among PACs. Of those examined in this study, Australia, Queensland, Denmark, New Zealand and Ireland were so required, and New Brunswick, South Australia,¹⁴³ British Columbia, Canada and Ontario

¹⁴² Annual report 2000-01, piii

¹⁴³ While there is no requirement for the Committee to produce an annual report, it does in fact do so. The annual report of the Economic & Finance Committee (which has a much wider remit than a traditional PAC) for July 2001-June 2002 was published in October 2002, and is a substantial

were not. Though it, unlike departmental select committees, does not produce an annual report, statistical information on the UK PAC will appear in the House of Commons *Sessional Return*. The Australian PAC is required by statute to prepare and table in each House (it being a joint committee) a report for each financial year “on the performance of its duties during the year.”¹⁴⁴ The Irish PAC must “present an annual progress report to Dáil Éireann on its activities and plans.”¹⁴⁵

Those annual reports which we have examined for this study appear to be rather substantial documents, containing a great deal of information on the activity and outputs of the PAC, including statistical information on attendance of members at meetings and some indication of the PAC’s expenditure. Queensland’s PAC must abide by the statutory requirements for all such committees:¹⁴⁶

108 Annual report of committee

(1) Within 4 months and 14 days after the end of each financial year, the chairperson of each committee that has met and conducted business during the year must table in the Assembly a report about the committee’s activities during the year.

(2) The report must include –

(a) a list of meetings of the committee and the names of members attending or absent from each meeting; and (b) a summary of issues considered by the committee, including a description of the more significant issues arising from the considerations; and

(c) a statement of the committee’s revenue and spending for the year; and

(d) a brief description of responses by Ministers to recommendations of the committee.

(3) This section is subject to the Act or resolution of the Assembly under which the committee is established.

document of 27 pages (including appendices), covering its activities, inquires and reports, including a financial report covering its expenditure (appendix 1).

¹⁴⁴ Public Accounts and Audit Committee Act 1951, s8B

¹⁴⁵ SO 156(6)

¹⁴⁶ Parliament of Queensland Act 2001, s108

B Outcomes

(i) Responses

Most, but not all, parliaments require the body which is the subject of a PAC report to respond formally to it. 80% of those responding to the CPA study had such a requirement, though the length of time allowed, where that is specified, may vary, often around 2-4 months.¹⁴⁷

Ministers are required to respond to the parliament in Queensland to a report within 3 months of it being tabled, if the report recommends that the government or a minister should or should not take particular action about an issue. The response must set out

- any recommendations to be adopted, and the way and time within which they will be carried out; and
- any recommendations not to be adopted and the reasons for not adopting them.

If the 3-month deadline cannot be met, the minister must table an interim response, including the reasons for not meeting the deadline. The full response must then be tabled with 6 months of the original report being tabled.¹⁴⁸

The process for responses to the Australian PAC's reports is described in the PAC's background information:¹⁴⁹

Responses to Reports

Government responses to reports of the Committee can be transmitted in two ways; either by means of an Executive Minute (in those cases where the Committee's recommendations address administrative matters) or by means of a Government response (where the Committee has had policy recommendations).

The Executive Minute process (formerly Finance Minute) has been in place since 1952. The process involves the preparation of a minute to the Committee by the Secretary of the Department of Finance. The minute contains a response from each relevant Commonwealth agency to each of the Committee's recommendations.

¹⁴⁷ McGee, *op cit*, pp78-9 and 101

¹⁴⁸ Parliament of Queensland Act 2001, s107

¹⁴⁹ JCPAA, *Background information on the Committee:*
<http://www.aph.gov.au/house/committee/jpaa/backinfo.htm>

A Executive Minute is usually received by the Committee within six months of the tabling of a report. It is the Committee's practice to table Executive Minutes in the Parliament as soon as practicable after they are received. The Committee also publishes a compilation of all Executive Minutes tabled on its website.

The receipt and tabling of Executive Minutes gives the Committee an opportunity to comment on the departmental responses.... Ultimately, if the Committee is dissatisfied with the contents of a particular Executive Minute, it may decide to re-open its inquiry.

Where the Committee makes recommendations of a policy nature, a separate Government response is prepared by the responsible Minister. The Government has given a commitment to the Parliament that responses to parliamentary committee reports will be provided within three months of the report being tabled.

It is usual practice for the relevant Minister to table a Government response in the Parliament.

We asked the PACs under examination in our study to estimate how many of the recommendations in their reports were accepted by those to whom they were addressed, either entirely or in part. As the CPA study noted, acceptance rates can be very high, and responses to our question ranged from acceptance rates of 45% (Denmark) or 50% (South Australia, New Brunswick) up to 80% (Australia, Queensland) or even 90% (British Columbia, UK). In 2001, the UK PAC reviewed 112 reports from the previous Parliament, containing over 1,000 recommendations, and found that 85% were accepted in full, though in 95% of recommendations the Government accepted what the Committee were suggesting and undertook to implement the change.

As important as acceptance of recommendations, is their implementation. To some extent this can be tracked through the 'follow-up' processes that PACs and/or Auditors employ, an aspect which is examined below. It also will be enhanced if the governments or other audited bodies have procedures in place, which are published and open to scrutiny, to take forward relevant recommendations. In the UK, for example, the Treasury bring to the attention of Accounting Officers any recommendations accepted by the Government which affect accounting principles and methods maintained in the public sector.

(ii) Parliamentary action

Practice varies as to how the parliament itself deals with the work of its PAC, depending often on how, if at all, that parliament considers reports from its committees generally.¹⁵⁰ The CPA study reported that 57% of parliaments responding said that their PAC's reports were

¹⁵⁰ For example, the Rules of the Indian parliament require a committee report to be presented by the committee chair, who must, "if he makes any remarks, confine himself to a brief statement of fact, but there shall be no debate on that statement at this stage.": Rule 279

debated.¹⁵¹ Substantive plenary debate is relatively rare in Canadian and Australian parliaments (the Queensland parliament has only done so once) though the standard guidance in the former is for PAC reports to be tabled at least annually and debated by the parliament.

PAC reports are generally presented to the full parliament in some way, and some parliaments will formally debate them all. However this may well be of a rather cursory nature, especially where, as at Westminster, a plenary debate may be on a 'take note' basis, and may cover a series of PAC reports. For example on 14 January 1999, the UK House of Commons took note of the 1st-67th reports of the PAC in 1997-98 and the Government response contained in Treasury Minutes.¹⁵² Irish committees can make a specific request for a debate in any report presented to their parliament, and a motion to take note of the report is placed on the Order Paper. However, this lapses if not moved within three months.

The rather different New Zealand financial scrutiny model means that financial reviews of government departments and offices of parliament, undertaken by select committees, are presented to the parliament annually in a compendium report from the PAC and a debate is held on it in the second reading of the Appropriation (Financial Review) Bill (which must be held no later than 31 March each year). The financial performance of other public bodies is debated separately.

C Follow-Up Procedures

(i) Generally

The effectiveness of the parliamentary audit process will be enhanced by adequate follow-up arrangements. These should enable PACs to ensure, in particular, that the conclusions and recommendations arising out of the process which have been accepted by those to whom they have been addressed, have been or are being acted upon by them. This may often involve the Auditor, at least initially, perhaps by that officer reporting back to the PAC on the progress of implementation. In Canada, the PAC and Auditor seek to ensure that their respective follow-up procedures are integrated, and in Saskatchewan, the Auditor maintains a chart detailing the progress or otherwise of PAC recommendations, which is published as an appendix to the Auditor's annual report.

In some jurisdictions, what is described commonly as 'follow-up' may well be part of the more general arrangements for an audited body's response to a PAC report. If operated successfully, this arrangement may prove to be an effective way of ensuring genuine

¹⁵¹ McGee, *op cit*, p101

¹⁵² The terms of the relevant motion may well be drafted so as to highlight those reports which the Committee regard as being of particular interest. Interestingly, such debates in the House of Commons are replied to, on behalf of the Government, by the Financial Secretary to the Treasury, who is, notionally at least, a member of the PAC.

administrative change of the sort recommended by the PAC and/or Auditor. It will also negate any tendency for audited bodies to regard any formal response to a PAC report being made by it as the de facto end of that particular scrutiny. The British Columbia process is presented here in some detail, as an illustration of this approach.

Follow-up, though a necessary part of the parliamentary audit process, is a component particularly dependent on the adequacy of committee time and other resources, as well as other factors such as the desire of members to move on to new, and potentially more 'interesting' topics. The marginal cost, in political terms, of a follow-up of a previous inquiry may not be regarded as worthwhile. In Australia, the PAC's secretariat has an additional appropriation to ensure resources are sufficient to monitor responses.

Procedures at earlier stages of the audit process may well limit or even pre-empt the necessity for follow-up later on. The UK's practice of the Auditor agreeing facts with the audited body in advance before reporting to the PAC, while time-consuming, "is seen as an especially effective means of getting departmental 'buy-in' for implementation of PAC recommendations. Indeed these are effectively implemented as part of the process of inquiry rather than as an outcome of the findings."¹⁵³

This also emphasises that follow-up, as with all other stages of an audit process will impose burdens on the bodies being audited, and these may be more pronounced when PACs and Auditors are returning to issues already covered. This can put additional strain on the relationships between the auditing bodies and those being audited, especially where the audited body has either disagreed with, or not, implemented a recommendation. For example, the Indian PAC, "where the Government have reasons to disagree with a recommendation of the Committee,...may, if it thinks fit, present a further report after considering the view of the Government."¹⁵⁴ The sensitivities are recognised in the guidance for the Saskatchewan PAC that follow-up necessary to complete the accountability cycle, it "should be performed in the spirit of maintaining a constructive relationship with the government."

PACs may try to deal with these potential problems by using tracking reports produced regularly by the Auditor. In New Brunswick, regular audit reports contain a chapter that reviews the follow-up actions of departments on previous recommendations. The Ontario Auditor's practice is described in the Office's 2002 annual report:¹⁵⁵

¹⁵³ McGee, *op cit*, p79

¹⁵⁴ Indian PAC webpage: <http://164.100.24.208/committee/p17.htm>

¹⁵⁵ Chapter 4, p316

Ontario Auditor's practice on following-up recommendations

It is our practice to make specific recommendations in our value-for-money (VFM) audit reports and ask ministries and agencies to provide a written commitment to take corrective action for publication in Chapter Three of our Annual Report. Two years after we publish the recommendations and related responses, we follow up on the status of actions taken by ministries and agencies with respect to our recommendations.

...Our follow-up reviews are planned and conducted to provide a moderate level of assurance on the extent and adequacy of corrective actions taken by ministries or agencies. The reviews consist primarily of inquiries and discussions with management; analyses of information they provide; and, where deemed appropriate, limited examination and testing of systems, procedures, and transactions. This is not an audit, and accordingly, we cannot provide a high level of assurance that the corrective actions described have been implemented effectively to fully resolve noted problems. Where these reviews identify new issues or concerns that need to be acted upon, these issues will be considered in our audit planning process. In any event, the results of the corrective actions taken or planned will be more fully examined and reported on through future audits.

(ii) British Columbia scheme

The most systematic follow-up arrangements we found in this study are those of British Columbia, where procedures have been put in place to coordinate the actions of the PAC (by re-calling witnesses) and the Auditor (by follow-up audits), and where there was no formal requirement for responses to be tabled within a specified time, from bodies subject to a PAC report. The various follow-up practices, especially by the Auditor, which were previously in place prior to 2000, and the time pressures on the PAC itself, meant that there were criticisms of the timeliness of any substantive follow-up, sometimes 3 years by the PAC.

Demand by PAC members for a speedier process led to discussions in early 2000 between the PAC, the Audit Office and the relevant government officials. A new scheme was adopted by the PAC in April 2000. It was not formally debated or approved by the parliament itself as such, though it was included as an appendix to a PAC report, subsequently approved by the parliament.¹⁵⁶

The PAC identified a number of challenges that the new process would involve, which it is monitoring, including

- the administrative burden—a database was developed to enable the PAC staff to track the process

¹⁵⁶ This process was queried, when the BC scheme was discussed in some detail at the 2000 conference of the Canadian Council of PACs, in terms of the procedural and 'legal' weight of a process emanating from a committee rather than from a formal resolution of the parliament.

- turnover in senior government personnel, which can disrupt the continuity of the process and cause delays
- determining whether follow-up action is necessary, especially when the extent of implementation is not always clear, or where some recommendations are ongoing and may take years to resolve.

The PAC published a leaflet, *Guide to the follow-up process*, describing its follow-up process, which is available on its public website.¹⁵⁷ The *Guide* is included with all follow-up correspondence from the Auditor's office, and is also outlined in the Ministry of Finance's policy manual:

¹⁵⁷ <http://www.legis.gov.bc.ca/cmt/37thparl/session-3/pac/PAC-FollowupProcess.pdf>

The British Columbia follow-up process

1. *Following an audited organization's appearance before the committee, representatives of the Auditor General's office will contact representatives of the audited organization and request that a progress update be provided to the Office of the Auditor General within a period of time (usually 5 months).*

2. *Audited organizations must prepare a written response in the format noted below, and direct it to the Office of the Auditor General. In drafting the written response, organization representatives may wish to consult with the Office of the Comptroller General, and/or the Office of the Auditor General.*

As well, the Office of the Clerk of Committees would be pleased to answer any questions regarding the work of the committee, and committee procedure.

3. *All written responses submitted by audited organizations are reviewed by the Office of the Auditor General to generally confirm the fairness of information about the progress made in implementing the recommendations contained in the Auditor General's report.*

4. *All written responses, and results of the Auditor General's review thereof, are provided to the Office of the Clerk of Committees for distribution to each committee member (normally 6 months after the witnesses' attendance before the committee). These materials are also provided to the audited organization and the Office of the Comptroller General.*

5. *Once the committee has tabled its report on the matter in the House, all written responses become public documents, and are not subject to Freedom of Information and Protection of Privacy Act procedures. Written responses, along with the Auditor General's review thereof, are also tabled in the Legislative Assembly on a bi-annual basis (March and October, although this is subject to variation). The Clerk of Committees should be advised well in advance of any material considered to be confidential.*

6. *Following review of the written response and the Auditor General's comments, the committee may request that representatives of the audited organization re-appear before the committee to provide further information, or that further information be provided to the committee in written form.*

7. *The Office of the Comptroller General will arrange for witnesses to attend where the committee has asked for a return presentation based on the written follow-up.*

The form of written responses to requests from the Auditor under these arrangements is specified in some detail by the PAC in the *Guide*:

D Conclusions

Many of the issues considered in this Part of the report are largely dependent on factors external to the Audit Committee itself, such as the rules and practices of the Parliament, or the activities of the Auditor. Therefore there is perhaps relatively less here in terms of lessons to be learned by the Audit Committee. The environment within which the Committee operates already appears to enable it to be at least as flexible and effective as the PACs we examined. This is the case in the drafting of reports, where initial drafting from within the Committee's own support staff rather than by the Audit Service represents a crucial shift from Westminster practice.

Subject to these comments, there are areas where the Committee can examine overseas practice for guidance as to enhance its existing practices:

Issues for consideration

Could the output of reports be greater, without affecting their quality or the scope for public notice of them or action to be taken on them?

Would the publication of the Committees routine practices, such as its follow-up procedures, and the dissemination of its reports, enhance public awareness of its work?

Should the Committee's annual report be more substantial and informative, notwithstanding any parliamentary guidance on the standard format of committee annual reports?

Are the Committee's arrangements for tracking progress on the implementation of its recommendations, either itself or in conjunction with the Auditor General, as robust and transparent as they could be?

PART 4: KEY RELATIONSHIPS

A Structural Relations with the Auditor

A PAC may have a role in the appointment of the Auditor; the financing of the Audit Office or of examining the Audit Office and Auditor themselves. In Scotland, the Convener of the Audit Committee will, and other members of the Committee may, be a member of

- the Selection Panel recommending a nominee for Auditor General, and
- the SCPA, which deals with the budget and audit of Audit Scotland.

For example, in Queensland, by statute:¹⁵⁸

- the Premier (as the responsible minister) must consult with the PAC about the appointment selection process and the terms and conditions of employment of the Auditor-General
- The PAC must also agree to any proposed motion to remove the Auditor-General from office
- The Treasurer must consult with the PAC in developing the annual budget of the Queensland Audit Office.¹⁵⁹

Strategic reviews of the audit office must be conducted every five years, and include examining the Auditor-General's functions and the performance of those functions to assess whether they are being performed. economically, effectively and efficiently.¹⁶⁰

The Australian arrangements, under the Auditor-General Act 1997 and the Public Accounts and Audit Committee Act 1951, are similar:

- The Minister cannot recommend an appointment as Auditor-General to the Governor-General unless it has been approved by the PAC
- The Minister cannot recommend an appointment as Independent Auditor (who audits the Audit Office) to the Governor-General unless it has been approved by the PAC, and
- The PAC has responsibilities in relation to the finances of the Audit Office.¹⁶¹

¹⁵⁸ Financial Administration and Audit Act 1977

¹⁵⁹ The method of consultation is not prescribed by statute, but the PAC has agreed a process with the Treasurer, which involves the Treasury department keeping the PAC informed of the Budget timetable in relation to QAO; funding requests made by QAO; results of the budget process and (where applicable) the reasons for funding not being granted.

¹⁶⁰ The Premier is required to consult with the PAC about the appointment of a reviewer and the terms of reference for the review, and the review report is deemed referred to the PAC under the Parliament of Queensland Act.

¹⁶¹ JCPAA annual report 2001-02, p3

Considering the Operations and Resources of the Audit Office

In its role as the Audit Committee of the Parliament, the JCPAA has assumed additional responsibilities concerning the Audit Office. Under section 8(1)(g-i) of its Act, the Committee is required to consider the operations and resources of the Audit Office, including funding, staff and information technology. It is also required to consider reports of the Independent Auditor on operations of the Audit Office. The Committee's responsibilities extend to reporting to the Parliament on any issues arising from these considerations, on any other matter relating to the Auditor-General's functions and powers or on the performance of the Audit Office, as it sees fit.

The JCPAA is also required, under section 8(1)(j-l), to consider draft estimates for the Audit Office and the level of fees determined by the Auditor-General and to make recommendations to both Houses of Parliament and the Minister who administers the Auditor-General Act 1997 on the draft estimates.

Pursuant to section 8(1)(m-n) of the PAAC Act, another new responsibility for the Committee arising out of its role as the Audit Committee is to determine the audit priorities of the Parliament and to advise the Auditor-General of those priorities. It must also determine the audit priorities of the Parliament for audits of the Audit Office and advise the Independent Auditor of those priorities.

In British Columbia, statute requires that the Auditor is appointed on the recommendation of the parliament following the unanimous recommendation of a special parliamentary committee.¹⁶² In practice, the parliamentary resolution appointing this 'special committee' required it "be comprised of members of the Select Standing Committee on Public Accounts established this session."¹⁶³

In New Zealand, the financial arrangements of the Audit Office are dealt with by the Parliament through its Officers of Parliament Committee, as part of the structured approach that parliament has to the various parliamentary officers within its remit. Under procedures developed based on recent statutory requirements, the PAC (the Finance & Expenditure Committee) has a key role in parliamentary scrutiny of Audit Office's draft annual plan:¹⁶⁴

¹⁶² Auditor General Act 1996 s2

¹⁶³ Report of the Special Committee to appoint an Auditor General, March 2000

¹⁶⁴ Finance & Expenditure Committee, Special Report on Auditor-General Annual Plan for 2003/04, Dec 2002

The proposed process for the 2003/04 annual plan is –

- The Auditor-General will send all Ministers and select committees of the House of Representatives a preliminary draft annual plan in December 2002, with an offer to brief and discuss the preliminary draft with those interested.*
- The Auditor-General will ask for any comments on the preliminary draft to be provided directly to Auditor-General (either individually by Ministers or members or select committee) by 28 February 2003.*
- The Auditor-General will consider any comments received, and prepare the statutory draft annual plan for submission to the Speaker in March 2003. The Speaker will then present the statutory draft annual plan to the House.*
- After presentation, the Finance and Expenditure Committee will circulate the draft annual plan to select committees for comment. The Finance and Expenditure Committee will co-ordinate responses from the other committees.*
- The Speaker and the Finance and Expenditure Committee will forward their responses to the Auditor-General by 30 April 2003 and the Auditor-General then will amend the draft annual plan as appropriate.*
- Before the beginning of the financial year, the Speaker will present the completed annual plan to the House of Representatives.*

As these arrangements are both new, and involves interaction between the PAC and other committees, it is instructive to note how the statutory requirements were put into practice in the first year of operation for the 2002-03 Plan, before this formal scheme was promulgated for the 2003-04 Plan. The FEC was briefed by the Auditor-General on the work programme and the committee discussed with the Auditor-General the 'appropriate approach to take to meet the obligations under the Act'. Subsequently the FEC wrote to other subject committees inviting them to comment on the discretionary work programme and, also, to say which of the potential studies listed in the annual plan 'they considered to be most important'. Responses were received from five committees, and the FEC recommended the Auditor-General to consider their comments and recommendations. Analysis of the five letters shows that the committees were unwilling to offer views on subject areas outside their jurisdiction, were generally content with the plan proposed by the AG, but were happy to endorse areas of particular interest to them.

The Australian PAC has conducted a 3-year review of the main financial framework legislation, including the Auditor-General Act 1997. In its comprehensive report on the Act, "the Committee's overall finding was that the Auditor-General Act provides an effective framework for the ANAO to carry out its functions. However recommendations in the form of proposed amendments to the Act, which will enhance the power of the Auditor-General

to carry out his responsibilities effectively, were accepted by the Government in their response tabled on 19 September 2002.”¹⁶⁵

As an Auditor’s main parliamentary link, a PAC may wish to act to defend the Auditor or the Audit Office when they are publicly questioned or impugned, as the need arises. An example of this was described in the Queensland PAC’s annual report for 2001-02:

Report on a matter raised by the Auditor-General

32. *The Auditor-General wrote to the committee expressing concern about a newspaper article that referred to comments allegedly made by the former chair of the Queensland Investment Corporation (QIC) about the role and powers of the Auditor-General. The committee was concerned about the impact the comments could have on public confidence in two key public institutions, namely the Queensland Audit Office and the Queensland Investment Corporation.*

33. *The committee met with both the Auditor-General and the former chair of QIC and reviewed material provided by both parties.*

34. *The committee tabled Report No.58: Report on a matter raised by the Auditor-General in November 2001. The report discussed the statutory roles of the Auditor-General and the QIC and the scope of a public sector audit as compared to an audit of a financial report performed by the private sector.*

35. *The committee was satisfied that the audit issues that contributed to the comments published in the newspaper article could be satisfactorily resolved between the Auditor-General and QIC. There were no recommendations requiring a ministerial response.*

¹⁶⁵ JCPAA Annual report for 2001-02, foreword, p. v. The report referred to is Report 386, and is summarised in p11-12 of the annual report.

Issues for consideration

Should the split, derived from Westminster practice, between the Audit Committee, the SCPA, the Parliament and, indirectly, the SPCB, in the appointment, resourcing and scrutinising the Auditor General and Audit Scotland, be retained?

If there was some reallocation of these functions, which should be devolved on the Audit Committee itself, or on other parliamentary bodies on which it was, directly or otherwise, represented?

To what extent should the Committee regard itself as the 'parliamentary champion' of the Auditor General and Audit Scotland?

B Relations with other Committees

(i) Other committees' use of Auditor expertise

The extent to which a parliament other committees can make use of the resources and expertise of the Auditor and the Audit Office is often a sensitive one, especially at Westminster itself. The availability of the AG and the NAO to departmental select committees has been much discussed there over the past 20 years and was raised again in the 2001 Sharman report, which recommended that "To make the most of audit activity, arrangements should include...further use for the work of the NAO, for example, by providing the C&AG with the resources to brief departmental select committees annually on key financial issues, without in any way undermining the key relationship between NAO and PAC, or drawing the C&AG and his staff into questioning policy matters."¹⁶⁶

There have been examples of what have been regarded as successful use of the NAO by select committees:¹⁶⁷

¹⁶⁶ Sharman Report, *op cit*, paras 5.15-17. See also the 1st report of the HC Modernisation Committee HC 224, 2001-02, Feb 2002, para 29

¹⁶⁷ *The work of select committees 2001*, 1st report, 2001-02, HC 590, Feb 2002, para 27

National Audit Office

27. We draw attention to a valuable innovation reported by the Transport, Local Government and the Regions Committee. In November the Committee took evidence from the National Audit Office (NAO) following the latter's report on the London Underground PPP. The Committee comments on the value of its session "which elucidated how value for money might be assessed" without drawing the NAO officials "into policy or matters which would compromise the impartiality of the NAO". We welcome the co-operation received from the NAO. The Comptroller and Auditor General (C&AG) already seconds some officials to committee staffs. We understand that other committees are also making use of the NAO's resources in carrying out their scrutiny work. There is no single model for this; it will therefore be important for committee staffs to exchange information in order to establish best practice. At our Chairman's request, a background note was prepared by the C&AG. We hope to see more work done in conjunction with the NAO, especially in areas such as the Estimates.

The status that some 'Westminster' parliaments give to the Auditor as an 'officer of parliament' emphasises that the Auditor serves the parliament as a whole, and not just the PAC. The CPA study envisaged "the Auditor-General potentially having a working relationship with every committee of the legislature, if the Auditor-General can provide expertise that is relevant to the work of these committees," though it emphasised that that would depend on available resources, so that the wider use of these auditing resources would "not be at the cost of an effective working relationship with PACs."¹⁶⁸

New Zealand has formalised these arrangements through a detailed code of practice on assistance from the Auditor to other committees and MPs.¹⁶⁹

¹⁶⁸ McGee, *op cit*, p30.

¹⁶⁹ Code of practice for the provision of assistance by the Auditor-General to select committees and members of Parliament, Report of the Officers of Parliament Committee, 2002. The Code is attached as an appendix to that Committee's report.

The protocol provides guidance for managing each of the main ways in which the Auditor-General may interact with the House, its select committees and members. These fall into five distinct categories, each of which is addressed separately in the protocol:

- assistance with select committee Estimates examinations*
- assistance with select committee financial reviews of public entities and reviews of the performance and current operations of each*
- individual department, Office of Parliament, Crown entity, public organisation or State enterprise*
- assistance with select committee inquiries*
- assistance with select committee consideration of the reports of the Auditor-General tabled in the House*
- assistance with members' inquiries or requests made directly to the Auditor-General.*

The Officers of Parliament Committee recognises that a protocol of this nature can only be a guide. However, the committee is of the view that it is useful to codify practice. It draws the attention of the House to the protocol appended to this report in order that it may provide a useful guide to good practice.

(ii) Sharing audit and financial scrutiny

A parliament's other committees may also have a role in financial and audit scrutiny, alongside the PAC. This may well depend on the way in which a parliament deals, structurally and operationally, with its financial business, and is considered more fully in the conclusions of this study. For present purposes, the Australian approach is instructive, and is described in its PAC's guidance:¹⁷⁰

Review by other parliamentary committees

In addition to the JCPAA's statutory review process, the House of Representatives has, over the last decade, developed the practice of occasionally referring audit reports to its standing committees, and to certain joint committees. Senate committees too occasionally review issues arising from audit reports. For example, six of the 44 audit reports presented in 1993-94 and three of the 31 reports presented in 1994-95 were examined by other parliamentary committees.

The referral of audit reports to other committees is appropriate in some circumstances – for example, where an audit report is relevant to a subject already being considered by another committee, or where an audit report deals with an issue in which another committee has developed a particular expertise.

¹⁷⁰ JCPAA, *Reviewing reports of the Auditor-General*: http://www.aph.gov.au/house/committee/jpaa/Auditor_Generals/AUDREV.HTM

However, it is important to note that the requirement to review described in the PAAC Act is not satisfied by the referral of an audit report to another committee. The Act is specific in its requirement that the JCPAA examine all audit reports.

While the JCPAA is conscious of avoiding unnecessary duplication, it intends to fulfil its obligation by examining all audit reports, including those which have been referred to other committees. In most cases it is likely that the JCPAA's examination will show that the other committee has reviewed, or is reviewing, the major issues identified in the audit report. However, there may be occasions when the JCPAA decides that further review is needed.

FIAG did not believe that the Parliament's Audit Committee should have a monopoly of considering reports from the Auditor General for Scotland, and suggested that the appropriate subject committees should consider many VFM reports. It saw the advantages of this arrangement as

- encouraging subject committees to take responsibility for investigating performance and vfm as well as policy; and
- both the Audit and subject committees would be able to develop respective expertise in relation to financial/VFM audit.¹⁷¹

Under Rule 6.2, all of the Parliament's committees can "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."

Issues for consideration

How much scope is there for other committees to access the resources and expertise of the Auditor General and Audit Scotland?

Why has the parliamentary audit function not been shared between the Audit Committee and subject committees, as recommended by FIAG?

Should the Parliament create some form of broader Financial Affairs Committee, which would include the functions of the Audit Committee?

Does the Parliament's experience since 1999 with the Auditor General suggest that it should devise standard arrangements for dealing with it and other 'parliamentary officers' (including those royal appointments made on the Parliament's nomination, and the Standards Commissioner)?

¹⁷¹ FIAG report, para 6.6

PART 5: CONCLUSIONS

A Introduction

As discussed in Part 1, this study has approached its comparative examination of the parliamentary audit function with two main concepts in mind, namely *independence* and *effectiveness*. Regard has been had also to the extent to which the Audit Committee operates as a committee of the Parliament, with all that that implies, especially in terms of its operational procedures and practices.

With these criteria in mind, we examined other jurisdictions in terms of what might be, appropriate for consideration in the Scottish environment. We did not give equal weight to scrutiny of all aspects of the parliamentary audit function, especially those which seemed to be unique to the parliamentary and governmental circumstances of a particular jurisdiction, or derived more from that parliament's arrangements for its committees generally. This applies, for example, to various powers or procedures such as the degree of legal protection or 'privilege' applicable in various stages of the process, or the means whereby PAC or Auditor reports are tabled in the parliament.

We focussed on those potentially relevant aspects by reference to the concepts of independence and effectiveness, and the Parliament's underlying culture and ethos, especially adherence to the notions of accountability, power-sharing, equal opportunities, openness and participativeness. These key areas include a PAC's

- structure, composition and remit;
- resources, including staffing and sources of information and advice;
- operating procedures and practices;
- relationship with the Auditor and Audit Office;
- relationship with other parliamentary committees, and
- relationship with the public and the media.

B General observations

Within the necessarily limited nature of this comparative research study, our overall observation would be that *the Scottish Parliament's Audit Committee fits into the generality of PACs, especially those based on a 'Westminster model', and those which conform to a narrow 'audit' remit rather than one which subsumes other financial functions.*

While PACs have developed, in different ways, beyond the Westminster model of the mid-19th century – as indeed has Westminster itself – these origins can still be detected in some of their practices and, especially, in their culture. This is particularly pronounced in those aspects where the Scottish Parliament's unique culture and ethos is most apparent, such as in the nature and extent of engagement with the public. There is even a sense, at least in some PACs, that formal provision for openness and public participation may not be translated

wholeheartedly into practice. Perhaps taking their cue from their parliament generally, they do not seem to regard public engagement as something to be pro-actively pursued or encouraged.

On the other hand, some PACs provide far more than the Audit Committee does in some respects, such as annual reporting and promulgation of relevant information and guidance material. These are areas where the Committee can most easily take on board these comparative lessons, as they fit in with the Scottish Parliament's own ethos. However, issues of public engagement, as with resort to more 'innovative' forms of information-gathering, must be considered in the context of the nature of the parliamentary audit function as compared with other parliamentary functions.

That there does appear to be something different, perhaps unique, about the parliamentary audit function, as we discussed earlier in this report, explains much about why the Audit Committee may not have appeared to have exhibited all of the characteristics, and some of the procedures and practices, of the Scottish Parliament's unique way of working. Some of these may well be detrimental to the two key criteria for parliamentary audit, namely independence and effectiveness.

This does not prevent the Committee from considering the adoption of procedures and practices which are used elsewhere in the Parliament, or by other PACs. Rather, it is a point about the risk of 'throwing out the baby with the bathwater'. So long as the Parliament's financial scrutiny functions remain based on the 2000 Act scheme, the sensitive and potentially fragile tripartite relationship between the Parliament, the AGS/AS and the Executive, which underpins the effectiveness of the devolved audit system, has to be protected from changes which might undermine it. Some protection is afforded by the 'reserved' nature of the core aspects of the system, as set out in the Scotland Act 1998.

A central plank of parliamentary audit in the Westminster style is the priority given to consensus and unanimity amongst a PAC's members. These attributes are supposed to be important to the Parliament's committee system generally, and they are perhaps more important, and more difficult to achieve, in a system of unitary, multi-purpose committees such as the Parliament has. Most PACs, especially those with a narrow audit remit, aspire to these aims. This accounts for conventions such as the avoidance of policy scrutiny; and for generally restricting the net of potential witnesses to accountable officers and the like, and for the treatment of structural issues like composition.

One final point to be borne in mind, which has been confirmed by our comparative study, is that a parliament's PAC, while prestigious and respected, may not always be regarded as a sought-after committee assignment for elected parliamentarians. The work of a parliamentary committee should not be skewed to make it more 'desirable', if that may affect its effectiveness. There is a danger that that concentration on the more technical aspects of a committee's scrutiny process may actually deter elected members from active or

wholehearted membership. *A strong and effective PAC is not necessarily one that seeks to duplicate the expertise, or replicate the technical work, of the Auditor or Audit Office.*

C Specific aspects

(i) Structure, composition and remit

At the beginning of this report we examined the very different structure and remits of PACs. On the structural axis, the Audit Committee is obviously alongside other parliamentary committees, rather with the independent audit entities common in Europe and elsewhere. On the remit axis, the Committee is at the ‘narrow PAC’ end rather than the broader financial ‘PAC+’ end, though by no means at the extreme. Its remit and powers are such to allow it to operate more extensively and pro-actively than some PACs whose remits are narrower in scope and whose activity relies, wholly or in part, on external initiative.

The changing context of the political/administrative environment within which a public audit system has to operate are primarily for the Auditor and Audit Office to navigate, rather than for a PAC directly. However, a PAC must always have an interest in what affects the actual audit function, as it will impact on its own parliamentary audit function. *The PAC should have the power and the will to keep its system of parliamentary audit sufficiently flexible to adapt to any changing circumstances. This is an essential pre-condition for effectiveness.*

The factors governing the composition of a PAC are relevant both to its effectiveness and to its perceived, and actual, independence. For example, a PAC composed entirely of one party (governing or opposition) may be thought in some senses to be ‘effective’, but would not be thought to meet criteria of independence or fairness. We have already noted that the nominal party allegiance of the PAC chair or deputy chair may not be that crucial to the independence or effectiveness of the committee. Much will depend on the relevant parliamentary, and wider political, culture within which the PAC operates.

The Parliament need not regard composition as given and ‘off-limits’, and it could at least examine possible changes in the Audit Committee’s composition, and the party allegiance of its convener and deputy convener, without automatically putting that Committee’s integrity and operational ability at risk.

We have suggested some issues for consideration in terms of the composition of the Audit Committee. These relate to the application of the Parliament’s normal interpretation of the ‘having regard to party balance’ injunction; any ‘overlap’ requirements between it and other committees, and in the party allegiance of the convener and deputy convener. Any changes in this area may have some practical consequences, in enhancing the range of expertise within the Committee’s membership. However, the main effect may well be in the message that such changes would send, about the Committee and the unique function it performs.

(ii) Operating procedures and practices

The way in which a PAC operates is, as we have seen, dependent on factors such as its remit, its parliament's scrutiny culture generally, and any specific rules or procedures applicable to it. Being a parliamentary committee, albeit one with a unique remit, means that it will inevitably be structured in a particular way and operate as a scrutiny body, generally by way of inquiry and reporting. Not being a wider financial or expenditure committee means that it need not necessarily operate in a politically-charged environment, nor regard the examination of policy as central to its remit.

None of this means that the Committee must or should act in the ways implied above. The key point is positioning the Committee on the spectrum of PACs worldwide, so that meaningful lessons can be learned. A PAC which, for example, is an independent audit body rather than a parliamentary committee, or which examines budgetary and other financial issues as well as audit, will, almost of necessity operate in very different ways from a PAC of the Westminster type. These PACs may well have specific features that are of interest to the Committee, but inevitably, especially in the context of this short, narrow study, there is more potential for fruitful comparison with those PACs than more closely resemble the Audit Committee in these essential respects.

In particular, much depends on the relationship a PAC has with the Auditor and Audit Office. The classical Westminster situation is one where the PAC is, in effect, driven by the Auditor and Audit Office. It may become, or be seen as, little more than the parliamentary arm of the Auditor. This may be a convenient and comfortable model for a PAC, in that much of the burden is shouldered by others, while it receives the benefit of a large and well-resourced bank of expertise, and basks in the reflected prestige of the Auditor. However, it can stifle a PAC's initiative, both in terms of what it does and how it does it. The Audit Committee has already taken one step towards a different relationship by drafting its own reports rather than relying on the Audit Office to do this essential task. *The Committee could, if it wished, to realign its relationship with the AGS and AS further, by, for example, not having them routinely at all its meetings, or by broadening the sources of its information, as examined above.*

Any move away from the traditional convention of avoiding direct policy scrutiny (that being primarily a matter for subject committees) could affect a PAC's operating procedures and practices. It may lead to

- greater collaborative working with other committees;
- greater overall workload, and
- an alteration of the current balance between time spent on public evidence-taking and information-gathering, and on deliberation and private briefing.

Bringing ministers and 'policy officials' within its usual range of witnesses may lead to the Executive reassessing how it interacts with the Committee, perhaps leading to new formal guidance. Any greater sense of partisanship may bring a dilution, or even breakdown, of the

goal of unanimity, leading to more formal voting in the Committee, and more obvious expressions of minority or dissenting opinions in its proceedings and reports.

None of this is to suggest that these consequences, whether intended or not, are necessarily undesirable. But they imply a change of environment from that which was clearly intended for it through the CSG/FIAG/2000 Act process, and which has, generally speaking, operated since the Committee's establishment. This may bring some perceived disadvantages, such as the risk that governments may feel it is easier to reject or ignore its recommendations, but these may be compensated by benefits which may accrue. Greater public engagement may lead to greater public legitimacy and approval, because parliamentary audit may not be perceived as a separate, specialised and rather private process. In so far as PACs, like committees dealing with subordinate or private legislation, may not be the most desirable of committee assignments, more members may be encouraged to participate in the Committee.

We have stressed how so many of the individual operational aspects and practices are in fact part of a general ethos designed to maintain what is a unique function for a parliamentary committee. It follows that any changes here – the broadening of the witness pool; the use of external advisers; operating by consensus and unanimity; explicit consideration of matters of policy and so on – will almost certainly have a wider effect. The Committee will have to address whether it wants to retain its existing ways of operating or whether it regards a fundamentally different model as potentially more effective for devolved Scotland

(iii) Resources, staffing and sources of information and advice

The PACs examined in this study exhibit different ways of ensuring they have the infrastructure necessary to fulfil their parliamentary audit function. However, this applies more to staffing and resources generally, than to formal information-gathering by way of evidence from witnesses. In the latter respect, this study has demonstrated that, generally speaking, PACs, especially those with a narrower audit remit, rely primarily on the Auditor and the Audit Office, supplemented by evidence from official sources, especially from those with 'accountable officer' functions.

How a PAC operates is to some extent a function of what resources it has, and the rules and conventions within which it operates. This will be considered further in the following section, but it should be noted that there will be a balance between what is within its discretion and what is, in practice, beyond its control. Resourcing may be decided through allocations made across a parliament or across its committees. A direct correlation between the perceived importance or workload of a committee, and the resources it is allocated, cannot be assumed. Some PACs will be resourced through some sort of standard allocation or, more likely in smaller parliaments, common or shared resources across some of all committees, or even across the parliament as a whole.

Similarly, much of the operating environment will be determined by the laws, rules and practices determined outwith the PAC, applicable either to all committees generally or to the

PAC in particular. Balancing that will be the PAC's own 'jurisprudence', its own conventions and practices, which it has evolved to cater for the particular needs of its parliamentary audit function.¹⁷²

The purpose of this study is to present the Committee with examples of how the parliamentary audit is carried out differently, so that it can decide for itself what may be suitable and appropriate for it to consider when developing how it does its business. As has been noted throughout, there is a high degree of interdependence between the various separate components of a parliament's structure and operation.

This is especially true for a PAC, especially one with a very close relationship with its Auditor. Therefore, this study has examined resourcing and information-gathering issues together. This relationship has classically been discussed in terms of PACs not requiring additional means of information-gathering—through additional staff, use of advisers, wider range of witnesses, more innovative techniques—because of their access to the relatively substantial resources of the Audit Office. Is the relationship too close and limiting, in ways in which it could be affecting the effectiveness of the PAC's function? Or is it a necessary way of maintaining the integrity and effectiveness of the overall audit process, of which the parliamentary phase through the PAC, is just one part?

This may be a more difficult question for the Audit Committee than for any of the PACs examined here, in that it operates within a novel, and relatively well-defined, parliamentary and committee culture. The Parliament's operating environment is a strong influence on the Committee adopting many of the procedures and practices which may be routine in most other committees. The presumption may be that the Committee should act in these ways until it can demonstrate strong reasons to the contrary. Just as the Committee should not copy from other jurisdictions without good reason, neither should it fall into line with its fellow committees in the Parliament simply because of peer pressure, without any justification in terms of its actual function. To take on advisers, or to broaden the category of witnesses, for example, just to be as 'CSG-compliant' as other committees will not be a sensible approach for the Committee, if it harms its ability to do the job it has been given.

¹⁷² There will be some overlap, of course, such as PAC practices which may have evolved with the committee, but are later enshrined more formally in external sources, such as Standing Orders or the like.

We have noted in the previous section that some of these issues, especially those relating to the Committee's sources of information and advice, go to the very heart of its present ways of working. This may provide limited scope for the Committee to make significant changes without altering its basic approach and ethos, especially in its relationship with the Auditor General and Audit Scotland. Nevertheless there are some specific areas where developments may be made without having such an effect, many of which relate to openness and transparency, and so are considered below in terms of relations with the public and the media

(iv) Structural relationships with the Auditor

The operational relationship between a PAC and the Auditor has underpinned much of this Study. However, some of the the PACs we have examined have more formal, structural connections with the Auditor and/or the Audit Office. These can relate to the appointment of the Auditor, and the budget, audit and operation of the Audit Office, and have been examined in Part 4.

The Scottish model generally keeps these matters away from the Audit Committee itself, at least directly. The parliamentary procedure for nominating an Auditor General is by way of a specially constituted selection panel, which will include the Committee's convener, and perhaps other members of the Committee. In that sense, it is similar to the British Columbia arrangements, described earlier, although there the ad hoc body is designated a parliamentary committee. In terms of Audit Scotland, responsibility rests with a separate statutory body, composed of MSPs, including the Committee's convener, the Scottish Commission for Public Audit (SPCA). In that sense, these arrangements follow Westminster and its Public Accounts Commission.

FIAG had recommended the creation of what became the SPCA (in line with Westminster practice, it originally termed it the 'Public Accounts Commission'), after examining whether these functions could be undertaken by another Parliament-related body such as the Audit Committee or the SPCB. FIAG did not think the Audit Committee was an appropriate vehicle:¹⁷³

First, the AGS's independence, set out in the Scotland Act, could be compromised if his or her main Parliamentary "customers" in the Audit Committee were also responsible for determining his or her pay and rations.

Second, the Audit Committee is likely to have an interest in maximising the resources devoted to audit and scrutiny of all kinds. An independent body should preferably therefore be responsible for proposing the level of resources allocated to these activities.

¹⁷³ FIAG Report, para 6.75

Neither did it think that the SPCB would be suitable:¹⁷⁴

The SPCB could discharge these tasks without causing problems of this kind. However, the commissioning and funding of public audit is a somewhat specialised function probably best undertaken by a specialised committee with the advice of special professional advisers. .. A possible compromise would be for the Public Audit Commission to be a subcommittee of the SPCB. This would have the advantage that the Commission and the SPCB would be well placed to judge the allocation of resources between professional services (including value for money studies) provided by the audit bodies and other professional work commissioned by the Parliament's committees.

While the Parliament and the Committee may be content with the present arrangements for Audit Scotland, and also for the appointment of the AGS,¹⁷⁵ it would appear that some other jurisdictions not regard such direct involvement as inappropriate or a threat to the concept of audit independence. Indeed, they appear, in some cases, to regard having these responsibilities as a desirable or even a necessary component of a PAC's functions. The creation of the SCPA epitomised how much of the initial arrangements for the Parliament's devolved financial scrutiny derived from Westminster precedents, and so this may be a suitable topic for any review of the 2000 Act.

In addition, as the Parliament's role in the nomination and appointment of various public officers expands, it may wish to examine the appropriate scope and extent of this function, and the practical implications it has for the time and resources of its members, staff and committees. The committees will probably have to devote some of their already limited time on the work of these officers, if there is to be the sort of meaningful connection with the Parliament that is implied by the Parliament's role in their appointment and resourcing.¹⁷⁶ The SPCB needs to spend time dealing with their relevant statutory responsibilities, and plenary time has to be set aside to consider relevant motions. In all these, and other parliamentary activities, personnel, finance, legal and other staff of the Parliament will be required to support these officers, however indirectly.

The SPCB referred expressly to this activity in its 2002 annual report,¹⁷⁷ and it was also discussed briefly during the Finance Committee's scrutiny of the SPCB's 2003-04 budget at its 8 October 2002 meeting.¹⁷⁸ The Parliament may wish to consider some form of standing

¹⁷⁴ FIAG Report, paras 6.76-77

¹⁷⁵ At least until the nomination process for the Information Commissioner at the end of 2002, the nomination or appointment process for the various public officers, such as the Public Services Ombudsman and the AGS, had appeared to have been conducted without controversy.

¹⁷⁶ The creation of a dedicated Public Appointments Committee has already been floated, in connection with the Bill currently being examined by the Parliament.

¹⁷⁷ At para 5.4

¹⁷⁸ 19th meeting, 8.10.02, cols 2221-2. The Parliament's chief executive said: "Sponsoring such commissioners and ombudsmen and helping them to get set up has quite an impact on our

arrangement within the Parliament for regulating its dealings with these officers, much in the way parliaments in Australasia have for their 'officers of parliament'. While this is a wider issue for the Parliament, it is directly relevant also to this study, as the AGS would presumably be considered as one of this category of 'parliamentary officer', as might also Audit Scotland, and thereby also the SPCA.

We were struck by the extent to which some other jurisdictions regard matters of the appointment, resourcing and scrutiny of the Auditor and Audit Service as proper matters for the PAC itself. Indeed some appeared to regard these functions as necessary components of their overall parliamentary audit function. Even accounting for the different parliamentary and PAC models, it would appear that the considerations that led FIAG to recommend the adoption of a Westminster approach to these matters are not regarded as such matters of principle elsewhere. As much of this area is covered by statute (both Westminster and Scottish), the Committee cannot make any such changes itself, but it could be a catalyst for them.

(vi) The Audit Committee and the other committees

For this study, four main aspects of the relationship between the Audit Committee and the Parliament's other committees were relevant:

- the extent to which the parliamentary audit function should be a matter solely or primarily for the Audit Committee, or shared with some or all of the other committees;
- the extent to which, if at all, the parliamentary audit function should be formally made part of the remit of a single committee whose remit covers all the financial functions currently dealt with by the Audit Committee and the Finance Committee;
- the scope for joint working between the Audit Committee and the other more policy-oriented committees, and
- the scope for sharing of resources between the Audit Committee and other committees, especially in the context of other committees' access to the Auditor General and the resources of Audit Scotland.

Even within the limited scope of this study, a number of different PAC models have been identified, such as those which are

- not based on a parliamentary committee, especially in Europe,
- committees dealing with a range of financial issues, beyond a narrow PAC/audit function, such as Australia and New Zealand, and
- those where the PAC shares the parliamentary financial scrutiny functions, include aspects of audit, with other committees, and which may act as coordinator of these activities, as in Australia.

organisation. We could not have predicted that a year or so ago. As Alasdair Morgan says, this is a growing area. I will need to consider it carefully with the corporate body to ensure that we have people to support the commissioners, even in fairly basic things."

Amongst those which can be thought of as PACs in a narrower sense, the range and scope of the remit can vary quite extensively, often related directly to the remit of the Auditor, especially in relation to the bodies covered, the types of audit review covered, and the provenance of subjects of inquiry.

These differences in structure, scope and operation are, or should be, inter-related. As has been emphasised throughout this study, ad hoc adoption of procedures or practices from other jurisdictions, without consideration of both the context within which they apply, and the context of the Scottish Parliament's environment, is not an efficient method of parliamentary reform and development. Therefore, whether or not the four main aspects identified at the beginning of this section are examined independently or together, there will inevitably be some connections between them, so that changes in one aspect may well have consequences in one or more of the others.

Notwithstanding that 'health warning', we believe that some of the practices of PACs we have examined can potentially be of interest to the Committee. Fuller examination and evaluation of these ways of working than has been possible in this narrow and brief study would be required to determine their relevancy and appropriateness as for the Scottish Parliament. These include, in particular, within Parliaments of a 'Westminster model' type

- joint working with other committees, whether or not as part of a broader financial scrutiny coordination role,¹⁷⁹ as in the well-developed Australian case;
- availability of the expertise and resources of the Auditor and Audit Office to parliamentary committees generally, as in New Zealand, where a code of practice exists to regulate this matter.

Comparative parliamentary study should include not only what happens in other jurisdictions, but also what options have been considered within them, even where these have either been rejected or not yet adopted. This is especially appropriate for the 'close to home' example of Westminster itself, not only as the main inspiration for much of the devolved audit scheme (as well as much of the basic foundation of Scottish devolved governance itself), but because there has been a lively debate on parliamentary reform over the last decade, even if only a limited amount has actually been implemented.

A good example of this is the recent report of the Hansard Society Commission on Parliamentary Scrutiny, chaired by Lord Newton of Braintree, which reported in 2001. It examined Westminster's financial scrutiny arrangements and concluded that "at present, the Commons fails to perform this role in either a systematic or an effective manner. Financial scrutiny should be central to the work of the Commons since it underpins all other forms of accountability. The procedures of the Commons need to be adapted to ensure that all

¹⁷⁹ This may be akin to the coordinating role the Finance Committee plays in the annual budgetary process.

committees, and hence all MPs, have the scope and resources to ensure proper financial accountability.”¹⁸⁰

In addition to its recommendations for using NAO and C&AG resources more generally amongst committees, for an in-house central financial research resource, and for Westminster making more use of the Audit Commission, discussed elsewhere, it made proposals for each departmental committee to take a more direct role in financial scrutiny:¹⁸¹

Newton Report proposal for Finance & Audit Sub-Committees¹⁸²

Members of the PAC cannot be expected to become experts on the enormous range of subjects into which they inquire. They are likely to be less well informed on a given subject than a member of the relevant departmental select committee. Reforms should encourage and enable departmental select committees to play a greater role in the scrutiny of finance. Each departmental select committee should pilot and evaluate a new form of committee, a Finance and Audit Sub-Committee. The sub-committee should consider, for example, Estimates and departmental allocations, audit and value-for-money inquiries, Public Service Agreements, performance indicators and outcomes.

This proposal may well not be implemented in the House of Commons in the near future, if at all, but it does indicate the thinking on financial scrutiny reform that is taking place there. It shows that the home of the PAC model can be, in principle, adapted to incorporate a very different approach to parliamentary audit, one which (subject to obvious issues such as committee capacity and resources) may be relevant to the Scottish parliamentary context. The Scottish Parliament may seek other ways to expand its audit capacity within the committee system, perhaps by adopting a structural change it resorted to when dealing with the workload of the Justice and Home Affairs Committee, by creating two committees with the same remit.¹⁸³

¹⁸⁰ *The challenge for Parliament* (Newton Report), executive summary, p xii

¹⁸¹ One member of the Scrutiny Committee suggested, in evidence to the Modernisation Committee’s recent select committee inquiry, that a greater financial scrutiny role for departmental select committees might assist in encouraging some MPs to become members of these committees. Recruitment has not, to date, been a problem in the Scottish Parliament, though retention may well become so, at least for some committees.

¹⁸² *op cit*, para 5.20, p66 (emphasis in original)

¹⁸³ Such a suggestion was made, perhaps not entirely seriously, by the senior government member on the Westminster PAC, Alan Williams, when giving evidence to the Modernisation Committee’s select committee inquiry in December 2001: “I am anxious that since the PAC is a bottleneck, we can only do 50 hearings a year, I differ in my view from the previous Chairman of the PAC, I think it is important that the financial role of the Select Committees be enhanced. The PAC just cannot cope with it. We have to have a second PAC.” Modernisation Committee, *op cit*, HC 224-II, 2001-02, minutes of evidence, Q92, 19 Dec 2001

Consideration of the Audit Committee's relationship with the Parliament's other committees raises the issue of whether it wishes to retain the essence of its existing model, or to develop a different model that goes beyond the Committee itself, and involves structural change to the committee system. The further the Committee wishes to travel from its current position, the more likely it will involve structures and practices elsewhere in the Parliament, especially in terms of financial scrutiny generally.

(vii) Relationship with the public and the media

This aspect is a central concern generally for the Parliament, as it one of the main ways in which its declared culture and ethos, within the spirit of the CSG principles, can be given practical expression. However, as already noted, it is also an area which might not be as suitable for parliamentary audit activity as it is for the generality of parliamentary activity, because of the potentially detrimental impact more innovative procedures and practices may have on the effectiveness and independence of the process.

It is clear from even this limited study that the Audit Committee operates within a more participative and open parliamentary environment than many other PACs enjoy. This is true even though there is a growing awareness across parliaments generally of both the need to interact more with their publics and of the opportunities ICT affords in making this possible.¹⁸⁴ Its policy and practice towards operating under the potential gaze of the public and media is, as with all the Parliament's committees, commendable. This can be seen in terms, for example, of the holding of most of its proceedings in public and in making available, in advance, many papers prepared for its meetings. The fact that the Committee has commissioned this piece of comparative research is itself a telling instance of this culture.

This perspective makes it more possible for the Committee than for many other PACs to contemplate and take on board possible changes and developments which are relevant, compatible and potentially beneficial to its operation. Armed with the Parliament's ethos, it can seek to absorb external experience, so as to develop and improve its essential function and operation in ways that remain consistent both with the unique context of public/parliamentary audit and the Parliament's underpinning principles.

As we have already noted, there is scope where the Committee could consider the greater provision of information by some PACs, in their annual reports, guidance notes and otherwise. The extent to which a PAC should go beyond simply treating the wider public as

¹⁸⁴ This can be seen even at Westminster, where the Public Accounts Commission – the UK equivalent of the SCPA – agreed in mid-2002 that it would generally sit in public session when taking evidence from the NAO and other witnesses, and that a verbatim transcript of these proceedings would be produced.

an audience for its work¹⁸⁵ and actively involve them, in a substantive way, in its actual scrutiny processes, has been examined in the context of a PAC's information-gathering strategies. This applies to the public in its various guises, as consumers/customers of the bodies being audited, or as employees, contractors, or shareholders of them, for example. The Parliament's usual culture would presume that such categories of people or bodies would be just the ones that should be, and are, those that a parliamentary scrutiny exercise should involve.

These are sensitive issues, requiring the Committee's consideration of how far, if at all, embracing this approach more fully than it does at present would undermine its work and efficacy, by disturbing, in a detrimental way, the delicate equilibrium that exists within the membership of the Committee, and between the Committee and the Auditor and the Executive. This goes to the heart of the nature of the Committee's role in the parliamentary audit function, which has been examined in this study. There is scope for the Committee to be less cautious than it perhaps has been thus far, and only by careful experimentation in those aspects of its operating practices, can it discover just how far it can go.

This is an area where the 'CSG culture' of the Parliament potentially has its greatest impact on our examination of the parliamentary audit function. We have highlighted a number of areas where the Committee could be more open and transparent, without affecting the basic tenets of its existing ways of working. These include the devising and publication of detailed and accessible information on its procedures and practices; what it is has done, is doing and proposes to do, and how the public can participate meaningfully in the Committee's work.

D Next Steps

(i) A comparative review of the parliamentary audit function

While we have emphasised throughout the limited scope and nature of this short comparative study, we believe that it has demonstrated the value of the Audit Committee in assessing its arrangements and performance on a comparative basis. This can be done in a number of ways, other than simply through commissioned research study. Regular and structured contacts with fellow PACs in a variety of jurisdictions, within the UK, Europe, Commonwealth and worldwide, both national and sub-national, will provide the sharing of experience and discussion of common problems and issues that helps keep the Audit Committee aware of developments.

This can be done on an ad hoc basis, through bilateral contacts, but is perhaps most efficiently and effectively pursued through membership of appropriate organisations of

¹⁸⁵ The Danish PAC is regarded as a media-conscious body, which is responsive to a media agenda in terms of the areas to be audited, and the presentation of its outputs.

fellow PACs. The existence of such bodies in Australasia and Canada, in particular, seem to have been of great value to the many PACs with these regions, and their publications and conferences have, as can be seen, informed many aspects of this study. Both appear not only to cater for the PACs within their own jurisdictions, but also involve those from elsewhere in their activities.

It is very likely that the Auditors and Audit Offices will be participating in parallel international organisations and meetings.¹⁸⁶ PACs may derive some indirect benefit from this Auditor activity, but it would seem a good principle that PACs should also establish and maintain their own independent contacts, so that they are not dependent on their Auditor for the benefits of comparative experience.

The Sharman report noted that the creation of devolved audit arrangements brought new risks of uncoordinated approaches to audit work, and recommended that the various audit bodies across the UK “should ensure that they have arrangements in place to enable them to draw on each other's methodologies.”¹⁸⁷ The same point could be made with equal force for PACs in the UK, in so far as no such body exists formally at present. Other committees and offices in the Parliament have taken the initiative or a leading role in creating such formal linkages within, and beyond, the UK relevant to their particular areas of interest or operation.

The Audit Committee could, if it wished, take the initiative in the formation of a 'UK PAC Liaison Group'.

We also believe that the Audit Committee would find a broader and deeper comparative research study of sufficient value to justify the commitment of time and resources it would involve. Such a study could cover the PACs examined here, alongside others, especially those reflecting different, non-Westminster models. The opportunity could be taken then to examine those jurisdictions with which the Parliament has regular and cordial relations, so that a fuller study of their parliamentary audit arrangements can be examined within their overall parliamentary and political contexts, by utilising existing knowledge and contacts outwith the PAC area of their activity.

As well as examining parliamentary audit systems in more detail than was possible in this study, a more substantial project should take more directly into account the perspective of the audited bodies themselves, and their own ‘customers’, as well as the PACs and

¹⁸⁶ See, for example, the AGS’ description of these links in Public Audit in Scotland: a strategic statement by the Auditor General, Aug 01, pp10-11

¹⁸⁷ para 5.32. As to the UK C&AG’s view of the impact of devolution on public audit, see the NAO’s evidence to the UK Public Accounts Commission, published in the Commission’s 11th report, 11th report, HC 1251 of 2001-02, November 2002, supplementary evidence by the NAO, para (vi):<http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmpacomm/1251/125123.htm>

Auditor/Audit Office. This is an important and common scrutiny principle in the Parliament, and should be applied to a comparative audit study.

The Audit Committee could commission a more substantial comparative research exercise, building upon this study.

(ii) The framework and timing of a more general review

Because the Scottish Parliament is, within the scope of its powers, in control of its own procedures and practices, it can seek to develop the way it, or any of its component parts, operate. It is always open to the Audit Committee to decide whether and how to change the way it works, or suggest to the Parliament, through the Procedures Committee, options for change. It has already used the latter route when changes in Standing Orders are required, as in the recent amendment to its remit.

However, if the Committee believes that a more structured review of itself, its operating arrangements, and its place within the Parliament, is required, then a convenient and appropriate opportunity could well be in the context of a review of the broader arrangements for the Parliament's participation in devolved finance generally, in and through the Public Finance & Accountability (Scotland) Act 2000. A number of the PACs we examined – this may be more common with those with a wider financial remit than the narrow audit function – can or have reviewed, either as required or permitted by their remit or as referred by their parliament, the broader schemes of parliamentary budgeting, auditing and financial scrutiny within which they operate.

A good example of this was the Australian PAC's review, after 3 years, of the Auditor-General Act 1997:¹⁸⁸

Reasons for the inquiry

1.12 In view of the Committee's significant legislative responsibilities to guard the independence of the Auditor-General, the Committee believes that it must be satisfied that the Act is achieving its stated intentions. The Act has been operating for just over three years which is sufficient time to review its effectiveness and, where necessary, suggest amendments.

1.13 In March 2000, for example, the Committee reported on its review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities Act 1997. These Acts also came into effect on 1 January 1998 and this length of operation was sufficient time for the Committee to provide an adequate assessment through its inquiry.

1.14 During the previous three years, the Committee has had the opportunity to observe and to explore its responsibilities in relation to the operation of the Act. This experience places the Committee in a very good position to review its operation. For example, the Committee's role in scrutinising the reports of the Auditor General gives it an effective knowledge of how the Act provides the framework for the Auditor-General's performance audit function. In particular, the Committee has examined whether the information gathering powers of the office of the Auditor-General are sufficient for it to conduct its scrutiny role.

Objectives, scope and focus

1.15 The Committee's main objective is to provide an assurance function and test whether the functions of the Act are being properly fulfilled. This examination has identified a number of sections of the Act that could be enhanced through legislative amendment....

The Manitoba PAC's mandate, in this respect, is more limited, but does include scope to review amendments to legislation dealing with the responsibilities of the Auditor General during its parliamentary passage, and, perhaps more importantly for present purposes, "review and make recommendations to the House on the functioning of the Committee and its rules."¹⁸⁹

The advantages of a review of the parliamentary audit function within a more general review of the 2000 Act and the surrounding procedures and practices of parliamentary scrutiny of devolved finance, are that it would, for example, enable a review to

¹⁸⁸ Report 386, Sept 2001

¹⁸⁹ Rule 94(b)-(c)

- examine the parliamentary audit function within the overall context described
- consider the role and function of the Audit Committee within the committee system in general, and the Finance Committee and the subject committees generally, in particular
- examine the totality of the Committee’s relationship with the Auditor General and Audit Scotland, and their respective roles in the system of devolved public audit.

If the Committee was minded to consider undertaking, or suggesting to the Parliament, a review of this nature, then a convenient time for such a review may well be during the mid-term of the next parliamentary session, as that would broadly coincide with the fifth year of the 2000 Act scheme. Such a review might be conducted in conjunction with the Finance Committee, for example. This might well complement any more general reviews of Scottish devolution, and of the Parliament, that may be taking place around that time, either internally or at UK level, and could therefore take account of any aspects which are or may be reserved under the Scotland Act 1998.¹⁹⁰

The Audit Committee could seek the establishment, within the Parliament, of a fundamental review of the parliamentary audit function, within the context of a 5-year review of the Public Finance & Accountability (Scotland) Act 2000 held during the next Parliament. Such a review could include the further comparative research exercise suggested above.

¹⁹⁰ For example, the creation of the post of Auditor General for Scotland and the general requirements for devolved finance were in the Scotland Act, especially Part III of the Act. The AGS was established by s69, which included, for example, the post’s independence from the Executive and the Parliament, and the framework for the financial control, accounts and audit arrangements were contained in s70.

Appendix 1: Key comparators used in this report

These parliaments were our main source of information, although as will be clear from the report, extensive use was made, not only of a number of other reports, websites and informal sources, but of other PACs, some of whom were sent and responded to our questionnaire. Each of these comparators submitted a response to our questionnaire, and some offered follow-up assistance. The bulk of this material is set out in the main report, but some basic facts and figures of the comparators are given below.

1. Public Accounts Committee, House of Commons, United Kingdom

The population of the UK is 59.6 million. The committee has 16 members and reports to the lower house of the Parliament only, where there are 659 MPs.¹⁹¹ The National Audit Office Act 1983 underpins the independence of the Comptroller and Auditor General. The chairman of the PAC must be consulted when the appointment is made.

This committee has a distinguished reputation and long experience in audit work. It is regarded as one of the most important committees in the Commons. The PAC was first formed in 1861, and is an all-party committee whose chairman, by convention, must always come from the Opposition and is often a senior minister. Its focus is on the effectiveness of a policy, rather than the policy itself. It benefits from the expertise of 750 National Audit Office staff and its reports are based on the reports presented to parliament by the Comptroller and Auditor General. Civil servants, rather than ministers, are summoned as witnesses to its hearings. There is an annual parliamentary debate to discuss the 50 or so reports issued each year by the PAC. The Government Resources and Accounts Act 2000 and the February 2001 Sharman report *Holding to Account* has led to recent extensions in the PAC's remit.¹⁹²

2. Public Accounts Committee, Dáil, Ireland

Ireland has a population of 3.7m and a bi-cameral parliament, with 166 members in the lower house, the Dáil. The Committee reports to the Dáil only and has 12 members. The Chairman is by convention a member of the Opposition. It normally publishes about 5 reports a year. The position of the Comptroller and Auditor General is recognised in the Irish constitution, but a statute in 1993 placed his powers on a modern footing.

The PAC is constituted as to be impartially representative of the Dáil, and places great importance on not addressing policy issues, and therefore preserving a 'non-political approach'. Its approach closely follows the Westminster model, apart from its special reports. This committee has had a major role recently in investigating taxation fraud, and has had its powers supplemented by the Comptroller and Auditor General and Committees of

¹⁹¹ Not counting the Financial Secretary to the Treasury, who is a non-attending ex-officio member

¹⁹² The Review of Audit and Accountability for Central Government, HM Treasury February 2001

the Houses of the Oireachtas (Special Provisions) Act, 1998 to enable it to carry out its investigative functions more effectively. Appendix 3 offers more detail in the form of a case study.

3. Finance and Expenditure Committee, House of Representatives, New Zealand

New Zealand has a population of just over 3m and a 120 member unicameral parliament. Until 1982 it had a Public Accounts Committee, but reforms in the mid 1980s established a committee with a broader remit which extends to reporting on the budget as well as examining expenditure. It now has overall responsibility for the review of financial management in the public sector, and will also scrutinise relevant bills and carry out inquiries. The Committee has 12 members and to date has been chaired by a member of the Government party or parties. It produces around 12 reports a year.

The Public Audit Act 2001 set out a statutory framework for the relationship between the committee, the Controller and Auditor-General and other parliamentary committees. An Officers of Parliament Committee recommends the Auditor-General's budget to the House and has developed a Code of Practice which governs the interaction of the Auditor-General's office with other parliamentary committees.

4. Public Accounts Committee, Folketing, Denmark

Denmark has a population of 5.3m and has a unicameral parliament with 179 members. This committee is an independent agency not subordinate to the parliament or executive. It has 6 paid members who serve for a fixed four year term and need not be members of parliament. Allocation of places is by proportional representation so each major party is represented. Membership is unaffected by the results of intervening general elections. It is chaired by the longest-standing member of the PAC. It produces about 18 reports a year.

The PAC has power to request that the National Audit Office of Denmark examine certain policy areas, and is a more 'political' committee than Westminster style PACs. It has responsibility for recommending the appointment of the Auditor General. It comments on policy objectives and makes visits to areas under study. It also requires responses from ministers, who have resigned or transferred ministries on occasion following adverse reports.

5. The Joint Committee of Public Accounts and Audit, Australia

Australia has a population of 19.6m with a bi-cameral federal parliament. The lower house has 150 members and the upper house has 76. This is a joint committee of both houses, with 16 members. It is chaired by a Government member, with a vice-chair from the Opposition and has a long-standing non-partisan tradition. It has control over the budget of the Auditor's Office and has wide discretion, enabling it to issue reports on topics separate from

Australian National Audit Office reports. The annual number of reports is normally 8. In 2000, the Committee carried out a review of the Auditor-General Act 1997, which enabled it to consider the details of its relationship with this independent officer of parliament. Audit Office staff can act as 'observers' a type of special adviser to the Joint Committee.

6. Public Accounts Committee, Queensland, Australia

Queensland has a population of 3 million and 89 members of a unicameral parliament. Following the Parliamentary Committees Act 1995, six statutory committees were established to work alongside 6 estimates committees which scrutinise Executive expenditure. The Public Accounts Committee has a membership of 7 and is generally chaired by a Government member, with a Vice-Chair from the Opposition. It has statutory powers to hold public meetings and take evidence. It can conduct public hearings on the executive's nominee for Auditor-General and can exercise a veto close relationship between the committee and this officer.

7. Standing Committee on Public Accounts, House of Commons, Canada

Canada has a population of just over 31 million, and a bicameral parliament. Its lower house has 301 members and this committee has 17 members. The Committee has a close relationship with the Auditor General of Canada, and produces about 25 reports a year. It can be described broadly as a typical 'Westminster model' PAC, with more flexible procedures than some of its provincial counterparts.

8. Select Standing Committee on Public Accounts, British Columbia, Canada

British Columbia has a population of 3.9 m. Its legislative assembly has 79 members, and this committee has 11 members. It follows a fairly traditional Westminster style of Public Accounts Committee and is currently chaired by one of the only two Opposition members in the legislative assembly. It has an innovative follow-up process described in detail in the main report.

Appendix 2: Description of the role of a parliament in various public audit systems¹⁹³

Different types of supreme audit institutions

Most developing countries use one of three auditing systems: Napoleonic, Westminster, or board.

In the Napoleonic system the supreme audit institution—also called the *cour des comptes* (court of accounts)—has both judicial and administrative authority and is independent of the legislative and executive branches. The institution is an integral part of the judiciary, making judgments on government compliance with laws and regulations as well as ensuring that public funds are well spent. The *cour des comptes* audits every government body, including ministries, departments, and agencies; commercial and industrial entities under the purview of ministries; and social security bodies. This model is used in the Latin countries of Europe (France, Italy, Spain, Portugal, and others), Turkey, and most Latin American and francophone African countries.

In the Westminster system, used in many Commonwealth countries (Australia, Canada, India, the United Kingdom, and many Caribbean, Pacific, and Sub-Saharan African countries), the office of the auditor general is an independent body that reports to parliament. Made up of professional auditors and technical experts, the office submits periodic reports on the financial statements and operations of government entities—but with less emphasis on legal compliance than in the Napoleonic system. The office serves no judicial function but, when warranted, its findings may be passed to legal authorities for further action.

The board system, prevalent in Asia, is similar to the Westminster model in that it is independent of the executive and helps parliament perform oversight. Indonesia, Japan, and the Republic of Korea, for example, have an audit board composed of an audit commission (the decision-making body) and a general executive bureau (the executive organ). The president of the board is the de facto auditor general. The board's primary mandate is to analyze government spending and revenue and report its findings to parliament.

Role of parliament

In the Westminster system the supreme audit institution is a core element of parliamentary oversight. Parliaments typically rely on supreme audit institutions to audit public accounts. Then a multiparty public accounts committee usually reviews reports by the office of the

¹⁹³ This is an extract from R Stapenhurst & J Titsworth, "Features and functions of supreme audit institutions", *Findings 208*, June 2002, pp1-2 and 2-3 respectively. *Findings* is a series of reports as part of the World Bank's work in Africa, but does not represent World Bank policy or views.

auditor general, considers testimony by witnesses from government departments and agencies, and sends its reports to the full parliament for comment and action. There are often recommendations or instructions requiring follow-up action by both the auditor general and government accounting officers.

In the board system the audit board prepares and sends an annual report to the cabinet, which submits it to parliament. Board staff attend all deliberations on fiscal accounts and are expected to explain the board's opinions.

In *cour des comptes*-style supreme audit institutions, parliaments do not automatically receive the auditors' reports, though they may receive a report on the court's work. There are, however, four possible forms of collaboration between the court and parliament:

- The president of the court may, at his or her discretion, pass the court's findings to parliament's finance committee.
- A parliamentary committee may ask the court to conduct a specific management audit, which typically audits the economy, efficiency, and effectiveness of processes in the organization (or organizations) being audited.
- The court's annual report, presented to parliament and submitted to the country's president, addresses the legal concordance between the general accounts of the finance department and the treasury.
- In a separate document, the court prepares an annual report for parliament on the use of the resources made available by the previous year's finance act.

Appendix 3: Ireland—the Public Accounts Committee and the DIRT investigation

Committees in the Irish Dáil were traditionally seen as undeveloped and ineffective in the scrutiny of the Executive.¹⁹⁴ However, a series of scandals in the 1990s have led to new legislation clarifying the rights of committee to obtain papers and summon witnesses. The Public Accounts Committee has played a crucial role in investigating a major tax-based fraud by equipping itself with full powers of compellability to conduct what amounted to a full judicial investigation.¹⁹⁵

The Comptroller and Auditor General Act 1993 modernised the remit and powers of the C and AG, following a successful campaign by the chairman of the PAC in the early 1990s.¹⁹⁶ The legislation helped the PAC to fulfil its obligations to scrutinise public expenditure in a much more effective (if traditional) manner. As is usual in Westminster style systems, the PAC had no remit to question government policy. This was seen as an essential factor in allowing the Committee to investigate a major failure of government policy.

When information came to light about failures of officials in the Revenue Commissioners to deal with widespread evasion of the Deposit Interest Retention Tax (DIRT) the matter was referred to the PAC to investigate. There were already a number of Tribunals of Inquiry in existence gathering evidence on other scandals and there was all-party agreement to use the PAC rather than to establish another judicial inquiry, which were both costly and lengthy. Two separate pieces of legislation were passed to facilitate the work of the PAC:

- Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities) Act 1997 This Act allowed for committees to establish sub-committees with powers to compel (subject to the consent of the Dáil) and set out the rights of witnesses appearing before a committee of the Dáil.
- Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act 1998. This Act enabled the C and AG to investigate further the scale of the tax evasion.

A special sub-committee was established to investigate, with powers analogous to those of a Tribunal of Inquiry under the Tribunals of Inquiry Act 1921 (still in force in Ireland, as in the UK). This consists of an inquisitorial procedure and provides for the examination of witnesses under oath. There were six members, all of whom had to pass strict tests of conflict of interests. The party whip was not in operation during the existence of the sub-committee.

¹⁹⁴ For background, see Eunan O' Halpin 'A Changing Relationship? Parliament and Government in Ireland' in *Parliaments and Governments in Western Europe* ed Philip Norton 1998

¹⁹⁵ Much of the information in this case study may be found in an unpublished thesis by Muiris MacCarthaigh, of University College Dublin

¹⁹⁶ On the inadequacies of the powers prior to 1993 see Eunan O'Halpin 'The Dáil Committee of Public Accounts' in *Administration* Vol 33, No 4 1985 pp 505-7

The sub-committee's work generated major interest in the media and its three reports (1999-2001) have been very influential in establishing a reform agenda for the Dáil and for strengthening parliamentary accountability. For the Clerk of the Dáil the Inquiry provided an opportunity to highlight problems with under-resourcing for parliamentary committees

An immediate result of the first report was a Government commitment to establish an Oireachtas Commission to manage the parliament (akin to the House of Commons Commission in the UK) with a separate Vote for the Committee system, set independently of the Department of Finance. A Bill was introduced into the Oireachtas in June 2002.¹⁹⁷ Other successful recommendations were:

- Recommendation for a new Revenue Act, to provide a clear independent framework for the Revenue Commissioners which was followed up by official action and involvement of the PAC in preparing proposals for legislation.
- An overhaul of the office of the Appeal Commissioners of the Revenue
- Agreement to the establishment of a Parliamentary Inspector, to assist committees in investigations
- Establishment of an Oireachtas Legal Adviser
- Appointment of external consultants to give objective assessment of the funding and staffing needs of both Houses

The Inquiry criticised the lack of accountability of the Executive and its agencies to the Oireachtas, but its attention was focused on officials rather than the successive Ministers of Finance in office during the period of tax evasion. There was criticism that politicians were failing to apportion blame appropriately in order to protect their own. A Tribunal of Inquiry may have offered a more impartial diagnosis of the issues.

The work of the C and AG was crucial to the success of the Inquiry. He spent seven months in work preparing for the Inquiry, enabling it to take evidence over a six week period only. The Inquiry's terms of reference were tightly drawn and the sub-committee was able to benefit from an extended parliamentary recess allowing its members to concentrate solely on the Inquiry. The then chairman of the PAC, Jim Mitchell, took an important leadership role throughout. An important element in its impact was the on-going review of the recommendations, undertaken by the sub-committee in open session.¹⁹⁸

But the sub-committee had to obtain permission from the Department of Finance for extra staff and resources over and above the usual PAC budget. It drew heavily on the central committee budget for preparation, denying other committees resources during the period of

¹⁹⁷ House of the Oireachtas Commission Bill (Bill 18 of 2002), available from <http://www.irlgov.ie/oireachtas/frame.htm>

¹⁹⁸ Committee of Public Accounts Sub-committee on Certain Matters: Final Report 2001 Chapter 1: Introduction

the Inquiry. It may be premature to conclude that the PAC is fully equipped to take on major inquiries as a matter of course.

Appendix 4: Glossary and Abbreviations

<i>'Auditor' refers to the Auditor-General or equivalent 'state auditor', and 'Audit Office' or 'Audit Service' refer to the office of the Auditor, or the office that supports the Auditor.</i>	
<i>'Parliament' is used generically, to include assemblies, legislatures and other bodies however named.</i>	
<i>'Scrutiny', 'oversight' and 'accountability' are used loosely and, where appropriate interchangeably.</i>	
<i>'Standing Orders' is used for any set of parliamentary rules, not contained in legislation (except where legislation itself prescribes the Standing Orders), and generally does not include informal conventions or practices.</i>	
<i>'subject committee' is used to denote a parliamentary committee that scrutinises a particular area of public policy, but may be known, within its parliamentary system, as a standing committee, select committee, special committee or whatever.</i>	
AG:	<i>Auditor General</i>
AGS:	<i>Auditor General for Scotland</i>
AC:	<i>Accounts Commission</i>
ACPAC:	<i>Australasian Council of Public Accounts Committees</i>
AS:	<i>Audit Scotland</i>
C&AG:	<i>Comptroller & Auditor General</i>
CCPAC:	<i>Canadian Council of Public Accounts Committees</i>
CPA:	<i>Commonwealth Parliamentary Association</i>
CSG:	<i>Consultative Steering Group</i>
FIAG:	<i>Financial Issues Advisory Group</i>
NAO:	<i>National Audit Office</i>
PAC:	<i>Public Accounts Committee</i>
PAF:	<i>Public Audit Forum</i>
RAB:	<i>Resource accounting & budgeting</i>
SCPA:	<i>Scottish Commission for Public Audit</i>
SPCB:	<i>Scottish Parliamentary Corporate Body</i>
VFM:	<i>Value for Money</i>

Appendix 5: Selected bibliography

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