

# **PROCEDURES COMMITTEE**

Tuesday 12 February 2002  
(*Morning*)

Session 1

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## PROCEDURES COMMITTEE

### 3<sup>rd</sup> Meeting 2002, Session 1

#### CONVENER

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

#### DEPUTY CONVENER

\*Mr Kenneth Macintosh (Eastwood) (Lab)

#### COMMITTEE MEMBERS

\*Susan Deacon (Edinburgh East and Musselburgh) (Lab)

\*Donald Gorrie (Central Scotland) (LD)

\*Fiona Hyslop (Lothians) (SNP)

\*Mr Frank McAveety (Glasgow Shettleston) (Lab)

\*Mr Gil Paterson (Central Scotland) (SNP)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Professor David McCrone (Adviser)

Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting)

#### WITNESSES

Bill Anderson (Forum of Private Business in Scotland)

Patrick Browne (Scottish Retail Consortium)

Iain Carmichael (Scottish Enterprise)

Roland Diggins (Scottish Council for Development and Industry)

Brian Jamieson (Scottish Enterprise)

Bob Leitch (Scottish Chambers of Commerce)

Alan Wilson (Scottish Council for Development and Industry)

#### CLERK TO THE COMMITTEE

John Patterson

#### SENIOR ASSISTANT CLERK

Mark MacPherson

#### LOCATION

Chamber



## Scottish Parliament

### Procedures Committee

*Tuesday 12 February 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 09:31*]

### Consultative Steering Group Principles (Inquiry)

**The Convener (Mr Murray Tosh):** Good morning, everybody. Welcome to the third meeting this year of the Procedures Committee. This is our umpteenth meeting on the consultative steering group principles inquiry, which is rapidly becoming the parliamentary equivalent of “The Mousetrap”. This morning we have trapped representatives of Scotland’s business and commercial sector. I look forward to hearing what everybody has to say. We have received submissions from some witnesses; others will give us a verbal presentation. We will rattle through all the contributions before holding a general discussion. Judging from the written submissions, many of the issues are points in common.

We will start with the initial comments of Pat Browne, who is from the Scottish Retail Consortium.

**Patrick Browne (Scottish Retail Consortium):** I thank the committee for giving the Scottish Retail Consortium the opportunity to give evidence as part of the inquiry into the CSG principles. The Scottish Retail Consortium was launched in April 1999 specifically in response to the creation of the Scottish Parliament. Prior to the consortium’s launch, our parent association—the British Retail Consortium—had continuing contact with the Scottish Office on issues that affected the retail sector in Scotland.

It was felt that the establishment of the Parliament presented an ideal opportunity to develop a new trade association alongside the new Parliament and its politicians and to give a specific voice to the concerns of Scottish-based retailers. The Scottish Retail Consortium was one of the first trade bodies to be established in Edinburgh in response to devolution.

I do not propose to restate the contents of our detailed response to the consultation. Instead, I will focus on a few key issues that we raised in our written evidence. Since the establishment of the Scottish Parliament, it is clear from speaking to colleagues and retailers that they welcome the

open, transparent and accessible manner in which the Parliament operates. It is particularly appreciated that that manner compares favourably with the more formal and less open consultative processes that are often used at Westminster.

Our members believe that Scottish parliamentarians are more open to the arguments that are presented by the business community. It is recognised that the Parliament’s procedures give industry bodies such as ours more of an opportunity to present the concerns of the industry with a view to their being addressed. Clearly, in many respects the Scottish Parliament is still a work in progress. Over time its processes and procedures will develop, as they have done during the past two and a half years.

We feel that the Parliament could try to improve a number of operational areas, to give civic Scotland—the business community in particular—more of an opportunity to embrace the Parliament in its operation. We have a concern about some of the time scales that committees apply when they seek evidence from groups that are affected by committee inquiries or proposed legislation. Too often, time scales are so tight that they restrict the ability of trade bodies to consult fully with their members in reaching an opinion.

The Enterprise and Lifelong Learning Committee’s inquiry into the Tobacco Advertising and Promotion (Scotland) Bill offered the most recent example of that. The SRC was given a few weeks over the festive period—the busiest time for retailers—to supply a response on the impact that the bill would have on the retail sector. We supplied a response and will give evidence on the bill to the Enterprise and Lifelong Learning Committee tomorrow morning. It would have been better if we had had longer to consult with our members on how the bill would affect them, so that our response reflected fully their concerns.

Prior to the creation of the Parliament, one of the operational developments that was most warmly welcomed was the fact that parliamentary committees would have powers to scrutinise legislation and investigate issues, as well as to legislate where that was felt necessary. It is evident, and generally accepted, that those wide-ranging powers have not been used as effectively as they could have been.

We suggest that part of the reason for that is the heavy legislative agenda of the Parliament, which drives much of the work of committees. Another reason is the heavy turnover in the membership of parliamentary committees, which has given parliamentarians less time to build an in-depth knowledge of specific subject areas. As a result, opportunities for legislative reform do not present themselves as readily as they could do.

The SRC believes that there is scope for examining whether it is possible to make the membership of committees more stable and to give committees more time to discuss a wider range of issues, when considering their own legislation. The SRC also feels that there needs to be greater co-ordination between committees in relation to the organisations from which they take evidence. Although that was a significant issue at the beginning of the Parliament's operation, the fact that the Parliament's pre-legislative scrutiny powers are working in a more effective way means that perhaps it has become less of an issue.

Groups and organisations from other sectors have mentioned that the usual suspects are invited regularly to the Parliament to give evidence—apparently on issue after issue. That has also been a concern among bodies that represent the business community. The establishment of the Parliament represents a clear opportunity to reach out to the dozens of smaller trade bodies that are representing Scottish businesses for the first time and to let them have their say. That opportunity has not yet been grasped effectively.

Input from a wider range of business groups needs to be balanced by all business organisations being a bit more honest about how they work with the Scottish Parliament. Specifically, they need to recognise that they do not always have to give evidence on every issue and that other groups occasionally have more expertise in particular areas and are better placed to give evidence to the Parliament.

Too often, business organisations seem to say the same things when they give evidence to committees. Instead, one or two business groups could present the industry case effectively and free up time for other groups to give a different perspective. There are signs that business organisations are beginning to carry out critical appraisal of their dealings with the Parliament.

As the Parliament approaches the third anniversary of its establishment, our members recognise that although it got off to a tremendous start, the Parliament could improve things in specific areas. I hope that the Procedures Committee's inquiry will assist in that process. I will be happy to answer any questions on our response.

**The Convener:** Members will return to many of the points that you made. I hear what you say about the same business organisations always being invited. We invited everybody this morning, because we wanted to get at the business sector as a whole. I am conscious that the committee has not heard much from the business sector. We wanted all organisations to feel that they have the opportunity to comment when they need to. I hope

that you will forgive us if we have invited too many business groups this morning. I am sure that they will all get their say.

Brian Jamieson, the company secretary of Scottish Enterprise, is next.

**Brian Jamieson (Scottish Enterprise):** Iain Carmichael, senior director of finance of Scottish Enterprise, is with me.

Scottish Enterprise is a non-departmental public body, which is sponsored by the Scottish Executive's department of enterprise and lifelong learning. We are grateful to the committee for the opportunity to give evidence. I will not repeat the written submission, which members have a copy of, but will highlight a few general points from our experience of working with the Parliament during the past two and a half years.

Unlike the other organisations that are represented at this meeting, Scottish Enterprise is a public body, so our comments are made from that perspective. We have focused on two aspects: accountability and, to some extent, accessibility, which we have direct experience of. Both those principles are well evidenced by the holding of today's session. It is difficult to imagine an equivalent process at Westminster. As a public body, in a number of ways we are held to account more regularly by the Scottish Parliament than we were when we were subject to Westminster scrutiny. Up to a point, that is evidently a public good. We think that the Scottish committee system has been the greatest success, particularly when committee members have built up a detailed picture of our work.

We have had a number of constructive meetings with the Enterprise and Lifelong Learning Committee, which is our principal contact committee. Witnesses have told the inquiry that there is a significant advantage in committee members gaining experience of subjects and that that produces stability. The system may mean that committees will ask us more searching questions, but that is balanced by genuine dialogue with people with in-depth knowledge of subjects.

We have contributed to a number of consultations and welcome that, particularly in contributing to the work of the Enterprise and Lifelong Learning Committee, which has tackled a number of substantial topics. We have contributed to the CSG inquiry and to a number of other committee consultations.

Such activities and the significant increase in parliamentary and informal questions to Scottish Enterprise has required additional resource. That is manageable, but my colleagues in the parliamentary team have a plea in respect of parliamentary questions. If MSPs merely seek information, an informal, direct approach through

any channel is as likely to produce the information that is required and will be much less labour intensive and expensive.

One aspect of accessibility is physical accessibility for the press and public to attend meetings such as this. However, the fostering of a spirit of openness is more important than that. The Parliament has been successful in that respect and the committees have set a tone of relative informality, openness and approachability. We have found committee conveners and committee clerks to be very helpful. Our evidence mentions that the Parliament's website has always been user friendly—our staff access it daily.

My comments are informed by previous arrangements whereby we had occasional contact with Westminster. We rarely had the opportunity to attend committee meetings and building relationships with MPs was difficult, given the logistics and House of Commons timetables. Building relationships with the Scottish Parliament has been much easier.

I am happy to answer questions about our submission.

**The Convener:** Alan Wilson and Roland Diggins from the Scottish Council for Development and Industry are with us. Alan Wilson has some introductory comments.

**Alan Wilson (Scottish Council for Development and Industry):** The committee listed 26 questions connected with the inquiry on which it sought comment. In response, we have provided 46 paragraphs in 13 pages.

**The Convener:** That will teach us.

**Alan Wilson:** I had to reread the submission as it was written over six months ago but, in general, we stand by what we said. The Scottish Council for Development and Industry's board and executive committee—which is our policy group—endorsed the paper. There are three members of the original CSG on the board and the executive—Kenyon Wright, Joan Stringer and Esther Robertson. All have seen the submission and had input into it. I am not sure whether that is good or bad, but I wanted to make that point.

I have two declarations of interest to make. SCDI is a founding member of the Scottish Parliament and Business Exchange and I am a board director. From last week, we have also provided the secretariat to a cross-party group on international trade and investment.

Like the other witnesses, I do not want to go through our submission blow by blow—members would not thank me for that—but I will make some points.

We found the concept of sharing power difficult

to grasp and measure; we tackled it through the initiation ratio. If members are interested, my colleague Roland Diggins can give statistics. By initiation ratio, we are referring to bills in the past two years, work in progress on bills and where they originated—from the Executive, committees, MSPs or external organisations. The initiation ratio is evolving as the Parliament evolves, but there should be more members' bills and committee bills.

09:45

We endorse the use of sub-groups in committees. Recently, we gave evidence to the Enterprise and Lifelong Learning Committee's sub-group in the lifelong learning investigation. The sub-group came to our office at Chester Street. We brought in 20 to 30 of our members and the exercise was useful. We encourage committees to make more use of sub-groups.

The issue of open and closed meetings has cropped up in previous meetings. We think that the committee should give clear guidelines to conveners on when there should be closed committee meetings. Closed meetings should be kept to an absolute minimum and private sessions must be justified. We understand that there must be some private meetings, but we think that the number of private meetings is increasing. Perhaps that should be investigated.

Like others, we feel that there should be a minimum period for organisations to respond to consultations. Sometimes two or three requests a day hit our desks and what is relevant and how to allocate resources must be decided. Each year, SCDI responds to around 50 submissions—50 consultations—not just from the Parliament and the Executive, but from London and Brussels. We also try to be proactive. We suggest that a minimum of 12 weeks should be available for normal consultations, unless there is something untoward.

I feel strongly that questions were so woolly in some early consultations that they could be answered in any way. I do not want to be over-prescriptive, but we should get a far better feel for what is in the committee's mind. In one consultation, we had to translate what we thought was meant by a question before putting it to our members in a survey form. We hoped that our interpretation was what was requested. We would welcome tighter, more specific questioning, along the lines of the questioning in this consultation.

We like interim reports, which give an opportunity to bounce back, reconsider and progress. We realise that such reports elongate time scales, but we welcome them.

There is an opportunity for more working in

partnership. Like other organisations, we are prepared to consult our wide membership on specific issues and feed back responses into the system. Committees should take such opportunities more often.

Finally, the Parliament's website has been a substantial success. We have made some technical suggestions, but it is excellent.

**Bill Anderson (Forum of Private Business in Scotland):** The Forum of Private Business in Scotland is a fully devolved organisation, based at Stirling University. We are a research-based group that represents the views of business. We research our members' views.

A good example of why we need a Scottish Parliament came when I received notice of this meeting from our headquarters in Knutsford, south of the border. I was told that we were giving evidence to the Standards Committee. That proves that perhaps we know our affairs up here better than do people down south.

FPB Scotland welcomed the Parliament. We ran a day's business seminar to give it a good launch and invited organisations such as Alan's. The seminar was on the challenges and opportunities of the Scottish Parliament. The late Donald Dewar was a principal guest speaker and the former Secretary of State for Scotland, Lord Younger, was included in the list of speakers.

We had high hopes of the Parliament. I am a business person who has long supported devolution. I was involved with the committee set up under Sir Robert Grieve to draw up the claim of right. We were early off the mark in giving support to the concept of devolution. We felt that a Scottish legislature would be more aware of Scottish business and of its impact on the Scottish and local economies. A Scottish legislature is more likely to understand the importance of tourism to the people of Ardnamurchan than a legislature the overwhelming majority of whose members have never heard of Ardnamurchan or of the Procedures Committee.

Has the Parliament lived up to our hopes and expectations? The Scottish Parliament has tackled a backlog of necessary legislation. In some people's views, it has enacted legislation that was not urgent, but that is a matter of opinion. The Parliament has led the rest of the country on such matters as freedom of information and access to the countryside. However, we still have reservations about section 9 of the Land Reform (Scotland) Bill, which could be damaging to certain parts of the tourism industry.

There are also some welcome innovative ministries. We welcome the fact that enterprise and lifelong learning have been combined in one department, the recent appointment of a separate

minister responsible for tourism and the creation of the Scottish Executive environment and rural affairs department.

In our view, the committee system in Scotland is better than the committee system at Westminster. Colleagues from England who have attended committee meetings here have confirmed that. However, we are surprised that in a Parliament that avows open government and transparency so many matters are considered by committees meeting in private.

Access to MSPs is good and generally MSPs are very accessible. With one or two exceptions, ministers have also been accessible. I would like to mention in particular Henry McLeish, when Minister for Enterprise and Lifelong Learning, and the current Minister for Enterprise, Transport and Lifelong Learning. I see that the former Deputy Minister for Local Government, Frank McAveety, is present. We always had good relations with him and found meetings very easy. Others have been less accessible, but we believe that that is not an inherent flaw of devolution, but a measure of the attitude of the person in office.

There have been considerable attempts to consult, but too often consultation has not been backed up by adequate research. Little attempt has been made to discover what business people really feel. I am not talking about people like us, but people who are running businesses at grass-roots level. Even the consultative process on tourism was very unstructured. The responses of tourist service providers—area tourist boards and officials—were given equal status with those of tourism businesses. No attempt was made to find out what the consumer—the tourist—feels. In the end, the whole matter was handed over to a firm of consultants whose recommendations were not based on any consensus of opinion. For example, we believe that the retitling of the Scottish Tourist Board as VisitScotland had little support in the tourism industry. Having said that, the fact that we are here today, giving our opinions to the Procedures Committee at its invitation, says a great deal about the committee's attitude towards open consultation.

We are concerned that some ministers appear to be all too ready to accept opinions rather than properly researched facts. We are concerned that, on occasion, they have accepted the opinion of an individual or a small group of individuals within an organisation, without any proof that that is the properly researched opinion of the majority of members of that organisation.

We are also concerned that an opinion is sometimes accepted because that opinion comes from a bigger organisation, without the quality of the statistics, the facts and the argument having been examined. We cite a recent dispute between



the Confederation of British Industry Scotland and the Federation of Small Businesses about which body had more members than the other. Such issues are superfluous to a consideration of the merits of, and the facts behind, the respective arguments of those organisations on business rates. What matters is the quality of the argument, rather than the clout—or imagined clout—of the organisations concerned.

What should happen was exemplified at Westminster, when in 1998 the new Labour Government chose to accept the advice of the smaller Forum of Private Business in enacting legislation on late payment that was hotly opposed by the larger Federation of Small Businesses. As a result of that legislation, the United Kingdom is now near the top of the European prompt-paying league, instead of languishing somewhere near the bottom. That is proof of the wisdom of the Government's decision. We do not see in the Scottish Executive the confidence to take similar steps.

We have concerns about the quality of some of the advice that ministers are given by their civil servants. Past experience leads us to believe that the best ministers are often those who are prepared to examine critically the quality of the official advice that is given to them and, if necessary, to take a different line. The quality of the Scottish Executive depends not only on the calibre of its ministers, but on the quality of the advice that they are given.

Many of the highest-calibre politicians in Scotland—Gordon Brown, Robin Cook, Helen Liddell, Ming Campbell, Malcolm Bruce and Alex Salmond, to name but a few—have chosen to remain at Westminster, rather than to give leadership to a Parliament of which they were outspoken advocates. That contrasts with the historical precedent of Robert the Bruce, who was allegedly the richest man in England when he succeeded to the earldom of Huntingdon. He forfeited that title, and then lost his Scottish estates to Edward I when he decided that his future lay in Scotland.

Ministers' lack of even junior ministerial experience has had a significant effect on their performance. We must ask whether all the present Scottish Executive ministers would have gained even junior office under any previous Secretary of State for Scotland. It is a well-known adage that a rolling stone gathers no moss, but we do not believe that ministerial experience can be gained with constant changes in portfolio. For example, Angus MacKay was hardly in his job a year before being removed. The ministers who have served longest have gained visibly in experience and performance. Business organisations also find it difficult to have to deal with different individuals in

the same job. We have had to deal with three different finance ministers on business rates matters.

We are not at all opposed to the concept of devolution. We accept it as an opportunity and a challenge. We regret that some hopes and aspirations remain unfulfilled because of the failures and shortcomings of individuals. There have been some failures, but also some successes. It is important that we learn from our failures, and the first step towards doing that is to acknowledge them. The very fact that we are here today bodes well in that regard.

**The Convener:** My SNP colleagues were delighted by your reference to Robert the Bruce. I will do my best to restrain the former ministers on the committee when we come to questions.

**Mr Gil Paterson (Central Scotland) (SNP):** I think that all Scots would be proud of Bill Anderson's statement about Robert the Bruce.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** Absolutely.

**The Convener:** I thought that SNP members would be particularly pleased by it.

We will now hear from Bob Leitch, who is the parliamentary officer for the Scottish Chambers of Commerce.

**Bob Leitch (Scottish Chambers of Commerce):** I am grateful for this opportunity to appear before the committee.

Having heard the evidence that was given by the previous witnesses, I should probably say, "Ditto, ditto, ditto" and then be quiet. However, I will set out the views of our organisation, because it is important that they be heard.

I start from a rather biased position—as the parliamentary officer for the Scottish Chambers of Commerce, I would not be sitting here today if there were no Scottish Parliament. The Parliament is new and it is developing and growing. I will take that into account in my comments this morning.

Scottish Chambers of Commerce is involved with the Parliament at three levels. At Executive level, our director has face-to-face personal contact with most ministers. My responsibility is to liaise with the Parliament at committee level; since the Parliament was established, I have been involved with a number of committees. Last—but by no means least, because we are a bottom-up organisation that is based in local communities—the chief executives of chambers of commerce throughout Scotland and I, as the parliamentary officer for the Scottish Chambers of Commerce, are involved locally with the members who represent us at Holyrood.

10:00

I shall deal first with the Executive level, at which we feel we have free and open access. We have regular formal and informal access and we are invited to consult formally and informally on all sorts of subjects. However, there is regularly—if not too often—written consultation and we sometimes think that we are in the middle of a blizzard in which paper is flying around us like snow. We have criticisms about lack of control and the filtering of consultation. It would be useful if there were some sort of filtration system, so that the various consultations could flow out acceptably and manageably for those of us who are more than keen to participate and to respond to them. One of my colleagues mentioned a period of 12 weeks for responses to consultations, which seems to be reasonable.

At the committee level, much of our work in the Parliament has—through our involvement with the local economic forums and the lifelong learning review—been with the Enterprise and Lifelong Learning Committee. We have also worked with the Local Government Committee, the Rural Development Committee and the European Committee. Our experience has been good and—in particular—the Enterprise and Lifelong Learning Committee has been receptive, interested and responsive to our comments. The committee system is good because it provides access to policy creation and legislation development. It has allowed us to give the business view and to offer input when and where that is relevant.

One of the major downsides to the committee system is the number of committee items that are discussed in private and the short notice that is given of that. I have worn out perhaps two pairs of shoes climbing the Mound to get here only to discover that two thirds of a committee meeting is to be held in private. Like other organisations, we understand the need for private meetings, but it would be helpful to us all if those were better organised and better publicised. It would be even more useful if private and public committee meetings were held separately.

Locally, through reviews of chambers of commerce around the country, we have found that individual MSPs have shown varying levels of interest in and commitment to local business issues. Their involvement varies widely between the 20 chambers that stretch from Lerwick in the north to Dumfries in the south. It appears that relationships are best where local chambers are proactive. However, there can be a perception that many MSPs are not interested in the business view but are totally public-sector oriented despite the fact that the business sector creates the wealth and jobs that keep Scotland plc running. We accept that there is an obligation on our part to

be proactive, and we consciously encourage our members to recognise that.

I have a few general points to make. We are pleased with the openness of the Parliament and we feel that we are more engaged with the process than we are at Westminster or in Brussels. We have regular meetings in those places, but they are often distant, non-participative and non-productive. What happens here is much more valuable. Nonetheless, we are concerned about the great misunderstanding and lack of knowledge in the public sector and sometimes in the private sector—and among the public—about what are reserved and what are devolved matters. I confess that I carry a list of those matters in my briefcase so that, when I am involved with such issues, I know where I should or should not stand on them.

On accountability, we are also sometimes concerned about the level of MSP involvement in some of the Parliament's committees, in which not all members participate fully. Although we feel that the Parliament encourages participation by questioning, we have some doubts about the value of question time in its current form. We are even more concerned about the amount of time it takes to get an answer to a written question or a reply to correspondence. No doubt there are resource constraints; however, if the problem is not addressed, the credibility of the Parliament will be put under strain.

On accessibility and openness, we are keen—despite the cost—for committees to make local appearances where that is practicable and where it will allow our members to get an active feel for what the Parliament is doing; such visits are worth while in that respect. The website has also helped with the openness and transparency of the Parliament. Finally, we feel that the Parliament, the Executive and the members are enthusiastic and are working hard to create openness. We must also play our part, and our commitment to seeking information is imperative if the Parliament is to succeed.

**The Convener:** Thank you very much. I shall kick off the questions. Quite a few of the presentations touched on the interface between the Parliament, the Executive and the people who come to committees. We would like to hear whether business in general, as well as specific organisations, feels that its engagement with committees has been worth while in the sense that its contribution to committees has influenced reports that have in turn influenced the legislative programme and the development of policy. Is the Parliament an effective method whereby you can influence what is happening in Scotland? The central issue for the committee is whether the Parliament is able to relate to civic Scotland, to

business groups and to pressure groups in order better to shape the country for the future. Is your involvement worth while?

**Patrick Browne:** The honest answer is that our experience is mixed. I have no doubt that the evidence that we have given to parliamentary committees has influenced the final views of the committees on certain issues. It is much more difficult to say whether we have been successful in influencing the wider legislative agenda. There are issues that we would like parliamentary committees to examine, but because so much of their work load is determined by the legislative programme and because they carry out investigations into other issues—as they are entitled to do—they do not have the time to consider our issues and to respond to our concerns. One such issue is business crime, which costs the business community in Scotland £700 million a year but which is not being considered by the Parliament.

**Bill Anderson:** It is easy for us to say how our involvement with the committees affects us, but the important issue is how it affects our members. The problem is that, because our members are much further away from the Parliament, most of the information that they get about it comes from the newspapers that they read. The press's reporting of what has been happening in the Parliament—especially in the committees—has been very poor. Even the broadsheets have not reported committee meetings. I wonder how many reports of this meeting there will be in tomorrow's newspapers. I imagine that there will not be many.

We have tried to inform our members of what we are doing and whom we have met. Every time we meet a minister, we take a photograph. We do that not because we want to put it in the family album and say, "Look, there I am standing next to Wendy Alexander," but to show that we have met Wendy Alexander on our members' behalf when we inform them of the result of the meeting. We try to give our members that information; whether they read it is another matter. The trouble is that the information that they receive is being filtered at several stages, the biggest filter of all being the national press.

**Bob Leitch:** The question returns us to the issue of consultation, because it concerns our involvement. The issue is not just about the end product of our appearing in front of a committee; it is about the important process of our preparing to do that and involving our members before we do that. The benefit to the members—the people about whom we are concerned—will be greater if we consult them properly, so that they feel that they are giving some input to the committee and influencing its actions. That is part of the process as well.

**Roland Diggins (Scottish Council for Development and Industry):** Earlier, the committee talked about the Executive's ability to control the main flow of legislation and activity in the Parliament. The SCDI might therefore feel that it must keep in close contact with what the Executive—as a separate body from the Parliament—is doing. It is also worth our while to keep in touch with the parliamentary committees. Local economic forums were set up as a result of the Enterprise and Lifelong Learning Committee's inquiry into local economic development. We are concerned about the Parliament's ability to initiate legislation and inquiries. It is important that committees have the time to do that.

**The Convener:** Although I do not see any of the Scottish Enterprise representatives waving at me to speak, the question is relevant to them. Scottish Enterprise has direct links to the Executive and it would be useful to know what role the Parliament has in influencing Scottish Enterprise's dialogue with the Executive.

**Brian Jamieson:** The convener is correct to say that we have a different perspective. The three-way dialogue between Scottish Enterprise, the Scottish Executive and the Scottish Parliament has been successful. The Enterprise and Lifelong Learning Committee's major inquiries have dealt with some weighty topics. We have had discussions with the committee in Parliament and we have also briefed individual members on subjects such as the new economy. There is clear evidence that the enterprise and lifelong learning department has taken account of the views of the Enterprise and Lifelong Learning Committee—the three-way dialogue influences policy in that way. Often, the enterprise and lifelong learning department will delay a policy decision until that committee's inquiry, with which we have been involved, has reported.

**Mr Kenneth Macintosh (Eastwood) (Lab):** Everyone has mentioned the degree to which their organisations represent their interest groups and the ways in which we can interact with the business community through organisations or, as Patrick Browne said, through "the usual suspects". There is a difficulty on both sides. Has the Parliament been effective so far in speaking to the business community? Bob Leitch said that there was a perception that MSPs were not attuned to business interests. Is enough effort being made to contact individual businesses, rather than the organisations that are represented here today, which might or might not represent all the views in the sector?

**Bob Leitch:** The situation varies in various communities. I would like to underline the fact that both sides have a responsibility. The business community has a responsibility to ensure that its

views are heard so that matters that concern it are pursued. However, MSPs in some areas are much more proactive than MSPs in other areas are, which might be to do with the make-up of areas and their constituents, of course.

**Alan Wilson:** In the great wave of enthusiasm that followed the opening of the Parliament, we organised a couple of sector-led presentations to MSPs. One was for the oil and gas industry and the other was for the chemical and pharmaceutical industry. We learned our lesson early: MSPs do not turn up in great numbers to such events. Since then, we have had meet-the-MSP meetings. We invite one MSP and up to 30 of our members to our offices in Inverness, Aberdeen, Perth, Edinburgh or Glasgow and we have an informal discussion for two hours. That works tremendously well and facilitates far better bridge building and rapport.

10:15

The Scottish Parliament and business exchange has taken a while to get going, but it will be successful in time. An important point was that we did not want the scheme to be a clone of that which runs in Westminster. The exchange is open to organisations as well as to companies, which is important. It is open to MSPs who want to interface with Scottish Enterprise, universities, small and medium-sized enterprises and trade unions rather than with only blue-chip organisations. A few weeks ago, a shock-horror headline announced that only about 14 members had signed up, but I thought that that was a miraculous number, given that the exchange is in its infancy.

**Mr MacIntosh:** The press has highlighted the fact that MSPs' attendance at business functions is not what it could be, so I am interested to hear you say that you have started inviting only one MSP to meetings.

I know that the Scottish Retail Consortium—Patrick Browne's organisation—has had more success in attracting MSPs to its meetings, but I think that that is because you hold your meetings in Marks and Spencer and have nice sandwiches available.

**The Convener:** That will be tomorrow's soundbite.

**Mr MacIntosh:** What has the Scottish Retail Consortium done successfully that Scottish Financial Enterprise and the SCDI have had difficulty with?

**Patrick Browne:** A distinction must be drawn between political events and social events, such as the Scottish Retail Consortium's annual parliamentary reception, which is relatively successful and secures the attendance of a fairly

large number of MSPs. Like the SCDI, we arrange quarterly meetings with prominent figures in the Parliament and speak to them about some of the key issues with which our members are concerned. Previous guests have included Henry McLeish and prominent figures from other parties. Our discussions with those people tend to focus on issues such as retail crime.

Our contact with MSPs has been reasonably positive. We have conducted joint events with organisations such as the SCDI, for example as a retail briefing with the SCDI that was reasonably well attended—I think by about 15 MSPs. There are many approaches to working with MSPs and organisations must find the one that suits them best. We are reasonably happy with the contact that we have had with MSPs.

**The Convener:** After Bill Anderson speaks, I will allow Donald Gorrie to ask his question because his time is limited.

**Bill Anderson:** Earlier, I said that the Forum of Private Business works by researching the opinions of its members. We do not work by having a committee make up policy on behalf of the mass of members. The membership makes the policy through referendums and opinion polls; we feed the results of that back to the Parliament. Committee members will have seen the policy briefing notes that we send around, which are based on the research that we do on our members' opinions.

It is difficult for us to get feedback about whether our members feel that we are making the points correctly to MSPs, committees and ministers. However, we got feedback from members in relation to the tourism survey that we conducted. They said that they were pleased that we were forcing the issues that they had brought to our notice and that they felt that the exercise had been a success.

The process of consultation takes a lot of organisation; however, it is important that we do not represent our personal points of view, but those of our members.

**Donald Gorrie (Central Scotland) (LD):** I apologise for the fact that I must leave the meeting soon, especially as some of the witnesses' submissions have commented on the way in which members come and go, and other problems arising from poor attendance. However, the committees' timetables sometimes clash and members must divide their time.

Can you give the committee examples of occasions on which you have succeeded—either by lobbying the Executive directly, or by going through a committee—in altering Government policy, in altering legislation, or in getting legislation through the Parliament? If you found

that committees were too busy, would you consider finding interested members from different parties and working with them informally so that they could either lobby the Executive or propose a bill? You have identified the problem of committees' time being blocked. What is your experience of that and how might you get round the problem?

**Bill Anderson:** The Forum of Private Business can give some examples—one of which is to the credit of Donald Gorrie's party. Before the first meeting of the Parliament, when the Food Standards Agency was being set up, there was—can I now say this?—the daft idea that everybody who handled food in any way whatever would have to pay the same flat charge. The little village shop and the little corner shop would pay exactly the same flat charge as, for example, the Tesco hypermarket outside Inverness. The whole concept was daft. Enough support for that to be changed came about only because of a question that was asked by the then MP for Argyll and Bute, Ray Michie, which established that the rules in Scotland would be set by the Scottish Parliament. Because the Liberal Democrats were—with the Conservatives and the SNP—prepared to support the idea of not levying a flat charge, it was obvious that the idea would not succeed in Scotland. The Government therefore dropped the idea. The fact that the Scottish Parliament was imminent led the Government to change its mind.

I did not mention previously that we find the balance of MSPs in the Parliament good to deal with. We know that we will not find an unthinking block of MPs as we find at Westminster. There is a balance that gives us a chance to turn things around.

Another example is to do with business rates. Donald Gorrie was very much involved with the matter, as were Gil Paterson and Fergus Ewing. There was a move to replace transitional relief with a small business rates relief scheme, but I will not go into the technicalities—Frank McAveety will be aware of what happened. We said that there had to be transitional relief. We campaigned for that, and we got it. There was a transitional relief scheme and a small business rates relief scheme. We were against the idea—we still are—of thresholds in the small business rates relief scheme. There should not be a scheme in which a person on one side of the threshold gets 50 per cent relief, while a person on the other side gets nothing, or perhaps has even to pay a surcharge. That would be daft. The issue was taken up at the Local Government Committee—by Donald Gorrie among others. Keith Harding gave us good support as well. There was good cross-party support for our position and, in the end, the idea of a stepped or graded scheme was accepted by the Local Government Committee. That came about

because we put forward a good argument and we explained what would go wrong with a threshold scheme. As committee members will be aware, we are having some difficulties now because most of the debate is being conducted through the press rather than through meetings. However, the rates relief scheme was another success for us.

We feel that at least some members are listening. We are getting somewhere, which makes it worth while—it at least justifies Bob Leitch's job and my job.

**The Convener:** That factor is not inconsiderable, I am sure.

**Alan Wilson:** Determining whether effectiveness is demonstrable or whether the exercise is just cosmetic and pays lip service to the democratic process is complex. In any submission that we make, there may be 20 or 30 recommendations. If two or three of them are alluded to in the final document, that is sometimes deemed a success.

Getting retail prices index capping for business rates—when Jack McConnell was involved—was a success. It may sound a small success, but it came about through pressure from many different groups. Sarah Boyack withdrew proposals on workplace parking because of tremendous pressure from many organisations. Whether or not the M74 extension has progressed because of pressure from business groups we do not really know, but at least it has progressed. It is difficult to demonstrate effectiveness. That is why organisations such as those that are here today can usually get more done collectively than they can individually.

**Roland Diggins:** I want to discuss private meetings of committees. Evidence has suggested that part of the reason for having private meetings is to discuss what evidence will go into reports. It is difficult for organisations to know how effective they are if they are not allowed to hear discussion of their evidence and discover which of their arguments were deemed more acceptable. The same argument applies to Executive consultations. A lot of the evidence that is submitted in consultation exercises is discussed behind closed doors.

**Donald Gorrie:** The Parliament gets a lot of criticism for being secretive but, as you said, most of the private business in committees is to do with drawing up reports. You are arguing the benefits of exposing such discussion to the public gaze. Some people in this establishment feel that that could lead to grandstanding and could introduce more political in-fighting, when what the committees seek is consensus, which is best done in private. The issue is difficult and I am not saying that you are wrong. How do you feel about it?

**Roland Diggins:** We accept that the issue is difficult, but we are discussing the principles of the Parliament. In principle, it is right that MSPs, as elected representatives, should have their debates and discuss evidence in open session. I accept that that could lead to grandstanding—or “posturing”, as I heard it described at a previous meeting—but discussing reports in public has not really been tried. We seem to be moving away from it before we have even given it enough time.

**The Convener:** A difficulty arises if committees are given evidence confidentially. The Enterprise and Lifelong Learning Committee was given a lot of evidence for its report on rural fuel prices on the basis that the information would remain confidential, which influenced the whole discussion and the report. Another example was the information on private finance initiatives that the water companies gave to the Transport and the Environment Committee for its water report. A policy of always disclosing can create difficulties.

**Bill Anderson:** I would like to back up what Roland Diggins said. In my presentation, I mentioned that too many discussions are held in private in what is supposed to be an open organisation. Discussions should be more open. Private discussions should be the exception rather than the rule. At the moment, if there is any doubt, discussions are held in private. I say that the reverse should be the case: if there is any doubt, discussions should be held in public.

It is not only the decisions on reports that concern us. The Local Government Committee's first report on small business rates relief was very quickly made public, but the second report was kept under covers. I have never seen the second report.

**Mr Macintosh:** All today's witnesses—and witnesses at previous meetings—have said that private meetings are seen as obstructive and secretive. They certainly do not aid transparency. Witnesses have also said that the information that is available to the business community—and to the wider community—is often filtered, especially through the press.

One could argue that, when a report is discussed in committee, press coverage is bound to focus on arguments rather than points of consensus. That is one reason why meetings are held in private. If all meetings were held in public, debates in committee would end up like debates in the chamber, which are more confrontational than either public or private debates in committee. Do you have any sympathy with that point of view?

10:30

**Roland Diggins:** We have sympathy not just with MSPs, but with clerks and the staff of

committees who work hard to put reports together. It would not make their lives easier for reports to be debated in public session. However, the CSG principles call for openness, accountability and participation. Public committee meetings are a very important part of that.

**Brian Jamieson:** I am more sympathetic to the view that was outlined by Donald Gorrie and Kenneth Macintosh. The CSG principles encourage openness and transparency, but they also seek what is sometimes described as a new form of politics. As has been said, it is difficult to achieve a consensual report at a public meeting at which members are arguing from clearly defined political positions. There is a good argument for holding meetings at which reports are finalised in private, so that an agreed view can be arrived at.

The Procedures Committee has taken evidence from a number of people who have argued that there are too many private committee meetings. I am not as convinced by their arguments as some of my colleagues are.

**Bob Leitch:** I have some sympathy with the view that members have outlined. All of us in business realise that there are times when things have to be done privately and other times when things have to be done publicly. We all agree that it is important that the Parliament should be transparent and open and we all agree that the Parliament is more transparent and open than any other Parliament with which we deal. It is important that the Parliament should work to make itself even more open and transparent, so that we can have even more confidence that it is. That is why I said in my opening remarks that private meetings should be organised further in advance and that the results of such meetings should be reported more openly. That would give us confidence in the reasons that are given for holding meetings in private and would enable us to accept private meetings more readily. We need to examine closely the thin red line between public and private meetings. It is important to all of us that we get the division absolutely right.

**The Convener:** “Thin red line”—that is a feed for Frank McAveety.

**Mr Frank McAveety (Glasgow Shettleston (Lab):** Five years ago, the business community had concerns about the establishment of a Scottish Parliament. Have any of those fears been confirmed, or has the Parliament begun to overcome them?

**Patrick Browne:** The Scottish Retail Consortium supported the establishment of a Scottish Parliament as part of a process of devolution throughout the UK, despite the fact that we had reservations. Some of our concerns related to the difficulties that could result from

having different legislation in Scotland on some of the more operational aspects of retailing, such as food hygiene. In the main, those concerns have been unfounded. The Scottish Parliament and the Scottish Executive have introduced regulations in line with other parts of the UK, so the problems have not come to pass.

On other issues, such as business rating, the response from the Executive and the Parliament has been positive. Generally, we are satisfied with the way in which the Scottish Parliament and the Scottish Executive have operated. The problems that we foresaw have not arisen over the past three years, although there are signs of different lines being taken on some issues, which might become more of a problem over the next parliamentary session. Up until now, we have been reasonably satisfied.

**Bob Leitch:** I endorse that view. In general, we are more than happy with what we have found. Our involvement is greater and we have closer contact with the Government in Scotland than we would have had. Although we are, ultimately, part of a UK organisation, we did not have such a close relationship with the Government in the past. The change has been to our advantage. It is important that we are proactive, but members also have a responsibility to be proactive towards business. As we grow and develop, we are getting more involved with the Government and the exercise is worth while for us. The Scottish Parliament has been a plus.

**Bill Anderson:** The small business sector did not have many misgivings. A review that was conducted by *The Herald* showed that opinion in the small business sector was evenly split between those who were for and those who were against a Scottish Parliament. I was involved in getting the names of the people who contributed to that review.

The situation was not the same in the big business sector, where people tended to be against the idea of having a Scottish Parliament. Some of the misgivings were about political posturing. The Scottish Chambers of Commerce carried out another useful survey just before the 1997 election, which showed a softening of approach. The smaller the business, the softer its approach to the idea of a Scottish Parliament.

We must differentiate between the failures of the system and the failures of people. We all fall short of the standards that other people expect us to reach. The failures that there have been have often been the failings of individual people rather than of the system. I agree with Bob Leitch. I have worked in this area for nearly 20 years. I have worked with Westminster and have had good relations with all political parties, but those relations were never as close as the relations are

that we have now.

It is so much easier here. If a meeting is required at Westminster, it is necessary to contact MPs and arrange it a long time in advance; here, I have only to pick up the phone. I was amazed recently when I wanted to speak to Kenny MacAskill about a point that he had made and to give him some facts. I phoned him on a Friday—no MP at Westminster would be contactable on a Friday—and there he was. I met him within half an hour of phoning him. The situation is ideal. The Parliament works and it is on our doorstep.

Nevertheless, as someone who has operated principally from the north of Scotland for 20 years—I insist on doing that as well as having a base in Edinburgh—I remind members that an awful lot of Scotland is not in the central belt. If there are to be consultation meetings at the Parliament, they should be held not at 9 o'clock in the morning, but at a time when people can get here on the train from Inverness or Dumfries. It is important not to forget the outlying parts. Scotland is not the area between Edinburgh and Glasgow; there is an awful lot of Scotland elsewhere.

**Alan Wilson:** I remind members that the SCDI was a member of the Scottish Constitutional Convention. We had to tread quite a delicate path because—as in most organisations—some of our members were for a Scottish Parliament and others were against it.

The thing that makes us just a little bit different is that our membership includes large and small companies, the further and higher education sectors, local authorities, trade unions and the voluntary sector. That is a very wide constituency. Our activities led to the dissemination of information and the encouragement of debate, which undoubtedly leant in favour of the Parliament.

Comparing the present situation with the situation five years ago—when we had to deal with the Department of Trade and Industry, the Treasury and other departments—is like comparing day and night. The present situation is much better—it is far more involving. We have been rejuvenated.

**Mr McAveety:** I welcome those contributions. Five years ago seems like another time in history. I wonder whether Bill Anderson's comments about ministers detract from his complimentary contribution. I wonder whether he would have been brave enough to make such comments in the Westminster system, rather than in the open, transparent Scottish system, but that is a marginal matter. I thank Bill Anderson for the compliment.

Almost all the witnesses said, independently, in their submissions that there should be space for legislation initiated by committees. If the witnesses

were on a committee, what would they legislate for?

**The Convener:** Pat Browne suggested a retail crime bill. If anyone else has another idea, let us hear it. Bob Leitch has a suggestion.

**Bob Leitch:** Less legislation.

**The Convener:** So you think that a bill to ban legislation would be helpful.

**Bill Anderson:** One thing is often forgotten. Business people tell me about all the red tape but, again, that is a misapprehension. Very little red tape originates from the Scottish Parliament or the Scottish Executive. A lot of red tape comes from Westminster; even more comes from Europe. Nigel Griffiths is absolutely right to tackle that. Very little has fallen on the shoulders of small business as a result of what has happened in the Scottish Parliament. I hope that the press note that.

**The Convener:** The press are all scribbling furiously up in the gallery. The people from the Scottish Council for Development and Industry might like to highlight the way in which the legislative programme tends to be dominated by the Executive, instead of stemming naturally from the parliamentary committees—Roland Diggins made that point quite strongly in the SCDI paper.

**Roland Diggins:** That is true. A quick summary of the Parliament's annual reports for the past few years shows that the ratio of Executive bills to members' bills is approximately 5:1. At present, one committee bill is in place and another one is about to go through. The fact that committee bills are now in the process is a change from the first few years of the Parliament. The SCDI is a big fan of the committees and the way in which they work. Committees are more participative than, for example, a typical debate in the chamber, which involves only MSPs.

We would like MSPs to have more committee time available. That would create a better balance, which would enable individual MSPs and groups of MSPs—in committees—to take forward inquiries and legislation.

**Patrick Browne:** A business crime bill would not necessarily be the first thing that we would look for.

There is a need for committees to have more time to scrutinise issues. Opportunities to improve the legislative system will present themselves when committees begin to examine issues in more depth. During the past 18 months, for example, the Scottish Executive has embarked on a fairly radical reform of the planning system in Scotland, which includes matters such as public participation. I am amazed at the limited amount of scrutiny that the Parliament has been able to give

that process. It is inevitable that freeing up time and giving committees more scope to examine issues will provide the opportunity for legislation that will improve the working of the system.

**Mr McAveety:** When I asked about legislation, one theme that emerged was less legislation. Alan Wilson, I think, mentioned workplace parking charges. That is an issue of self-interest. I do not mean that pejoratively—raising such matters is the legitimate reason why his organisation exists.

How do we get the balance right? Let us take two issues that folk in different parties have mooted—workplace parking and retail parking. There would probably be different views among the organisations that are represented today—those of large retail outlets at the edge of cities and of small businesses operating on main streets. The witnesses will lobby vociferously—understandably—on behalf of their organisations. The issue is how we bring that together with the parliamentary committee system and ministerial decision making. It is interesting that nobody is able to identify clearly a piece of legislation that they would introduce.

10:45

**Patrick Browne:** The issue, again, is not legislation per se. A lot of what the Executive does is not subject to legislation; it is about how things are done. A parliamentary committee that examines a current issue may not have to legislate on it, but it may improve how the system operates.

**Bill Anderson:** Frank McAveety raised a good point about retail parking and the complaints of small businesses in town centres, for example, that have double yellow lines outside their shops. That is a good example. It is difficult for business to speak with one voice on a lot of issues, because we represent different sectors.

Currently, there is controversy over small business rates relief. We are one organisation, which has a large membership of micro-businesses that will benefit from such relief. We also represent quite a lot of middle-sized businesses and larger small businesses that will be hit by the scheme. Scottish Chambers of Commerce covers, more or less, the same area and the Confederation of British Industry covers big businesses. One group wants rates relief and thinks that the situation at present is great, because very small businesses will benefit. Another group, which represents quality, family-run hotels, for example, is concerned that the situation will hit them. The CBI does not want a relief scheme at all. There are three distinct points of view, because we represent different sectors and shades of different sectors. There will always be that conflict of interest.



Alan Wilson must have the same trouble, because he has within his membership organisations such as ours, the CBI and the Federation of Small Businesses. It is difficult to get a coherent view. In tourism, there is a conflict between the smaller hotels and the big multiples. The Scottish Tourism Forum has to represent that breadth of interest. It is difficult, because there are shades of opinion, which differ from each other, which is understandable.

**Fiona Hyslop (Lothians) (SNP):** I compliment the witnesses on their written evidence, which contained practical suggestions.

The witnesses have made the case that parliamentary committees need more time, not necessarily to scrutinise legislation, but to scrutinise policy. We have also touched on the fact that the witnesses are all representative organisations and that the time that they need to consult and give a view—or a variety of views, as Bill Anderson said—can be extensive. The Scottish Retail Consortium mentioned that the time available to examine a bill following its introduction is restricted. How do the witnesses feel about that?

How do the witnesses feel about consultation on policy? From the comments, I recognise that consultation on policy is probably as important for business interests as consultation on legislation. Should we restrict the period when bills and consultation exercises can be introduced? For example, should their introduction be restricted before Christmas or during the summer? The comments that have been made are similar to those made by people who are interested in social policy—that representative organisations require time to access their members.

On policy consultation, a justice committee, for example, might spend a lot of time scrutinising legislation, but other committees may not. It is horses for courses. Is it as important to have time to consult on policy as it is to have time to consult on legislation?

**Bob Leitch:** That is a difficult question to answer. One of the things that we have been doing of late with the European Parliament is examining future legislation and policy before it is fully developed. It would be useful if we could do that here, although I am not sure how consultation would be fed in. One of the problems of all sorts of legislation and policy is that, by the time it reaches people such as us, if it is not a fait accompli, a strategy is already in place. We always come in after the creative part has been done. If there were a system in which we could consider the coming attractions, so to speak, so that we could take a view on those and consult our members before ideas were set, it would be useful for all of us.

**Fiona Hyslop:** Does that mean that the consultation on policy issues within your field comes too late? Do you see committees as having a role in that?

**Bob Leitch:** Yes.

**Alan Wilson:** It is quite attractive to have open and closed periods in the passage of legislation, although it might lead to bottlenecks and might have a detrimental effect, because there might be fewer chamber events. Those are the things that get televised and publicised, so people might criticise the Parliament for being less active, which would not be the case. We would be attracted by the idea if it gave parliamentarians more time to consider policy initiatives, rather than simply screening legislation.

**Susan Deacon:** I want to move on to a different issue, but before I do so, I have a follow-on question. Many different witnesses have made a plea for more time. However, at the end of the day, a finite amount of time is available to us and, to some extent, if more time is made available for one thing, there will be less time for something else. It is interesting to tease out how we can make better use of our time.

All the witnesses this morning have talked about a range of different processes that they have used to inform and influence politicians. Some of those methods are informal—you have mentioned that seminars and receptions are opportunities for people to interact—while others, such as committee meetings and meetings with ministers, are more formal. Do those processes add value to one another, or is there duplication that could be eliminated? I am particularly interested to know whether some of the dialogue that you have with ministers and parliamentarians separately could be held together. Is there an opportunity for everyone to sit round one table, rather than holding separate briefings? That would seem to be consistent with the Parliament's principles of power sharing. Is there any scope for efficiencies in our processes, or is everything that has been mentioned today a necessary part of what we do?

**Roland Diggins:** That would be a good idea and we could aspire to that situation. However, in terms of practical issues, from the perspective of business and other sectors of the community, it is very hard to juggle diaries. The greater the number of people involved in a meeting, the harder it is to get the right people to the meeting. A series of meetings, rather than one or two large meetings, is inevitable if different sectors are to get their points across.

**Brian Jamieson:** I echo that point. Since the Parliament was set up, we have been learning what works and what does not. Things have changed. Like other organisations, we tried issuing

blanket invitations, but that does not work. Invitations must be focused on the members who sit on the committee that is directly relevant to one's area of work or who have an interest in one's area of work. Now our meetings are much more focused. I agree that everyone's diaries are full but, as I said earlier, although it is easier to get hold of MSPs than it is to get hold of Westminster MPs, it can still take a long time to set up meetings, even if only a couple of people are involved.

We have learned how best to use our time over the period and we are clear about what MSPs want from us and what we can get from them. From our perspective, access to the minister is a slightly different issue. The minister has easy access to us.

**Patrick Browne:** The arrangements depend on the issue. About two years ago, when Jack McConnell was Minister for Finance, he embarked on a series of meetings with the business community that involved everyone sitting around the table to discuss rating issues. Two or three such meetings were held, and they seemed to be very effective because the differences between the different groups were teased out. That enabled the minister to crystallise his opinion and to decide what he wanted to do. That approach worked well on rating issues. I believe that ministers are planning to repeat the exercise next week.

**Bill Anderson:** Lobbying and campaigning are, by their very nature, exceptionally inefficient. I believe that it was Winston Churchill who said that democracy is very inefficient but it is the best thing that we have. Basically, lobbying and campaigning involve repeating one's message again and again. As I said, members of the business group all have their own constituency but, even within parties, there are members who have different emphases—some are more interested in how an issue will affect urban areas while others are more interested in how it will affect rural areas. One must also consider the differences that exist between the parties. The meeting that we are to have next Monday will be useful, but there are shades of opinion within the business community.

Meeting MSPs eyeball to eyeball is useful. I am meeting two of the convener's colleagues at lunch time and I know that their priorities will be different to those of Tavish Scott and Kenny MacAskill, whom I met to discuss the same issue. Members of different parties pick up different issues and want different information from me, whereas I might want the same information from all members. However, it would be very inefficient to gather all MSPs together in one room to get that information. It is useful to speak to a group, but one notices that there are differences of opinion within political parties.

**Bob Leitch:** I will be brief. It is a matter of horses for courses. We hold different meetings for different purposes, but all serve their own purpose if they are used in the right context. In our opinion, that is something that we have to live with.

**Alan Wilson:** I agree with the previous speakers. There is no right or wrong way and, in the present circumstances, we all try to balance our approaches by doing different things. Some people might put more emphasis on one-to-one—or eyeball-to-eyeball—meetings, whereas others might put more emphasis on the media and on communicating to parliamentarians through the press. Each organisation has to find the right way for its own purposes.

MSPs have constituents, but so do all of us. We must communicate to our members that we are being active. Whether we are being effective is a different question, but the purpose of a lot of our communication is to show that we are active.

**Susan Deacon:** I will move on tangentially, although I will stick to my theme of efficiency. My question is for Scottish Enterprise, which is one of the few public bodies to have appeared before the Procedures Committee. Brian Jamieson touched on the issue of parliamentary questions, which is worthy of further examination. He mentioned the demands that dealing with parliamentary questions place on Scottish Enterprise—I am aware that that is an issue for a range of public bodies. As he acknowledged, there is a need to strike a balance between openness—getting the information out in a way that is transparent—and the better ways that he hinted at of skinning a cat to achieve that openness. Could Brian elaborate on that point?

**Brian Jamieson:** Parliamentary questions are, obviously, a legitimate device. In some cases the MSP wants to get the information into the public domain and it is appropriate that they ask a parliamentary question. That is, however, a cumbersome device to use to get information that they require privately. After the question is asked, it passes through the Executive, circulates around looking for a home, comes to us through our sponsoring department eventually, and has to be turned around often within 48 hours. It is often difficult to understand from the question what the questioner wants and, by that time, there is usually not enough time to pinpoint the precise essence of the question.

Although a parliamentary question is a legitimate device for holding the Executive to account and getting information into the public domain, very often it is asked just to elicit information which we would be delighted to supply by letter, e-mail or fax. Very often a simple phone call to an MSP's assistant or researcher can deal in minutes with a matter that would take days to deal with through

the parliamentary question process.

That is not to say that we do not want PQs, but the growth in their number has been enormous. We have had to devote a considerable additional resource to that and it is disproportionate to the resource that we have used in dealing with consultations and committee inquiries.

11:00

**The Convener:** Have you ever gone back to the MSP who has asked the question and whose purpose is not clear to try to work out what the person is after so that you can give a pertinent answer?

**Brian Jamieson:** Indeed, we have done so when the question was not clear. Sometimes the information is not in the form that we have asked for. In one case we went back to an MSP—who will not be identified—and asked exactly what he was trying to find out. He replied, “I am not sure. My researcher framed that question.” We are making a plea for understanding when a PQ is appropriate and when the information could be got very quickly via a phone call.

**The Convener:** I am interested in that, because it is a fairly common complaint that the questions are not clear. I do not think that there is a great practice of clarification. Once the question is in the system, it seems to grind through and the system produces the best that it can produce.

**Iain Carmichael:** There are sometimes a series of questions on the same issue and it is pretty clear that the questioner is trying to understand the issue rather than get specific information. That is when a dialogue would be more useful.

**The Convener:** It would be better to have a briefing for something like that.

I owe Gil Paterson an apology, because I was not watching the clock as I should have been and he had to go to another meeting at 11 o'clock. I think that he has left his question with Fiona Hyslop.

**Fiona Hyslop:** Gil Paterson sends his apologies, but the Equal Opportunities Committee, on which he also sits, held back its meeting so that he could attend.

He is particularly interested in evidence from the Scottish Retail Consortium on accountability. In written evidence you said that some people expressed concern about MSPs who continue to take part in other employment areas while being elected members of the Parliament. You also said that you do not have a difficulty with that as long as it is declared. I am interested to hear your development of that point and any other interests from witnesses. We have to bear it in mind that we

sometimes get criticised for being specialists in one area when we are trying to be generalists.

Your contact with MSPs can vary. I have not taken a large part in economic interests in the Parliament. Most of my contact with your organisations has been at constituency level. We are trying to improve generalist knowledge, but at the same time we have an intense dialogue on key issues with specialists. To what extent do you think that it is helpful for people who sit on committees to have had or to have working experience of the area in which they are interested?

My next question is more general and is directed towards everyone. Do you think that you are learning lessons about whether you expect everyone to become specialists on economic and business issues? To what extent do you think that we have to ensure that everybody has a broad base of knowledge? Perhaps we have to be a bit more sophisticated about the level at which and the purpose for which contact is being made.

**Patrick Browne:** It is helpful for people to have external interests as well as being MSPs as long as the time requirements of those do not clash and do not cause a problem. Prior to the establishment of the Parliament, one of the business community's criticisms or concerns was that there was a perception that the MSPs who were going to be elected did not have a lot of experience of business or of the private sector, and there was too much of an orientation towards the public sector. That has been less of a problem because of the way that the Parliament is operated. However, we would be concerned that if we were to restrict people's external interests, that private sector experience would be lessened and would make it more difficult for the Parliament to gain broad knowledge about wider society.

It is helpful if there is a balance between both types of experience as long as the requirements of one do not conflict with those of the other. Declarations should also be made so that people are aware that an MSP has wider interests and that those interests might influence their other parliamentary work.

As to whether people should be specialists or generalists on business issues, the reality is that we will never have 129 MSPs who have a high level of knowledge about business issues. It would be unreasonable to expect that, just as it would be unreasonable to expect a high number of MSPs to have a high level of knowledge of public sector work. There has to be a balance.

The reality is that there will be a smaller number of MSPs who have the inclination, time and experience to develop knowledge of the business sector and economic issues. We should accept

that, rather than try to force everyone to gain knowledge that they might not want. It is better to allow people to specialise in those areas in which they feel that they can add the most.

**Bob Leitch:** I agree with that. We have what we have and we cannot change that. People come to the Parliament because they are elected to represent their area. As a result of that, we get a mixture of people from various backgrounds with various interests. That is important to the Parliament.

I agree that there is likely to be a minority who are experienced in business. We have to accept that fact. It is better to use what we have, and encourage those who might not have been involved in certain types of issue before to get involved. That would broaden their experience and might enlighten us on anything else that we could or should be doing that we have not done in the past. We have to accept that there is a wide variety of people from different backgrounds and we have to work with that to get the best out of the situation for all of us.

**Bill Anderson:** I agree with that. We work on the assumption that MSPs are generalists and not experts in the field of business. That is a good discipline because, when we present information to you, we try to make it short and to the point. For example, we use visual evidence such as a simple chart, which gives the story. You realise that a lot of research has gone on behind that simple chart; you do not want to see all the calculations and figures. You want to see the chart because it gives the picture straight away.

I mentioned the Food Standards Agency. When we targeted that, we wrote to members of Parliament and picked out examples in their constituencies. We mentioned to the Highland MPs the ridiculousness of the little store in Lochinver paying the same business rate as Tesco in Inverness. That is another issue—justice. MSPs care about injustice and we care about injustice and we need to get that message across. That was just a simple example—I need not go into technicalities—but the sheer daftness of those two businesses paying the same rate is what got the message across.

We are frequently surprised that, when meeting some MSPs, it is sometimes obvious that they know as much if not more than we do and are way ahead of us. I suppose that I am possibly meeting the local government or enterprise and lifelong learning spokesperson in each of the parties. However, when we explain something using a simple chart, they pick it up quickly and ask for lots of detailed information.

While many MSPs are generalists, there are also specialists. That is welcome but we have to

work on the basis that MSPs are generalists and that all they are interested in is the justice and correctness of what we are trying to tell them. Our briefing notes are never on more than both sides of one sheet of paper. We could make them last for 10 sheets, but we think that it is better that our briefing notes only take up two sides of one sheet of A4 paper.

**The Convener:** For the benefit of the *Official Report*, I should add that Mr Anderson is holding up a sheet of A4 paper, on which there is a series of bar graphs. I am sure that Mr Anderson would want that information to be on the record.

**Alan Wilson:** It is not possible to manufacture the make-up of 129 MSPs. People get twitchy about the composition of the Parliament, saying that it does not include enough people from the business sector or from other areas. However, as long as some of the principles on gender balance, for example, are followed, we should not worry too much about that.

Continuity in committee membership is important. Problems arise when the membership chops and changes. For a six-month period, MSPs are expected to be experts on health, education or whatever the subject happens to be. This sounds like a contradiction, but people can specialise and still be generalists.

I cannot miss the opportunity to plug the business exchange, which—despite its name—is broad in concept. For example, as part of a business exchange, Susan Deacon might attach herself to a health board and Frank McAveety might attach himself to a local authority.

**Fiona Hyslop:** I am one of the MSPs who worked in the private sector—in Edinburgh, in my case. There may be more MSPs with different kinds of business background than the media credit. I am one of the MSPs who signed up for the business exchange and, although I had correspondence and discussions with the exchange, I was named and shamed as one of the MSPs who had not signed up for it. I am not sure where the leak came from, but it was not welcome.

I have a question for Scottish Enterprise. In your oral evidence, which was particularly interesting, you explored the issues of accessibility and openness in contacts with MSPs on subjects that are unrelated to committee or chamber work. You spoke about contacts that build up the relationships between MSPs and organisations and networks outwith the Parliament. We have not received such evidence, which is valuable, from other organisations. Were you surprised at the level of contact? Is it something that you might build up throughout Scotland? Are there pockets where such contacts are working well?

**Brian Jamieson:** We made a conscious effort to build up the contacts. When the Parliament was still at the planning stage, we began to encourage our local enterprise companies to build contacts. Although Scottish Enterprise is not a representative organisation, unlike the other bodies that are represented today, all 12 local enterprise companies in Scotland have business-led boards.

We encouraged the boards to make contacts with their local MSPs and many of them have made good contacts. The chairmen of the boards hold meetings every two months to exchange experiences of dealing with their local MSPs. That enables them to spread best practice and—to follow up on an earlier question—to discuss what works best when briefing MSPs on interacting with the local economic forums. We aim to do better in our contacts with MSPs.

We have also made the people who deal with parliamentary affairs into more of a network team. That means that the members of the team share their experiences of dealing with MSPs. We are anxious to make contacts at a local level in addition to interacting with the enterprise spokespeople from each of the parties.

**Fiona Hyslop:** How are we doing? As you know, the inquiry is supposed to be about us and how well the Parliament is performing. How are MSPs dealing with contacts that are made about issues outwith their work on committees or in the chamber?

**Brian Jamieson:** That echoes what I said more generally about having access to MSPs. We are finding it easier to make contact with MSPs than we did with MPs, whose movements always seemed to be out of sync with what we tried to organise. My experience was that it was very difficult to get together with MPs. MSPs have proved an easier audience to target. I am sure that there is a learning process on all sides.

**Mr Macintosh:** I have a question for Alan Wilson and Roland Diggins about the continuity of committee membership. One of the CSG recommendations was that committee membership should stay the same to allow members to build up expertise. A criticism of that—I am not sure whether it has been made to the Procedures Committee—is that committees can have the wrong balance. For example, it is said that the justice committees are full of lawyers, which might be described as going native. I am loth to mention fox hunting, because I promised that I would not—however, I must break that promise. The Rural Development Committee is full of members with rural interests—certainly more so than is the Parliament as a whole. Therefore, there is sometimes a conflict between the committee's view—for example, its view on the Protection of

Wild Mammals (Scotland) Bill—and Parliament's view. Is that a problem? In practice, there has not been continuity of membership. Is that a better way of working?

**Roland Diggins:** There might be a connection to the argument about the number of MSPs on committees. It might be more obvious that the balance is off in a smaller committee than is the case in a larger committee.

11:15

**The Convener:** I thought that your point about committee size was way off beam. Nearly every member of the committee is a member of another committee, but most members of the big policy committees are members of only one committee. The justification for that is that it gives members time to focus on their principal interest and remit. I found myself burnt to a frazzle when I was the convener of this committee and a policy spokesman on a policy committee. At that time, some members were on three committees; I think that Donald Gorrie is still on three committees.

The reduction in committee size relates not only to the volume of work that committees do, although I realise that it means that there are fewer members to draw on to be reporters. It also allows members to use their time in a more efficient and disciplined way. On balance, the present system is better for productive and efficient work. It is a matter of judgment.

**Roland Diggins:** I accept that. Part of the thrust of our argument is that more time should be available for committees. That might help to offset some of the issues that you mentioned.

**Mr Macintosh:** The representatives of the SCDI made a helpful comment about the number of MSPs that are required to make the committee system work effectively. Perhaps they should make a submission on the size of the Parliament. That would be welcome.

**The Convener:** Professor McCrone is the committee's adviser and may put questions to the witnesses through the chair.

**Professor David McCrone (Adviser):** Increasingly, business organisations work with different levels of governance. The witnesses might not be able to answer this question now, but I wonder whether they have identified examples of best practice in other legislatures. For example, I am thinking about the chambers of commerce in Germany, which have a different relationship to the legislatures in the Länder from that of the Scottish chambers of commerce to the Scottish Parliament. In general, the committee is interested in learning from the relationship of business to other legislatures and Parliaments and in adopting best practice.

**Bob Leitch:** You are correct that the structure in continental countries is different from that in ours. I cannot answer your question quickly and easily because we would have to do some research. Our experience is mainly with dealing with the three Parliaments that affect Scotland—the Scottish Parliament, the Westminster Parliament and the European Parliament. We have links and connections with all those Parliaments, but our links to the Scottish Parliament and our opportunities to participate are much greater than they are with the other Parliaments.

We do not have the legislative back-up for the kind of participation that exists in Germany and France. To be honest, we do not want that kind of participation. Our independence from the system allows us more opportunity to have an input than we would have if we were on the paymaster's payroll, which would make it difficult for us to criticise and to become involved in issues. We are happy to research the system in other countries and to report back but, off the top of my head, that is our view.

**Alan Wilson:** Roland Diggins has just reminded me that one of his key personal development objectives is a secondment to the Brookings Institution in Washington. Perhaps I will be better able to answer your question with the passing of time.

**Mr McAveety:** It is important that an MSP accompanies him on that secondment.

**The Convener:** Fourteen have already signed up and now you have an additional name. As long as foreign travel is involved, Frank McAveety will go.

**Susan Deacon:** On a different topic, the media have been mentioned oft in our discussions. Earlier, Bill Anderson made the valid point that many of his organisation's members view the activities of the Parliament through the prism—or the filter, to use his word—of the media. It will come as no surprise to the witnesses that a recurrent theme has been that many organisation representatives say that, although they have close contact with the Parliament, the same cannot be said for their wider membership, who depend very much on the media for information. The Parliament clearly has issues of communication to consider and we are indeed considering them.

Most, if not all, of the organisations represented here today have gone through a process of evolution and development since devolution, affecting, among other things, their capacity to engage with the Scottish media. As part of the broader debate on policy and legislation, is there anything that you would like to share with us about your own communication machinery? I am asking you to do a bit of soul searching. Bill Anderson

wondered what tomorrow's coverage of this meeting might be; he suspected that there might be relatively little. Have any of you issued statements to the press about your appearance at the committee today? Have you released your submissions to the press? It would be useful for us to get a flavour of the role that you see yourselves playing in informing debate through the Scottish media post-devolution.

**Bill Anderson:** The answer to your direct question is yes. I put out a news release and attached our four-page submission to it. After nearly 20 years of dealing with the press, I feel that it is always important to get one's own story across and not let the story be the media's. Sometimes, it is better to give them too much information than to give them too little, which may allow them to come back and question things.

Alan Wilson made this point earlier and I agree with him: we use the press as a means of campaigning, making direct contact and lobbying—the whole gamut. My impression of the broadsheets in Scotland—which should be the best informed and most informative about what happens in the Parliament—is that, although most of the coverage was supportive at the time of the referendum, it is less supportive now. That may be because the broadsheets have always knocked the establishment. For all their *douce* appearance, *The Scotsman* and *The Herald* are organs that knock the establishment. Good on them—that is part of what they have to do. However, the important thing is to ensure that the story that they have is not spun but is the true story of what happens here.

You are being open in this meeting and I hope that it is reported properly. Our submission to you is critical, but I feel that it is helpfully critical. It says that you have done some good things but that other things are not so good—although the things that are not so good are mainly the failings of individuals. The press may pick up on only the criticisms and say: "Businesspeople knock Parliament"—or, in my case, "Forum of Private Business knocks Parliament". We did not knock the Parliament—we were trying to come up with objective and constructive criticisms. I hope that such things will be reported properly.

**The Convener:** I have a fair idea of how tomorrow's press might treat some of the comments that you have made on the ministers and the Executive. Perhaps I will be proven wrong.

**Alan Wilson:** That is a challenge.

**Roland Diggins:** The question is a difficult one. There are times when the SCDI goes with the flow of the press and there are other occasions when we do not agree with what the press are saying. One of the great benefits of the Parliament is that

there is a vastly improved line of direct communication between the SCDI and members. Although the newspapers are important in reporting what the Parliament does, more important is the scale of contact between us and the Parliament, even if that is mediated by the press.

**Brian Jamieson:** Our experience in dealing with the press in recent times has echoed what we have been trying to do with MSPs, which is to have a more open debate about what we do, rather than lurid headlines. The question was intended to elicit what the Parliament can do to have a better relationship with the press. I am not sure how members can take that forward—"educate" is too strong a word. We have been trying to have an open debate about what MSPs think of what we are doing.

**Susan Deacon:** Business is in a slightly different position from that of other audiences in Scotland because most broadsheet newspapers tend to contain dedicated business sections. Similarly, there are several publications dedicated to business in general. Do you think that you have more informed coverage of what happens in Parliament, at least in as far as it affects business? Perhaps that is an unfair question. I am just wondering whether it helps to have that amount of dedicated attention to business and whether that is reflected in parliamentary coverage.

**Brian Jamieson:** Certainly the coverage from the business columnists commenting on economic policy affairs is much more considered than the coverage on the front pages. We get a more genuine debate on the real issues.

**Patrick Browne:** The coverage that business journals give to the policy issues in the Parliament is limited—it tends towards political journalists who are looking for a business angle on a story. Because of that, we probably get worse coverage than we do from business journalists who are trying to work the process the other way.

I hate to be controversial, but the main problem for the Parliament is that the committee agenda does not tend to be business oriented, so the scope for coverage of business policy is more limited. Only by addressing that point will the Parliament broaden coverage.

**Bob Leitch:** Since the Parliament came into being, there has been more coverage of our views, which is to our advantage. However, I agree that that coverage is greatly restricted and does not always portray a true view. It tends to pick up on issues that are more attractive to the eye than attentive to the brain.

**Alan Wilson:** The Sunday papers and magazines take learned pieces and we try to

encourage that. As for rent-a-quote and column-filling reactions, we could spend our whole lives agreeing or disagreeing just to get a line in the press. Some people do that, but it is not a resource that we would feel was worth while. Occasionally we want to react, but not that regularly. I get a lot of comments, sometimes critical, about the balance that the SCDI strikes. However, I could have three people working on that full time and I doubt that the coverage would be much different. It might be greater in cubic centimetres but—to go back to the question—it probably would not amount to a row of beans in terms of demonstrable effectiveness. I do not know the answer—different debate, different chamber.

**Bill Anderson:** We have to face the fact that people in the small business sector tend not to read the broadsheets; they tend to read the tabloids. Even the broadsheets—certainly from the perspective of small business—make little attempt to give coherent small business news, although *The Herald* is doing so. The average small businessperson is not looking at the financial pages; they are borrowing money to run or expand their business. They want to know what is going on in Parliament, but generally speaking they tend not to read the broadsheets; they tend to read the tabloids.

11:30

**The Convener:** That is an endemic problem in society.

**Mr Macintosh:** The SCDI's submission included an especially helpful contribution on the process of giving evidence. I hope that your experience today has not seemed intimidatory or like appearing in court. The point has been raised before and we are all aware of it.

We are not supposed to ask leading questions, but it is difficult to frame a question on this issue without doing so. I believe that committees use a spectrum of approaches when asking for evidence. We treat individuals with great courtesy, try to involve them and are not antagonistic. At the other extreme, we might be aggressive with ministers. Business comes between those extremes; I believe that it comes near the approach that is taken with ministers.

I will start with Scottish Enterprise, because, as a member of the Enterprise and Lifelong Learning Committee, I know that as a public body it has had a couple of rough experiences. I want to get your thoughts on the way in which you give evidence at committees. Do committees take an approach that gets the best from our witnesses and from the evidence?

**Brian Jamieson:** You mention rough evidence-taking sessions at the Enterprise and Lifelong Learning Committee. There have been very few of

those. Most of the time, there has been a constructive dialogue. The fears about political point scoring have not been realised—such point scoring has been rare in the Enterprise and Lifelong Learning Committee. In other committees, if there has been a difficulty, it has been because there is a gulf—or a misunderstanding—between what we are trying to say and the committee's understanding of the position. After any of the meetings that have not gone so well, there has usually been a period of informal contact to try to repair the misunderstanding.

On the whole, the Enterprise and Lifelong Learning Committee has gone about evidence taking in an objective and non-partisan way. That has been greatly appreciated. I know that the atmosphere in some of the other committees has not been the same. I have appeared in front of a couple of committees and have found the evidence taking to be conducted courteously, as it has been today. However, I have certainly seen evidence suggesting that people on public bodies feel that they have had an unduly rough time when they have appeared before other committees. Building understanding about what one does is the key to that.

**Alan Wilson:** Occasionally witnesses should say, "We don't know," instead of guessing or trying to give the committee the answer that it might want. Witnesses might be intimidated not because of any great fear, but because they might have to make up policy on the hoof if the committee takes them down a tangent that they had not thought about. Witnesses must have their wits about them. If a committee takes the witness down an avenue—or a cul-de-sac—that the witness does not want to go down, the witness might appear defensive and might end up looking a bit lost for words. That point was made to us in our consultations with our members. A couple of them felt that the experience had been intimidating and that they had been playing ping-pong rather than putting forward a view. That has not been the experience of my colleagues and me but we included those comments in our submission because our members made them to us.

**Mr Macintosh:** It has been suggested to us that witnesses should be able to interact more with one another in evidence sessions. In committees such as the Procedures Committee or policy-making committees such as the Enterprise and Lifelong Learning Committee, that would be a chance to share the power. The process would be far more participative if witnesses could ask questions of other witnesses. Would you welcome that?

**Alan Wilson:** Yes, I would prefer dialogue to ping-pong.

**Bob Leitch:** Our experience with committees has been good. We have enjoyed our participation

and felt that what we have said has been listened to. That is important. It is all very nice to have a conversation but, if that is all that it is and we all walk away and do our own thing, it will have been rather a waste of time. That has not happened in our experience; in fact, our input has had an impact.

To go back to a point that the convener raised, the most important issue is consensus politics. The great thing about committees is that they deal in consensus politics—we have had a good discussion with all members of the committee, irrespective of their political party. We think it important that that continues. If we were at the other end of the spectrum and committee members were forced into their political colours on the issues, the discussion would not be nearly as beneficial as it is at present. It is important that committees continue to have consensus politics.

**Bill Anderson:** On Ken Macintosh's point, it is a good idea that witnesses should be able to ask questions of other witnesses. A good example of that was when we gave evidence to the Local Government Committee. Halfway through, the fire alarm went off and we all went out into Parliament Square. A group of SNP members cornered me and asked what questions they should ask. One of Mr Tosh's colleagues in the Conservative party—who will remain nameless—came up and asked the same question. I was able to tell them that it was crucial that a particular question was asked at a particular stage. That question was asked, but it would not have been asked if we had carried on and had not been interrupted by the fire alarm.

Frank McAveety talked about political posturing—I think that he called it "grandstanding". Our impression from our dealings with committees is that there is little political posturing. Most of the time there is a cross-party agreement. If there is disagreement, it is handled differently and not divisively. Our impression is that the shape of the chamber means that people do not think in terms of "the other side of the House". In the committees in particular, our experience is that, if we did not know which political party members belonged to, we would not necessarily be able to tell. There is no political division in the committees with which we have had dealings.

**The Convener:** I am sorry that I have not been able to arrange a fire alarm for this morning, but we will now have a break for three minutes or so. Before we do so, I thank the witnesses for their papers, which contained constructive and useful points, and for the oral statements and the answers to questions. The session has been useful and interesting.

11:38

*Meeting suspended.*



11:46

*On resuming—*

## Public Bills (Guidance)

**The Convener:** I reconvene the meeting. The last item of business is a report on manuscript amendments and amendments to the guidance on public bills. Andrew Mylne is with us to address the issues.

**Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting):** When the rules relating to bills were changed recently in a number of respects, including by the introduction of a procedure for manuscript amendments at stage 3, the committee requested that there be an addition to the guidance to cover the new procedure. That is what the paper that is in front of members today sets out.

The paper contains a number of minor changes to the guidance that cover the other changes that were made to standing orders, but the change that it is important to pay particular attention to is the new paragraph 4.74. The new paragraph is designed to provide guidance for a convener at stage 2 or the Presiding Officer at stage 3 in deciding whether to allow a manuscript amendment that has been lodged to be moved; in other words, it provides guidance on applying the revised test that is set out in rule 9.10.6. In drafting the new paragraph 4.74, we have tried to allow for various factors, in particular the fact that the later a manuscript amendment is lodged the greater the disadvantage to members and to the public, and the fact that the disadvantages are greater at stage 3, in particular if a suspension of proceedings is required.

The paper acknowledges that a main reason for having the procedure that has been agreed to is to allow bills to be passed without defects. The procedure is a safety valve for last-minute problems. In particular, the procedure acknowledges the point that was made by the committee when it examined this issue previously, that there is a case for manuscript amendments where they are lodged directly in response to amendments that were lodged just before the normal deadline. We have tried to build all those factors into the guidance to give a reasonable steer to conveners and the Presiding Officer, without being overly prescriptive. We acknowledge that a wide range of circumstances are involved and have tried to leave a degree of flexibility and judgment.

The Presiding Officer has already seen this paragraph in draft and is content with it. We thought that that was important, given that he in particular will have to apply the rules.

Although the new procedure for lodging manuscript amendments has been in place for only a short time, it has been used quite a lot already—perhaps more than we had anticipated. I remember writing in an earlier paper for the committee on this subject that the procedure will have failed if lodging a manuscript amendment becomes anything other than a last resort. It may be a little early to say that we are in that situation now, but the committee may wish to keep an eye on the matter in the medium term and to review it after a large number of bills have gone through stage 3 under the new rule, in order to see whether it is working as intended.

**Fiona Hyslop:** I will make some general points first and then I will make specific suggestions on the text of the guidance.

I have serious concerns about the use—or misuse—of manuscript amendments. Just before we dealt with stage 3 of the Community Care and Health (Scotland) Bill, I raised a point of order that dealt not with the content of the manuscript amendment but with the fact that, as Andrew Mylne said, if the new system is used as a matter of course, it will have failed. Our experience of the past few weeks gives me cause for concern.

When the Procedures Committee considered its report on manuscript amendments, I suggested some changes to reflect the committee's discussions. I suggested changing the emphasis from a presumption in favour of accepting a manuscript amendment at stage 3 to a requirement that there be sound technical and legal reasons for accepting such amendments. My changes, which were accepted by the committee, were included in the final report that was presented to Parliament.

There is a general feeling across the parties that we may need to use manuscript amendments at stage 3 to ensure that legislation is technically competent. However, I do not underestimate the discomfort and concern that was evident in the chamber when a manuscript amendment was debated during stage 3 of the Community Care and Health (Scotland) Bill. The responsible action for the committee to take would be to ensure that we do not allow a free-for-all. If members lodge amendments at the last minute, they will allow substantive policy debates on manuscript amendments to take place.

I will distil that point into what I think it means for the text that is in front of us. Paragraph 4.73 refers to the range of manuscript amendments, starting with those that are

“lodged just too late to meet the deadline”.

An amendment is either late or it is not late—the phrase “just too late” should not be included in the text of the guidance. We should be hard about

that, because if we do not keep a firm hold of the deadlines in the legislative timetable, we will allow slippage and end up with a huge number of manuscript amendments that are lodged at the last moment. I do not think that that would be in the Parliament's best interests.

The substance of the issue is covered in paragraph 4.74.

**The Convener:** Let us deal with paragraph 4.73 before we move on to paragraph 4.74.

I want to be clear about what we are saying in paragraph 4.73. If someone lodges an amendment after the deadline, his or her amendment becomes a manuscript amendment. We are not saying that that amendment would be selected for debate. In fact, unless there were a justifiable technical or legalistic reason for accepting the amendment, it would be lodged too late if it were submitted after the deadline, even if—to be blunt—it contained a new point. It would be a manuscript amendment that would not be selected.

**Andrew Mylne:** In essence, that is the position. All I am trying to do in paragraph 4.73 is to provide a definition of a manuscript amendment. A manuscript amendment is any amendment that is lodged after the deadline, even if it is lodged only seconds or minutes after the deadline has expired. That is all that paragraph 4.73 says—it is not an evaluation of manuscript amendments but simply a description of what a manuscript amendment is.

The convener is quite right to say that an amendment that is lodged up to the deadline, which might be 4.30 on a particular day, is an in-time amendment. Amendments that are lodged after 4.30 are manuscript amendments. The sentence to which Fiona Hyslop referred simply makes it clear that manuscript amendments range from amendments that are lodged literally seconds after the deadline right through to amendments that are lodged seconds before the last point in the proceedings at which they could possibly be lodged. All manuscript amendments are encompassed in that range. We do not get on to the issue of which manuscript amendments should be allowed to proceed until later in the paper.

**The Convener:** Would it help if we strengthened this paragraph by indicating that, in normal circumstances, an amendment that is submitted late will not be accepted unless there are good reasons why it should be accepted? I know that that is implicit in the paragraph but, given that this is public guidance that MSPs might expect to be followed, we would not want to lead members to believe that, if they brought their amendments in just too late, their amendments would be accepted.

**Andrew Mylne:** It is not intended to create any impression about distinctions of that sort, as the

paragraph is meant to be purely descriptive. However, I am happy to re-examine the wording to see whether it would be possible, by making a minor tweak, to avoid giving that impression.

**Fiona Hyslop:** If the word "just" is taken out, the paragraph will be clear.

**Susan Deacon:** I support the points that Andrew Mylne has made. Although I agree with some of the wider comments that Fiona Hyslop has made, I think that that paragraph is purely descriptive and factual. It says exactly what Fiona wants it to say.

**Mr Macintosh:** I agree with Fiona Hyslop. The paragraph is intended to be purely descriptive but "just too late" is a value-laden term. I would infer from it that a prejudicial decision will be made and that an amendment that is just too late would be considered more favourably. I am sure that Andrew Mylne could write the paragraph using more neutral language—in fact, he described the process in neutral language a few minutes ago.

**The Convener:** Fiona Hyslop has suggested that "just" be removed from the paragraph. Without considering the matter in depth, it seems to me that simply saying "lodged too late" would be a more neutral way to put it. The term "just too late" might be taken as implying that someone might say, "Och, we'll let you off with it this time."

**Andrew Mylne:** I am happy to re-examine the wording.

**The Convener:** Are there any comments on paragraph 4.74?

**Fiona Hyslop:** Paragraph 4.74 contains guidance on when manuscript amendments would be acceptable. In previous discussions, we agreed that we should give credence to the view that we should have technically and legally competent legislation that makes sense. There is a strong argument that, after the deadlines for the submission of amendments, further analysis of the bill might necessitate the lodging of further amendments.

There is concern about the possibility that manuscript amendments might be used to introduce a new policy issue. It is more likely that members will use a manuscript amendment to counter the submission of an amendment before the deadline on the last day. Although it is open to interpretation, that is how I would characterise the Community Care and Health (Scotland) Bill manuscript amendment. The paragraph talks about adjournments and suspensions. I would be concerned if the use of manuscript amendments meant that a number of adjournments took place at stage 3. I would appreciate procedural guidance on when an adjournment could take place during a stage 3 debate.

I would feel more comfortable with the paragraph if a change were made to the sentence that reads:

"In applying that test, the convener should begin with a presumption in favour of allowing the amendment to be moved, but weigh against that the difficulties that reduced notice may cause, both to members and to outside parties with an interest in the Bill."

I would prefer it to read: "In applying that test, the convener should begin with a presumption against allowing the amendment to be moved, but weigh against that the benefits that achieving consensus and agreement of technically sound legislation would bring."

I prefer that balance. It keeps in the idea of technically sound legislation and preserves the opportunity for reaching a consensus, as could have happened with the Community Care and Health (Scotland) Bill manuscript amendment. However, the current presumption in favour of using manuscript amendments skews their use too far to be acceptable to members.

**The Convener:** However, that sentence cannot be read without referring to the previous sentence, in which we are told that the convener would already have made a judgment that the manuscript amendment was justified in the circumstance, taking account of the disadvantages. I do not think that the sentence to which Fiona Hyslop refers is saying that there is a presumption in favour of anything that is lodged as a manuscript amendment. It is saying that there is a presumption in favour of a manuscript amendment that has been judged and seems justified in the light of the criteria that would be applied for its selection.

**Fiona Hyslop:** I understand that there is a distinction between the criteria for lodging a manuscript amendment and the criteria for accepting it for debate. A number of amendments could be lodged; the issue is whether they should be accepted.

12:00

**Andrew Mylne:** There is a danger of confusion here. A manuscript amendment may be lodged in the same way as any other amendment. By definition, it is lodged after the deadline, but it is lodged in the same way and is subject to the same admissibility criteria as all other amendments. What distinguishes a manuscript amendment is the fact that there is an additional hurdle for it to overcome after it has been lodged—whether it passes the test that is set out in rule 9.10.6 of standing orders. That test is applied by the convener or the Presiding Officer.

The rest of paragraph 4.74 is meant to be guidance to the convener or Presiding Officer on

the application of that test. It is not quite correct to say, as the convener suggested, that the test follows on from a decision that has already been made. The test is about how that decision is made. The paragraph states that there should be an initial presumption in favour of allowing a manuscript amendment, but that its disadvantages should be taken into account. A lot of the paragraph describes what those disadvantages are, which arise to a different extent in different circumstances. The test is about striking a balance between the disadvantages and something on the other side—and the something on the other side is a presumption in favour of allowing the amendment to go ahead. Against that presumption, the various disadvantages that apply in relation to a particular amendment in particular circumstances are factored in.

The fact that the process begins with a presumption in favour of manuscript amendments does not mean that the majority of amendments will pass the test, as the disadvantages may be many and substantial. However, there must be something in the first place against which those disadvantages are counting. That is why the paragraph is worded as it is. If things were put the other way round, as you have suggested, the point would be lost.

**Fiona Hyslop:** That is precisely the point that I raised on the wording during the report of the Procedures Committee. That was the balance that we changed round. The wording in the Procedures Committee's report on this was to say that there were disadvantages first and then limited advantages, most of which were of a technical legal nature. That is why the committee agreed to the changes before the report came to the chamber, and that is the balance.

We can start with the advantages and then consider the disadvantages. The balance of the view that I interpret from the Procedures Committee's inquiry—I have discussed it with members following the first use of manuscript amendments last week—is that the disadvantages are the most pronounced. That is why I much preferred wording that talked about a presumption against, although I recognise that there are occasions on which the use of manuscript amendments can achieve consensus and it makes sense to ensure that we have technically sound legislation. I think that we can all agree that that is the main reason for having manuscript amendments. The problem is that if the wording of an amendment is loose—I do not mean that pejoratively—or suggests otherwise, it is an invitation for abuse.

One thing that the committee must do is ensure that we preserve the dignity of the Parliament to make sure that we have full debate. Members will

recall that we were in Hawick last Friday night. One of the interesting points that was made was that people had only three days at stage 3 during which they could influence somebody on some of these issues. If we allow members only one day, we are neglecting our duty.

**Mr Macintosh:** I agree with the thrust of Fiona Hyslop's argument. I am not sure about the wording. The paragraph needs to be reworded, although I am not sure whether Fiona's wording would be right.

The arguments for a technical manuscript amendment are fairly convincing and straightforward. Technical manuscript amendments should be allowed. However, there should be a presumption that policy amendments should not be allowed, especially—perhaps we should spell this out—if they have already been debated either by the full Parliament at stage 2 or in committee at stage 3.

**The Convener:** It is the other way round.

**Mr Macintosh:** Yes, exactly. I know.

If amendments have been debated and voted on, I do not think that they should be allowed as manuscript amendments. I am not sure about the wording. The paragraph says:

"In applying the test, the convener should begin with a presumption in favour of allowing the amendment to be moved."

I would prefer the presumption to be the other way around. We should be putting hurdles in the way of manuscript amendments, not encouraging them.

I find the last sentence particularly extraordinary. It says:

"Where an Executive or member-in-charge amendment has been lodged immediately before the normal deadline, and so is only available in print ... agreement should normally be given to move any manuscript amendments which are lodged directly in response to that Executive or member-in-charge amendment."

That suggests that Executive amendments that come in just before the deadline should be treated differently from anybody else's amendments. I do not agree with that at all. All amendments should be treated equally.

If people do not like Executive amendments being put in just before the deadline, they can vote against them, just as they can vote against anybody else's amendment. I do not think that we should necessarily allow people to lodge a manuscript amendment unless it is a technical amendment. If the Executive amendment that is lodged just before the deadline changes the bill and somebody has to change it technically to retain the policy intention—a technical rather than a policy amendment—that should be allowed. A

policy-changing amendment should not be allowed. There should be no presumption that last-minute Executive amendments have any less standing than anybody else's last-minute amendments.

**The Convener:** I disagree with that. We are entitled to see an amendment lodged by the Executive—or the member in charge if a member's bill has got to that stage—as one that is likely to be agreed to. It is reasonable for members who might disagree with those amendments to have the opportunity to lodge counter-amendments.

The committee has put a lot of emphasis on persuading the Executive that it is appropriate for its amendments to be lodged a day earlier, even though we have not required that. The purpose of that is to allow people who might wish to dispute those amendments to have the opportunity to lodge a counter-amendment.

If the Executive, for whatever reason, lodges its amendments at the last minute, we deny other members the opportunity to disagree with the Executive by counter-amendment, unless we provide for some kind of manuscript amendment to be lodged. The alternative is to require the Executive, or the member in charge, to lodge their amendments earlier than other people. We have chosen not to do it that way.

I am quite happy to accept what the Executive says—in principle, it always tries to lodge its amendments in due time. However, it does not always manage that and for the debates that we are having this week, the Executive lodged about 30 amendments on the last day.

The principle of allowing debate on amendments requires that, as a reasonable part of power sharing, if somebody lodges a substantial amendment—or any amendment that is likely to become part of the law—we allow members who might disagree with the policy the opportunity to lodge an amendment to the Executive's last-minute amendment. The Executive would accept in principle, although it would no doubt have good reasons for this, that it had failed to achieve its targets if it lodged an amendment at the last hour of the last day.

**Fiona Hyslop:** We also heard evidence about the performance of the Executive in lodging amendments at stage 3. I do not normally sing the praises of the Executive by any means. However, I was pleasantly surprised to learn that, by and large, the Executive had met the timetable for lodging amendments—I cannot remember the exact number of days in advance—to allow the Opposition to see those amendments and to lodge amendments before the deadline to counter them, if necessary.

That system is working well. The committee must advise members to lodge amendments before the last day precisely to allow the counter-amendment to be lodged, but not as a manuscript amendment. That is a real test for the Parliament.

We have a real problem in that if we do not try to keep hard deadlines, there will be abuse of the system. The difference with the bill that we are currently debating, which is likely to have a number of manuscript amendments, is that it is not an Executive bill; it is a member's bill. That is perhaps the distinction. Do the rules for the Executive lodging amendments apply to any bill, whether it is a member's bill or an Executive bill? Should the deadline of five days in advance for the lodging of Executive amendments apply only to Executive bills or should it apply to all bills?

**The Convener:** If a member has taken a bill as far as stage 3, we have to assume that an amendment brought forward by the supporters of the bill is likely to be passed. It has to be treated in the same way as an Executive bill amendment. If, for whatever reason, an amendment is lodged close to the deadline, other members have to have the opportunity to react to that amendment.

We should not allow—and I do not think that the rules do allow it—members to come forward after the deadline has passed and bring up an entirely new issue that they want to put up for debate. That is new material and it is not on. Where we are allowing people to react to each other's amendments and accept that as legitimate, we have to create a mechanism that requires amendments to be lodged early and gives time for counter-amendments to be lodged.

Alternatively, if a deadline is to be laid down, people have to have the opportunity to amend things that were submitted late. If we do not do that, we are failing to operate transparently, failing to share power and not giving members the opportunity to react to amendments that are likely to become law.

**Mr Macintosh:** I disagree with that interpretation of amendments and motions for amendments. By the time a bill has reached stage 3, most of those issues should have been debated already. Members should therefore have the power to vote for or against an amendment. They will not be denied that opportunity by not having the ability to vote on their amendment to that amendment. They can either accept or reject the amendments that have been lodged at the last minute.

We are trying to prevent abuse of the procedure. We are not trying to stifle debate or allow the member in charge or the Executive to take advantage of their position. We are trying to make the procedures fair so that people have a chance to debate the substantive policy and not, in this case, giving an edge over the Executive to those

who are opposed to members' bills or Executive bills.

**The Convener:** I am sorry but if we allow the Executive and the lead member to lodge amendments at the deadline, we are giving the edge to the supporters of the bill. At stage 3, we are not simply debating policy issues because they have been ventilated at the committee stage. We are finalising the wording; it is the last cut at getting the wording precise and correct.

I am not calling anyone's good intentions into question, but it has been the case that, for whatever reason, there have been fairly significant and substantial amendments lodged regularly at stage 3 of bills. That often happens after stage 2 discussions, when it is agreed that a minister will go away and come back to present something at stage 3. Unless the minister lodges the amendment on time so that other people can react to it or we allow a process for manuscript amendments, Parliament is denied the opportunity to do anything to change the wording.

When we come to the debates taking place this week, we will find that there are some fairly significant late amendments. It is entirely reasonable that other members should have the opportunity to react to such amendments. If amendments are lodged on a Thursday, members then have the Friday to consider them and that is fair enough.

However, if the amendments come in late on Friday afternoon, I think it is entirely reasonable for the Presiding Officers to consider amendments to those amendments and, on the Monday, to select them for debate. After that, the chance has gone because members should react to amendments right away.

If somebody comes in on Monday morning and says, "Hey, I have decided that I would like to add a whole new extra section to a bill" and it adds an undebated and unanticipated area of policy, they have bombed out. That is an abuse of the procedures. However, to allow people to fine-tune the wording of a proposed law is entirely reasonable. That is why the mechanism has been produced.

12:15

**Andrew Mylne:** It might be useful to respond to a few points that have been raised. On Mr Macintosh's concerns about the last sentence in paragraph 4.74, that sentence directly reflects something that the committee agreed to at a previous meeting. As the convener has already pointed out, the earlier paper that the committee agreed to that led to the standing order changes specifically included a paragraph suggesting guidance along exactly those lines. When the committee agreed that paper, it also agreed that

the procedure of lodging manuscript amendments at stage 3 was a way of meeting, by a slightly alternative route, the concern about the earlier deadline for Executive amendments, in particular where the Executive or—in the case of a non-Executive bill—the member in charge lodged an important amendment at the last minute, which other members would not see in print until after the deadline had expired. The manuscript amendment mechanism legitimately gives members an opportunity to lodge amendments to such an amendment or to lodge amendments that are prompted by it. All I have done in paragraph 4.74 of the guidance is to reflect something that the committee has already signed up to.

One or two members have mentioned a distinction between what can be called policy amendments and technical amendments. Although I understand that distinction—and people can point to clear examples of either sort—it is nevertheless quite hard to apply. Such a distinction is not hard and fast, and there will often be a grey area between the two sorts of amendment. Some amendments are both policy and technical amendments, and it will be a matter of judgment and controversy to work out which they might be. As a result, it would be pretty difficult to build such a distinction into the guidance and apply it.

That said, we have tried to ensure that such a distinction is recognised in practice. If the guidance were followed in practice, the green light would be given mostly to technical amendments and it would be less likely that any new policy amendments would be agreed to. However, as I said at the beginning, we have tried to avoid being overly prescriptive. Every circumstance that might arise cannot be dictated in guidance, although I hope that it works out that way in practice.

**The Convener:** I should point out that the majority of manuscript amendments to the Protection of Wild Mammals (Scotland) Bill that have so far been accepted are technical amendments. I cannot think whether anyone has lodged a new policy amendment.

**Andrew Mylne:** That said, some amendments illustrate the difficulty that I have alluded to. For example, an amendment that introduces a whole new section might be lodged on the final day. However, if the Executive has lodged such an amendment to fulfil a commitment that was made at stage 2, we will consider the issue, come up with something and introduce that at stage 3. The Executive might lodge an amendment that goes a long way to meeting members' concerns at stage 2, but does not go as far as some members would like. In response, they might want to lodge amendments that change the word "may" to "shall" and so on in order to beef up and strengthen the

Executive amendment. That is both a matter of policy and a legitimate use of the manuscript amendment route, because the only opportunity to lodge such amendments is after the Executive amendment has been lodged and therefore after the deadline.

**The Convener:** But the member who moves a manuscript amendment is not introducing a new issue, but responding to a policy amendment that has been lodged in time. However, that amendment has not been lodged in enough time to allow members to read and understand it and to think, "Well, I'd like to strike out the word 'just'". You have to allow members the opportunity to do that, otherwise you will frustrate the perfectly legitimate operation of members dealing with legislation.

**Fiona Hyslop:** I want to respond to that point, if I am not too late to do so. Although we want to be alert to the distinction between policy amendments and technical amendments, you have cited examples of amendments that are lodged to achieve consensus and legislation that is technically and legally competent. For example, the Executive might give a commitment to lodge an amendment on a particular issue at stage 3, but then its amendment does not go as far as members wish. We then have to reconcile the Executive's will to go in one direction with members' will to come together.

The guidance should emphasise consensus and ensure that we have technically and legally competent legislation. Its explicit presumption should be that we should not accept manuscript amendments unless they are trying to achieve those two objectives. We want guidance. If members do not understand what they are doing, not only will we have disruption and unhappy members at stage 3, but we will not have good law.

**The Convener:** I do not know how it can be presumed that manuscript amendments will not be accepted. If manuscript amendments that are lodged meet the selection criteria, surely they should be accepted.

**Mr Macintosh:** I agree with Fiona Hyslop. It is difficult to discuss the guidance in the context of the controversial bill that will be debated tomorrow, which has caused worries among members throughout the chamber, particularly about abuse of the legislative process. I will take that issue no further, but there are concerns that many of the last-minute amendments are oppositional, not consensual.

The proposal in a manuscript amendment to change a word such as "may" to, for example, "shall" is likely to be in the interests of the chamber and is likely to be, or should be, accepted. In such

cases, I do not understand why one would want to single out last-minute manuscript amendments, whether they are from the Executive or the member in charge. All amendments should be treated equally. An amendment by a member who opposes a bill should be treated the same as a member-in-charge amendment.

In the interests of consensus, if a member finds an amendment's wording unacceptable, but does not have time to lodge a counter-amendment that would make the amendment acceptable, they should be able to lodge a manuscript amendment without that being discriminated against. A member's amendment that opposes an Executive amendment or a member-in-charge's amendment should not be considered more favourably than other members' amendments. All amendments should be treated equally.

Fiona Hyslop's more important point was that interpreting the reason for lodging a manuscript amendment is a matter of discretion—the guidance notes are not rules. However, I trust the Presiding Officers—I am sitting next to one—to exercise their discretion properly.

**The Convener:** We should not have a debate about whether the amendments that were lodged on Thursday for Friday's business bulletin were less or more legitimate than the amendments that were lodged on Friday afternoon for Monday's bulletin. Mr Macintosh might want to consider the matter carefully and come to his conclusions. It is dangerous to consider specific bills and activities.

I accept that the Executive is less likely to seek to change by counter-amendment an amendment that is lodged by a back bencher or an Opposition spokesman, but it is valid to suggest that one can imagine that happening and so it is reasonable to say that all amendments should be treated the same. I would have thought that if I were to lodge an amendment at 3.52 pm on a Friday the suggested procedure would allow the Executive to decide that it would support the amendment, subject to an amendment on a point of detail. In effect, that would be a counter-amendment, but that is not the term that we have used. In such a case, my late amendment would be treated similarly to the Executive's amendment.

Executive and member-in-charge amendments have been highlighted because the Procedures Committee discussed the matter several times on the understanding that greater weight is attached to an Executive amendment. Opposition amendments are often lodged so that an issue can be debated; it is accepted that the amendment will be knocked down. One can imagine the Executive being largely in favour of an Opposition amendment or an amendment from a member of a party that is in the Executive, but wanting to change the amendment's wording. That was the

case last week with half a dozen manuscript amendments.

I am happy for the wording of the guidance to reflect the principle that all amendments are the same. What we call the amendments or where they come from is not important. However, it is important that an amendment that is lodged late can be counter-amended—without departing from the general policy area—to allow a debate on the amendment the following week. It is also important that no member derives an advantage from lodging an amendment a minute before the deadline that would deliberately or accidentally deprive other members of the opportunity to press their issue the following week. It is important to protect members' right to react to other members' amendments.

**Andrew Mylne:** I have a couple of brief points on what the convener said about the last sentence of paragraph 4.74. As I said, the wording was designed to reflect the committee's earlier discussion and the fact that it wished to distinguish Executive and member-in-charge amendments from others. The sentence attempts to say that, among the various factors that are taken into account in deciding whether a manuscript amendment should be allowed to be moved, there might be a presumption in favour of a manuscript amendment that is in response to an Executive or member-in-charge amendment that was lodged immediately before the normal deadline. That does not rule out the possibility of an amendment of a similar sort that is in response to a non-Executive amendment being allowed through, if it is seen as legitimate in the circumstances. The sentence makes a bit of a special case, but it certainly does not rule out the other situation to which Mr Macintosh referred.

**The Convener:** But you could amend the wording to respond to the concern that the committee has raised.

**Andrew Mylne:** I can look at it again.

**Fiona Hyslop:** I have a suggestion. A number of concerns have been raised about the wording of the guidance. Things are happening as we speak. We have another stage 3 debate on Thursday. The issue is whether we rush to agree the wording of the guidance, bearing in mind the fact that a number of us have concerns, or whether we allow time for reflection and redrafting the paragraph, bearing in mind the fact that the points that have been discussed will be communicated to the Presiding Officers in the next few days, when they will be considering manuscript amendments for stage 3 debates.

**The Convener:** There is no requirement to approve the changes today. The selection of amendments for the Protection of Wild Mammals

(Scotland) Bill has already taken place. The selection for the Water Industry (Scotland) Bill will take place later today. I do not think that the Presiding Officer would want to apply different criteria to the Water Industry (Scotland) Bill from those that were applied to the Protection of Wild Mammals (Scotland) Bill, or indeed the Community Care and Health (Scotland) Bill last week. We are not talking about changing procedures; we are talking about how we frame the guidance. I agree that it is important that we get that right. We need to ask Andrew Mylne to reflect on the *Official Report* of this discussion and the points that have been made, and to find ways to reword the paragraphs so that they convey more precisely the guidance that the committee wishes the Presiding Officers to apply.

**Mr Macintosh:** I have one more suggestion. As I said, it is difficult to think today without being conscious of the forthcoming debates. Would it be possible, when we next examine the issue or possibly before, to be given examples of manuscript amendments that were lodged and which were and were not accepted? That may help us to take a more balanced view on whether the guidance is right.

**Andrew Mylne:** If the committee is not happy with the wording, I am more than happy to adjust it in line with the concerns that have been raised, to the extent that I can reconcile the different views that members have expressed. With respect, I am not entirely sure that examples would be helpful. In such situations, we always try to produce guidance that is suitable for the generality and which is not dictated by one or other particular circumstance, because if guidance or procedures are based on a particular case, something is likely to result that does not work in other cases. There would be something slightly problematic about focusing on specific examples, which would tend to politicise a discussion that needs to be fairly general. Providing examples might distort the issue.

**Mr Macintosh:** Would not it be possible to provide several examples? I did not mean one example; I meant perhaps a dozen examples. If we had a dozen examples from a range of bills that covered several situations we could see whether the guidance works.

**The Convener:** That would be difficult at this stage. Andrew Mylne said at the beginning that we should review the agreed guidance after a number of stage 3 debates. It would be better to examine the issues and see how the rules were applied with a fair degree of retrospect. Obviously if we wish subsequently to revise the guidance or the standing orders, it is open to us to do so, but it is important to see how the new procedures work before we rush to judgment on them. It might be

better to examine examples that have arisen, rather than look at this week's examples—which might generate undue emotion—or imaginary ones. We are better to wait.

12:30

**Susan Deacon:** There may be a halfway house between what Ken Macintosh and Andrew Mylne have said. I appreciate the risk of considering guidance in relation to particular examples, because each case is different, but none of us wants to agree guidelines that are not capable of being applied effectively.

Some of the discussion has been a wee bit abstract. The objective we all share is to pass good law. I am more persuaded by the convener's arguments about what would enable us to pass good law, but I want to be persuaded that any revision to the text will enable the guidance to be applied effectively in a range of different situations to ensure that we put the most effective legislation possible on the statute book. That is our overwhelming aim. Our aim is not always to create consensus, because consensus is not always achievable. Nor is it to be for or against what the Executive or the member in charge of a bill has done. It is to ensure that legislation is effective.

I do not want to prolong the discussion further—we have been at it long enough—but, rather than bring along specific examples, can everything possible be done to test the application of the guidance? There is no point in the committee doing something in good faith that we find, further down the track, has the opposite effect when it is applied to a live piece of legislation.

**The Convener:** I am quite certain that if the Presiding Officers feel at any stage that they are having difficulty applying the procedures or interpreting the guidance they will invite the committee to revisit the matter at an early stage.

**Andrew Mylne:** I have one final point of guidance. As far as the standing orders—which state the formal position—are concerned, it is simply for Presiding Officers or conveners to decide by applying the short and simple test that is set out. Obviously, they will try to follow any guidance that is published, but the guidance is not a straitjacket. Even if the guidance is not perfect, it will not stop them making sensible decisions in particular cases by applying the test that is in the rules.

**The Convener:** Do we agree to reconsider the wording of that part of the guidance at a subsequent meeting?

**Members indicated agreement.**

**The Convener:** I thank members for their attendance and contributions.

*Meeting closed at 12:32.*



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