



The Scottish Parliament
Pàrlamaid na h-Alba

Conveners Group

Agenda

1st Meeting, 2022 (Session 6) Wednesday 26 January 2022

The group will meet virtually at 12.30pm.

1. Minutes of the previous meeting
2. Diversity, inclusion and participation (presentation from Participation and Communities Team (PACT))
3. Post-legislative scrutiny
4. Work programme
5. AOB

Next meeting – Wednesday 23 February

The papers for this meeting are as follows –

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| 1. | Minutes of last meeting | CG/S6/21/3/M |
| 2. | Conveners Group work programme | CG/S6/22/1/1 |
| 3. | Post-legislative scrutiny | CG/S6/22/1/2 |

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Conveners group

Minutes

3rd Meeting, 2021 (Session 6) Wednesday 24 November 2021

Present:

Liam McArthur MSP, Convener

Clare Adamson MSP, Constitution, Europe, External Affairs and Culture Committee

Claire Baker MSP, Economy and Fair Work Committee

Siobhan Brown MSP, COVID-19 Recovery Committee (virtual)

Ariane Burgess MSP, Local Government, Housing & Planning Committee

Jackson Carlaw MSP, Citizen Participation and Public Petitions Committee

Finlay Carson MSP, Rural Affairs, Islands and Natural Environment Committee

Joe Fitzpatrick MSP, Equalities, Human Rights and Civil Justice Committee (virtual)

Kenneth Gibson MSP, Finance and Public Administration Committee

Neil Gray MSP, Social Justice and Social Security Committee

Stephen Kerr MSP, Education and Young People Committee (virtual)

Richard Leonard MSP, Public Audit Committee (virtual)

Dean Lockhart MSP, Net Zero, Energy and Transport Committee

Gillian Martin MSP, Health, Social Care and Sport Committee

Stuart McMillan MSP, Delegated Powers and Law Reform Committee

Audrey Nicoll MSP, Criminal Justice Committee (virtual)

Martin Whitfield MSP, Standards and Procedures and Public Appointments Committee (virtual)

- 1. Committee business:** The Conveners Group agreed the minutes of the last meeting.

The Group agreed to write to the Parliamentary Bureau regarding gender balance on committees.

It also noted its agreement to the following Committee debates:

- 2 December: Covid-19 Recovery Committee debate on Covid-19 – preparing for winter and priorities for recovery
- 16 December: Standards, Procedures and Public Appointments Committee debate on participation in parliamentary business
- 18 January: Local Government, Housing and Planning Committee debate on retrofitting of properties for net zero.

- 2. Parliamentary business:** The Group discussed issues around programming of parliamentary business and other matters relating to the operation of committees with George Adam MSP, Minister for Parliamentary Business, and Steven MacGregor, Head of Parliament and Legislation Unit, Scottish Government.

3. **Meeting with the First Minister:** The Group noted the arrangements for the 15 December meeting with the First Minister and agreed to focus the questions on the themes of Covid-19 and Net Zero.
4. **Conveners Group Strategic Priorities:** The Group noted an update on its Strategic Plan for Session 6, and the development of a work programme to support its delivery.

Date of Next Meeting: 15 December 2021

Contact details for the clerk

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Conveners Group

1st Meeting, 2022 (Session 6), Wednesday 26 January 2022

Work Programme

Purpose of paper

1. The purpose of this paper is to inform Conveners of the arrangements for this meeting of the Group.
2. It also invites Conveners to consider the Group's work programme over future meetings.

Introduction

3. The Group agreed at its previous meeting to develop a work programme around the four strands of its strategic priorities. These are—
 - i. Cross-committee working
 - ii. Diversity, Inclusion & Participation
 - iii. Post-legislative scrutiny
 - iv. Supporting Members as Parliamentarians
4. Members will recall that these priorities were agreed in order to develop the Group's strategic function and its role in championing the work of committees over the current session.
5. This meeting will provide the opportunity for the Group to consider and discuss developments under the Diversity, Inclusion & Participation and the Post-legislative scrutiny strands of the strategic priorities.

Conveners Group meeting

Diversity, Inclusion & Participation

6. Public engagement and citizen's participation form an important part of the Diversity, Inclusion and Participation strand.
7. By way of an introduction to the key issues, the Group will receive a presentation from the Participation and Communities Team (PACT) on the ongoing work of the team and future initiatives at the meeting.

8. This will provide the Group with the opportunity to consider ways in which the Group can add value to committee public engagement, including how the Group can support other initiatives in this area.

9. It is planned to bring forward discussion on other matters which fall within this strand, such as witness diversity, to a future meeting.

Post-legislative scrutiny

10. The Group has also identified post-legislative scrutiny as a strategic priority this session.

11. In order to facilitate an initial discussion on this, Conveners have been provided with a paper setting out possible approaches to post-legislative scrutiny. This paper is attached separately.

12. The Group will have the opportunity to consider and discuss the issues set out in the paper and ways in which to develop and enhance post-legislative scrutiny.

13. The outcome of this session will allow this work to be taken forward. The Group will receive updates on progress at future meetings.

14. **The Group is invited to note the arrangements for the meeting.**

Work programme

15. Conveners will note that a schedule of meetings which more or less follows the pattern of taking place on the last Wednesday of every month has been set up until the summer recess.

Meeting with First Minister

16. The Group is invited to note the plans for rescheduling the postponed session with the First Minister.

17. As previously advised, the First Minister is available to meet the Group at lunchtime on Wednesday 2 March. It is anticipated that by this point a fully in person meeting will be possible. It was agreed that the postponed session would be structured around the themes of Covid and Net Zero. It is proposed that the rescheduled session follows the same format.

Work programme

18. The meeting with the First Minister will take place outwith the Group's meeting cycle, in the week following a scheduled meeting.

19. In order to make progress on actions under the strategic priorities, it is proposed that the meeting on 23 February goes ahead as planned in order to make some progress in these areas.

20. At this meeting it is proposed that the Group will receive an update from the Convener of the Constitution, European, External Affairs and Culture Committee on post-EU issues. This is an important area of scrutiny and so it would be helpful to make Conveners aware of recent developments in this area.

21. As previously noted, work is being taken forward in relation to monitoring and collecting data on witness diversity. This is a key part the diversity, inclusion and participation strand. It will inform any initiatives being taken forward to engage with hard-to-reach communities and ensure that a diverse range of views are heard by committees. It is therefore proposed at a future meeting to invite the Group to consider the approach to this work and to consider how best to take this work forward.

22. In terms of other future business, it is proposed to provide updates on other cross-cutting work, for example the forthcoming National Care Service Bill as well as work on net zero.

23. The Group will also be invited to consider any CPD which would be helpful for committee members.

24. It is anticipated that Conveners will wish to raise ongoing issues relevant to the work of committees with the rest of the Group. This is an important part of information sharing and supports the Group in its strategic role.

25. In order to facilitate this, it is proposed that the opportunity to raise issues is provided at meetings. It would be helpful if these could be flagged with the Deputy Presiding Officer in advance in order to allow consideration to be given to the issue in advance. That way, the Group can have a more informed discussion.

26. Finally, the Group may also wish to note the schedule of committee debates attached in the annex.

Recommendations

27. **The Group is invited to note plans for forthcoming meetings, in particular—**

- **to note the arrangements for the rescheduled meeting with First Minister which will take place at 12 noon on Wednesday 2 March.**
- **to agree to proceed with the scheduled meeting on 23 February,**
- **to note the planned work programme items at future meetings,**
- **to note the opportunity for issues to be raised by individual conveners at meetings and the request to flag these in advance.**

**Clerk to the Conveners Group
January 2022**

ANNEX – SCHEDULE OF COMMITTEE DEBATES

	Date	Committee	Title	Official Report
1	Thursday 2 December	COVID-19 Recovery	Covid-19: Preparing for Winter and Priorities for Recovery	https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-02-12-2021?meeting=13443&iob=122063
2	Thursday 16 December	Standards, Procedures and Public Appointments	Shaping parliamentary procedures and practices for the future	https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-16-12-2021?meeting=13477&iob=122371
3	Tuesday 18 January	Local Government, Housing and Planning	Retrofitting of properties for net-zero	https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-18-01-2022?meeting=13523&iob=122720
4	Tuesday 22nd February	Delegated Powers and Law Reform	Debate on the Delegated Powers and Law Reform Committee's inquiry into the use of the made affirmative procedure during the coronavirus pandemic	
5	Thursday 24 February	Net Zero, Energy and Transport	The road to COP27 and beyond: Tackling the climate emergency in the aftermath of COP26	
6	Tuesday 15th March	Equalities, Human Rights and Civil Justice	Ending conversion practices	
7	Tuesday 29th March	Health, Social Care and Sport	Perinatal mental health	
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Conveners Group

1st Meeting, 2022 (Session 6), Wednesday 26 January 2022

Post-legislative scrutiny: a new approach for session 6

Purpose

1. This paper reviews the use of post-legislative scrutiny (PLS) in recent parliamentary sessions, identifies what is perceived to have worked and what has been less successful, and suggests a new approach for session 6.

Action

2. **The Conveners Group is invited to discuss the paper and endorse the new approach.**

Introduction

What is post-legislative scrutiny?

3. Parliaments have a responsibility both to pass new laws and to monitor whether the laws they have passed are implemented as intended and have the expected impact. PLS is now increasingly recognised as an important dimension within the oversight role and the legislative role of a parliament and an integral part of the legislative cycle in many jurisdictions.
4. The broad act of reviewing and evaluating laws that a parliament has passed is known as PLS. There are various reasons why having more systematic PLS can be of value:
 - to see whether legislation is working out in practice, as intended;
 - to contribute to better regulation;
 - to improve the focus on implementation and delivery of policy aims; and,
 - to identify and disseminate good practice so that lessons may be drawn from the successes and failures revealed by this scrutiny work.
5. In addition, PLS can be useful to act preventively regarding potential adverse effects of new legislation on fundamental rights, as well as, for instance, gender equality, the environment and climate, or on economic and social welfare.

6. It is important to note that PLS is not strictly limited to the task of reviewing an Act or Acts of Parliament. PLS can equally refer to a broad legislative and policy review, the purpose of which is to evaluate whether and to what extent one or more pieces of legislation or particular provisions within them have achieved the intended purpose and what are the impacts.
7. PLS can also be seen as part of a continuous process of scrutiny and follow-up. That is, it can start at the point that any Act receives Royal Assent and can be seen as having different stages involving different forms of scrutiny. For example:

Initially:

- ensuring that all relevant provision is brought into force
- ensuring that relevant subordinate legislation is laid
- ascertaining early views on the experience of users/those advising on the Act's provisions

Further down the line:

- looking at implementation – is further guidance required?
- are there ambiguities in the legislation that require Act to be tweaked?
- are more fundamental legislative changes required?
- has the Act delivered on its policy objectives? What outcomes has it delivered/achieved?

8. There are many other aspects of scrutiny work in the Parliament that involve retrospective analysis of the legislative landscape. For example, scrutiny of most new bills or SSIs involve looking at, at the very least, improving on the existing provisions on the statute book. Many committee inquiries will also seek to address policy shortfalls or outdated provisions within the statute book.
9. These types of activity are rarely singled out and labelled as PLS, but nonetheless involve the same type of approach; i.e. assessing whether existing legislation is working or needs improved upon.

Post-legislative scrutiny examples from previous sessions

10. In session 4, the then Standards, Procedures and Public Appointments Committee carried out an inquiry into PLS. Its [report](#) highlighted a number of key principles that should underpin PLS work in the Committee:
 - That there should be a flexible approach to what PLS is and not just focus on the review of a single Act of Parliament.
 - That it is better to focus in on specific provisions within an Act or on a single Act itself and not attempt to conduct a review of a wide tranche of legislation.
 - That it was equally valid to look at issues with subordinate legislation and not to confine any scrutiny to primary legislation

- That a dedicated PLS committee was not the way forward.¹
- That it was worth considering how to use various “trigger mechanisms” to enable issues that merited PLS to be brought to the attention of a subject committee (e.g. representations from the public, media campaigns, members of the judiciary commenting that a piece of legislation should be revisited, or the existence of a sunset/review clause within an Act).

11. In session 5, the Parliament chose to add the task of PLS to the remit of the Public Audit Committee (thereby becoming the Public Audit and Post-Legislative Scrutiny Committee). An assessment of the efficacy of this arrangement is set out below.

12. Before looking at what has worked and what has been less successful, it may help members of the Conveners Group to be aware that there have already been examples as far back as session 4 of PLS in the Parliament. These include:

- A review in 2013 by the then Justice Committee into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003, which led to subsequent legislative changes and changes in policy practice on the ground.
- Similarly, PLS of the Police and Fire Reform (Scotland) Act 2012 by the then Justice Committee in session 5 led to major changes in the governance by the Scottish Policy Authority and, after a further independent review by Dame Elish Angiolini, to a commitment from the current government to bring forward legislation to change the police complaints system.
- The provision in the High Hedges (Scotland) Act 2013 which provided for a review of the operation of the Act to take place within a specific timeframe led to a PLS inquiry in session 5 by the Local Government and Communities Committee. Although some tightening up of practice occurred, no substantive changes to the law were put through by government.
- The Climate Change (Scotland) Act 2009 contains provisions which require regular scrutiny of government policies and proposal documents, which itself involves detailed PLS by a range of committees on a cross committee basis.
- The Public Audit and Post-Legislative Scrutiny Committee itself conduct a PLS inquiry into the Control of Dogs (Scotland) Act 2010, which has now led to newly introduced changes via SSI to the statute book and

¹ “There could be a risk of duplication of effort if a dedicated committee took on matters within the remit of a subject committee. It also might lack the specialist expertise to do so. A dedicated committee might feel the need to re-open policy debates, given that it did not have a role during the passage of the original bill.”

agreement to a further review by government of the provisions of the Dangerous Dogs Act 1991 insofar as they relate to Scotland.

13. So it is important that Members appreciated that PLS is in fact relatively widespread as an activity within the Parliament, albeit that it is rarely labelled as such, and that we do have examples of the latter and even examples where legislative or policy change has followed the scrutiny.
14. There are also examples in the current session of committees wishing to undertake PLS, such as the plans by the Finance and Public Administration Committee to do PLS of the financial memorandum of Children and Young People (Scotland) Act, early in 2022.

What has worked and what was less successful?

15. Whilst some of the above examples clearly demonstrate success (if the measure of that is government action to change the law), some aspects have not worked so well. Some the lessons identified by the clerks most closely involved with PLS activity are as follows.
16. It is certainly the case that, whilst sometimes more urgent, the longer that a law has been in place, the easier it was to find more evidence and experience of the Act and where it is going wrong on which to draw.
17. Ensuring that a committee had a very clear idea at the outset – informed by evidence – and was realistic in what it hoped to achieve was vital to success. If you are asking general questions about whether a law has achieved its policy objectives, a committee may have enough evidence to say that it has not achieved that or the law is working in the way it intended, but less likely to say how the law should specifically be changed. Which raises the question as to whether post-legislative scrutiny should be done in a number of stages.
18. Where Acts have statutory provision for a review, it is important that time and resources are put in place to make sure sufficient and accurate data is available to members to be able to carry out any review and include that requirement in the review provision.
19. It can also be useful for committees to ask about the data/evidence that the Scottish Government plans to collect during the scrutiny of the initial Bill so that it is available for PLS of any subsequent Act.
20. It is also our experience that the use of what the former Standards, Procedures and Public Appointments Committee called “trigger points” can be especially important in giving a subject committee confidence that the issue to be reviewed is of sufficient political importance relative to their other work. There was no doubt that strong engagement by Members and media can raise the profile of a committee’s scrutiny and put pressure on the Scottish Government to respond effectively. We particularly saw this with the Control of Dogs.

21. It was also clear from the above example (the Control of Dogs) that sustained efforts at following up any PLS can be needed, asking for periodic invitations from government to update a committee on progress.
22. Critically, unless a committee is thinking about introducing a committee bill itself, and post-PLS legislative change is going to have to be taken forward either as a member's bill or more likely by the government. Therefore the issue of the extent to which the government buys in to at least considering PLS recommendations for legislative change as part of the annual programmes for government is very important. That can be just as important where legislative change is not required but change to the way a law is being implemented or how it is resourced has been identified as key.

New principles and a new approach for session 6

23. With the approval of the Conveners Group, the clerks intend to build upon the above information and bring forward a new approach for PLS in session 6. A further paper detailing how this might work in practice will be drawn up.
24. At this stage, the Conveners Group is asked to discuss and endorse the view that any new approach for PLS would be built around the following principles:
- That PLS can take many different forms and is part of a continuous process of scrutiny and follow-up work.
 - That we make efforts to more clearly 'label' some of the work we undertake in the Parliament as PLS to make it more visible and easier to find, thereby making any successes more transparent. Capturing this information in committee annual reports might be one idea.
 - That there should be a 'light-touch' approach to PLS and not one that mandates or requires a certain number of PLS activities by each committee in a given year. This is unlikely to be successful as subject committees usually want to set their own priorities.
 - That standing order changes are, for the moment anyway, not considered necessary to "make PLS happen".
 - That the approach to encouraging PLS should allow for flexibility by a committee and not be confined strictly to one where a committee reviews a single piece of primary legislation.
 - That the means by which a subject committee 'buys in' to the need for PLS is vital, and then conducts the scrutiny itself as it has the specialist knowledge and contacts, and knows its own work programme.
 - However, there is a role for the new Citizens Participation and Public Petitions Committee to think about how it can use its new remit and new tools for citizen's participation and deliberative democracy to inform

subject committees of possible ideas. Equally, subject committees could request work or advice from the Citizens Participation and Public Petitions Committee on how to use these tools themselves to gauge public interest/support for any piece of PLS work.

- That we think about how we can incorporate aspects of data gathering and review mechanisms into our scrutiny of a Bill to make it easier to conduct PLS in later years. So for example:
 - Clarifying with the minister/member in charge what outcomes they expect the Bill to deliver.
 - Asking what data/evidence government intends to use/gather to measure that
 - Perhaps encouraging committees to think about including something on this in their stage 1 reports (and if necessary seeking amendments to the Bill to ensure that relevant data/evidence is collected)
- That we explore with Scottish Government officials and then the Minister for Parliamentary Business how the government can ‘buy in’ to being involved in taking forward recommendations, or at least seriously considering them.
- That we explore how other resources in the Parliament, such as the academic engagement activities or budgets for commissioned research can be used by committees to help them identify or carry out PLS work.
- That we consider how the Conveners Group can play a role in encouraging committees to consider PLS as a core part of their role and how that can be built into work planning (e.g. at business planning days).

25. Further consideration will need to be given to how the UK’s exit from the EU and also the development of a shared powers model with the UK Governments interacts with PLS. A review of review of previous acts of parliament may take in parts of the statute book which have subsequently been reformed in terms of how they operate by a changed set of provisions and powers for the two governments.

26. Finally, members of the Conveners Group might like to be aware that officials are also looking at how the Parliament can benefit from working with bodies such as the [Westminster Foundation for Democracy](#) and the [Study of Parliament Group](#) whose experts are looking at examples of good practice in other legislatures and the idea of benchmarking the performance of parliaments against a number of key indicators for PLS.