The **Constitution** Unit

Single Chamber Parliaments:
A Comparative Study
(Stage Two)

September 1998

Contents

Executive Summary

This summary contains conclusions to be found at the end of each chapter of the stage two report. The report contains four principal chapters, drawing upon the themes for further investigation identified by the Consultative Steering Group as a result of discussion of the stage one report in March 1998. The four chapters are:

- **Legislative Policy Making**
- **Investigatory and Scrutiny Powers**
- **Relationship Between Parliament and Executive**
- **Intergovernmental Relations**

1.   Legislative Policy Making

Scrutiny of Legislation
- Adopt a statute similar to the Queensland Legislative Standards Act. The statute could not only set out minimum legislative standards but also deal with the way legislation is passed through parliament. It could include for instance a requirement for consideration by parliamentary committee which can take public submissions both in writing and orally.
- Allow for an initial parliamentary committee to scrutinise bills with the aid of independent parliamentary staff (legal officers for example) in private.

Holistic Government – Committees Subject Areas vis a vis Government Departments
- Allocate Committees' subject areas on a thematic basis, which will allow for a rational connection to the subject areas of the executive. Committees' thematic areas may however be broader than the corresponding departments of the executive they deal with. This may allow for committees' to draw links across subject areas which may not happen within individual departments.
- Allow committees, of their own initiative, to set up joint committees of one or more committees to consider a bill or subject of common interest.

Committee Input in Policy Making
- Give committees the power to initiate bills, and when reporting government bills back to parliament to suggest amendments.
- Allow a dissenting minority in a committee to append a dissenting report on a bill being reported back, including its own recommendations for amendments.

Co-opting Outside Members Onto Parliamentary Committees
- Allow parliament to set up special advisory committees which may include outside experts with speaking but no voting rights.

Influencing the Financial Dimensions of Policy
- Design the parliamentary stages of the budget process to include review by a parliamentary finance committee. Such involvement should come early in the budget drafting process if it is to be more than a mere review of government proposals.

Non-Government Legislative and Policy Initiatives

- Do not consider the use of a system of citizen's initiated referenda as a means for allowing outside interests to be heard in the legislative policy process – focus instead on ways of drawing the public into comment on bills through select committee hearings.
- Consider a formalised procedure, perhaps managed by a committee, to allow members of the public to present policy suggestions, including proposed bills to the Scottish Parliament.
- Consider allowing the committee, or a significant minority of the parliament the power to pass a resolution requiring the executive to have a bill drafted on a particular subject and to achieve a particular purpose – which the parliament would then debate as if it were an ordinary government bill.

Avoiding Executive Domination

- When allocating chairs for the Parliament's select committees allow non-government parliamentarians to chair some committees, perhaps in proportion to their parties representation in parliament.

Preparation for the New Parliament

- Design parliamentary staff orientation and ongoing training to allow for links between the staffs of different committees in order to encourage cross-fertilisation of ideas and expertise.
- Hold briefing seminars for members of the new Scottish Parliament similar to those being carried out with the new Northern Ireland Assembly.
- Implement a programme of public education measures to inform Scottish electors of how they can make submissions and otherwise have their views heard in the Parliament.
- Allow for review within the Scottish Parliament of its standing orders within 12 to 18 months of their introduction with the specific aim of improving the operation of the Scottish Parliament as constituted: i.e., such a review mechanism should not extend to review of the devolution process itself.

2. Investigatory and Scrutiny Powers

Outside Experts Involvement in Parliament

- Allow the parliament under its standing orders to set up special advisory committees comprising members of parliament and co-opted outside experts. Such committees could be set up on an ad hoc basis and would only have the power to investigate a matter and present a report with informal recommendations to the parliament.
- Allocate parliamentary committees a budget to allow them to consult outside experts within their subject matter fields.

Committee Investigations

- Allow parliamentary committees to instigate investigations within their subject areas, including the ability to hold public hearings and require the attendance of witnesses, including members of the Scottish executive.

Scrutiny of the Executive

- Consider giving one parliamentary committee the role of 'constitutional watchdog'. This would include the power to hear complaints about the conduct of members of the parliament or the executive in the conduct of their duties, and the ability to report their findings to the parliament with a recommendation on whether a member should be censured, or, in the case of a member of the executive, whether a vote of no confidence should be passed which would require the minister to resign.

Audit

- Consider including in the standing orders a committee of parliamentary auditors, who would be members of parliament assisted by a permanent civil service audit staff. This audit function would be distinct from any non-parliamentary Scottish audit office. The auditors would have power over their own agenda and would consider the entire chain of policy development and implementation. Their reports would be presented either direct to parliament or to the select committee with jurisdiction over the subject dealt with. Allow the civil service auditors involved in any matter to register their agreement or otherwise with the conclusions of the parliamentary auditors.

3. Relationship Between Parliament and Executive

- Recognise a formal right for each member of parliament to introduce bills, or amendments to bills.
- Allow a certain time each year for the consideration of non-government bills.
- Allow a certain time in the passage of a government bill for non-government members to propose amendments to the bill.
- Consider allowing all members of parliament to be able to consult the parliamentary legal staff in confidence, including advice on drafting bills and amendments.
- Consider in the future seeking amendment to the Scotland Act to allow the Scottish First Minister to nominate, for the Parliament to approve, persons who are not members of the Parliament to serve as members of the Scottish executive. The number of such outside person could be limited and they could be subject to a higher confirmation requirement by the Parliament (a two thirds vote for instance, to encourage a level of bipartisanship to appointing outside experts) and would be subject to removal by simple majority vote of no confidence.

4. Intergovernmental Relations

- Establish a committee of the Scottish Parliament with the task of dealing with EU and UK intergovernmental relations issues. This committee should have a formalised role including being informed in sufficient time to allow for meaningful consideration, of discussions between members of the Scottish Executive and other UK governments.
- Consider developing links to other UK parliaments. This could be by creation of an interparliamentary body, or by regular meetings of committee members from committees in the same subject area.
- Establish standard means to share information between parliaments concerning matters of current policy interest.
- Encourage parliamentary officers, legal staff etc, to build links with their counterparts in other UK parliaments, to allow cross fertilisation of expertise.
- Consider how party structures might link politicians around the UK for the purpose of co-ordinating policy development

1. Introduction

1.1 This is the second stage report of the study of unicameral parliaments commissioned by the Scottish Office in connection with the establishment of the Scottish Parliament. The study is not intended to be a comprehensive survey of unicameral systems. Nor is it a classically academic exercise: it is intended to gather practical insights from other unicameral systems to aid design of Scottish Parliament. It also differs from the stage one report in that it is the collation of material collected during visits to the parliaments studied, from which conclusions are drawn of relevance to the Scottish Parliament throughout, rather than a comprehensive narrative about each jurisdiction. For stage one of the project, six parliaments from around the world were selected: **Sweden, Denmark, Quebec, British Columbia, Queensland and New Zealand.**

1.2 The stage one report comprised:

- summary overviews of each country examined
- an examination of the checks (legal and political) on the powers of the Parliament and an assessment of their efficacy with particular reference to five key parliamentary functions.

1.3 The stage one report, published by the Constitution Unit in February 1998 concluded that the presence or absence of a second chamber was not itself a determining factor as to whether a parliament would work as a successful democratic institution. Other design issues were more important: for example, the presence of a well-designed system of parliamentary committees. The number of chambers is not in itself a determining factor: it is how business is carried out within those chambers that matters.

1.4 Stage two involved visiting four of the parliaments considered in stage one, interviewing local personnel and collecting any relevant primary materials. In addition three further parliaments were added to the study, the **German** Länder parliaments of **Lower Saxony** and **Bavaria** and the **Catalan** parliament in Barcelona. During the stage two investigations the Unit also verified the material and conclusions contained in the stage one report. After presentation of the stage one report to the Consultative Steering Group of the Scottish parliament and discussion with Scottish Office personnel the following themes were used to guide the interviews in each jurisdiction:

Theme One - Legislative/Policy Making Machinery
- How is public input into legislative process achieved? - Pre-legislative scrutiny
- Scope of Committees- can they adopt subject areas different from the range of Executive departments? - holistic government
- Committees' legislative and Investigatory initiative powers - can committees contribute constructively to policy making?
- Approval of Estimates and departmental budgets, how can committees influence the financial dimension of policy?
- Scope for external or consultative committees- c.f., ECOSOC, Consumer Consultative - Committee of EC
- Scope for people who are not members of the parliament to participate in Committees? - Pros and cons of co-opted members

Theme Two - Legislative Management and Extra-Parliamentary Input and technical Issues

- Presiding officers and parliamentary staff
- Amendment to legislation

Theme Three - Relationship between Parliament and the Executive

- Management of parliamentary business and agenda- how to maintain degree of independence from the Executive- an issue particularly when the Parliament is dominated by one party (more likely in Wales than Scotland)
- Conflict between sustaining the Executive, allowing the Executive to develop policy and govern effectively but avoiding Executive domination of Parliament

Theme Four – Intergovernmental Relations

- In federal or quasi-federal states, how do the parliaments and governments within the state interact?

1.5 These themes are the basis for the thematic headings in the following chapters. In order to allow for a clearer flow to the material we have reordered the themes slightly so that legislative policy making is separated from investigative matters. The headings in the chapters are:

- **Legislative Policy Making**
- **Investigatory and Scrutiny Powers**
- **Relationship Between Parliament and Executive**
- **Intergovernmental Relations**

1.6 For more technical details in relation to each parliament the stage one report should be consulted. A brief technical description of the three extra parliaments visited for stage two is contained in appendix 2. The report's conclusions and recommendations are set out in boxes at the end of each theme and also collected together in the executive summary above.

2. Legislative Policy Making

Introduction

2.1 This section deals with the policy process in parliaments, how legislation is proposed and by whom. It also considers the way political parties, especially those not in government and other outside interests may be heard in the parliamentary process. The section also considers ways legislation is checked for compliance with constitutional and other stipulations about its content. A major theme in the brief for the second stage report was how the legislative policy process worked, in particular, how interests other than the government's where heard in parliament, and so this chapter is the largest in this report. Within this chapter there is a strong focus on the roles of various parliamentary committees. Committees were a part of the legislative process in all the parliaments studied. They are the most notable institution for strengthening the parliaments' position as a partner, along with the executive, in legislative policy making.

Select Committees in the Legislative Process

2.2 In all the parliaments committees played a central role. More thorough systems have rules requiring all, or close to all, bills to be scrutinised in committee. The committee stage was a key forum, allowing parliamentary and public input into the legislative policy process.

2.3 All the parliaments allowed for some level of public input into the legislative process, principally at a bill's committee stage. This involvement ranged from fairly restricted in **Denmark**, where after members of the public have sent in written submissions, the committee may invite witnesses to appear before it, usually for about a quarter of an hour. **Danish** committee members query witnesses but there is no 'give and take' discussion between the committee and witness. This contrasts with the **New Zealand** Parliament where witnesses may also appear before committees to give oral evidence designed to supplement their written submissions.

2.4 In the **Danish** system parliamentary committees may put submissions received from the public to the relevant minister in order to allow that minister to take the submissions into account. There is a degree of 'cooperativeness' in the **Danish** legislative process, certainly in part achieved by its procedures, but also arising out of Danish political culture. There has to be some flexibility in policy development as a result of the government more often than not being in a minority position in the parliament.

2.5 The **Danish** and **Swedish** systems also involve a fair degree of consultation over legislation before a bill is even introduced into the parliament. This prior consultation is analogous to Whitehall's White Papers. Public responses to the proposed bill are referred not only to the drafting department, but also accompany the draft bill when it is referred to committee during its passage through parliament. At Westminster public responses are not disclosed in this way.

2.6 In the early stages of passage of legislation through the **Catalan** Parliament bills go to an initial subcommittee. This committee is attended by representatives of all party groups in the parliament. Each member of the committee votes in proportion to the number of seats controlled by that member's party group. The subcommittee also has the benefit of outside expertise. First, the parliament's own legal officers provide their opinion on the bill's constitutionality. Second, government experts involved in preparation of the bill are invited to

the subcommittee. Third there is also the possibility of calling other interested community groups in for their views.

2.7 All committees studied could hold public hearings in which experts may be asked to appear – a process in **Denmark** which is regarded as a key method of enabling committees to obtain expert input in legislation. In addition **Danish** committees also have a budget for the payment of experts the committee may wish to consult.

2.8 In **Denmark** there has been a concerted effort to increase parliament's ability to carry out this type of checking by increasing the financial resources available to the parliament and to parties to allow for the hiring of their own policy experts. This entails directly practical things such as increasing the support staff of parliamentary committees and legal sections. An associated rationale for increasing parliament's resources is that this helps improve the balance between the parliament and the executive in the parliament's favour.

2.9 Pre-legislative technical scrutiny (as contemplated in the Scottish Parliament) is also seen as a way of improving the quality of legislation. In **Denmark** all legislation is checked by a special section in the Justice Department prior to its presentation in Parliament. Once in Parliament a first stage technical review is carried out by parliamentary legal staff. If necessary parliament's legal staff will hold discussions with the government department responsible for the bill. Any problems identified by the legal officer are reported to the speaker of the parliament.

2.10 The **Catalan** parliament's initial technical review is also carried out by the parliament's legal officers. Their report on the bill's constitutionality is presented to the parliamentary subcommittee to which all legislation is initially referred.

2.11 Until the last decade the **Queensland** Parliament lacked any significant committee system. One of the first measures introduced to redress the perceived failings of the single chamber **Queensland** parliament was a set of 9 committees, including one to which all bills are submitted for consideration of whether they meet a set of minimum criteria for legislation. The **Queensland** Parliament's own legal counsel advises the relevant committee on a bill's compliance or otherwise with the Legislative Standards Act, making the process more independent of the executive, and also to an extent a check on Parliament. An excerpt from the Queensland Legislative Standards Act 1992 is set out in the box following.

2.13 A similarly formalised process is found in **Bavaria** and **Lower Saxony**, where all bills are checked by parliamentary legal officers for compliance with both the German and State constitutions, federal laws, and will fit with already existing state law. In **Bavaria** all bills, in addition to being referred after the first reading in plenary session to a subject committee, are also referred to the Committee on Constitutional, Legal and Communal Affairs, and if they have financial implications, the Budget and Finance Committee. The legal officers make suggestions where necessary, and their opinion on bills is respected by members of parliament. In **Lower Saxony**, these legal officers also have the right to attend and speak at meetings of committees considering bills. This allows them to explain their opinions on bills they have reviewed.

Fundamental Legislative Principles – The Queensland Legislative Standards Act 1992

4.(1) For the purposes of this Act, 'fundamental legislative principles' are the

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principles relating to legislation that underlie a parliamentary democracy based on the rule of law.

(2) The principles include requiring that legislation has regard to–

    (a) rights and liberties of individuals; and
    (b) the institution of Parliament.

(3) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation–

    (a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
    (b) is consistent with the principles of natural justice...
    (k) is unambiguous and drafted in a sufficiently clear and precise way.

(4) Whether a Bill has sufficient regard for the institution of Parliament depends on whether, for example, the Bill–

    (a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
    sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly...

2.14 The **New Zealand** Parliament, like its Queensland counterpart, has also undergone significant reform over the last fifteen years. Michael Cullen, deputy leader of the opposition cites the committee system as the most important reform for improving parliament's ability to contribute to the legislative policy process. Practically all bills are referred to select committees organised along broad subject lines (the list of **New Zealand** committees is contained in the following box). Members of the public make submissions to the select committee and can also appear to give oral evidence, which is taken in public. Select committee hearings on bills are central to the legislative policy process, with the parliamentarians who sit on the committee taking a very real interest in public responses and using them to guide amendments to the bill. A combination of this open public submission process with the private initial review processes found in the early committee stages in **Catalonia** and **Denmark**, would provide a significant opportunity for a range of views to be heard on a bill early in its course through parliament – a time when amendment is often most easily accomplished.

Select Committees in the New Zealand Parliament

The Committees

- Commerce
- Education and Science
- Finance and Expenditure
- Foreign Affairs, Defence and Trade
- Government Administration
- Internal Affairs and Local Government
- Justice and Law Reform
- Maori Affairs
- Primary Production
- Social Services
- Standing Orders
- Transport and Environment
- Business (of the House itself)
- Privileges
- Regulations Review

Place of Committees

All bills except for appropriation (although estimates are referred for examination) and imprest supply bills to which the House has accorded urgency, are referred to a committee for consideration and report. Committees usually advertise for public submissions. Ministers in Cabinet are not normally appointed to select committees, while ministers outside Cabinet are. To aid the committee in understanding the policy rationale for a bill a minister in charge of a bill may take part in a committee's proceedings but does not have a vote.

Reports From Committees

Select Committees must give a final report to the House within 6 months of referral or the bill is automatically discharged from the committee and set down for the next stage of debate in the House. This means that bills, especially member's (i.e. non-government bills) which the government wants to thwart, cannot be left to languish through inaction in the committee stage. Extension of time in committee can, and has been given, especially to government bills. After the committee stage there is provision for consideration of the select committee's report on a bill by a committee of the whole House.

Committee Investigations

Select Committees may also instigate investigations of their own volition. Examples of such reports are:

- Departmental reporting to Parliament (Finance and Expenditure Committee)
- Parliament's role in the international treaty process (Foreign Affairs,

Defence and Trade Committee)

●● The processes and procedures for the appointment to the position of the Secretary to the Treasury (Government Administration Committee)

Legislative Policy Making Under Coalition Government

2.15 In **Denmark** the most highly proportional system studied, much decision making still comes down to brokering between and within political parties. This is shown in the following case study of the **Danish** finance committee, and the finance minister's role as the final broker of a political compromise to secure passage of the finance bill.

The Danish Finance Committee – Legislative Input into Financial Policy

The Committee has 17 members, currently from 10 different parties. Substitutes are not permitted. The Committee has a strong collective identity. The process is highly centralised and there are no formal links between the Finance Committee and the other subject committees in the Danish Parliament.

The Finance Bill for the following January is drafted by the Finance Ministry and sent to the Finance Committee by the end of the previous August. The Bill is accompanied by comprehensive notes which specify the individual appropriation proposals for subordinate expenditure and revenue accounts, the development of the appropriation over the past three years and the expected development during what are called the budget estimate years, the following three years. The notes include specification of and grounds for the appropriations applied for, including a description of the activity and developments planned within each spending area.

Once received by the Finance Committee the bill is split into 17 sections and each member of the Committee reports on a section from an *all party* point of view. The Committee meets during September to hear the conclusions of each of its members. During this time each member of the Committee may ask questions of the Finance Ministry concerning aspects of the bill. If after this debate process is finished members still require further information the Committee asks questions directly of the minister, either in writing for written reply, or the minister is asked to attend the committee to discuss the matter. The former method is more common with clarification of technical matters, while the latter is more often used for consultations and negotiations of a political nature.

After any consultation and examination of the replies to any written questions, the Committee normally produces a formal report including the written questions and answers and a summary of matters discussed with the Minister. This first report does not usually include any proposals for amendment, which are held for practical reasons until the third reading of the finance bill.

At about the same time the Committee is concluding its first report the Finance Minster's first set of amendment proposals are sent to the Committee. The Committee then examines the minister's amendments, with each member of the committee again taking responsibility for a particular budget area. Consideration of the proposals also leads to further questions and consultation between the committee and the minister. After this consideration has taken place the amendment proposals submitted by the

parties themselves in the Finance Committee are examined. Again, examination of these 'private' amendments may lead to more questions and discussion.

The Committee then goes through all the amendment proposals and prepares a supplementary report on the bill, which contains amendment proposals from the committee and, separately, the proposals from individual party groups. This report is submitted about one week prior to the final, third reading debate on the bill. The number of amendment proposals each year varies, but they will be in the region of 1500. This time leading up to the third reading is when the Finance Minster must bargain with the other parties in Parliament to achieve passage of the bill.

2.16 In other countries the impact of coalition government varies. In **New Zealand** the coalition National/New Zealand First government, until its demise in August 1998 behaved very much like a single party majority government. Negotiations between the coalition parties took the place of intra-party negotiations.

2.18 In **Hanover**, where proportional representation has been in use since the end of World War II, coalition government has a longer history than in **New Zealand**. Coalitions, based on coalition treaties are characterised as leading to constant compromise; and the coalition treaty may proves an inflexible framewoek for members of the coalition when circumstances change.

2.19 **Queensland** provides an interesting contrast: this state has had lengthy periods of government by a coalition between the National and Liberal parties. These coalitions behaved quite successfully as single party majority governments would. In the last decade however **Queensland** politics has fragmented and both the current and previous governments are minority governments depending on the votes of independent members of parliament. It is the emergence of minority government (whether single party or coalition) that has led to parliament's increased power in the **Queensland**, where it is now less easy to predict the outcome of votes other than on confidence issues.

2.20 In parliaments operating with single party or coalition minority governments (**Denmark, Queensland** and now **New Zealand**) more so than parliaments with majority coalition governments (**Sweden, Catalonia**), and even more so than parliaments with single party majority governments (**Lower Saxony, Bavaria**) the forum of parliament does acquire more power, as ministers have to broker support in the parliament for legislation. Experience does differ between parliaments within each group. For instance, in **Denmark** where there is a longer history of minority or coalition government, politicians seem adjusted to the need to broker deals on legislation, whereas in parliaments new to minority and coalition government there is a greater sense of uncertainty about whether such governments can govern effectively.

Party Groups

2.21 Even in systems which are highly proportional, or which explicitly recognise the independence of parliamentarians (e.g. **Catalonia**) the reality is there are few defectors from the party line. As has occurred in **New Zealand**, defectors either move to another party, or form a new party.

2.22 In **Catalonia** members of the parliament must belong to a parliamentary group. A group must have at least five members. One party may constitute only one group. A party of less then five members must join a combined mixed group.

2.23 In **New Zealand** proportional representation has resulted in a wider range of people being represented in parliament and is likely over time to increase the importance of parliament as a forum for policy making.

2.24 In all the parliaments much of the real brokering and dealing over legislation takes place informally through party political channels. This may well be preferable to every piece of legislation facing uncertainty as to its prospects in open legislative sessions. Governments require some level of predictability about the fate of their legislative programme in order to govern effectively, including being able to chart long-term policy goals.

Committees' and Other Non-Governmental Contributions to Policy Making

2.25 Subsequent to reunification in **Germany** the **Lower Saxony** Constitution was redrafted to include *inter alia* a range of procedures which allow for public input into the legislative process through initiatives, petitions and referenda. Similar measures are found in **British Columbia** and **New Zealand**. In **New Zealand** the latest cause to have attracted enough signatures to raise the prospect of a referendum is a proposal to reduce the number of parliamentarians from 120 to 100. The obvious danger of these measures is that they play into populist causes. Even though parliaments may retain the ultimate right to implement a referendum endorsed initiative, popularly endorsed measures may be hard for parliaments to refuse to adopt. The referendum process is not given to detailed examination of issues, and singles measures out for black and white treatment. In comparison parliamentary committees may receive public submissions from a range of perspectives in respect of a bill before them, and can propose a range of different solutions.

2.26 Drafting a statute can require more expertise than available to many members of parliament. **Bavarian** members of parliament can propose a vote requesting the government to present legislation to the parliament on a particular subject and within a certain framework.

Holistic Government

2.27 In the stage one report the Unit recommended subject area committees for the Scottish Parliament, following the subject areas of the Scottish Executive. The Consultative Steering Group asked whether it was possible for the parliament to adopt subject area committees on subjects of its own choosing, and not to be bound by the choices of the executive and its decisions about the range of executive departments.

2.28 There are two responses to this. First, subject committees should generally, though not necessarily directly, mirror the departments of the executive. Parliamentary committees have to work with departments of the executive, both in considering government legislation and in reviewing the activities of governments departments. There needs to be a parliamentary committee covering each aspect of executive activity. Otherwise parliament is disadvantaged in dealing with that aspect of the executive, whether in policy development or scrutiny. But committee subject areas may be thematic, with parliament adopting subject areas which may span a number of government departments. Parliament can bring to bear a more holistic approach while still covering all the executive departments. Another way of achieving cross fertilisation between committees is the **Swedish** practice of allowing committees to reach agreement with one or more other committees to consider a matter in a joint committee.

2.29 In addition, committees can be established on a temporary basis, as is the case with the **Catalan** legislative term committees, or the similar additional committees in **Sweden** (e.g. to consider Sweden's association to the European Economic Area). The Scottish Parliament could adopt standing orders allowing it to create additional subject committees for the term of the parliament. The Scottish Parliament will have wide powers to create a range of committees

to fit in with Scottish political culture as the Parliament starts to operate. On this second point, it should be kept in mind that committees draw on a parliament's resources, both monetary and in terms of the time of the members who sit on them. Generally no more than a few additional committees might be set up in each parliamentary term. Overburdening parliament, and parliamentarians, with too many committees could have an adverse effect on the ability of the core subject committees to perform their ongoing tasks.

Amendment to Legislation

2.30 The pre-legislative scrutiny stages or the early review stages often provide the most opportune time for amendments to be suggested and accepted to government bills. The **Catalan** Parliament's initial sub-committee review is a good example. The sub-committee meets in private and is assisted by legal officers. Its proceedings are informal, in comparison to the formal set speeches in the later general committee and parliamentary stages. It is identified in the **Catalan** Parliament as the opportune time to seek amendment to a piece of legislation. **Swedish** parliamentary committees also meet in private and this is noted as conducive to a co-operative working environment within the committee. These private stages are then balanced by the open parliamentary stages. In all the parliaments it was easier to achieve amendment earlier on in the legislative process.

Checks on Amendments to Legislation and Non-Government Bills

2.31 In the **Catalan** parliament non-government bills, in addition to the scrutiny given to government bills, face two other preliminary stages. First, they are presented to the government, which may block them if they involve an increase or decrease in the government's budget. Second, the bill is reviewed by a plenary session which decides whether it should proceed any further. In all the other parliaments there were similar checks when legislation is initially introduced. Parties were also able to get assistance from the parliament's own legal officers, or, employ their own advisers, with funding assistance from the parliament. Once introduced and past the initial formal checks, the primary method for checking amendments to bills is the committee and plenary debate sessions.

Place of Plenary Sessions

2.32 All the parliaments used open plenary session general debates. The two most important functions of plenary sessions were as a forum for the public questioning of members of the government, and as the main public stage in passage of a bill. Debates on bills in plenary sessions tend to be set piece and do not lead to significant amendments, except where a government is particularly uncertain of its voting strength in the assembly (currently **Queensland**, and **New Zealand**). Most of the work carried out on bills which leads to amendment takes place either in committee or as a result of informal negotiation between parties.

Preparation for Change and Management of Change in Constitutional Matters

2.33 The political culture and practical guidance available to politicians operating a particular system, especially at times of change, or at the time a system is being established may well be as crucial as consideration of basic constitutional and procedural design. This has been the case in New Zealand with the introduction of proportional representation and the subsequent coalition governments; and it is likely to be the case in the early years of the Scottish Parliament.

2.34 While full-scale review of the parliament in the near future may not be justified the parliament could use its significant discretion over drafting its standing orders to adopt an interim set. These standing orders could be reviewed periodically simply by a business and

procedure committee attended by representatives of all parties in the parliament. Such a review if pursued ought only to address procedural matters within the control of the Scottish Parliament itself: the aim being to facilitate fine tuning of the parliament's processes with the object of making the Scottish Parliament more effective.

Summary of Recommendations – Legislative Policy Making

Scrutiny of Legislation

- Adopt a statute similar to the Queensland Legislative Standards Act. The statute could not only set out minimum legislative standards but also deal with the way legislation is passed through parliament. It could include for instance a requirement for consideration by parliamentary committee which can take public submissions both in writing and orally.
- Allow for an initial parliamentary committee to scrutinise bills with the aid of independent parliamentary staff (legal officers for example) in private.

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- Allocate Committees' subject areas on a thematic basis, which will allow for a rational connection to the subject areas of the executive. Committees' thematic areas may however be broader than the corresponding departments of the executive they deal with. This may allow for committees' to draw links across subject areas which may not happen within individual departments.
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- Give committees the power to initiate bills, and when reporting government bills back to parliament to suggest amendments.
- Allow a dissenting minority in a committee to append a dissenting report on a bill being reported back, including its own recommendations for amendments.

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- Design the parliamentary stages of the budget process to include review by a parliamentary finance committee. Such involvement should come early in the budget drafting process if it is to be more than a mere review of government proposals.

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- Do not consider the use of a system of citizen's initiated referenda as a means for allowing outside interests to be heard in the legislative policy process – focus instead on ways of drawing the public into comment on bills through select committee hearings.
- Consider a formalised procedure, perhaps managed by a committee, to allow members of the public to present policy suggestions, including proposed bills to the Scottish Parliament.
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- Design parliamentary staff orientation and ongoing training to allow for links between the staffs of different committees in order to encourage cross-fertilisation of ideas and expertise.
- Hold briefing seminars for members of the new Scottish Parliament similar to those being carried out with the new Northern Ireland Assembly.
- Implement a programme of public education measures to inform Scottish electors of how they can make submissions and otherwise have their views heard in the Parliament.
- Allow for review within the Scottish Parliament of its standing orders within 12 to 18 months of their introduction with the specific aim of improving the operation of the Scottish Parliament as constituted: i.e., such a review mechanism should not extend to review of the devolution process itself.

3. Investigatory and Scrutiny Powers

Introduction

3.1 This section deals with measures enabling the parliaments to act as a check on the executive. The investigatory powers range from investigations of general matters, for instance when a parliament sets up a special committee to investigate a matter of topical interest, to committees which investigate complaints against members of the executive. These investigative committees, and an important base line mechanism allowing parliamentary investigation of alleged wrongdoing, and, investigation of issues leading to suggestions for legislation. But they are less used, and less important than the committees' roles discussed in the previous chapter. This section also contains an example of the comprehensive audit function carried out by the **Swedish** Parliamentary Auditors.

Investigatory Powers

3.2 In addition to parliamentary committees' legislative roles they may also have varying levels of discretion to pursue investigations. In **Denmark** some committees go so far as to seek the attendance of the relevant minister at each weekly meeting (the environment committee for instance) in order to question him or her. The Scotland Bill *prima facie* provides sufficient authority within the Scottish Parliament's power to draft its own standing orders to allow for investigatory committees. In **Bavaria** the committees typically have lives of one to two years and investigate matters of topical concern. For example a recent enquiry concerned possible plutonium smuggling going though **Bavaria**.

3.3 The **Catalan** Parliament allows for inclusion of outside expertise through its special expert committees. These committees are established by parliament to investigate particular subjects. Members may be both parliamentarians and outside persons. Such committees produce reports with recommendations, occasionally including proposals for legislative action.

3.4 The **Catalan** parliament may also establish investigatory committees, similar to the German state ones. Although a minority can establish them all their internal decisions are made by majority vote according to party strength. This has made it difficult for the most part to censure members of the government.

3.5 Where parliamentary committees have a role in policy making or investigatory powers the ability to seek the attendance before them of members of the government is important. In some systems this is a matter of convention – in others committees have the power to compel attendance.

Scrutiny

3.6 The case study of the **Swedish** constitutional affairs committee also shows how a parliamentary committee can provide for scrutiny of members of the executive. One of the Swedish committee's roles is the monitoring of the way ministers are performing their duties. The committee deals with *inter alia* investigations of complaints against ministers or the cabinet. The case study discusses the committee's activities, including its role in scrutinising ministerial behaviour, in more detail.

Audit

3.7 In the stage one report an audit function was identified as an external check on both the actions of a parliament and an executive (see sections 3 and 4 of the stage one report). The **Swedish** parliamentary auditors are worth further comment. The auditors were unique in the parliaments examined as being both to some degree a check on the executive and on the unicameral legislature.

3.8 The **Swedish** parliamentary auditors are distinct from the national audit office. The national audit office examines the raft of state agencies in Sweden charged with implementation of legislation. As the national audit office itself is a creature of the executive, the Swedes have in addition the parliamentary auditors. These are twelve members of parliament with a civil service staff of about twenty-five. They are able to audit the entire chain from policy development in parliament through to implementation in state agencies. The audit focuses on the whole system and broad policy questions, and is not limited to narrow operational details.

3.9 Although the twelve members of parliament who become parliamentary auditors have political interests, they take their obligation to pursue an independent role as auditors seriously. This may be one way of encouraging politicians not simply to be party ciphers on committees: by seeking to create certain key oversight committees and giving them particular roles, roles which politicians from all parties might collectively adopt.

3.10 The sense of collective identity within a parliamentary committee, which might ameliorate the conflicting interests of party loyalty is also evident in the **Danish** finance committee.

Summary of Recommendations – Investigatory and Scrutiny Powers

Outside Experts Involvement in Parliament
- Allow the parliament under its standing orders to set up special advisory committees comprising members of parliament and co-opted outside experts. Such committees could be set up on an ad hoc basis and would only have the power to investigate a matter and present a report with informal recommendations to the parliament.
- Allocate parliamentary committees a budget to allow them to consult outside experts within their subject matter fields.

Committee Investigations
- Allow parliamentary committees to instigate investigations within their subject areas, including the ability to hold public hearings and require the attendance of witnesses including members of the Scottish executive.

Scrutiny of the Executive
- Consider giving one parliamentary committee the role of constitutional watchdog. This would include the power to hear complaints about the conduct of members of the parliament or the executive in the conduct of their duties, and the ability to report their findings to the parliament with a recommendation on whether a member should be censured, or, in the case of a member of the executive, whether a vote of no confidence should be passed which would require the minister to resign.

Audit
- Consider including in the standing orders a committee of parliamentary auditors, who would be members of parliament assisted by a permanent civil service audit staff. This audit function would be distinct from any non-parliamentary Scottish audit office. The auditors would have power over their own agenda and would consider the entire chain of policy development and implementation. Their reports would be presented either direct to parliament or to the select committee with jurisdiction over the subject dealt with. Allow the civil service auditors involved in any matter to register their agreement or otherwise with the conclusions of the parliamentary auditors.

4. Relationship Between Parliament and Executive

Introduction

4.1 This section discusses the management of parliaments. It does this from two perspectives: first, the management of parliamentary business, and second the issue of parliamentary resources and staffing.

Management of Parliamentary Business

4.2 Formally all the parliaments place responsibility for management of the parliament in a presiding officer elected from the parliament. The **Swedish** Parliament does start with a collective ideal as the single Speaker is supported by deputies who together make up the speaker's conference. The ideal in **Sweden**, as elsewhere in varying degrees, is that the speaker once elected stands as far as possible outside day to day politics. In **Sweden** the speaker's conference is perceived as too large. As much parliamentary business as possible is worked out before it meets, between the speaker and representatives of the political parties.

4.3 In the **Catalan** parliament the agenda for the plenary assembly is set by the President of the Assembly (similar to the speaker at Westminster) together with the Board of Spokespeople (representatives of the parliamentary groups). Committees set their own agendas in conjunction with the President of the Assembly.

4.4 In **Bavaria**, a Council of Elders (made up of representatives of the parliamentary parties) assists the President of the Parliament (Speaker), to manage the Parliament. This includes meeting with the President before every sequence of plenary meetings to set the parliamentary agenda. A similar procedure is found in **Lower Saxony**.

4.5 Some parliaments have formal mechanisms for ensuring that non-government measures can come before them. A basic right in all members to introduce measures (including in committees to propose initiatives)is buttressed in the **Swedish** Parliament by time set aside for non-governmental measures. Members may submit private bills for a three week period in the autumny. Further, there is a right to submit amendments to government bills, or proposals put before parliament by committees, within fifteen days. Dissenting minorities in committees may also append amendments to a dissenting report on a bill.

Parliamentary Resources and Staffing

4.6 **Danish** parliamentary staff involved in committee work also commented that good relationships between the staff of different committees was important – to both allow for cross-fertilisation of substantive ideas and procedural expertise.

4.7 Funding both of political parties and Parliament in **Denmark** has been increased over the last decade. This policy is intended the enhance to parliament's ability to provide effective scrutiny of the executive. There is little point in parliamentary procedures which allow for parliamentary input in policy making or questioning members of the government if parliamentarians do not have the research and administrative staff to assist them.

4.8 Other support which may be offered to non-government members of parliament may include that provided by legal officers in **German** Lander parliaments. In **Lower Saxony** the parliament's legal officers provide a legislatory advisory service to parliamentarians. They will

answer questions on legal matters, advise on drafting bills, motions and questions. This service is a confidential one. The parliamentary legal officers regard themselves as strictly non-partisan, and are not permitted themselves to be members of political parties.

4.9 **Denmark** also offers good examples of ways of improving parliament's role as a partner in government, with the constraints placed on **Danish** governments as a result of having to depend on coalition arrangements, and the genuine commitment shown to improving the resources available to the parliament. But participants in the **Danish** system comment that a good deal of important decision making still takes place outside of the formal parliamentary process. The brokering done by ministers and other members of parliament is still crucial to deciding what policies are pursued and made into law. However the resources given to individual parliamentarians and to the political parties support the informal as well as the formal policy making process. Parliament provides the appropriate formal backdrop for policy making and the parties provide the political channels which allow the whole system to operate.

4.10 Parliament provides a forum for legislative policy making but cannot be the primary initiator of policy. That is the job of the executive. The executive sets out its positions, which it presents to parliament via both its party political channels and through formal parliamentary procedures. It is parliament's role to test and assess the detail of an executive's legislative agenda. Parliamentarians are not required to take responsibility for the day to day execution of legislation. That is also the job of the executive. While it is important to ensure a parliament is sufficiently resourced and has the necessary powers to carry out its legislative role and its scrutiny role, this should not be at the expense of the distinction between executive and legislative roles.

4.11 One reason for this report was to consider the ways of checking the powers not just of an executive drawn from a unicameral parliament, but the parliament itself. The executive, as one of the three branches of a country's government is to an extent a check on the parliament. When seeking to empower a legislature in the policy process within such a system the balance between the three branches of government - judicial, executive and legislative - should be kept in mind to avoid any one branch becoming too powerful and to keep all three branches acting within the proper boundaries of their roles.

The Bavarian Second Chamber

According to the Bavarian Constitution, until its recent abolition as a result of a referendum on its existence, the **Bavarian** Senate represented, 'the state's social, economic, cultural and municipal corporations'. Its 60 members were nominated from:

- Trade unions (11)
- Charitable organisations (5)
- Liberal professions (4)
- Industry and Commerce (5)
- Religious communities (5)
- Trades (5)
- Co-operatives (5)
- Agriculture and forestry (11)
- Local authorities and local authority associations (6)
- Higher education(3)

All bills had to go to the Senate for its opinion. The bulk of the Senate's work was debate on bills put before it by the lower house. It reported back to the lower house, which could not pass a bill until the Senate's opinion had been debated. The Senate could not otherwise delay or block legislation. The Senate also had a right to initiate legislation, which it seldom used. Its abolition was not accompanied by any measures aimed at compensating for the loss of the Senate's input. This was seen as inconsequential and in the end the Senate had few defenders, even from within the groups which sent representatives to it.

4.12 It is difficult in systems of parliamentary government not to continually return to the dynamic relationship between checks on legislative and executive power. The closeness of executive and legislative power obscures the complementary checking roles more apparent in systems with strict separation of powers. The institutions of executive and legislature may check each other and an overmighty parliament is as undesirable as an overmighty executive.

4.13 One way of strnegthening the distinction between the executive and legislature is found in the **Swedish**, **Danish** and **Catalan** Parliaments where members of the executive, apart from the prime minister, need not be members of the parliament. This possibility is not often made use of in **Denmark**, but is more so in the other two parliaments. In **Sweden**, if a member of parliament is chosen to be a minister, they leave their voting seat, which is taken by a supplementary MP, selected at the previous election. In **Sweden** up to half the cabinet is often from outside parliament. The check on this is that all ministers still sit in parliament (although they do not have a vote), must answer questions on their policies in parliament and before committees and can be removed from office by a vote of no confidence.

Summary of Recommendations – Relationship Between Parliament and Executive

- Recognise a formal right for each member of parliament to introduce bills, or amendments to bills.
- Allow a certain time each year for the consideration of non-government bills.
- Allow a certain time in the passage of a government bill for non-government members to propose amendments to the bill.
- Consider allowing all members of parliament to be able to consult the parliamentary legal staff in confidence, including advice on drafting bills and amendments.
- Consider in the future seeking amendment to the Scotland Act to allow the Scottish First Minister to nominate, for the Parliament to approve, persons who are not members of the Parliament to serve as members of the Scottish executive. The number of such outside persons could be limited and they could be subject to a higher confirmation requirement by the Parliament (a two thirds vote for instance, to encourage a level of bipartisanship to appointing outside experts) and would be subject to removal by simple majority vote of no confidence.

5. Intergovernmental Relations

Introduction

5.1 The stage one report analysed the ways in which the UK government and the Westminster Parliament will act as a check on excess or abuse of power by the Scottish Parliament. This report look at ways in which the Scottish Parliament can be designed to operate effectively within an intergovernmental system.

5.2 This topic was only explored in the federal or quasi-federal jurisdictions studied in stage two: **Lower Saxony**, **Bavaria**, **Catalonia** and **Queensland**. Intergovernmental relations describes the relations between a state's central government, and governments' of its constituent states, or in the case of **Spain**, the autonomous communities. It is a significant area of academic discourse and practical study, and will develop in the United Kingdom in response to the quasi-federal structure introduced by devolution. The topic is the subject of a wider research programme in the Constitution Unit.

5.3 The UK with its system of parliamentary government is likely to give rise to an intergovernmental relations system which is strongly executive dominated. This results in less openness and transparency as discussions take place in private between executives. In other federal systems, such as Australia, this has also led to a number of intergovernmental arrnagments being difficult to gain access to, or even held in comfidenceby governments . In **Germany**, the states' habits of agreeing the on common legislative action, which each executive then passes, with little chance for amendment in the state parliament, is viewed as a derogation from the ordinary legislative process. This dominance may lessen over time as the habit of strong cabinet dominance of the legislature is modified by altered voting systems about the Union and reform to the parliaments themselves. This section of the report suggests some ways to lessen executive domination of intergovernmental relations.

Institutions

5.4 A number of parliaments have committees of their parliaments with specific responsibility for federal and European affairs. In **Lower Saxony** this committee meets approximately twice a month and may call in experts as required. Its chair is also a member of the European Union's Committee of the Regions. In **Denmark** and **Sweden**, the European Affairs Committees also have significant roles in mirroring the governments negotiations at EU level. The **Danish** Committee for instance meets every Friday and follows activities in Brussels. It continues to meet when the Danish Parliament itself is in recess, if there is activity to monitor in Brussels. The Committee also co-ordinates the Danish Parliament's contacts with other parliaments, in particular with the European Affairs Committees of other parliaments.

5.3 Within **Germany** the federal upper house, the Bundesrat is a key intergovernmental forum. It is constituted by representatives of the German states, not by direct election. State governments have offices in the federal capital which are missions to the Bundesrat. Although the delegations are formally headed by ministers of the state governments, the career bureaucrats who work in the state missions also have significant power, with some politicians complaining that the bureaucrats have too much power within the system. Although the structure of Bundesrat suggests a significant forum for the states, it is heavily executive dominated and also heavily influenced by federal political issues and the federal political parties.

5.5 There are two other intergovernmental processes of note in addition to the formal processes of the Bundesrat. The political parties themselves act as filters for negotiation of policies between different governments. The parties have co-ordinating groups within them which deal with state/federal matters, whether the party is in government or not. The second are the conferences of the state chancellors and similar conferences of ministers in particular fields, also found in the **Australian** federation. The joint ministerial committee proposed by the government during debates on the Scotland Bill will play a similar role.

5.6 The **Catalan** parliament appoints senators to the **Spanish** national parliament, and also has the right to propose bills in the national parliament. Where the Catalan parliament does not have authority to act, it has a formal right to seek further powers from the state. The Spanish Constitution and the Catalan Statute of Autonomy set out the powers of each level of government. If either level believes the other has transgressed its authority, it may take the matter to the Spanish Constitutional Court, detailed in the following box.

Executive Dominance

5.7 In **Australia** and in **Germany** intergovernmental machinery is criticised as being overly executive dominated, closed and lacking in outside scrutiny. This arises for both logistical reasons and reasons connected with political structures and culture.

5.8 Executive dominated parliaments are associated with executive dominated intergovernmental relations. In **Australia**, the executives meet in councils of Premiers as well as a series of meetings of subject area ministers. In the Australian system, where traditionally governments have had clear majorities in parliament, ministers have been accustomed to being able to negotiate deals between themselves which they can then count on being able to pass through their respective parliaments. There is no expectation of significant parliamentary scrutiny, or real opportunity for parliament's to debate and require amendments to deals, which have already been 'done'. This is similar to the criticism in **Germany** of common legislative schemes arising out of conferences of state premiers. The problem is that the policy making in these circumstances is done in the secret forums of discussions between executives, rather than through the regular pathways of parliament. By the time the matter comes to parliaments, it is determined. This suggests there is something intrinsic in the process of intergovernmental relations which makes it difficult to ensure the involvement of state parliaments except after the event.

5.9 Exectuvie dominance arises in intergovernmental relations as much from logistical difficulties as from the political culture. In **Australia** this leads not only to general executive dominance, but also effective exclusion from intergovernmental negotiations by the state cabinets, and control of the process by the Australian federal government. This arises because in Australia, the peak forum, the Premier's conference is co-ordinated by the federal government's Department of Prime Minster and Cabinet. The federal cabinet may see documents before a meeting, but frequently those documents are not handed to the state premiers until very shortly before the meeting. In these circumstances the state cabinets, and the state parliaments are left with no opportunity to comment. One way of avoiding this would be to rotate responsibility for preparation of the agenda and meeting materials, and to require circulation of materials soon enough for them to be considered by all cabinets. Other improvements could include setting formal roles for an intergovernmental affairs committee in all the parliaments, similar to the European Affairs Committees found in European parliaments, and requiring the publishing of all materials before intergovernmental meetings.

5.10 From the point of view of anyone seeking to increase the role of legislatures in policy making there are obvious advantages in establishing inter-legislative bodies, regardless of other policy making forums. Legislatures can only gain by sharing expertise, and the inter-legislative links may themselves help to enhance the position of the UK legislatures vis à vis their executives and enhance the legislatures' ability to scrutinise intergovernmental relations.

Co-operative Legislation

5.12 Where there are areas of subject overlap, or simply because it is convenient to adopt common standards across the Union, uniform legislative schemes may be adopted. These could be implemented by negotiation over a common text passed by one parliament and copied by the others, or the UK could look to the example of the directive in EU law, variants of which are also found in **Germany** and **Spain**.

5.13 The directive would have the advantage of allowing Westminster, if it chose to use its residual authority to decree the implementation of for instance an international obligation, to leave the means by which the obligation is implemented to the devolved assemblies.

Summary of Recommendations – Intergovernmental Relations

- Establish a committee of the Scottish Parliament with the task of dealing with EU and UK intergovernmental relations issues. This committee should have a formalised role including being informed in sufficient time to allow for meaningful consideration of discussions between members of the Scottish Executive and other UK governments
- Consider developing links to other UK parliaments. This could be by creation of an interparliamentary body, or by regular meetings of committee members from committees in the same subject area.
- Establish standard means to share information between parliaments concerning matters of current policy interest.
- Encourage parliamentary officers, legal staff etc, to build links with their counterparts in other UK parliaments, to allow cross fertilisation of expertise.
- Consider how party structures might link politicians around the UK for the purpose of co-ordinating policy development

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Appendix One

Stage Two Outline Instructions

Introduction

The Constitution Unit at University College London is undertaking a study of unicameral parliaments in connection with the establishment of the Scottish Parliament.

As you will know the United Kingdom's parliament is bicameral, consisting of the House of Commons and the House of Lords. The parliament proposed for Scotland is unicameral. The unicameral nature of the proposed Scottish parliament has been raised during passage of the *Scotland Bill 1997*. The Unit's study is intended to inform debate on the workings of unicameral parliaments, indicating in particular how unicameral parliaments are designed to take into account functions performed by second chambers in bicameral systems.

Stage One

The study is not intended to be a comprehensive survey of unicameral systems. For stage one of the project, six parliaments from around the world were selected: **Sweden**, **Denmark**, Quebec, British Colombia, **Queensland** and **New Zealand**.

During stage one the issues addressed covered:

1. Summary overview of each country examined including:
    *   description of the electoral process,
    *   political composition of the Parliament,
    *   term of the Parliament, its powers and procedures,
    *   relationship of the executive to the Parliament,
    *   reasons the parliament was established with one chamber, or if there has been a change from bicameral to unicameral, the reasons for the change,
    *   if there has been a change the steps taken to alter the structure and operation of the remaining chamber

1. In respect of all the Parliaments reviewed, an examination of the checks (legal and political) on the powers of the Parliament and an assessment of their efficacy with particular reference to five key parliamentary functions:
    *   passage of legislation
    *   scrutiny of the executive
    *   defence of the constitution and human rights
    *   redress of grievances
    *   other protections against the abuse of power

Stage one resulted in an initial report, a copy of which is attached.

Stage Two

Stage two involves visiting four of the parliaments considered in stage one, interviewing local personnel and collecting any relevant primary materials. In addition three further parliaments have been added to the study, the **German** Länder parliaments of **Lower Saxony** and **Bavaria**

and the **Catalan** parliament in Barcelona. This rest of this paper sets out the issues the Unit would like to pursue on each visit. There are three key reasons for visiting each parliament:

1. verifying the stage one report's conclusions concerning the parliament visited (where applicable),
2. hearing any comments on the stage one report and the outline it contains of the Scottish Parliament, drawing in particular on six key themes (set out below), and
3. collecting any relevant primary material not available in the UK.

1 - Stage One Report - Your Parliament (Where Applicable)

Comments on the stage one report, in particular on the material concerning your parliament are most welcome. Two copies of the stage one report are enclosed, and you should feel free to simply note any comments you have on one copy, which the Unit can then work from.

2 - Stage One Report - Scottish Parliament

Any comments you have on the design of the Scottish Parliament, so far as it is evident form the report are also welcome. The Executive Summary and Part Four of the Report deal most succinctly and relevantly with the Scottish Parliament itself.

3 - Themes Identified with Scottish Office at Stage One Report Meeting

Five broad themes arose when Constitution Unit personnel met with the Scottish Office's Consultative Steering Group. We would like to focus our interviews with personnel in the parliaments visited around these themes, so far as they seem relevant in the context of each parliament.

Theme One - Legislative/Policy Making Machinery

- How is public input into legislative process achieved? - Pre-legislative scrutiny
- Scope of Committees- can they adopt subject areas different from the range of Executive departments? - holistic government
- Committees' legislative and investigatory initiative powers - can committees contribute constructively to policy making?
- Approval of Estimates and departmental budgets, how can committees influence the financial dimension of policy?

Theme Two - Legislative Management and Extra-Parliamentary Input

- Collective presiding officer?
- Scope for external or consultative committees- c.f., ECOSOC, Consumer Consultative - Committee of EC
- Scope for people who are not members of the parliament to participate in Committees? - Pros and cons of co-opted members

Theme Three - Relationship between Parliament and the Executive

- Management of parliamentary business and agenda- how to maintain degree of independence from the Executive- an issue particularly when the Parliament is dominated by one party (more likely in Wales than Scotland)
- Conflict between sustaining the Executive, allowing the Executive to develop policy and govern effectively but avoiding Executive domination of Parliament
- Who determines the parliamentary agenda? Role of business committee

Theme Four - Mechanisms for the Parliament to Review Itself [lesser importance]

- Parliamentary Review Committee?
- Extra Parliamentary review- e.g. Law Council in **Sweden**
- Special Commissions of inquiry

Theme Five - Future Issues

- Intergovernmental arrangements between parliaments within a country
- Double mandate - MSPs and the European Parliament - interaction between the Scottish Parliament and MEPs

People Who Might be Interviewed

We understand that in all the Parliaments we are visiting the time of both administrative personnel and politicians is limited. Where possible we imagine it would be useful to speak to some of the following:

- Members of the Parliament, both opposition and government
- legal personnel
- personnel from the parliament's presiding officer's office

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Appendix Two

Brief Outlines of Additional Parliaments Studied

The Landtag (Parliament) of Bavaria

There are 204 members of the **Bavarian** Landtag, elected on a proportional basis. The Parliament is administered by a President (Speaker) assisted by two deputies and representatives of the political parties.

Its main activities are:

- passage of legislation
- providing a forum for its members to question members of the government
- adoption of the budget.

It has 12 permanent committees, organised along subject area lines. It may, and on a vote of one-fifth of its members must, appoint a special committee of inquiry on any matter. Such committees meet in public and may take evidence and hear witnesses as if they were a court. These committees are peculiar to the **Bavarian** Parliament. There have been 42 of them since 1946. After they have completed work they report to the Landtag. A dissenting minority can append its own report.

The Landtag of Lower Saxony

The **Lower Saxony** Landtag is made up of 161 members, elected every five years under a proportional voting system. There are currently three parties represented in the Landtag, with the Social Democrats holding an absolute majority. Members of the Landtag elect a speaker and 2 deputies, called the President and Vice-Presidents. They, along with representatives of the parties in the Landtag, form the Presidium, which administers the Landtag itself. The Landtag also elects the state's premier, who heads the executive.

The **Lower Saxony** Landtag has 18 permanent committees arranged along subject areas, including Law and the Constitution, Federal and European Affairs, and Rules and Procedure.

The Parliament of Catalonia

There are 135 of members of the **Catalan** Parliament, elected on a proportional basis. Within the parliament members are grouped into party groups, unless they are from a party of less then five in which case they join a mixed joint group.

The Parliament elects a speaker, who together with spokespeople from each party group, determine the agenda of parliamentary work, including which committee should deal with a bill or other initiative. The Parliament also elects the President of the Generalitat (executive) who in turn selects ministers.

The most important institution in the Parliament are its committees, of which there are different types:

- legislative permanent committees - the most important, based along subject themes
- legislative term committees – set up for the term of the parliament to deal with matters of current interest
- committees of inquiry or investigation
- Expert committees – set up to investigate a given matter, and including, where necessary, outside experts on the matter being investigated
- Other select committees, as the parliament determines which carry out oversight or co-ordinating functions; e.g. the Ombudsman's Committee or the Committee which overseas the Catalan Broadcasting Corporation.