PROCEDURES COMMITTEE

Tuesday 3 April 2001
(*Morning*)

Session 1

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PROCEDURES COMMITTEE
3rd Meeting 2001, Session 1

CONVENER

*Mr Murray Tosh (South of Scotland) (Con)

DEPUTY CONVENER

*Mr Kenneth Macintosh (Eastwood) (Lab)

COMMITTEE MEMBERS

*Brian Adam (North-East Scotland) (SNP)
Patricia Ferguson (Glasgow Maryhill) (Lab)
*Donald Gorrie (Central Scotland) (LD)
*Mr Frank McAveety (Glasgow Shettleston) (Lab)
*Mr Gil Paterson (Central Scotland) (SNP)

*attended

WITNESSES

Alison Coull (Scottish Parliament Directorate of Legal Services)
Hugh Flinn (Scottish Parliament Directorate of Clerking and Reporting)
Michael Lugton (Scottish Executive Executive Secretariat)
Professor David McCrone (Sociology Department, The University of Edinburgh)
Andrew McNaughton (Scottish Executive Executive Secretariat)
Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting)
Anne Peat (Scottish Parliament Directorate of Clerking and Reporting)
Janet Seaton (Scottish Parliament Information Centre)
Bill Thomson (Scottish Parliament Directorate of Clerking and Reporting)

CLERK TO THE COMMITTEE

John Patterson

SENIOR ASSISTANT CLERK

Mark MacPherson

ASSISTANT CLERK

Katherine Wright

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 3 April 2001

(*Morning*)

[THE CONVENER *opened the meeting at 10:33*]

The Convener (Mr Murray Tosh): We will get the meeting under way. Kenneth Macintosh will be here shortly. Patricia Ferguson will not be present. She is in the United States.

We have a long agenda today, and the clerk wishes me to express to members his profound apologies at the length of the meeting and the thickness of the papers before us. There is a lot of stuff in them, so we will get cracking.

Private Bills (Guidance)

The Convener: Item 1 is on guidance on private bills. We are joined by Bill Thomson, head of the chamber office, and David Cullum of the non-Executive bills unit. It would be appropriate for you to say a few words about the main thrust of the paper, Bill. Members will then ask questions.

Bill Thomson (Scottish Parliament Directorate of Clerking and Reporting): Like the clerk to the committee, I am conscious that there is a considerable volume of material in the papers that have been circulated. I emphasise that the guidance has been drafted within the boundaries of the policy decisions that are set out in the committee's second report of 2000, on private legislation in the Scottish Parliament. That report led to the introduction of chapter 9A to the standing orders. In preparing the guidance, we came across one or two minor problems with the new standing orders, which will be addressed under agenda item 3.

The draft guidance refers to a number of determinations, most of which are to be made by the Presiding Officer—one has been made by the clerk and one requires to be made by the Scottish Parliamentary Corporate Body. One or two determinations have already been made, and work on the remainder is almost complete. We intend to submit those to the Presiding Officer for his consideration this week. The terms of the draft guidance necessarily anticipate the precise wording of the determinations, and may need to be adjusted if any changes are made in consultation with the Presiding Officer over the final form of those determinations.

Once the guidance and determinations are complete, the Parliament will be in a position to receive and consider its first private bills. Our aim is to reach that position by Easter. Our intention is that the guidance and the determinations then be made available to the interested parties, including potential promoters or objectors, and their agents, if they have any. We will review the documents in the light of experience and will report back to this committee if we consider that any substantial changes are required. Ideally, we would like to be in a position to publish a complete and more glossy revised set of documents by the end of the year.

With your permission, convener, I would like to take the opportunity to acknowledge the hard work of the remarkably small team of clerks and legal advisers who have been burning the candle at both ends to draft, critically assess and present the materials that are before members this morning.

The Convener: The covering report that is before us is perfectly straightforward. The recommendation is to approve the guidance and to make appropriate arrangements—that is not for us, but the details will be printed later in the year, as Bill Thomson has explained.

The way for us to consider the guidance is probably to take it part by part, and for members to raise any points or concerns that they may have. If we are to proceed in that way, we will start with part 1 on page 2.

Donald Gorrie (Central Scotland) (LD): I have a question on the earlier stages of the process. As I recall, representatives of the sort of people who produce private bills were involved in the consultation. Were they also involved in the consultation on the guidance, or is it understood that they are reasonably happy?

Bill Thomson: Those representatives have seen all the drafts—several successive drafts. We have not received any formal comments, but we have been in touch with them throughout the process.

Mr Gil Paterson (Central Scotland) (SNP): I hope that this comment does not come back to haunt me, but it may save time if I say that we are quite happy with what we see in the draft guidance.

The Convener: In that case, I will now introduce the two or three questions that I have on the draft guidance. Other members can of course come in on the back of points that I raise.

My first points relate to paragraphs 2.15, 2.16 and 2.17 on page 6, and are about objection. The provision that has been made for the memorandum, the statement and the expectation of potential objection appears to attach only to people with heritable property, whereas many private bills will convey within them a planning consent. In handling a planning application, a local authority would allow an objection to be lodged by anyone who was interested, as opposed to anyone who had an interest. I could object to a planning application to lower the roof of Waverley station, for example, but if a private bill on such a matter had to satisfy the procedures before us, the requirement would be only to involve and accept representations from people who had a definable property interest.

That appears to apply again, at a later point in the paper, on page 11. Paragraph 3.1 covers the possibility for people to

"lodge an objection to a Private Bill which would adversely affect their interests."

In planning terms, people have a much wider remit to object than is covered under that paragraph. I am concerned that we may be narrowing the rights of people to object to something simply because they do not have a registrable property right.

Bill Thomson: There is no single answer to that point. The notification to people with an interest in heritable property is only one of the steps that the promoter will have to take. There are certain other people—different classes of interest—who have to be notified directly, and there is a requirement to advertise in the local press or, if the bill has national importance, to advertise nationally. It is not meant to be implied that only those who have a heritable property interest can object. The objection is competent if it comes from anyone who can establish that their interests will be adversely affected.

That is not defined in great detail in here, nor for that matter, as you will be well aware, are the specific categories of those who can object to planning applications. It would be a matter for the private bill committee ultimately to determine whether it took the view that an individual's interests were sufficiently adversely affected for them to be a competent objector. It is quite possible for the process to develop to allow people in the categories you are envisaging to have a right to be heard.

The Convener: The matter arose again in paragraph 3.2, where it said that the committee would

"reject any objection where the objector … does not clearly show how they"—

that should be he or she, I suppose—

"will be adversely affected by the Bill".

I say that in deference to Mr Mylne, who is the protector of grammar in this morning's agenda.

The requirement to show adverse effect could be quite oppressive if it were interpreted in that way. I wonder whether it is appropriate for some addition to be made to the guidance to make it clear that the committee's interpretation of the categories need not be narrow and that it would, for example, be acceptable for an amenity group that did not have a direct involvement nonetheless to feel that its purpose entitled it to offer objections.

Bill Thomson: It is perfectly correct that we do that. The Private Legislation Procedure (Scotland) Act 1936 requires objectors to show that their interests are seriously and adversely affected. The committee, when it was considering its report, accepted that "seriously and adversely affected" was a rather complicated term and reduced it to "adversely affected"; however, we could incorporate a paragraph to expand the point that you have suggested.

The Convener: Does that meet with the

approval of the committee?

Members *indicated agreement*.

The Convener: That is satisfactory.

Given our preoccupation with European conventions, we must be careful that we do not at any stage lay the Parliament open to the accusation that it excludes people with a right to object.

My next point concerns the content of paragraph 4.18 on page 17. I remember our agreeing to that at the previous stage, but it strikes me that its implication might not have been fully worked out. In that paragraph we talk about a reporter undertaking a site visit alone being an example of a meeting where all members were not expected to be present. From local authority experience, I can imagine a successful legal challenge to a licensing decision because it was framed on the basis of comments from a member who had conducted a site visit when other people on the relevant committee did not have the same information.

I am aware of a local authority that will not allow councillors to take part in deciding a planning application if they have not been on a site visit because it takes the view that if they have not been there, they do not have the information. I wonder whether that is not a wee bit of a hostage to fortune. It might be better to proceed without that sentence and let the committee, in the light of the circumstances of the time, work out what it wants to do in the case of less than full attendance. If we put the sentence in, we are almost inviting it to be done. If it is successfully challenged, the guidance is weakened.

Bill Thomson: Removing that is a matter for the committee. It is simply a statement of the current position that applies to all committees under standing orders. I see no problem in its being removed. However, we would expect a private bill committee to be properly advised at each stage of its proceedings. If such issues were relevant, I would expect them to be pointed out.

The Convener: Does that sentence add anything to the guidance?

Bill Thomson: I felt that it added something, but I have no problem with its being deleted if the committee would prefer that. We would not lose anything.

The Convener: I would prefer to remove the sentence. I am trying to find out whether you feel that we would lose anything by removing it. Other members may or may not agree.

10:45

Donald Gorrie: I agree with you, convener. There is a difference between a committee acting in a judicial capacity and a committee considering an issue with a view to possible future legislation. In the latter case, a reporter and small groups making visits are helpful. However, when a committee is acting in a judicial capacity and a visit takes place, all committee members should participate. The group would be small anyway. The position should be all or nothing. I support the convener's contention.

The Convener: The idea seems to command general support.

I have a query about paragraph 5.11 on page 22, which says that there is no right of appeal against the committee's decision. Are decisions open to judicial review?

Bill Thomson: Yes. I made myself a marginal note about that.

The Convener: Should we include a caveat that decisions are subject to statutory judicial procedures?

Bill Thomson: Yes.

The Convener: My next query is about paragraph 5.16. The Parliament has sometimes found itself caught by the approval of the general principles of a bill at stage 1 when in a stage 2 debate about whether certain amendments would be inadmissible because they might materially amend or delete one of the principal points. How flexible is the stage 2 procedure? In approving the principles of a private bill at stage 1, is there a risk that we cannot materially amend the bill at stage 2?

Bill Thomson: That depends on what you mean by materially amending the bill. The same rules that apply to wrecking amendments to public bills would apply to private bills. Approval of the general principles limits the scope of any activity at stage 2, but for good reason, because otherwise we could end up with an ill-defined procedure at stage 2. I do not think that there is any greater risk with private bills than there is with public bills. As the committee is aware, the process is designed as far as possible to bring private bill procedure within the normal rules of the Parliament's legislative process. I hope that that is one of its attractions. Therefore, the rules that apply to public bills, unless they are inoperable, will apply to private bills.

The Convener: I understand that. If we find that we have a general difficulty, it will be tackled in the round.

Donald Gorrie: I have a question—I am not really competent in the area. If Edinburgh presented a private bill for an underground railway system that was paid for in a particular way, could amendments say that we agree with the railway

but want it to be funded by a private-public partnership, a trust or another method? Such amendments would be fairly fundamental. Are they possible in private legislation, or must we stick to the proposition, and if we do not like it, throw it out?

Bill Thomson: Such a bill would require a financial memorandum that would explain the funding basis. I do not think that it is certain that the funding basis would be set out in the bill. In some circumstances, a financial resolution might be required for a private bill. Only a member of the Executive could propose that. I find it difficult to understand why the bill might incorporate the funding process, but if it did, that would be open to amendment.

Donald Gorrie: Given the sort of issues that are in dispute in relation to the London underground, the bill might require a body to be set up that would run the underground system. I wonder whether it is possible to make far-reaching amendments to private legislation.

Bill Thomson: Gentlemen on either side of me are dying to get in. In essence, the answer to that question is the same as the answer to the convener's previous question: the same rules that apply to public bills apply to private bills. It is difficult to answer abstract questions.

Donald Gorrie: I appreciate that. Thank you.

The Convener: Annexe E on page 69 deals with the pro forma for an objection to a private bill. The paperwork for the promoters asks them to specify their positions—for instance, whether they are the chairman of a company or something similar—but I could not quite understand what was meant by the position of an objector.

Bill Thomson: It is not intended to be a geographical or physical reference. We envision, as you suggested, that objections will come in from amenity bodies or unincorporated associations of other forms. It would be helpful to the parliamentary process to know whether the person signing the letter was a committee leader, a secretary or chairman of a body or whoever. If the letter has been sent by an individual, we would not expect there to be a reference to their position.

The Convener: In that case, "position if applicable" might be a better form of words.

Bill Thomson: Yes. I do not think we have quite got the form right yet.

The Convener: Subject to that small amendment, I am quite happy with it.

Bill Thomson: It is an area in which there will be a determination. Once that has been agreed, there may need to be some improvement to this annexe.

The Convener: Do we accept the recommendation to approve the report with all the consequent implications?

Members *indicated agreement.*

Parliament and the Executive (Protocols)

The Convener: Item 2 deals with protocols between the Parliament and the Executive. We have had a response to a request for more information that we made at a previous meeting. Annexe A of the response outlines the protocols that exist between the Parliament and the Executive. The committee can ask questions about the matter, but otherwise is invited simply to note the current position.

Are we agreed to note the position?

Members *indicated agreement.*

Standing Orders

The Convener: Andrew Mylne joins us for item 3. Andrew is the convener of the group that was working on the subject of standing orders and which has produced the substantial document that we have before us.

Andrew, please take us through the material and raise with us anything that you think is important.

Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting): There are a number of items in relation to this matter. Like Bill Thomson, I apologise for contributing to the volume of paperwork that members of the committee have had to plough through.

I hope that most of the paperwork is reasonably self-explanatory. The most substantial element is the paper on financial resolutions, which, as you indicated, was produced by a working group that I chaired. We took the opportunity to try to tidy up a number of minor problems that we had identified with chapter 9 of the standing orders, which have knock-on consequences in chapter 9A.

The paper on those problems is quite lengthy as we were concerned to ensure that the committee had an adequate explanation of any change that is being made to standing orders, even though the consequences of most of the proposed changes are, we hope, extremely small and should not have a significant impact on the way in which procedures operate in practice. The changes are intended to clarify ambiguities in the standing orders and to make the standing orders clearer. I am more than happy to deal with any points that arise from any of the papers.

The Convener: Paper 3A concerns minor changes to chapters 9 and 9A of standing orders. I would like to clarify three points.

Mr Kenneth Macintosh (Eastwood) (Lab): I have a general question. Many minor changes are proposed in the paper. Who suggested them? Did clerks or members flag up the problems?

Andrew Mylne: In most instances, the proposals arose from the clerking directorate and concern occasions when, in applying standing orders during the past 18 months, we have discovered some difficulty in interpreting the rules clearly or applying them consistently.

The Convener: Paragraph 37 on page 6 of the paper suggests that rule 9.6.4 of the standing orders

"should specify that only the member-in-charge can lodge the Stage 1 motion."

As the paper suggests that there should, if necessary, be a designated member to substitute

for the member in charge, would it be appropriate—if the occasion arose—to allow the designated member to lodge the stage 1 motion?

Andrew Mylne: I think so. As you say, rightly, there are two related proposals. We want to clarify what constitutes the member in charge. We propose that the member in charge should be the member who introduced the bill or any other member who is designated by the member in charge. Once that has been established, any references elsewhere in the standing orders to the member in charge can refer to either member. That would apply in this case, as elsewhere.

The Convener: I see.

I am fairly sure that I understand what is meant in paragraphs 65 and 66 of the paper, but the standing order amendment is not entirely clear. Is the purpose of the change not to refer any dispute on whether a question is admissible to the Presiding Officer, but to give conveners that power explicitly at stage 2?

Andrew Mylne: Yes. Under rule 9.10.4 of the standing orders, the convener at stage 2 or the Presiding Officer at stage 3 determines whether amendments to bills are admissible. As the paper explains, it is impossible for the Presiding Officer and conveners, at stage 2 in particular, to make explicit decisions on every amendment that has been lodged. I am particularly conscious of that since I worked rather late last night on many amendments that were lodged quite late. We were not in a position until the evening to address any issues of admissibility that might have arisen and the amendments had to be in print this morning.

To be practical, we have interpreted the existing rule in such a way that we take to a convener or to the Presiding Officer difficult, borderline decisions or any decisions in which there is a suggestion that a member might not be happy with the clerks' initial advice. For the practical reasons that I have outlined, we do not do so in every case.

The Convener: Do you mean that you take such decisions to the convener at stage 2 and to the Presiding Officer at stage 3?

Andrew Mylne: Yes. There is never any uncertainty as to who should make a decision.

The Convener: A possible reading of that is that the Presiding Officer is given the role of resolving any dispute. That would be burdensome to the Presiding Officer.

Andrew Mylne: I apologise if that is unclear. The rules are drafted in such a way—and it should always be the case—that an identified individual should always take the decision. At stage 2, the convener of the committee to which the bill has been referred takes the decisions. The Presiding Officer takes the decisions at stage 3.

The Convener: That is as I understood the situation.

Paragraphs 72 and 73 concern a situation in which the Executive can, in effect, pre-empt a bill by indicating that it will introduce an Executive bill. Is there any intention to introduce a time scale within which the Executive would be expected to act? If the Executive did not act, would the issue then be referred to the committee? Concern has been expressed that the Executive could prevent a committee bill from progressing simply by indicating an intention to introduce a bill, but that the Executive might never get round to introducing the bill.

Andrew Mylne: I am conscious of that. I was clerk to a committee that made a proposal for a committee bill.

When the paper was being prepared, my view was that any proposal for a time scale would involve substantial change to the standing orders. That would not have been within the scope of the paper, which is about tidying-up changes. If the committee were interested in any proposals to impose a time limit, I would be more than happy to produce a paper outlining the appropriate options. However, the paper that is before the committee today simply clarifies the existing arrangements.

The Convener: I understand that. We should consider the matter separately, if indeed we want to progress it at all; we will discuss that when we come to our forward work programme.

11:00

Donald Gorrie: I strongly support the convener's comments. There is always the danger that an Executive might fend off members' bills and committee bills by promising to introduce legislation, even though it might have only some vague intention to fulfil that promise. That would be an excellent means of achieving inaction, which is often the Executive's aim, and the issue should be pursued in future.

The Convener: The paper focuses on minor amendments. As that is not a minor matter, it is not appropriate to proceed with it at this point.

Brian Adam (North-East Scotland) (SNP): Do you intend to accept Andrew Mylne's offer to produce a paper?

The Convener: We will return to that question when we consider relevant and cognate matters. I do not think that we will commission a paper on the basis of this morning's discussion, but the clerks will record that we want to return to the issue when we next discuss our forward work programme.

Mr Macintosh: In connection with rule 9.6.2,

paragraph 33 of the paper says:

"The rule should continue to require"

the Subordinate Legislation Committee

"to report on all subordinate legislation-making provisions, but give it discretion whether also to report on any 'other delegated powers'."

How is such discretion exercised? If subordinate legislation is referred automatically to the Subordinate Legislation Committee and delegated powers are not, who decides whether a delegated power should be sent to the committee?

Andrew Mylne: Under the slightly adjusted rules, any bill that contains a provision to confer a subordinate legislation-making power would be referred to the Subordinate Legislation Committee. The committee could then examine all the provisions in the bill that gave rise to the referral, as well as other provisions that confer other delegated powers.

Part of the reason for adjusting the rules is that it is difficult to establish exactly what provisions in a bill confer other delegated powers. As we are dealing with a matter of degree, the Subordinate Legislation Committee must decide which of the bill's provisions fall into that category. To assist that process, the committee would have the normal legal advice that it relies on in its work; however, establishing the nature and purpose of any provision over which there is doubt could form part of the committee's inquiry. The only limitation is that if a bill contained no subordinate legislation-making powers in the first place, it would not be referred to the committee at all under this rule.

Mr Macintosh: How could the Subordinate Legislation Committee get to consider a bill that contains no subordinate legislation-making powers but which contains delegated powers?

Andrew Mylne: Such a bill would not be referred to the Subordinate Legislation Committee under this rule. However, the Subordinate Legislation Committee's remit was changed—on the recommendation of this committee—a number of months ago. The final element in that remit allows the Subordinate Legislation Committee to consider—in any bill, whether or not it has been referred under rule 9.6.2—other delegated power provisions, with a view to considering whether they ought to be full subordinate legislation-making provisions. The committee therefore has some input, even when a bill has not been formally referred.

Mr Macintosh: Are you saying that, if a bill does not have subordinate legislation but the Subordinate Legislation Committee thinks that the bill has delegated powers, it can ask to see it?

Andrew Mylne: We are talking about bills that have been introduced. Although a bill has not been formally referred to the Subordinate Legislation Committee, the committee is still entitled to consider it, under its remit.

Mr Macintosh: If the Subordinate Legislation Committee is reading through a subordinate legislation bill and realises that the bill confers delegated powers that the committee would wish to consider, the committee will see that as it scrutinises the legislation. However, it will not see it if it does not scrutinise the legislation. Somebody would have to bring it to the committee's attention.

Andrew Mylne: As I have outlined, the remit gives the Subordinate Legislation Committee the power, in principle, to consider bills that are not formally referred to it. I suppose that it is an administrative matter for the committee to ensure that it is alert to issues that it might want to consider. I suspect that that is not really a matter for the standing orders. I am afraid that I do not know in great detail how the Subordinate Legislation Committee would go about that task, but I am sure that the committee's legal adviser would be able to help.

Mr Macintosh: The legal adviser would go through every bill scrupulously, but I do not think that an adviser would go through a bill that had not been referred to the committee.

The Convener: We are asked on page 14 of paper 3A to agree to the changes to the standing orders that have been set out in the annexe, which is on pages 16 to 21. Do members agree with those changes?

Members *indicated agreement.*

The Convener: We move now to paper 3B on financial resolutions. Members will see that Mr Mylne was the chamber office chair of the working group—I got that slightly wrong at the beginning.

Andrew Mylne: I have with me Alison Coull, who was also on the working group and who drafted the revised changes to standing orders that members have before them. Although this matter affects only one rule in chapter 9, members will see from paper 3B that we spent some time on it. It is not easy stuff. Between us, I hope that Alison and I will be able to answer any questions.

The Convener: I have a question about paragraphs 16 and 17, which is based on the observation in paragraph 17 that a financial resolution would not be required for a bill that covered payments

"between private individuals or bodies."

Would a financial resolution similarly not be required for a bill that imposed obligations or entitlements on local authorities if the authorities were able fully to recover the costs of their operations through charging?

Andrew Mylne: I think that such cases would not be covered. Alison Coull will correct me if I am wrong, but I think that there is provision for a form of local taxation. We have tried to avoid the potential confusion between that sort of taxation and the term that was included in the standing order. The suggestion under the revised rule is that local taxation of that sort, because it does not involve payments directly in and out of the Scottish consolidated fund, would not be covered.

The Convener: Such cases would not require a financial resolution?

Andrew Mylne: They would not require a financial resolution and would not be picked up by this rule.

Alison Coull (Scottish Parliament Directorate of Legal Services): That reflects the position at Westminster, where local taxation does not normally require the Westminster equivalent of a financial resolution. There was some confusion with the rule because of the reference to tax and it might have been thought that local taxation was included.

The Convener: If someone introduced a bill that gave local authorities duties that would not be covered fully by local charges, but would require an Executive contribution through revenue support grant, I presume that that would require a financial resolution because the Executive would require to signify its willingness to pick up that cost. Is that correct?

Andrew Mylne: I think so. In such cases I am slightly cautious about giving definite answers—we must always examine what is in front of us at a certain stage of a bill. It is difficult to give a definitive answer in response to an abstract example.

Donald Gorrie: It is a difficult area.

I want to explore the subject of amendments that have financial consequences. Let us take student funding as an example. If the Opposition wants students to receive funding in a different way to that which is proposed by the Executive—which I believe was the political position—is it allowed to lodge an amendment that has financial implications? If such an amendment were agreed to because of misadventure, such as Executive absenteeism, would the financial resolution that accompanied the bill have to be amended?

I have not seen the small print, but I understand that the Executive has lodged several last minute stage 2 amendments to the Regulation of Care (Scotland) Bill, which introduce the subjects of adoption and fostering. I presume that those amendments would involve considerable cost. How would that affect the financial resolution? We start with a financial resolution that is attached to a bill, yet there might be significant amendments to the bill that would have financial implications. In that case, what would happen to the financial resolution, which may have become pretty irrelevant?

Andrew Mylne: We check whether a bill, in the form that it is introduced, requires a financial resolution. The basic position that we were trying to achieve with the revised rule was one in which the protection that the rule afforded the Executive's control over the purse strings would be maintained throughout the passage of the bill. The rule is intended to ensure that, if a bill starts off without a financial resolution because of the form in which that bill is introduced, any amendment that would change that position—so that had the bill been introduced in that form it would have required a financial resolution—cannot be moved until a resolution has been provided. Similarly, if there is a financial resolution, amendments can be moved only if they are in the scope of that resolution. In the example that Mr Gorrie gave, we would have to consider the terms of the resolution.

It is a matter for the Executive to draft the resolutions according to its interests and priorities. To date, every motion on a financial resolution has been couched in general terms. In other words, although it is not a blank cheque, the financial resolution provides an assurance that the costs of the bill will be met. That is not the only way to draft such motions; they can be drafted to provide cover only for the form in which the bill is introduced. The more tightly drafted the motion is, the easier it is for any amendments to the bill to extend beyond the scope of the financial resolution. In such cases we would examine the amendment closely together with the motion. However, so far, the Executive has drafted resolutions in broad terms.

The Convener: There was a good example in the debate on the Transport (Scotland) Bill. The Minister for Transport and the Environment lodged an amendment that would create a national body. That would clearly have had financial implications and I remember challenging whether that would sit with the financial resolution. The minister's response was that the resolution was so general that it could accommodate that—she did not say that it could accommodate virtually anything, but she might as well have. It will always be in the interests of the Executive to ensure that it can amend bills, even if the amendments have financial implications. It is probable that Opposition amendments would also not be challengeable in that respect. If Opposition parties are concerned that amendments could be challenged on that ground, they should examine more closely the financial resolution before it is voted upon.

I presume that it is possible to amend a financial

resolution. I know that we have voted against them sometimes, but I do not remember whether we have amended any. Is it possible to lodge a motion to amend a financial resolution?

Andrew Mylne: I will have to check that.

The Convener: I would adjourn the meeting for a coffee break, but we do not have any coffee. We will next time.

Andrew Mylne: We will come back to the committee on the question of amending financial resolutions.

11:15

Donald Gorrie: Several members are pursuing the same point. For example, there are major issues with measures in the Housing (Scotland) Bill, such as mass stock transfer and extending to tenants of housing associations the right to buy. Those measures are politically contentious and there might well be amendments lodged by various sources that could radically alter them. I presume that that would radically alter the financial effect of the bill. We would not want to limit members' rights to challenge the basic ideas of the bill or their right to amend them quite distinctly. It would be unfortunate if the Executive were able to say that, because the financial resolution had been passed, amendments that altered the financial effect of the bill would not be allowed. That would be an unhappy situation.

The Convener: Has Alison Coull found the answer?

Alison Coull: There is nothing in rule 9.12 of the standing orders to say that the financial resolution cannot be amended. Having said that, only a member of the Scottish Executive can move a motion for a financial resolution, so there is some uncertainty. We will come back to the committee on that point.

The Convener: Will you reprise for us the procedure for a financial resolution? Those resolutions are lodged at stage 1 to indicate that the Executive is prepared to meet the costs, otherwise there would be no point in continuing with the bill. Is that correct?

Alison Coull: Yes. The financial resolution is normally debated at the same time as the stage 1 debate because there is no point agreeing to the general principles of a bill if the Executive will not fund the bill.

The Convener: The financial resolution does not come before the Parliament again at any stage. The decision at stage 1 is final. The resolution would fall only if the bill was not passed. Is that correct?

Alison Coull: Once the financial resolution has been agreed, that is it.

The Convener: We have opened up an interesting area here. It is conceivable that legitimate policy amendments could be constrained by the financial resolution. We would like to know whether a financial resolution can be amended or challenged. The general position is likely to be that the Executive is unlikely to tie its own hands and that that gives the Opposition parties or individual members plenty of scope, but it is an area of potential difficulty. I am not sure whether we should try to resolve it in the committee, but we certainly need to examine the situation.

Andrew Mylne: Bill Thomson helped to clarify the current position. The standing orders specify which motions cannot be amended and financial resolutions are not in that category. Therefore, although there is a restriction in that only the Executive can lodge or move a motion for a financial resolution, the normal presumption that any member can lodge an amendment to it would seem to apply.

Mr Macintosh: That is a good example. I will lead on from it. I am not entirely sure what the motivation or pressure for reform of the rules is—I asked about that earlier. One motivation, I know, is commented on in paragraph 35 of paper 3B, which talks about the proposed change to rule 9.6.3. It says:

"The first change to the Rules … is to add a requirement … that the lead committee should report on the Bill's Financial Memorandum"

and that that is to "address the problem identified" by and

"endorsed by the Finance Committee."

That problem gets only a small mention in the paper, but it is crucial. I am no longer a member of the Finance Committee, but I was. Financial memorandums have given the Finance Committee a great deal of problems throughout the first two years of the Parliament because—as has been highlighted—those memorandums are broadly drafted. The Finance Committee felt that it was being asked to rubber-stamp financial resolutions without giving them the scrutiny that they might deserve. It felt that the lead committee on a bill should take a far greater role in examining the financial implications of any expenditure under a bill, but that the Finance Committee should still examine the mechanism by which that expenditure would be achieved and also, as the paper says, retain the ability to examine the expenditure as well as giving that responsibility to the lead committee.

I have gone through the paper in detail again and, for the most part, I agree with it. I can see that there is a lot of work being done on the

matter. I am still unsure as to whether we will get further detail in the financial memorandums or the financial resolutions. If there was further detail in the financial memorandums, that would close the loophole by which amendments could be lodged at a later stage. At the moment, the financial memorandums and resolutions are broadly drafted. There is therefore huge scope for lodging amendments at a later stage of a bill's consideration. The Finance Committee said that it was unhappy with that and that it wanted the financial memorandums to be much more closely worded, so that it would be possible to include specific costings of bills. When we start to include specific costings of bills, the scope for lodging an amendment at stage 2 would become far narrower. If a tightly defined financial memorandum and resolution were agreed, there would no longer be scope for the Executive to increase the amount of expenditure that the bill would create. I would welcome Andrew Mylne's comments on that.

In the paper, an awful lot of detailed changes are proposed that would require quite thorough examination. I know that the financial resolutions working group is well placed to do that, but I think that the Finance Committee would also wish to do it. Has the Finance Committee had a chance to consider the paper? I do not believe that it has.

Andrew Mylne: I will take the last point first. The clerk to the Finance Committee was a member of the working group and he kept the convener in particular—but also the rest of the Finance Committee—in touch with what the working group was doing. I understand that, at one of its meetings, that committee endorsed specifically those parts of the recommendations in the paper that related to the role that is played by the Finance Committee. I can certainly assure the committee that the Finance Committee has been kept on board.

On Mr Macintosh's other comments, we need to keep a reasonably clear distinction between a financial memorandum and a financial resolution. I am not quite clear about some of what he suggested should be made more specific. The paper does not recommend any changes to the rule that deals with accompanying documents, and which therefore specifies what a financial memorandum must contain. There is some detail in that rule about what information a financial memorandum must provide, but we must bear it in mind that a financial memorandum can cover wider areas than those that would invoke a financial resolution. It is possible that a financial memorandum would describe certain costs that might arise at one remove from the bill, and which would be created by part of the policy package that the Executive—if the bill was an Executive bill—was developing, but that the terms of the bill would not require a financial resolution. There is a distinction.

How explicit, detailed or precise a motion for a financial resolution is, is a matter for the Executive draftsman who prepares it. As I have said, such motions have tended to be drafted in general terms, in that they provide a broad cover for the bill. However, that is not to say that they are imprecise. They are precisely general, if you see what I mean, in the same way that, if they were more tightly constrained, they would also be carefully drafted to ensure that the limits that they defined could be seen clearly.

Mr Macintosh: I understand that. The financial resolution is usually one or two lines that say that the Parliament agrees to the financial implications of the bill, such as the expenditure that would be generated. The Finance Committee agrees those resolutions, having studied the financial memorandum. In other words, that committee makes a decision that is based on the financial memorandum. The paper does not go into the financial memorandum.

The problem that was identified by the Finance Committee was that there was not enough detail in financial memorandums. In other words, we were being asked to approve financial resolutions without any detail—the Finance Committee was unhappy with that. I hope that the rules will lead to much more detailed financial statements from the Executive when bills are discussed. There have been several bills whose expenditure implications were so general that it was almost meaningless for the Finance Committee to discuss them. I expect that to be changed.

Perhaps the link between the financial memorandum and the financial resolution needs to be explored. If the financial resolution is still going to be specifically but generally drawn, that is fine, because that tackles the problem of how members can lodge amendments at stage 2. However, it does not tackle the committees' unhappiness about discussing the financial implications of bills.

Andrew Mylne: The rules are intended to ensure that the Finance Committee has a proper role to perform, which is sensibly balanced against that of the lead committee. The change that we are proposing to rule 9.6.3 makes it absolutely clear that the lead committee has responsibility for examining the financial memorandum—which is one of the documents that accompany a bill—in much the same way as it has a specific responsibility to consider the Executive's policy memorandum as part of the committee's stage 1 scrutiny of an Executive bill.

The last part of the change that we propose makes it clear that the Finance Committee retains the right—but not the duty—to contribute, should it

wish to do so. The main point of the change, however, was to address precisely the point that Mr Macintosh suggested that the Finance Committee had made: that the committee should not be expected in every case to examine a financial memorandum out of the context of general consideration of the bill. I hope that we have addressed that point.

The Convener: If I have got this wrong, shoot me down, but am I right in thinking that—in the spirit of the whole of report 3—paper 3B picks up procedural and minor matters? If the Finance Committee has additional issues that may be susceptible to procedural changes and standing order changes, could those matters be made the subject of further work and discussion? Does what is being done cut across what Kenneth Macintosh is looking for, or should we leave it to the Finance Committee to raise those matters with us, if it feels that that is appropriate?

Mr Macintosh: I am concerned that the Finance Committee has not had time to look in detail at the matter. Callum Thomson, the clerk to the Finance Committee, is a member of the working group, and he may have kept up to speed. However, I was a member of the Finance Committee until Christmas and I can tell the committee that the detail of the proposals has never been discussed at the Finance Committee. I can assure you that members of the Finance Committee will not have given the report the scrutiny that it deserves, but I think that they should do so.

I recommend that we put the proposed changes to the Finance Committee. We have already discussed a number of issues that require further consideration, and we are dealing with major procedural matters, not minor ones. The problem that I was aware of in the Finance Committee was the problem of financial memorandums. The report suggests that there is not a great link between the details of financial memorandums and what is in financial resolutions. In many ways, we can discuss financial memorandums in great detail, but financial resolutions are merely a broad agreement that whatever is in a given bill, at that stage or at any future amended stage, will be approved. It seems to me that there is no link between financial memorandums and financial resolutions.

Andrew Mylne: I certainly would not put it as strongly as that and I would not say that there is no link. There is a link, and the information that is contained in a well-prepared financial memorandum should certainly be material to the issue of whether a financial resolution is required. What I am saying is that it may go wider. Under standing orders, the duty about financial memorandums is that they must include the cost impact on a reasonably wide range of bodies, whereas a financial resolution is invoked by some reasonably direct impact on the Scottish consolidated fund. That is more specific, and that is why there might be situations in which a financial memorandum describes quite large costs, but where the decision might nevertheless be that a resolution is not required. However, that is not to say that there is no link.

My understanding is that the Finance Committee has considered the matter. I do not know exactly when, or what, it considered, but I understand that it has seen the report and approved those recommendations for change that affect the role of that committee.

11:30

The Convener: Concern has been expressed that the Finance Committee might not have had the fullest involvement in considering the report. I am anxious that the Procedures Committee should not in any way seem to impinge upon the Finance Committee's territory or to create any friction between the two committees. I am inclined to support Kenneth Macintosh's request that we continue consideration of the matter so that we can get clarification from the Finance Committee.

The question that I have to put at this point is whether—given what Andrew Mylne said about deadlines for the private bill implications—he would wish papers 3A, 3C, 3D and 3E to be put forward as a report without paper 3B. If we forward paper 3B to the Finance Committee, we could get the report presented to Parliament on 3 May. However, we will miss that deadline if we hold the whole report for the Finance Committee to consider. Assuming that we approve all the other papers, could we approve the report—minus paper 3B—and take another cycle to consider paper 3B, or should we delay the whole matter?

Andrew Mylne: We should avoid delaying the matter, if possible. My concerns relate specifically to the changes to chapter 9A of the standing orders and particularly to the changes that relate to fees and costs. It is important that those points are clarified so that guidance can be issued in a final form and promoters of bills can move forward without further delay. There are also changes to the report—to which the committee agreed some time ago—on time scales and deadlines for bills. It would be of great benefit to put those changes in place as early as possible. However, there would be no great cost if the recommendations in 3B were held back. If the committee considers that appropriate, that is acceptable.

The Convener: That is a clear indication that we should ensure that everybody has been involved and is happy. We shall continue consideration of paper 3B.

Andrew Mylne: Alison Coull wants to make another point for clarification.

Alison Coull: The working group did not examine the terms of financial memorandums. In fact, the rules on what must be included in financial memorandums are fairly detailed. If there are concerns about the inadequacy of a financial memorandum, perhaps that is something that the lead committee could raise with the Executive.

Mr Macintosh: The Finance Committee wanted the lead committees to do the work on financial memorandums because of the lack of detail. The Finance Committee did not feel that it was in the right position to do that work. The change to rule 9.6.3 reflects the Finance Committee's views, as I remember them, but it does not address the specifics of what is included in financial memorandums.

The Convener: If we agree to continue consideration of paper 3B, we will resolve all those matters and will be able to bring back a report as quickly as possible. If that report is approved by the Finance Committee, we ought to be able to make a slim and sharp report to Parliament, which could be approved formally without the requirement for use of any chamber time. That might be the best outcome.

If we can agree to that course of action—I think we can—we can move on to paper 3C on the different deadline for Executive amendments. There are no standing orders recommendations on this matter, because paper 3C is up for discussion. Do you intend to say anything to introduce the paper, Andrew?

Andrew Mylne: I do not think so. I am happy for the paper to speak for itself.

The Convener: We have three options, which we examined before Christmas. At that stage, the committee expressed a preference for option B, which was to introduce changes to the standing orders. We agreed to that in principle, but we also agreed that there should be a more detailed paper to outline the issues and suggest changes. We have received representation from the Executive, saying that that would create all sorts of difficulties and that we should reconsider the matter. I am struggling to find my copy of the Executive's letter; I know that I was given one.

The Executive view, which was expressed in the letter of 20 March to the clerk of the committee, was a preference for option A at paragraph of 49 of the original committee paper PR/00/14/2, which was

"not to consider a change to Standing Orders at present but to keep the matter under review".

The Executive letter also quotes its good practice guidance for staff. To summarise the letter, it is, in effect, a statement from Andrew McNaughton—the departmental committee liaison officer—that the Executive has a code of practice that it is trying very hard to live with and to live up to. It will try harder and does not want a change to standing orders unless we are convinced that that is absolutely necessary.

Members will not have seen this letter. [MEMBERS: "We have."]—Members have all seen the letter.

It is for the committee to decide how it wants to proceed. Do we wish to instruct the changes? I do not think that the changes can be made in time for the report to go through in this round. Does the committee want to instruct changes that were agreed previously in principle, or is it content to keep the matter under review? There is also an option C, but I think that we have forgotten about it.

Donald Gorrie: The letter of 20 March is not one that I could accept. It makes reasonable arguments but, with all due respect, the legislative system is supposed to be for the benefit of citizens, not for the convenience of the officials who are involved. There is a serious problem. I will, as an example, refer back to the late amendment that was lodged by the Executive on the Regulation of Care (Scotland) Bill. At stage 1, many people talked about adoption and fostering. The Executive said that it would introduce at stage 2 a new section in the bill about adoption and fostering. Such an amendment has duly been lodged, within the time scale that is laid down. The point is that there is not enough time for members who are interested in the subject to consult with outside bodies that are knowledgeable about the matter and to get their views on whether the amendments are sensible. As I understand it, the general thrust of the proposal is not controversial, but there is the matter of how to achieve it.

The legislative system must allow proper discussion with outside bodies. On the Transport (Scotland) Bill—which the convener and I were involved in considering—such amendments were lodged, which did not give time for members to consult interested parties. The issue needs more scrutiny.

The specific issue of whether Executive amendments should have to be lodged before other amendments is included in the paper. That would be sensible. It would be helpful to thoroughly consider the whole issue. I suppose that I support option A, but I make it clear that the status quo is not an option. I am strongly in favour of a change, but I want such a change to be well considered and widely supported in the light of experience of the passage of bills.

Brian Adam: We have all had limited

experience of dealing with legislation.

My experience has not been good, in that the lodging of amendments and time for proper consideration of those amendments has been difficult, whether they were lodged by the Executive or by members. Most amendments are lodged by the Executive and tend to be fairly complex and I do not think that that is the way to produce good legislation. Having said that, it would seem unfair for us to do unto the Executive that which we do not want it to do to us. I am quite happy that we should put the matter off, but I would not include in option A, the phrase, "for, for example, 6 months". There should be a specific time scale of no more than six months.

Some fairly major bills are in passage on which a great number of amendments are being lodged—Donald Gorrie referred to the Regulation of Care (Scotland) Bill and the same is true of the Housing (Scotland) Bill. I would like more time to be given to consideration of bills at stage 2. We are currently imposing unrealistic deadlines on them. I have raised at every opportunity specific concerns about the Housing (Scotland) Bill, not because I want to delay it—there are some good measures in it—but because I want adequate time for proper consideration of it. I do not think that allowing major Executive amendments to be lodged at the last minute is the way to do that.

Mr Macintosh: I will confirm the consensus around the table. This is a real problem. All of us have struggled to cope with amendments at the last minute. Although we might have done a lot of work in preparation, the wording of the amendment might throw us and we might be unsure as to what has happened. It is very unsatisfactory.

I agree with the suggestion from the clerk, in paragraph 13 of paper 3C, that we might consider the issue along with the matter of manuscript amendments at stage 3. The timetabling of bills, which we have addressed, might make it easier to have a longer time for amendments. I agree with both the comments that have been made. We should go for option A now, but we should return to the subject.

We should keep a level playing field by treating Executive and non-Executive amendments the same.

Brian Adam: Well—

Mr Macintosh: No? Well, we can discuss the issue later.

The Convener: Let us argue about that nicety at the time.

When the committee discussed the matter initially, the view was expressed that, as Executive amendments were generally likely to be passed, there ought to be the opportunity for other members to consider all the Executive amendments and have the opportunity to amend amendments or frame alternative amendments. That is why we feel that the Executive amendments should be lodged before anyone else's, although the fair point is made in the Executive's letter that sometimes it has to respond to issues late in the day.

We are giving a clear message that we are unhappy about the practice that has led to people having no time to respond to amendments. The ball is very much in the Executive's court. If by its practice, precedent and demonstration, it convinces us that it can manage the problem, the problem by definition goes away. If the Executive cannot do that, the committee will return to the issue of deadlines and will consider the possible application of the principle of an earlier deadline, as it will consider all the other possible options.

I hope that the Executive gets the clear message that the committee wants the problem to be resolved. What we previously voted for reflected a sense of frustration that the Executive was not acting to resolve it.

Mr Paterson: I agree with almost everything that the convener said, but I do not know whether we want to leave the matter in the hands of the Executive. We are saying that we would like to give the Executive more time, but we want something more definitive; having time to respond to amendments should be a right rather than a gift. If we leave it to the Executive to come up with all the answers, there could be slippage later on and we might get back to the same position.

It might be that there is a need for a change in standing orders to make having time to respond to amendments a right rather than a gift. I am happy that we give the Executive time, but I take Brian Adam's point that there should be a definitive time scale; six months seems reasonable. I take Donald Gorrie's point that we must produce a firm proposal rather than leaving it in limbo. The matter will come up again, when it suits the Executive.

The Convener: All sorts of issues must be considered. I am sure that the Executive will closely examine what the committee has said this morning in considering how it might react.

Brian Adam: This is not on that specific point, but on the point about manuscript amendments. As someone who is considering the Housing (Scotland) Bill, I would like clarification on exactly what is meant by a manuscript amendment.

The Convener: We have, in Andrew Mylne, one of the world's leading authorities on manuscript amendments. He will share his wisdom with us now.

Andrew Mylne: If I know what Mr Adam is unclear about, I will try to help where I can.

Brian Adam: I assume that, if someone wants to change the word "shall" to "may" in an amendment that has been lodged, it is possible for him to do that at the discretion of the convener and with the committee's acceptance of the change. Is that the procedure for a manuscript amendment?

Andrew Mylne: That is almost right. In the standing orders, the term manuscript amendment is used to refer to any stage 2 amendment that is lodged after the normal deadline. That can be any time from five minutes after the shutter comes down on lodging amendments on the final day to the point during the committee meeting when that part of the bill is about to be dealt with.

11:45

Brian Adam: Does not a manuscript amendment have to be lodged in writing?

Andrew Mylne: Yes, it does. The standing orders define it as an amendment that is lodged after the normal deadline. Manuscript amendments are therefore subject to the same rules that apply to all other amendments. That means that it has to be lodged, it has to be admissible and it is subject to the same rules on being moved and disposed of as are other amendments. Standing orders set out how an amendment is lodged, which includes by e-mail or in writing.

Brian Adam: Does that mean that, if I decide that a minor technical point is required as a result of a committee debate, I can scribble a note with the change that I want to be made?

Andrew Mylne: It would be perfectly acceptable to scribble the manuscript amendment on a piece of paper and sign it.

Brian Adam: Why should I have to go through the mechanics of doing that? If a minor technical point that arises as a result of a debate can be covered by a manuscript amendment, why does it have to be written?

The Convener: Surely everything has to be moved.

Brian Adam: By all means a member could move the manuscript amendment during the debate, but would it not make sense, in the case of minor changes such as replacing "may" with "shall", to do as I suggest?

The Convener: Are we not pre-empting the discussion that we have just agreed that we will have?

Andrew Mylne: I would like to clarify the point, as it is an important one. As I have explained, a manuscript amendment is defined only by the time at which it is lodged. There is no reason in principle for a manuscript amendment not to be substantial. It may not be as simple as changing "may to "shall", but it could add a whole new section to a bill. Anything that can be done with an amendment can be done by manuscript amendment; the only difference is the time at which it is lodged.

A simple example would be where, at a very late stage, just before a member moves an amendment, they spot an error in the amendment and want to move a manuscript amendment to it. That may seem a straightforward matter as the change may seem to be superficial, but there will never be a clear definition of what constitutes minor change.

The difficulty is that procedures are rather more formal and bureaucratic precisely because we are dealing with the letter of the law, which the courts will interpret in the real world. The courts will interpret legislation as they see fit. What may seem to have been—in the space of a few minutes—a small change, may turn out to be an important one with significant implications for how a court reaches its judgement. That is why we try to ensure that proper notice is given of any change that might get into the eventual act. That allows people to have time to consider the implications and ensure that the change, however minor it may appear, is acceptable. Where an exception is made, in the case of the manuscript amendment, it is still subject to reasonable constraints. That is why we try to ensure that the normal rules on having the amendment lodged in writing and having it subject to the normal tests on admissibility are still adhered to.

Brian Adam: Surely whether the amendment is lodged in writing or offered verbally does not in any way change its quality.

The Convener: I do not think that that is particularly pertinent to today's business. We have a lot of work to get through today and we can address that point later.

We have worked our way to agreement on option A within a reasonable time scale. That allows us to sweep up the other matters that Brian Adam and Andrew Mylne have been discussing so eloquently. It is humbling to be in the presence of a man such as Andrew Mylne who loves his work so much. He has shown a real passion and enthusiasm for the manuscript amendment.

If that recommendation is agreed, we will move on to the next item. Paper 3D addresses the lodging of amendments to stages 1 and 3 motions. The matter has exercised some controversy in the chamber and the paper rehearses that

controversy. The Presiding Officer has ruled and given guidance on the matter through the business bulletin. He has now referred the matter to the Procedures Committee and has asked whether the matter needs further examination, as there may be standing order implications. We have three options: option 1 is to accept his ruling; option 2 is to monitor the situation; and option 3 is to decide on changes to standing orders and to commission a further report on those proposed changes. Does Andrew Mylne wish to add anything to the paper?

Andrew Mylne: No.

Donald Gorrie: One problem, which has been mentioned before, is that some bills cover several quite disparate areas. The concept of supporting the general principles of a bill that may be a ragbag of individual albeit good propositions is difficult. Members should have the right to indicate their opposition to a section of the bill. In the case of the Ethical Standards in Public Life etc (Scotland) Bill, the clause 28 issue was tagged on to the end of the process. The Conservatives never had a proper opportunity to express their opposition to that part of the bill. Similar things happened with the Transport (Scotland) Bill. If there are two or three sections to a bill, members should have the right to say that they are okay with the bill as a whole, but that section 3 is wrong. If the proposition is agreed to, the question is whether it will allow members only to set out their stall or whether it will allow them to lodge an amendment that will have the effect of deleting a section of the bill.

Opposition parties should have the right to set out a philosophical point, but reasoned amendments should be worded in such a way that they do not amend the bill. Members should continue to have the right to try to amend a bill as it progresses. Members' stage 2 amendments can be caught out by the proposition that the Parliament has approved the general principles of the bill. A member cannot move an amendment that challenges those alleged principles. Members should have the right to lodge reasoned amendments, but they would have to be statements of opinion rather than formal amendments to the bill.

The Convener: My own experience may be of assistance to the debate. I lodged a reasoned stage 3 amendment to the Transport (Scotland) Bill. The Presiding Officer would not accept it unless the wording was amended. He considered that my amendment raised a doubt about the passage of the sections of the bill to which it related. I therefore had to word it to make it absolutely clear that the passage of the bill would not be affected, while expressing a dislike of certain aspects of the bill. That problem is at the core of the sensible ruling that the Presiding Officer gave. I see nothing wrong with a stage 1 or a stage 3 amendment expressing reservations, support or opinion, so long as the outcome of the decision on the bill is not open to challenge.

Although it is not referred to in Sir David Steel's ruling, another example happened during the course of the Salmon Conservation (Scotland) Bill. The Presiding Officer accepted an amendment that was lodged by the SNP, which accepted the bill but criticised it for not fully addressing the issues as the SNP saw them. The SNP then tacked on further actions that it expected the Executive to take. I was a bit more surprised that the Presiding Officer accepted the amendment as, although the amendment did not affect the passing of the bill, it seemed to introduce some extraneous material. I did not think that that was quite right.

As Donald Gorrie said, a reasoned amendment should express an opinion, such as, "We are going to pass the bill but we do not like section 3." That is harmless. A reasoned amendment simply allows members to support the generality of a bill without compromising their position on an aspect with which they are uncomfortable. That is a healthy thing to do.

Brian Adam: I, too, feel quite comfortable with what the Presiding Officer did, but I do not agree with your final comments, convener. It is perfectly legitimate to offer a member the opportunity to lodge objections to what appears in a bill. However, it is equally valid to allow an amendment to say what is omitted from the bill and to encourage the Executive to redress that omission at some future point. To have such an opinion about a bill is just as valid.

The Convener: I agree. Members would be entitled to say that they approve the bill but regret that it does not tackle A, B and C. That is fair enough. In that particular case, the motion urged or instructed the Executive to do something further and departed a bit from the expression of opinion, which is at the core of a reasoned amendment. However, the Presiding Officer's ruling does not touch on that; the matter remains within his discretion and we need not fall out about it.

Brian Adam: I am content with the current position. As long as any amendment that is passed does not have an adverse impact on the bill's implementation, the current position is fair.

Mr Macintosh: I share the sentiment that has been expressed so far. One thing on which I am unclear is the reconsideration stage, which we have never used yet. Perhaps Andrew Mylne is the best person to comment.

The Convener: Absolutely.

Mr Macintosh: What is the difference between

passing reasoned amendments at stage 3 and the reconsideration stage?

Andrew Mylne: The reconsideration stage is provided only for the very particular circumstance that may arise when either the Secretary of State for Scotland or one of the three law officers challenges a bill that has been passed. The grounds on which they can challenge the bill are contained in the Scotland Act 1998, which we cannot amend. Only in that particular circumstance, which has not yet arisen, can there be a reconsideration stage.

The basic position is that subject to that possibility, the Parliament's last chance to amend a bill is before the bill is passed. One of the motivating factors behind the Presiding Officer's ruling is that there can be no uncertainty about the final outcome—in particular on amendments to a stage 3 motion. A bill is either passed in its entirety or not passed, in which case it falls and does not become an act. The Presiding Officer wanted to ensure that that clear distinction was preserved.

The Convener: I think that an agreement has evolved that we are happy with the Presiding Officer's ruling. We look forward to his exercising his discretion on future occasions.

The final matter under agenda item 3 is the draft report. Because the report contains recommendations from the paper "Financial Resolutions for Bills", which we will not now be able to progress, the report will require to be amended. Therefore, it does not make much sense to go through the report section by section, particularly as we have agreed all the proposed changes to standing orders. In any event, it was recommended that Kenneth Macintosh, who is the deputy convener, and I should approve a finalised version. Clearly, a little more work will now need to be done to get the draft report ready for the end of the week, which is the target.

Is it agreed that, subject to the delayed matters being excised and further adjustments being made, we will recommend the approval of the draft report?

Members *indicated agreement*.

The Convener: I do not know whether the report will need parliamentary time or whether it will be approved formally but getting the report sorted out will remove a big headache from the clerks and the legal people and everybody else who has been involved.

Scottish Commission for Public Audit

The Convener: Item 4 on the agenda concerns the Scottish Commission for Public Audit. Alison Coull is still with us and we are joined by Anne Peat. I commend to other officials the practice of lodging a report with the observation that the paper is self-explanatory. I hope that we will find that it is easy going. Does Alison Coull want to make any introductory comments?

12:00

Alison Coull: Anne Peat will introduce the paper with a few comments.

Anne Peat (Scottish Parliament Directorate of Clerking and Reporting): I hope that the paper is self-explanatory. The proposal is to allow standing orders to provide the mechanism by which appointments are made to the Scottish Commission for Public Audit, to set out the procedure by which a member will be removed and to provide the means by which the SCPA can report to the Parliament. If the paper is approved, it is intended to bring draft rules before the committee later—I hope in the next month or so.

The Convener: The committee has to take a view on some items. When we were discussing the paper in advance, we wondered to what extent the views of the Presiding Officer, the Scottish Parliamentary Corporate Body and the Parliamentary Bureau had been taken into account in framing the recommendations. Where there is a choice to be made, what is their view?

Anne Peat: The convener of the Scottish Commission for Public Audit is Patricia Ferguson, who is a Deputy Presiding Officer. I am not aware that she has sought the views of the Presiding Officer.

The Convener: Would it be reasonable to proceed by asking that the opinions on the matters of discretion be canvassed with those people before we make final recommendations? Is there a pressing time scale that requires an instant decision?

Anne Peat: The time scale is not pressing. The Public Finance and Accountability (Scotland) Act 2000 provides for the commission to consist of five members. There is one vacancy at the moment. We are looking to make a further appointment to the commission.

The Convener: In regard to filling the vacancy, does the political spread of the appointees reflect the balance of parties in the Parliament? Is that the practice?

Anne Peat: I am not aware that there is such a practice. The act does not make any specific provision.

The Convener: Could we perhaps canvass views on whether that should be the case? If the proposal goes to the bureau, the business managers will have the opportunity to decide whether they want all the main parties to be represented. Perhaps that could be included in the consultation and be brought back to a further committee meeting.

Alison Coull: It would be possible for the standing orders to cover that point. The present appointments are governed by a transitional order, so arrangements are already in existence. My paper is concerned with putting the formal basis for the appointments in standing orders, as was envisaged by the act.

The Convener: Is it possible for the vacancy to be filled under the terms of the transitional order? Would it create any difficulties if the transitional order were used to fill the vacancy?

Alison Coull: The vacancy can be filled under the transitional order.

The Convener: I think that we are not hugely excited about this, but we would rather take the time to consult everybody, get it right and then instruct that the appropriate changes be made to standing orders.

Donald Gorrie: I shall reveal my ignorance about these things. The paper mentions that the Westminster equivalent is the Public Accounts Commission, which consists mainly of various MPs. Does the Scottish Commission for Public Audit consist only of MSPs or does it also have professors of accountancy and local government chief financial officials and people like that?

Alison Coull: The Scottish body consists only of MSPs. That is a requirement of the act.

Donald Gorrie: So we are not talking about outside experts.

Alison Coull: No.

Donald Gorrie: Paragraph 8 says that it is desirable that individual elections should be avoided. In a democracy, elections are usually thought to be quite a good thing. What is the thinking behind that statement?

Alison Coull: That relates to a situation in which the four names that have been proposed have been agreed to. It would seem to be a little bureaucratic to require there to be a separate vote for each person. However, that would not prevent an amendment being made to have an election for only one of the four names.

Donald Gorrie: I am unhappy about giving powers of any description to the Parliamentary Bureau.

Brian Adam: I noticed that—you have not hidden that very well.

Also out of ignorance, I would like to ask who the four members currently are. We know that the Deputy Presiding Officer, Patricia Ferguson, is a member, but who are the others?

Alison Coull: Keith Raffan and Annabel Goldie are members. Andrew Welsh, because he is convener of the Audit Committee, is an ex officio member. The other member was Malcolm Chisholm, who stood down when he became a minister.

The Convener: The dark secrets that people have, eh? That membership means that the group reflected the political balance of the Parliament reasonably closely as the extra place was given to the largest party and the other major parties were represented. The obvious course of action would be to install another Labour member in Malcolm Chisholm's place—although that makes us all, apart from Kenneth Macintosh, even less interested in the group.

I suggested that the Parliamentary Bureau should be involved only so that the business managers could take a view on whether they each wanted to have a political representative on the group. The issue in the paper was whether the Scottish Parliamentary Corporate Body or the Presiding Officer should make the substantive changes. We are fairly agnostic on the matter. Once we hear the business managers' opinions and get a representative, canvassed view, we will be able to comment further. Could Anne Peat and Alison Coull canvass those opinions and produce a paper on the changes to standing orders, with options? If they do that, we will implement the changes quickly.

Anne Peat: Yes.

Brian Adam: Will you also canvass the view of the convener of the Audit Committee? The matter would clearly be of interest to him, as one option that is being considered is that the convener of the Audit Committee should perform certain functions.

The Convener: I think that that would be perfectly acceptable.

Parliamentary Questions

The Convener: We will be doing well if we get through this item by 12.30. If we find that we are time constrained, we might have to ask Donald Gorrie to accept that his paper will have to be dealt with at the next meeting.

Donald Gorrie: As long as it then gets favourable consideration.

The Convener: We will put it at the top of the list.

We have been working our way through a series of issues on parliamentary questions. Some of the usual suspects are with us today. Hugh Flinn is making a repeat appearance before the committee, but I do not think that Janet Seaton has been here before. I welcome her and assure her that all the awkward questions will go to Hugh. We are also joined again by Michael Lugton and Andrew McNaughton from the Executive.

We can proceed straight to paper 5A, which deals with holding answers and makes a recommendation. Would Hugh Flinn or either of the Executive people like to comment on the paper?

Hugh Flinn (Scottish Parliament Directorate of Clerking and Reporting): We have nothing to add. We flagged up the recommendation in a previous discussion and are simply asking for its endorsement.

The Convener: As no one from the Executive seems to have any comments either, do members agree the recommendation to note the number of questions; to agree to proceed as set out in the report; and to note that the matter will continue to be monitored?

Members *indicated agreement*.

The Convener: That takes us to a more substantive report on the admissibility of questions. Do members have any comments on paper 5B?

Donald Gorrie: I have a question about paragraph 9. As quangos

"fall within the general responsibility of the Scottish Executive"

questions about them are legitimate. The paper continues:

"However it is recognised that operational matters solely within such bodies' direct responsibility are not most appropriately addressed"

through parliamentary questions.

That returns us to the question of how an operational matter is defined. For example, if it is alleged that the acute health trust in Tayside, or whatever, has made a complete hash of something or other, presumably members from that area should be allowed to ask questions about that. Perhaps the definition of "operational matters" needs some tidying up in that respect. The presumption should be that members are allowed to ask questions if there are doubts about a certain situation.

The Convener: I sympathise with that view; I, too, have scribbled down some notes about paragraph 9. I understand that the untidy appearance of the bin store at Crosshouse hospital is not an appropriate matter for a parliamentary question and that any member who is worried about that matter should write to the local health officials. However, I have seen parliamentary answers on health matters that have contained the clear implication that a problem was a matter for the health board, even though the question that I have in mind concerned ministerial guidance to the health board in question on the disposal of surplus properties.

Many areas are, arguably, operational matters for health boards, but questions may arise about ministerial guidance, recommended practice and whether information is or should be held centrally for monitoring purposes. As a result, in health and other areas, on many matters that affect the interface between the minister and the health board or trust, it is reasonable to ask the minister to take either an overview or a more central and strategic view. If we accept the final clause in paragraph 9, we should be quite clear that, although we accept the principle that minor local administrative stuff is a matter for local people, policy, guidance, control and major budget matters are properly areas for which ministers should answer. After all, those bodies are agents of the minister, with whom the buck stops. The same issue about operational and policy matters will arise in relation to the Scottish Environment Protection Agency and the new Scottish housing body.

Brian Adam: The position of local authorities is a little different, although we could still ask them about the bins. You have drawn a perfectly fair distinction between minor operational matters and policy issues that might involve the minister, but how would you make a similar distinction with local authorities, which have a fairly unique place?

The Convener: I do not think that we should be asking questions about local authorities at all, unless they centre on ministerial guidance to local authorities. For example, on planning matters, we might ask why a minister did or did not call in an application. However, we cannot ask ministers whether Dundee City Council is keeping the streets clean enough. That is a matter for the local

authority.

Brian Adam: However, as you described, local authorities are acting as agents of the Government on many matters, rather than making independent choices, because much of the money is ring-fenced. If we accept the principle that you gave us, how would a distinction be drawn between councils clearly making independent choices and councils acting as agents?

12:15

The Convener: That point is perfectly fair. I do not know how well the proposal will stand up to academic scrutiny. I would have thought that a council could not be questioned on how it discharged its education responsibilities, because those decisions are devolved to it. However, councils can act as contractors to the Scottish Executive. For example, they did that until recently to maintain trunk roads and if people wrote to a roads director about a matter of Executive policy, the letter would go to the minister, who would answer it, because the local authority was only the Executive's agent.

We must narrow down what local government matters councils undertake because they are on the ground and over what matters councils have discretion given to them. If the matter is in their discretion and in their resources, it is their business. We cannot reasonably ask ministers about such matters, but we could ask ministers about the guidance to local authorities on educational standards, without asking how many schools they apply to or what age the weans are when they go to secondary school.

Brian Adam: The Government doles out excellence funding for a particular purpose. I would have thought that how local authorities may use that money differentially was a perfectly legitimate subject on which to lodge questions.

The Convener: Absolutely. I am sure that you could ask a question about the steps that the Executive has taken to monitor local authorities' effectiveness at handling excellence funding. The Executive would tell you what it did. However, I do not think that you could ask the Executive whether it agreed with the purchase of computers at Monifieth High School, for example.

Anyway, we are hogging the debate. I beg the witnesses' pardon. We assemble all these experts for their wisdom and end up talking shop. Can the witnesses give any guidance to help to clarify the meaning of that part of paragraph 9 of the section on admissibility of questions?

Hugh Flinn: The distinctions that you have drawn are not inconsistent with the practice that we follow. I emphasise only that the second sentence of paragraph 9 does not say that some questions are inadmissible. It simply describes what guidance we would give members about the most appropriate way of proceeding to obtain the information that they want.

The Convener: We have been arguing about how many angels can dance on the head of a pin. The information is only guidance.

Mr Paterson: Another issue is the thorny old subject of the requirement in rule 13.3.3 that questions "be in English". Is that a wee bit too prescriptive? Paragraph 2.2.1(c) of annexe A says:

"**A question shall be in English**

Members may provide Scots or Scots Gaelic translations of questions, and such translations will be printed in the Business Bulletin. However an English version must always be provided."

Should not that say that an English version should normally be provided? One or two members normally use common Scots words such as dreich, drookit, oxter or vindaloo. If that paragraph were followed right down the line, it would suggest that such words would have to be translated. That would be silly.

I know what we are trying to get at. I understand spoken Scots, but I find Scots difficult to read. That is something that we have missed out in the past 100 years. We no longer practise it. If a substantive question is in Scots, Doric or another foreign language, a note should accompany it, but the paragraph that I quoted would knock out words, rather than sentences.

The Convener: We have discussed that several times and reached a decision.

Mr Paterson: Not in this context.

The Convener: No. However, on the grounds of logic and consistency, the decision that stands in relation to everything else should stand here. I would be embarrassed if our Australian compatriots, reading the *Official Report* avidly on the website, were confused because all Brian Adam's Doric questions began with "Fit like". I am happy for Brian Adam to lodge questions in Doric, but I would like to be able to read an English equivalent, which would need to be reasonably standard across the English or American speaking world. I think that we should stick with that point. However, Gil Paterson's comments will be recorded for posterity in the *Official Report*.

Mr Paterson: In that case, I will push it to a vote.

The Convener: Oh dear.

Mr Paterson: It is the same thorny old subject. We say that the Parliament is Scots and Gaelic friendly, but rules such as this, in effect, say that

those languages are substandard and not to be used. That sends out the wrong message. If we want to send out the right message, we should facilitate the use of Scots and Gaelic. We could include the phrase "should normally be provided". That would be more than adequate and would cover people such as me who use Scots an awful lot. There are many words that I use that are going out of fashion because people think that those who use such words must be ignorant.

I am determined that that point should not only be on record in the *Official Report*, but that we should vote on it to find out whether other members agree that we are simply paying lip service to the language whereas we could give it some support.

The Convener: Before we do that, could I clarify what the position would be if someone wishing to make a point of using the Scots tongue came to the chamber office with a question framed in Scots and wanted it to go in the business bulletin in that form? Does that happen?

Hugh Flinn: It has never happened with a question, although it happens with motions from time to time. If it happened with a question, we would adopt the same procedure as for motions, which is that the English version would appear followed by the Scots language version that is provided by the member. If it were a matter of one word in a motion that was otherwise in standard English, it would depend on the context. We have to make a judgment on each case. I would not have thought that we would say that an alternative would have to be provided for one word.

The Convener: That strikes me as a model of flexibility and good sense.

Mr Paterson: I will accept that. I was not talking about whole questions, but the odd word here or there. I frequently use Scots words, as do other members, including the Presiding Officer. I am satisfied as long as we would not have to write out such words from the script or put in another word.

The Convener: I am sure that Gil Paterson will now draft a whole series of questions with single Scots words planted in them to test the validity of the ruling that we have been given.

Brian Adam: The problem with the flexible approach that has been explained to us is that it is precluded in the standing orders, which say that a question "shall be in English". There is no choice as long as standing orders say that questions shall be in English.

Mr Macintosh: I suggest that the English language is flexible enough, but I would like to test the ruling that we have heard. Would the word "dreich" be accepted in a motion?

Brian Adam: It is certainly not English.

Mr Macintosh: It is not English, but most people speaking English in Scotland would understand it. I am interested to know whether Hugh Flinn would accept it.

The Convener: I would say that the word is English. Any Scots, Russian or Japanese word that is in common use in English has become part of the English language—it will be found in an English dictionary. Scotticisms—whether idiom or individual words—that are commonly used are English and are therefore covered. I cannot imagine a question that would include the word "dreich", but if someone came up with such a question, I would argue that "dreich" would be an acceptable English expression that should be allowed. We use all sorts of words that have no Celtic root and are Anglo-Saxon in their origins but are accepted every day in Scots, such as kirk, which is both a Scots and an English word. The Executive will resolve the matter for us.

Michael Lugton (Scottish Executive Executive Secretariat): As I understand it, the standing orders place the burden of interpreting the rule on the Presiding Officer. One could rest on the assumption that the Presiding Officer would always take a sensible view on what constituted English and what did not.

The Convener: Do we have enough agreement to accept the paper?

Members *indicated agreement*.

The Convener: We have redefined "English", we have redefined "admissibility", and we have had a rather dreich discussion.

That takes us to paper 5C, which is a memorandum from the Scottish Executive. I think that this is a matter for Mr Lugton to speak to.

Michael Lugton: I hope that the paper speaks for itself. It follows up points that were raised at the previous meeting when you took evidence from us. It deals with Executive resources and the current position on the advisory cost limit. In view of the time that is available, I will say simply that I am happy to try to answer any questions that members may have.

The Convener: May I ask a question about the last sentence of the paper, in paragraph 15, which says that, on an interim basis:

"The limit would only be used to justify not providing information where the Minister concerned considered that provision of the information was not appropriate in all the circumstances."

Am I correct to understand that to mean that an answer would not be withheld on financial grounds alone, but would be withheld because of wider considerations?

Michael Lugton: That is right. We have used

that mechanism very infrequently. Of the 14,000 questions that have been lodged, only 50 have been subject to it. We intend to continue to use it extremely sparingly.

Donald Gorrie: This question may reveal my incompetence, but we were promised by Iain Smith, when he was a member of this committee—or rather an attender at the committee, representing the Executive—that there would be a sort of telephone directory of relevant senior civil servants whom members could phone. That would perhaps obviate the necessity of lodging a question. As far as I am aware, such a directory does not exist. The Executive website mentions various people, but I understand that that is more for the general public than for us. Has progress been made in that regard?

Andrew McNaughton (Scottish Executive Executive Secretariat): We hope to put in place arrangements for the directory to be made available to MSPs and parliamentary staff during the forthcoming recess. You will have access to it when you return from recess.

Donald Gorrie: Good—that is very helpful. Thank you.

Brian Adam: On page 2, paragraph 7 does not quite provide the response that I was looking for. My suggestion was aimed much more at getting guidance directly, as opposed to what is contained in the text of that paragraph, which says:

"Members are already encouraged to access other sources of information".

As I recall, my suggestion was that the Executive could be more proactive in its response, in that members could receive a direct communication from the officials dealing with the matter, detailing where the information could be found, instead of the onus being thrown back on the member asking the question, who would simply have to go and look for their own sources of information. I suspect that, if such information was offered on a number of occasions, members would get into the habit of consulting the appropriate sources.

Michael Lugton: I am sorry if we have misunderstood the point, but there was no intention not to be helpful. We would certainly aim to be proactive; where we felt that the information was more easily obtainable than through parliamentary questions, we would aim to alert the member of that as quickly as we could—as well as answering the questions, which we would have to do, as they had been lodged.

Brian Adam: That does not come across in paragraph 7. The implication is that members are already encouraged to access other sources. That is a general thing. The suggestion is, "Go and look it up somewhere else"; the paragraph does not say that you will provide the information on what the appropriate source is.

Michael Lugton: The second sentence of that paragraph says that:

"further advice may be offered to Members in individual cases."

I think that that covers what I was trying to say.

Brian Adam: Okay.

The Convener: Can we agree to note the paper?

Members *indicated agreement*.

The Convener: We now come to paper 5D, which is

"To consider the transparency of Executive answers to parliamentary questions."

There is no recommendation to discuss, but paragraph 8 says:

"The solution that would provide most transparency would be for any letter arising from an answer to be put in the public domain."

That would appear to resolve the difficulty raised by Christine Grahame and others. Janet Seaton, does the issue trouble the Scottish Parliament information centre?

Janet Seaton (Scottish Parliament Information Centre): Yes, it does. Where the answer to a question states that a letter exists, inevitably people want to see it. At the moment, if the letter comes to SPICe—as is often promised—that is all right for MSPs but it does not help anybody else. However, the letter does not always come to SPICe. I suggest that, where a minister says that they will write or that somebody else will write, when the letter becomes available it be reproduced at the end of the WAR.

Brian Adam: That seems reasonable to me.

12:30

The Convener: That seems reasonable to us all. It may be a wee bit of extra work somewhere but nothing quantitatively different. Is that problematic for the Executive in any sense?

Michael Lugton: Not really, convener. We regard this as a parliamentary matter. There is no desire on our part for responses to parliamentary questions, whether they are in parliamentary answer format or in any other form, to be unavailable to those who would like to see them.

Brian Adam: I expose my ignorance again, but what is the WAR?

Janet Seaton: Written answers report.

The Convener: It is what the Executive wages

on you weekly.

We have agreed that reproducing letters at the end of the WAR would be the best way to proceed.

The final matter under item 5 is the quantity, quality and relevance of questions. There is a report here, which I believe that John Patterson had the pleasure of writing. The recommendations are in paragraph 24. The report concludes that the monitoring has worked well and that we should continue to monitor and discuss issues. We start with the new Deputy Minister for Parliament at our next meeting, when we can question him on those and other matters.

Are there any questions arising from the report?

Donald Gorrie: Some of the comments refer to people like me. The purpose of the question can be clear in the questioner's mind but not in anyone else's. Like others, I meet an organisation, its members raise an issue and I bang in a question. It would probably be better if people like me sent a wee note to the department, describing the background to the question. Alternatively, if the department did not know the background, they could phone us to ask us what it is. While I am all in favour of transparency, my thought processes are not necessarily transparent to others.

The Convener: If I was not clear, I would not lodge a question. I would write a letter, knowing that it would come back to me. If I had misjudged the issue or asked something stupid, only the minister and I would know. As I would not publish the letter, that would be the end of it. We discussed previously the matter of when we should ask a question and when we should write a letter. There may be matters that can be resolved by letter. If we were considering putting a question on the public record, writing might even help to clarify what question we should ask.

Donald Gorrie: It would take even longer, as the track record for answering letters is not all that great.

The Convener: Indeed, it takes a long time.

Brian Adam: This is not a matter of just exposing public ignorance on issues. To follow Donald Gorrie's second point, where Executive officials are not sure what the question is about, it is quite reasonable for them to contact the member who lodged the question and to seek clarification. People on the chamber desk contact me on the questions that I wish to lodge. It would be in everyone's interests if Executive officials who wished to know the reasons behind questions were encouraged to contact members.

The Convener: That is a fair point. I hope that Executive officials will see our request for e-mail contact points and a staff directory not as climbing all over the Executive but as encouraging communication. It ought to make Executive officials feel that they are entitled to speak to us. If it is a particular person's job to follow up a particular letter or question from us, that person is entitled to ask exactly what we mean. It would be a two-way process, and it might help everybody to do their job a bit better.

Brian Adam: On most occasions, I would want the communication to be in the direction that you have just described, convener, rather than in the other direction with me bombarding Executive officials with requests. I want to give them the opportunity to clarify what was in my mind when I asked the question.

The Convener: Mr Lugton, we accept that you may feel that only certain people should initiate contact with MSPs and that your staff may want to ask you to contact us. That would be a matter for you to decide.

Michael Lugton: In general, we would think it appropriate to go through the chamber office. The chamber office would only have accepted the question because it regarded it as clear, with no uncertainty as to what was required. If we were puzzled, the chamber office would be our first port of call, and we would ask it to pursue the matter with the member. I am not sure that it would be entirely appropriate for officials to speak directly to members to get clarification on a question.

Brian Adam: Why not?

Michael Lugton: Because, as I said, we would need to proceed on the assumption that the chamber office regarded the question as clear; otherwise, it would not have accepted it. We would therefore seek clarification from the chamber office if we did not find the question clear.

Brian Adam: We are asked to make our questions brief and to the point. It may well be that a phone call to the member—from an appropriate official—could provide the background information that was needed. To my mind, the role of the chamber office is different—to help members to frame admissible questions. That does not necessarily provide the background on why the question is being asked.

The Convener: I think, Brian, that Mr Lugton is concerned about protocol and about the chamber office not being involved as it should be. The question has come through the chamber office and therefore it should go back through the chamber office.

Hugh Flinn: That is correct. In the great majority of cases, if there were any lack of clarity in a question, we would hope to iron that out with the member before the question went to the Executive. There have been occasions when the

Executive has asked exactly what was meant by the wording of a question, and we have been happy to take that request for clarification to the member concerned.

The Convener: We feel that there could be more confidence in that procedure; we will see how it goes. We have nothing else to raise on this agenda item, and we will approve the report's recommendations. I thank the witnesses for attending.

If Donald Gorrie does not mind, we will take his report as an early item on the next agenda. Do you wish us to canvass the Executive's views before the next meeting?

Donald Gorrie: I was going to suggest that members canvass within their own groups. There is an issue here and people may not like my attempt at resolving it. Having discussions in groups on how to resolve it would be helpful; people could then come to the next meeting with ideas supported by their groups.

The Convener: Fair enough.

Consultative Steering Group (Principles)

The Convener: Item 7 on the agenda is the consultative steering group report. Professor McCrone has been waiting patiently and is now with us at the table. We have the report in front of us. Professor, would you like to make a few prefatory remarks?

Professor David McCrone (Sociology Department, The University of Edinburgh): I have provided a brief outline to give a way of thinking through some of the issues. I am happy to be associated with this. It is certainly worth while considering how the Parliament, in its relatively short existence, has performed vis-à-vis the CSG principles. I am especially keen that coverage should be as wide as possible—including the staff of the Parliament, the members and, crucially, the general public. That will allow us to synthesise views and to get a sense of how people think that things have gone so far.

The comments that I have made at the back of the paper are to outline some of the issues and to remind people of the founding principles. I can certainly elaborate on how the committee might consider what has happened so far, and I can certainly advise the committee—especially on methodology. I would be happy to answer any questions.

The Convener: I suggest that, unless someone has a burning question that they are desperate to ask now, we conclude today's business. We advertised a press launch for 12.30; we are running slightly late and seven or eight people are outside. If we do not invite them in, we will lose impetus.

Members *indicated agreement.*

The Convener: I thank Professor McCrone for his presentation and I invite him to join us as the officials leave. I thank all today's participants.

Meeting closed at 12:40.

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