The Scottish Parliament
Pàrlamaid na h-Alba

SUBMISSION TO THE SENATE MODERNISATION COMMITTEE OF THE PARLIAMENT OF CANADA BY THE RT HON KEN MACINTOSH MSP, PRESIDING OFFICER OF THE SCOTTISH PARLIAMENT

Introduction

I am pleased to be invited to provide information to the Committee as part of its ongoing inquiry, *Modernization: A Senate more open, more inclusive, more effective*. I hope this will build on the helpful discussion we had when I visited the Senate in April 2017.

Before responding to your specific areas of interest I thought you might welcome some context around the Scottish Parliament's approach to developing its rules, procedures and working practices.

Background

The first mention of a Scottish Parliament dates to 1235 with Acts of the Scottish Parliament being recorded from 1424. The Crowns of Scotland and England were unified in 1603 and the Scottish Parliament was dissolved on 28 April 1707 with the Union of the parliaments of Scotland and England, sitting in Westminster, coming into effect on 1 May.

The Scottish Parliament was re-established in 1999 and its powers, as a devolved legislature, are set out in the Scotland Act 1998. The purpose of Schedule 5 to the Act was to define devolved powers in terms of explicitly excepting powers reserved to the UK Parliament. Subsequent devolution of additional powers to this Parliament has come about through the Scotland Act 2012 and the Scotland Act 2016.

Section 22 of the 1998 Act states that the proceedings of this Parliament 'shall be regulated by standing orders'. In addition, Schedule 3 makes provision for how certain matters are to be dealt with. For example, that the Presiding Officer and Deputy Presiding Officers must not all represent the same political party and our proceedings shall be in public (except in circumstances as standing orders may provide).

The Standing Orders of the Parliament came about through a consultative process, some of which started before the Parliament's re-establishment. Following unsuccessful attempts to introduce devolution in Scotland and Wales in the 1970s, several Scottish pro-devolution bodies and political parties joined together to form the Scottish

Constitutional Convention in 1989 and which adopted a declaration to secure a Scottish Assembly or Parliament. Its 1995 report contained a blueprint for devolution which was to have an influence on future policy such as the method of electing MSPs, fixed term parliaments, the Standing Orders and our founding principles.

Following a referendum held in 1997 that secured majority votes on the establishment of the Scottish Parliament (and whether it should have a tax varying power) the then Secretary of State for Scotland (who sits in the UK Government) set up the Consultative Steering Group (CSG) with the remit to:

- bring together views on and consider the operational needs and working methods of the Scottish Parliament.
- develop proposals for the rules of procedure and Standing Orders which the Parliament might be invited to adopt.
- prepare a report to the Secretary of State by the end of 1998, to inform the preparation of Standing Orders

The CSG itself created an Expert Panel on Procedures and Standing Orders (along with other expert groups on financial issues; ICT; code of conduct; and media issues). The CSG commissioned research on the working methods of other parliaments (e.g. Bavaria, Sweden, Quebec, New Zealand) which could inform and shape how this new Parliament could work. A copy of the Checks and Balances research has already been forwarded to the Committee. The CSG's report, [Shaping Scotland's Parliament: Report of the Consultative Steering Group](#), was published in 1998 and outlined the key principles which guided the CSG's work and shaped thinking about the practical operation of the Parliament. It also contained detailed proposals for procedures and Standing Orders which embody those principles. These key principles, which continue to underpin the work of this Parliament, are:

- Accountable: The Scottish Parliament is answerable to the people of Scotland. The Scottish Parliament should hold the Scottish Government to account.
- Open and participative: The Scottish Parliament should be accessible and involve the people of Scotland in its decisions as much as possible.
- Power Sharing: Power should be shared among the Scottish Government, the Scottish Parliament and the people of Scotland.
- Equal Opportunities: The Scottish Parliament should treat all people fairly.

The founding principles influenced subsequent rules and practices such as:

- MSPs, committees and opposition parties are all allocated time in the chamber
- in addition to the Scottish Government, parliamentary committees and MSPs can promote public law bills
- our public petitions process provides an open route into the Parliament for people to bring forward matters of national concern and many petitions have led to a change in law or influenced government policy or the Parliament's thinking on an issue

- Committees travel to different towns all over Scotland to allow everyone to see their Parliament in action
- The Scottish Government answer questions from MSPs each sitting day in plenary (the committees meet Tuesday, Wednesday and Thursday morning while the Parliament meets in the Chamber these afternoons)
- The working hours of the Scottish Parliament are designed to be 'family friendly e.g. Decision Time (when divisions on the day's business in the chamber take place) is normally at 5.00pm

The CSG report therefore provided the blueprint for how this Parliament works and in June 1999 (the Parliament met for the first time on 12 May 1999) it agreed that the Parliament's operations should embody the spirit of the CSG key principles.

A recommendation of the CSG was that the Parliament should regularly measure its achievements against the founding principles. In 2003, our then Procedures Committee (now the Standards, Procedures and Public Appointments Committee) published its report on the founding principles which stated:

'Our priority is to look to the future, and our recommendations will suggest to the Presiding Officer, the Parliament, the Executive [now the Scottish Government], the Scottish Parliamentary Corporate Body (SPCB) and the Parliamentary Bureau how to strengthen our devolved institutions and how to develop even further the partnership which the authors of the CSG envisaged between the Parliament, the Executive [Government], local government, civil society and the people of Scotland.

This work continues and in October 2016 I established a Commission on Parliamentary Reform.

Commission on Parliamentary Reform
The Parliament's founding principles I refer to above have guided the establishment and early years of the Parliament well. While these principles remain as relevant and central as ever, the Parliament will turn 21 this session and has experienced coalition, majority and minority governments, further devolution of powers, and digital reform. But, 17 years in, I felt it was timely to create an independent Commission to take a fresh, fundamental look at how effectively the Parliament conducts its business and whether it remains fit for purpose within a realm of continuing change. At the time I noted:

"In 1999, the Scottish Parliament was hailed as ground breaking, bringing a new, inclusive style of politics to Scotland. However, over the last decade or more, we have seen Scottish politics becoming increasingly tribal and divisive. This has, among other things made it challenging for MSPs to find the space to develop in their distinct role as parliamentarians. I want the Commission's work, therefore, to help bring the Parliament back to its roots, ensuring Holyrood is open, transparent, truly participative and fit for the significant challenges which lie ahead."

I have specifically asked the Commission to consider ways in which the Parliament can:

- be assured it has the right checks and balances in place for the effective conduct of parliamentary business;
- increase its engagement with wider society and the public, and
- clarify its identity as distinct from the Scottish Government.

I was pleased that all party leaders supported the set-up of the Commission, and that, in the chair, I have an experienced and independent former Electoral Commissioner for Scotland and BBC Scotland Controller. Membership is made up of one representative from each of the five political parties represented in the Parliament, and five individuals from civic society, including equalities groups, the Scottish Youth Parliament, the education sector and public policy.

Between January and March 2017, the Commission attended over 40 workshops, conferences and meetings throughout Scotland hearing from over 1000 people. It received 105 submissions to its call for evidence, carried out an online survey asking people about their experiences of engaging with the Parliament, and produced a discussion toolkit and quiz for groups and organisations to gather and submit their own views of the Parliament and reform.

The Commission is currently considering all the evidence gathered, with the aim of reporting back to me in June 2017. I'll then consider the recommendations and direct them towards the relevant area of Parliament, including the Parliamentary Bureau, the Scottish Parliament Corporate Body, and the Standards, Procedures and Public Appointments Committee, for detailed scrutiny as required. I will forward a copy of the report to the Senate for its interest.

Other reforms
Although I was keen to give the Commission the time and space to take a detailed look at how the Parliament is working, I was also eager to use the powers I already have to make some changes immediately. This has included extending the length of First Minister's Questions to allow more questions from backbenchers and to introduce supplementary questions on any topic of the day, without the need to give advance notice. Allowing room for more spontaneity and immediacy, this was seen as a positive move by members, the media, and the public alike.

I immediately allowed wifi in the Chamber, recognising that members are working digitally and need to be connected to the 'outside world' in their day-to-day work.

Most recently, and, after observing first-hand question periods in Manitoba and Ottawa, I have written to all Scottish Government Ministers asking them to shorten the length of their answers, again with a view to enlivening proceedings and allowing for more backbench contributions.

Issues of specific interest to the Committee

The information below responds to the issues which you have identified as being of interest and which you might like to discuss during our videoconference evidence session on Wednesday 17 May 2017.

How debates are organized for (a) bills; (b) inquiries; (c) resolutions; and (d) other business?

The [Parliamentary Bureau](#) - chaired by the Presiding Officer and comprising business managers appointed by each political party or group with more than five Members – is responsible for proposing the programme of parliamentary business. It is ultimately for the Parliament to decide whether to agree the Bureau's business motion. The Bureau's business is conducted by consensus where possible. If voting is required to reach decisions, each business manager carries a weighted vote according to the size of the political party or group they represent.

The business motion sets out the items to be dealt with at meetings of the Parliament over a two week period, including such items as Government and non-Government debates, committee debates, question times, Ministerial statements, etc. Business motions are also used to set timetables for the various stages of bill scrutiny (see separate section below) and to make adjustments to the daily programme of Chamber business.

Inquiries are conducted by parliamentary committees. With the exception of bill inquires and those relating to some other referred items of parliamentary business, timetabling is generally a matter for the committee concerned. Our Standing Orders set aside 12 half sitting days in each parliamentary year during which the business of committees is given priority in the Chamber. These Chamber slots are generally used to debate committee reports (although not all reports have to be debated). Bids for Committee slots are first considered by the [Conveners Group](#) – made up of the Deputy Presiding Officer and Committee Chairs (referred to in the Scottish Parliament as Conveners). Where recommended by the Conveners Group, the Parliamentary Bureau will make time in the business programme for committee business.

Decision time takes place at a set time on each day that the Parliament meets. The overwhelming majority of questions are put at decision time. This normally takes place at 5.00pm.

How the government is determined (is there a leader of the government? Is there a government caucus or grouping?)

The Scottish Government is led by the First Minster who is appointed by Her Majesty the Queen on the basis of a nomination from the Parliament. The nominee for First Minister is elected by the Parliament. It is then for the First Minster to propose which Members should be appointed as Government Ministers. Again Ministers are appointed by Her Majesty but only after their nomination is approved by resolution of the

Parliament. Members of the Government party who are not themselves Government Ministers have the same rights as members of non-Government parties.

How the opposition is determined (is there an official opposition? Is there a leader of the opposition?)
Any party that is not a party of Government is effectively in opposition although official opposition is not a term that is used in a formal sense.

The Standing Orders set aside time in each parliamentary year during which the non-Government parties can chose what business is considered. This time is allocated between the parties on a proportional basis reflecting the number of seat occupied by their Members. There is no official leader of the opposition, however, in practice the Presiding Officer guarantees to call party leaders at First Minister's question time (Thursday, 12.00-12.45pm) in order of party size and allocates time to them on the same basis. Similarly, non-Government spokespersons are called first in response to Ministerial statements (again in party or group size order) and parties and groups (including the Government party) are allocated speaking time in debates on the basis of size.

Presence of caucuses or groupings; How these are established; How they are recognized in standing orders or rules;
As mentioned above both political parties and groupings can be represented on the Parliamentary Bureau. Our Standing Orders state that, in addition to the Presiding Officer, membership of the Parliamentary Bureau comprises a representative of each political party represented by 5 or more Members of the Parliament. In addition, Members who represent a political party with fewer than 5 representatives in the Parliament and members who do not represent a political party may join together to form a group. Any group formed of 5 or more Members is entitled to nominate a representative as a member of the Bureau.

Under the rules, certain items of business require to achieve cross-party support before they can progress. Cross-party support is defined as support from members of at least half of the political parties or groups represented in the Parliamentary Bureau. These items of business include whether a proposed Members' Bill can be introduced in the Parliament. In addition, although not set out in the rules, motions to be debated for Members' Business need to attract cross-party support before they are included in the business motion.

Members are able to form cross party groups, involving outside organisations and members of the public to discuss a shared interest in a particular cause of subject. The operation of cross party groups is regulated under the Members' code of conduct and applications to establish such groups are made to the Standards, Procedures and Public Appointments Committee. Cross party groups have no status in parliamentary proceedings.

Functions and mandate of the Business committee;
As mentioned above, the Parliamentary Bureau is responsible for proposing the business programme and for proposing changes to the daily business. It is also responsible for proposing the establishment, remit, membership and duration of any committee or subcommittee. In each case, the Parliament has the final decision. In addition, the Bureau is responsible for dealing with any questions on the competence of a committee to deal with a matter and, where more than one committee is competent, which of those committees should have lead responsibility. Members of the Bureau are nominated by their party leader (or, in the case of a non-party grouping, by each member of that group).

The rapporteur process: when is it used? How are rapporteurs selected/appointed?
Under our Standing Orders a committee can appoint a reporter to report on any matter within its remit. It is for the committee itself to decide whether to appoint reporters. This is generally done where the committee has decided there is an issue it is keen to look into but where it didn't feel it had the capacity to consider it as a committee. To date, this arrangement has not been widely used.

We have a specific Standing Order (Rule 12.6) however, which says that committees should appoint a committee member as a European Reporter whose role is to bring to the attention of the committee any EU issue as appropriate. This rule pre-dates Brexit.

The process of passage of bills.
Public bills are considered by the Parliament in a three stage process which normally takes place as follows:

At stage 1 bills are referred to a lead committee which undertakes an inquiry into the general principles (i.e. whether law is required in the relevant area and whether this, broadly speaking, is the correct bill for that purpose). In preparing its report, the lead committee will also consider reports on the bill from the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee. After the committee has reported, the Parliament is asked to decide whether it agrees the general principles of the bill. Only if the general principles are agreed does the bill move on to stage 2.

At stage 2 the bills are referred back to the lead committee where amendments are considered. Any member can lodge amendments but only committee members can vote on them. When all amendments have been considered the bill passes to stage 3.

At stage 3 the Parliament as a whole considers any further amendments that have been selected by the Presiding Officer. Again any Member can lodge amendments but this time all Members have a vote. Once the selected amendments have been disposed of the bill is debated in its final form and the Parliament is asked to agree whether it should pass or be rejected.

The business programme can set out deadlines for the completion of stages 1 and 2 and also gives notice of the timing of the stage 1 debate and the stage 3 proceedings.

Structure of the Committee system: how many committees; how membership is determined; how chairs and deputy chairs allocated.
There are currently 15 [committees](#). This number varies from session to session. There are certain subjects for which a committee must be established under Standing Orders. These are: Finance and Constitution; Public Audit and Post Legislative Scrutiny; Culture, Tourism, Europe and External Relations; Equalities and Human Rights; Public Petitions; and Delegated Powers and Law Reform, and are known as mandatory committees. In addition, a number of subject committees will be set up, which generally reflect ministerial portfolios. We currently have nine such committees and they fulfill a select/standing committee function.

As mentioned above, the number of committees, their remits, size, and membership are proposed by the Parliamentary Bureau in a motion or motions which are then voted on by the Parliament as a whole. The Bureau also proposes which party should hold the convenership of each committee.

Our Standing Orders say that in proposing the party who has the convenership and deputy convenership of each committee and in proposing the number of members for each party on committees, the Bureau must "have regard to the balance of political parties in the Parliament." In practice, convenerships and deputy convenerships are decided using the d'hondt formula and membership is decided on direct proportionality.