PROCEDURES COMMITTEE

Tuesday 29 October 2002
(*Morning*)

Session 1

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PROCEDURES COMMITTEE
13th 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)
*Paul Martin (Glasgow Springburn) (Lab)
*Mr Gil Paterson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Phil Gallie (South of Scotland) (Con)
Trish Godman (West Renfrewshire) (Lab)
Richard Lochhead (North-East Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Steve Farrell (Scottish Parliament Directorate of Clerking and Reporting)
Hugh Flinn (Scottish Parliament Directorate of Clerking and Reporting)
Miss Annabel Goldie (West of Scotland) (Con)
Stephen Hutchinson (Scottish Parliament Directorate of Clerking and Reporting)
Alasdair Rankin (Scottish Parliament Directorate of Clerking and Reporting)

WITNESSES

Andrew McNaughton (Scottish Executive Parliamentary Liaison Unit)

CLERK TO THE COMMITTEE

John Patterson

SENIOR ASSISTANT CLERK

Mark MacPherson

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 29 October 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:32*]

The Convener (Mr Murray Tosh): Welcome to the 13th meeting in 2002 of the Procedures Committee. I have received an apology from the deputy convener, Kenneth Macintosh, and apologies for late arrival from Paul Martin and Susan Deacon.

Correspondence (Statutory Instruments)

The Convener: We have a brief agenda this morning. The first item is a paper on negative Scottish statutory instruments, which is essentially a covering report accompanying a letter from Annabel Goldie MSP, who is the deputy convener of the Enterprise and Lifelong Learning Committee. Miss Goldie is with us this morning, principally to respond to any issues that committee members may wish to raise with her, but I give her the opportunity to add anything to the letter or underscore the significance of any point that she has made.

Miss Annabel Goldie (West of Scotland) (Con): The letter is self-explanatory. The issue is highlighted at the top of page 2, which explains the time scale for consideration of the Late Payment of Commercial Debts (Scotland) Regulations 2002 (SSI 2002/335). The consequences of that time scale were rather alarming for the Enterprise and Lifelong Learning Committee. That highlights the issue that the Procedures Committee might want to consider, but if committee members want to ask me questions about the incident, I will be happy to respond.

The Convener: We are also joined for this item by Alasdair Rankin, who is the clerk to the Subordinate Legislation Committee. Alasdair, would you like to draw any issue to the committee's attention? You are obviously aware of the recommendation that we raise the matter first with the Subordinate Legislation Committee.

Alasdair Rankin (Scottish Parliament Directorate of Clerking and Reporting): The incident is the first time that a committee has taken a decision on an instrument and reported before a motion has been lodged and the committee has been asked to consider that motion. The time scale is a factor, as Annabel Goldie mentioned. It turned out to be very lucky for the member who lodged the motion to annul that the Enterprise and Lifelong Learning Committee was meeting the next day and happened to have the minister in charge of the instrument present. It could otherwise have been administratively difficult to put all the various stages in place to achieve what the lodger of the motion sought. Given that he had lodged the motion so late, the Parliament might have had to say that it was not possible to take all the steps that he was asking the Enterprise and Lifelong Learning Committee and the Parliament to take.

Fiona Hyslop (Lothians) (SNP): I know some of the background to the case, because one of the Scottish National Party front benchers contacted me the day before the Enterprise and Lifelong Learning Committee met. The Law Society of Scotland had realised that there were concerns about the instrument and I had been asked to contact the minister concerned via the Executive office, because we felt that the Executive might want to lodge a motion or withdraw the instrument.

We must balance the issues. There were genuine points of concern on the instrument, as Annabel Goldie reflects in her letter. We have a dilemma: the rules within which we operate say that members are allowed to lodge a motion to annul up to 40 days after the instrument is laid before the Parliament, but there is a commonsense point about how we manage our business to allow objections to be raised and considered properly.

The incident is a good example of a case in which there was probably good will on all sides to acknowledge that there was a potential problem with the instrument. I think that the jury is now out. My understanding from reading the *Official Report* is that the Executive has been asked to keep a watching brief on the instrument.

Rather than changing deadlines, we need more of a process. I have a question for Annabel Goldie, who has dealt with a number of negative instruments. It is right that committees should deal with SSIs as early as they can, which seems to be what the Enterprise and Lifelong Learning Committee is doing. However, if potential problems are subsequently brought to a committee's attention, should that committee be prepared to revisit the matter? It is reasonable to reconvene a committee if necessary within a space of seven to 10 days. Perhaps we should have a deadline round about the 30-day mark. That would allow a committee to come back to an instrument. There may be some instances in which a committee will decide itself that it wants to reconsider an instrument.

Is the problem not the 40-day deadline, but the process within those 40 days? Perhaps we need a

process that allows for different scenarios. The problem is that, on the whole, those scenarios have not arisen—we just happen to have had one. Would it be reasonable to say that we do not necessarily want to establish a tighter deadline, or should we lessen the number of days slightly?

Miss Goldie: The 40-day period is not the problem. As Fiona Hyslop says, the problem is the process that is invoked within that period. The pragmatic way of dealing with the problem may be to have a final cut-off point for the lodging of a motion to annul within the 40 days for the simple reason that, if we do not have that cut-off point, we could create insoluble problems for the lead committee, the minister in charge and the Parliament. If the Enterprise and Lifelong Learning Committee had made a different decision on Lloyd Quinan's motion to annul, the consequence would have been that the Parliament would have had to consider the issue the following day.

The problem is the chain of events within the constrained time scale. As Alasdair Rankin indicated, whether the committee would manage to comply with the spirit of the existing rules was in the lap of the gods. Had the situation turned out otherwise, it might have been impossible. I do not know what sort of problem that would have created, because, as far as I could see, Lloyd Quinan acted perfectly competently—and, indeed, timeously—within the existing rules. The 40-day deadline is not the issue. The issue is what can reasonably happen within that period.

Fiona Hyslop: I agree.

Alasdair Rankin: When committees have to take a view on negative or affirmative instruments, the sense of standing orders is that members should regard the 40-day period as the total amount of time that they have to complete the procedure. It is impractical for members to think that they can lodge a motion on the 39th or 40th day. Although standing orders leave that possibility open, members will realise the practical difficulties that are raised when we try to telescope a procedure into three days, which is the absolute minimum. Everything happened to fall into place with the instrument concerned, but that might not happen on another occasion.

Donald Gorrie (Central Scotland) (LD): I have some questions that are not critical but which merely illustrate my lack of experience on the matter. Is it normal for the Executive to produce negative instruments that come into force before the end of the 40-day consideration period?

Miss Goldie: As I understand it, that is the effect of the negative procedure. The current procedural rule is that the instrument is in force and that there is a 40-day period for a potential annulment, if the appropriate committee decides that the instrument should not proceed.

Donald Gorrie: Is that sensible?

Miss Goldie: I suppose that it mirrors the negative procedure in other fora.

Donald Gorrie: With due respect, that is not an argument.

Miss Goldie: I do not object per se to the application of the negative procedure. There are circumstances in which it might be the sensible way in which to proceed. It is relevant to mention that the instrument that we are discussing came into force at the beginning of August, which was in the middle of the recess. Interested parties outwith the political domain might not have had their eyes on the ball at that time, which is understandable during a holiday period. That fact exacerbated the situation.

Donald Gorrie: Would not it be more sensible if committees waited until the 40-day consideration period was over to discuss whether to annul the instrument?

Miss Goldie: I suppose that that depends on one's view of the point of the 40-day period. One view from a practical standpoint is illustrated by the instrument that the Enterprise and Lifelong Learning Committee considered. Because the regulation was in force, benefits were undoubtedly accruing to certain organisations in Scotland. It would be an onerous decision to decide at short notice to abbreviate the exercise of a benefit that individuals and organisations enjoy. The potential effect of an annulment is the reason why, if we are to have a negative procedure in the Parliament, I would not want an extension of the 40-day period. My view is that, if there is to be an annulment under the negative procedure, it must be within the 40 days. Fiona Hyslop makes a pertinent point about the management of the 40-day period.

The Convener: Donald Gorrie probably raises wider issues about the nature, purpose and organisation of subordinate legislation in the Parliament, which are based on a transitional order that reflects practices at Westminster. The issue that we are charged with considering today is the more specific one about whether our procedures and standing orders need to be adjusted to make the existing system work. That exercise assumes nothing about the existing system, other than that it is there and that it should work in the terms under which it was framed and enacted. Reforming, amending, changing, sweeping away or any of the more radical options that Donald Gorrie might have in mind for the system are more important matters that might fruitfully be considered, but I suspect that the Subordinate Legislation Committee would be the best body to initiate that.

Donald Gorrie: I accept your polite rebuke, convener.

The Convener: It was not a rebuke; it was merely an amplification of your point.

Donald Gorrie: Okay, convener. What is Annabel Goldie's best advice on how to deal with such a situation? Do we say that the person in Lloyd Quinan's position has 30 days instead of 40 days in which to lodge his motion, and that the committee has 10 days within that 40 days to give it proper consideration? How do you suggest we approach the matter?

09:45

Miss Goldie: There are two issues to determine. The first is what it is reasonable to expect a committee to do in considering a negative instrument. In the case of the Enterprise and Lifelong Learning Committee, it happened to suit our agenda to consider the instrument concerned at the earliest possible opportunity. We of course had a whole lot of other business to do. As I understand it, we first considered the instrument at the earliest possible opportunity—it was put on our agenda just after the end of the recess. Such flexibility is desirable. It gives committee members time to look at the instrument. If issues arise, members will have the remainder of the 40-day period in which to decide what to do about the instrument.

The second issue is what it is reasonable for anybody who is minded to oppose the operation of the instrument to do. I think that the first thing that it is reasonable for them to do if they have a concern is to appear at the relevant committee and intimate that concern. If, as happened in this case, the concern is not known about at all and has not been registered in the minds of any outside individuals when the relevant committee meets, I think that it is sensible to say that further objections may be lodged within the 40-day period. Perhaps there has to be a cut-off point seven days before the expiry of that 40-day period.

Our recent experience was the first time that my committee and I have had to deal with such a problem. I would be reticent about suggesting that I am the omnipotent authority on these matters. I can merely explain to you my experience and my reaction.

Fiona Hyslop: Thank you for bringing the matter to our attention. Your committee had to deal with the instrument in question, but the Parliament as a whole is affected by the issue.

My understanding is that it is important for committees to examine statutory instruments as early as possible. Ordinarily, a committee will have no issue with the instrument and will let it through. However, if a committee wanted to pursue a matter, it might want to call witnesses. There has to be a period to allow it to do that and to have a second cut at the issue if it wishes. I do not want us to assume that committees will wish to examine these things only at a later stage; it is important that they consider them early on.

Would it be fair to say that the end process may mean that members who want to lodge objections have to do so within a seven to 10-day period in order to allow for the subsequent chain of events, but that the committees themselves could lodge motions until fairly late in the 40-day period? When we are considering the procedures, we should perhaps bear in mind the difference between an individual lodging an objection and the committee lodging an objection. Please correct me if I am wrong but, if the committee decides that an issue is so important that it wishes to convene to discuss it, it will probably need only a day or two—as long as that period covers the Wednesday or the Thursday, when the Parliament meets—in which to lodge a motion. That is the worst-case scenario. We need to consider the various scenarios and ensure that our process can accommodate them all.

How would you feel about different lodging dates for committees and individuals? If an individual lodges an objection, they will need evidence and will need to be given the chance to say their piece. They can do that only with a committee's agreement. If the committee itself decides to object to an instrument, it can, I assume, lodge a motion up to a fairly late date. I invite responses to those points.

Miss Goldie: Fiona Hyslop has drawn an interesting and valuable distinction. If the Enterprise and Lifelong Learning Committee, when it first met to consider the instrument, had been made aware of the reservations that were felt by other parties, I think that it would have wanted to take evidence, but it might well have found itself against the wire, with 33 days or whatever. Having taken evidence, the committee might have had to convene a meeting to establish what its members made of the evidence and to reach agreement on its position. There is a strong argument that the committee needs the latitude of as much of the 40-day period as possible to do what is proper.

On the other hand, one would imagine that an individual might have a particular reason to be concerned about the provisions of the instrument. If that is the case, it seems reasonable for the individual to be required to represent their concerns at an early stage. I am not unsympathetic to the suggestion that, if an individual is unhappy about an instrument, they

should act within seven days of the 40-day period, whereas a committee should have slightly greater latitude to act within the 40-day period.

The Convener: Do we agree with the report's recommendation to refer to the Subordinate Legislation Committee the issues that Annabel Goldie's letter raises about the compatibility of our current procedures with the essential framework for subordinate legislation?

Members *indicated agreement.*

The Convener: We shall invite the Subordinate Legislation Committee's response and encourage it to reflect on some of the broader issues that have arisen in our discussion, which might be pertinent in the longer term for it to consider.

Miss Goldie: Thank you.

Public Petitions (Languages)

The Convener: The second item on the agenda is our consideration of a paper on the use of languages other than English in the petitions process. We are joined for this item by Steve Farrell, the clerk to the Public Petitions Committee and—without a name plate—Mark Richards, who prepared the additional paper outlining some proposed changes to standing orders, which was tabled at the beginning of the meeting.

Steve Farrell (Scottish Parliament Directorate of Clerking and Reporting): I will make a brief statement. In evidence that the Procedures Committee heard as part of its consultative steering group inquiry, we acknowledged that there might be a gap in our provision of suitable guidance to ethnic groups in Scotland. The language policy paper, which addresses that issue, is to be discussed later in the meeting.

The proposals to change standing orders are sensible and simple in that they would allow petitions to be submitted in any language. At the moment, petitions can be submitted only in English or Gaelic. The proposal takes away all barriers to petitions being submitted in different languages and proposes an arrangement whereby the Parliament will provide suitable translation of petitions to allow the Public Petitions Committee to consider the petition in English.

The Convener: I think that members have now had the opportunity to look at the text on the proposed changes to standing orders. I invite members to comment on the proposals.

Mr Gil Paterson (Central Scotland) (SNP): The changes seem to be a way of strengthening the petitions process. The strength of a petition is based on the document that people sign. If the petition is in someone's own language and they fully understand it, there will be no error or minute detail that could cause a problem.

The problem arises at the Parliament. We have got to get the process for translating into English right. I am a strong supporter of the Public Petitions Committee and of the way in which the committee allows individuals, particularly from ethnic minorities, to access the Parliament. I support the proposals.

Fiona Hyslop: I have a simple question. I recognise that the Public Petitions Committee wants to respond, or to have the discretion to respond, to petitioners in the language in which the petition was submitted, but what do you mean by the use of the word "notification"?

Steve Farrell: As members know, we feel that it is important to keep petitioners involved at every stage of the process. We also feel that people who

use languages other than English and approach the committee should not come up against a barrier of the Parliament being unable to respond. We want to be able to see the process through by responding to the petitioner in the language in which the petition was submitted. The changes would also allow us to provide appropriate translation for people to come to the committee and speak in their language, should they want to do so.

The Convener: I will ask a supplementary question. Am I right in thinking that the paper that we will consider shortly on languages would require the *Official Report* of that committee meeting, and indeed further committee meetings in the process, to be made available in translation in the language that had been used to initiate the petition?

Steve Farrell: Perhaps Stephen Hutchinson from the official report could address that point. I think that we currently produce a Gaelic translation, in which case the *Official Report* is produced in Gaelic as well as in English.

The Convener: Could Stephen Hutchinson come to the table? We are now joined by Stephen Hutchinson from the official report. Can you answer the question that I asked?

Stephen Hutchinson (Scottish Parliament Directorate of Clerking and Reporting): One of the recommendations that the Scottish Parliamentary Corporate Body accepted was that a full translation should be offered of an *Official Report* of an item or a meeting at which a language other than English, Gaelic or Scots was used. I think that that goes beyond the point that Fiona Hyslop made. The committee might want to discuss the matter later.

The Convener: I am making the point obvious, because resource and work load implications will arise from the adoption of the policy. It is important that, in initiating the change, the corporate body is fully aware of and supportive of the implications of its request. There is the potential for a lot of work to be involved. Gil Paterson's point is that the change strengthens the petition and the ability of the petitioner to follow the process.

Donald Gorrie: If an activist from, for example, the Indian community starts a petition in Hindi, or whatever the correct language is, and people sign it, does he or she get notified about the progress of the petition or do all the petitioners get notified?

Steve Farrell: There is a principal petitioner, who takes responsibility for being the contact with the Parliament. That individual will be notified in the language in which they submitted the petition.

Donald Gorrie: I accept the implication of the comments in the paper that we have been given, but I think that there are differences. If somebody produces his petition in Eskimo, or whatever, to make a political or other point, that is fair enough. If he speaks English, however, I think that we can respond in English. If he genuinely cannot speak English and is an Eskimo asylum seeker who has just arrived here, it is fair enough that we respond to him in Eskimo. We should not waste a lot of resources on translating things when that is not necessary. We should translate the information when that is necessary. The wording of the proposed changes to standing orders suggested in the additional paper states that the notification may,

"at the discretion of the Committee, be given in the language of the petition or in English."

That is sensible, so I support it.

The Convener: We must decide whether to recommend the standing order changes in paragraph 3 of the additional paper that has been tabled today. I am hesitant about that, given that members have only just had the opportunity to look at the paper, but there is no negative procedure for recommending standing order changes. Therefore, we must take a decision. Do we agree to recommend the proposed changes to standing orders?

Members *indicated agreement*.

Language Policy

The Convener: Item 3 on the agenda, for which we are now joined officially by Stephen Hutchinson, is the language policy of the Scottish Parliamentary Corporate Body. This is essentially a report back to the committee on the comments that it made when the matter was previously discussed. Does Stephen Hutchinson want to highlight any points?

Stephen Hutchinson: I want to say only that I hope that the committee is content with the policy and the action plan. The language policy group is grateful to the committee for the comments that members made at the meeting that I attended. I hope that the committee feels that we have taken the spirit of those comments on board.

The Convener: Members will see from the papers that we have thoroughly discussed these matters before, but this is an opportunity to comment and to make any further observations. If there are no further observations, we shall simply note the paper.

10:00

Mr Paterson: I would like to make a couple of comments. I was speaking particularly about the Scots language and I think that there has been a significant move forward in the paper, which treats the language as any other language. There may not have been moves afoot to exclude Scots, but it would have been remiss not to include it in a normal fashion.

I am a bit disappointed that there are no moves forward on signage for the Scottish Parliament buildings. It seems strange that we have a Scottish Parliament but we do not want to use Scots when we title it. I hope that my comments will bring about a rethink on that issue. It is good that Braille is to be used. I cannot remember that being mentioned before, so that is excellent. However, I hope that somebody somewhere will take note of the fact that this is the Scottish Parliament and that it would be a good idea if it were titled in Scots.

The Convener: That is not our decision. I know that the matter has been debated many times, but Gil Paterson's point is on the record once again.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I welcome the paper, which is a helpful and balanced report. I am especially grateful that my hobbyhorse—access points to the Parliament—has been directly addressed. I appreciate that.

The Convener: Do members agree to note the paper and the action plan?

Members *indicated agreement*.

Parliamentary Questions

The Convener: Hugh Flinn joins us for item 4, which is consideration of a report on various possible changes to standing orders in relation to parliamentary questions. This item arises from our meeting with the Minister for Parliamentary Business on 11 June and her subsequent letter of 10 July.

Hugh Flinn (Scottish Parliament Directorate of Clerking and Reporting): This is, in essence, a tidying-up paper dealing with various issues, most of which arise from the minister's attendance at the committee on 11 June. Proposed changes to standing orders are before members for consideration, and I shall summarise the paper briefly.

Paragraphs 2 to 9 deal with the period for answer to parliamentary questions. They highlight the difficulties that the current 14-day rule causes when public holidays occur during the 14 days for answer. They recommend that standing orders be changed so that the period for answer will normally be 10 days when the office of the clerk is open, rather than 14 normal days. For recess questions, the period will be 20 days when the office of the clerk is open, rather than 28 days. I hope that that change will address the various logistical difficulties that the current rule poses for the Executive and for the chamber desk, but I hope also that it does so without detriment to members in terms of the period for answer.

Paragraphs 10 to 21 address various issues relating to recess questions. We note that the Executive is not now seeking any moratorium period during recesses, nor is it seeking to extend the 28 days to 35 days. We have considered two issues concerning when the 28-day period when the office of the clerk is open should apply. It is really for members to take a decision on those two issues, which are addressed in paragraphs 17 and 20.

Paragraphs 22 to 25 seek to address an anomaly in standing orders on the position of junior ministers, and recommend a change so that it is explicit that junior ministers can answer written questions as well as oral questions.

The recommendations are summarised in paragraph 26.

The Convener: We are also joined for the discussion by Andrew McNaughton from the Scottish Executive parliamentary liaison unit.

Andrew McNaughton (Scottish Executive Parliamentary Liaison Unit): We welcome the recommendations and thank the committee for its consideration of them. As the convener knows, the Minister for Parliamentary Business, Patricia Ferguson, has commented on some of the

recommendations in her letter of 10 July. I commend the recommendations to the committee.

The Convener: We will deal with the three sets of proposals in turn.

The points that are made in paragraphs 1 to 9 of the paper reflect our discussion in June. The aim is to have questions answered within 10 working days, rather than within 14 days. I want to ask about the proposed insertion into standing orders of the term "counting days" and the offer of a definition of that term. The basis for that recommendation appears to be that it is felt that the term "working days" is not very accurate. Might it have been possible to use the term "working days" and to provide a definition of the term for the purposes of this rule? Would that have conflicted with the way in which the term "working days" is used in other contexts, thereby leading to confusion?

Hugh Flinn: We considered that option, but it would have complicated the position. The working days of the Parliament and the working days of the Executive are not identical. No doubt a formulation could have been worked out, but it is likely that the wording would have been very complicated. We also considered wording based on the notion of days when the office of the clerk is open, but that led to complicated formulations in standing orders. The term "counting days" that is proposed for insertion in standing orders as rule 13.5.2A is a device designed to ensure that the substantive standing order is as simple as possible.

The Convener: So counting days are neither the working days of the Executive nor the working days of the Parliament.

Hugh Flinn: They are more akin to the working days of the Parliament—they relate to

"days when the Office of the Clerk is open."

The Convener: Are counting days the working days of the Parliament?

Hugh Flinn: The Parliamentary Bureau can recommend that the office of the clerk should not be open on days that are not public holidays or privilege holidays for parliamentary staff. It often does so for the days between Christmas and new year. I do not think that counting days and the working days of the Parliament are exactly the same.

Donald Gorrie: This is broadening the issue a little, but would it be possible for the first sentence of standing order 13.5.2 to read, "The answer to a written question shall be lodged with the Clerk and shall answer the question"?

The Convener: That would be an interesting additional point to pursue, but it is not relevant to the specific issue of timing. I am sure that we will have ample opportunity in another context to discuss the issue that Donald Gorrie has raised.

Fiona Hyslop: Donald Gorrie makes a very interesting point, but perhaps we should seek answers to oral questions before dealing with written questions.

I support what Hugh Flinn said about the importance of referring in standing orders to

"days when the Office of the Clerk is open."

We know that many MSPs and their staff work on public holidays. It is important to define when the official business of motions and questions can be lodged. We should use the term "counting days" and define that exactly. In Edinburgh, in particular, there are a number of public holidays in May and June. Some of the main concerns relate to those.

I want to address the issue of the recess. The committee has worked with the Executive to reach an accommodation, taking into account the working of the chamber office. I am very pleased that the Executive is no longer seeking a moratorium on written questions during part of the recess or an extension of the deadline for answers to recess questions. We are left with the narrow issue of what happens at the end of the recess.

At the end of the summer recess, I had a very interesting experience. A helpful clerk pointed out to me that if I delayed lodging a question for two days it would be answered more quickly than if I lodged it during the recess. That is not common sense. I am reluctant for the last week of the recess to be covered by the rules for answering written questions that apply during the summer. We need to have a transition period, whereby the same rules would apply to the lodging of questions in the last week of the recess as would apply after the recess. I do not support the Executive's move to treat the last week of the recess in the same way as the rest of the summer, because that would produce the bizarre situation with which I was faced. I was told that if I hung on for two days, I would get a reply more quickly. That is not appropriate.

The Executive and the committee have worked together constructively on improving responses to members and to staff. I am interested in the speed of response. I note that we have recently received notification on another of the issues that we are pursuing in relation to parliamentary questions—the cost of answering questions. I understand that Colin Boyd's office has replied that Colin Boyd cannot answer questions because of disproportionate cost.

I am concerned that the good will that we have shown in co-operating with the Executive on one issue is perhaps being undermined by the lack of response and the treatment by one of the

Executive's departments of another issue that we are considering. I would prefer to operate on the basis of good will and co-operation, regardless of the issue that is raised. The Executive has raised the cost issue. We have responded promptly on an issue that is in the Executive's interests. I am slightly concerned that it is taking longer for some matters to come to light in relation to an issue that is not in the Executive's interests. The Executive seems to be operating a system without the agreement of the committee.

That is my caveat. The Executive may or may not wish to respond to that point, because that is a point for the committee. I am willing to move towards the Executive to a great extent, but we must be aware that we must operate on the basis of good will with the Executive on such matters.

The Convener: The point has been made, but it is not relevant to the paper. I do not expect Hugh Flinn or Andrew McNaughton to be able to answer on advisory cost limits. However, you are free to add anything that might be pertinent in your answer to the earlier points.

Andrew McNaughton: In relation to Fiona Hyslop's point about not extending the deadline into the last week of the recess period, there will probably always be some anomalies in the operation of the process. As the Minister for Parliamentary Business has set out, our concern is that we might end up in a situation in which we were not able to answer questions as timeously as we would hope, which would be counterproductive. We all want questions to be answered timeously.

As the minister noted in her letter of 10 July, the Executive's holidays do not necessarily follow the Parliament's recess dates. When staff come and go, there will be other urgent business to pick up. There is a benefit in having a consistent approach. The 28-day period should apply to the whole or part of a recess. That is our line. In our opinion, it would be beneficial to allow a 28-day period for the answering of questions throughout the recess. However, it is for the committee to decide what it wants to do about the issue.

Susan Deacon: I never cease to be impressed by the ability of my colleague Fiona Hyslop to talk about good will and co-operation with the Executive, while taking a direct pop at the Executive. I agree that we can and should seek to maximise co-operation between the Executive and the Parliament. I have made that point several times. In particular, I have highlighted the importance of working together to make best use of the resources that are available to the Executive and the Parliament.

The table in paragraph 13 of annexe B is striking in revealing the inexorable rise in the number of parliamentary questions that are being lodged. I am aware that the figures in the table relate only to the recess period. The figure rose from 783 in 1999 to more than 1,500 in 2002. I know that there are similar trends throughout the rest of the year. I appreciate the fact that the committee has carried out a separate piece of work on issues around the volume and processing of parliamentary questions, which bears some relationship to the wider work that we have been doing on the CSG inquiry.

10:15

Senior representatives from the Executive and the Parliament are here today. I wonder whether this question has thrown up any further thoughts or observations on their part on what the steady increase in the number of questions has meant in resource terms. I am keen to know whether the work that we have been doing has generated further thoughts about what might be done to address these matters, because the increase in the number of questions is a matter of shared concern to the Parliament. I say that without seeking to limit or constrain an important part of the parliamentary process. I am interested in how we can manage it more effectively.

Hugh Flinn: The increase in the number of questions that were asked during the recess, particularly this year, has resource implications for parliamentary staff. The recess is usually when staff take leave so there are normally fewer clerks available to handle all the questions. There was very little difference between the number of questions that we received in this year's recess and the number of questions that we receive in a non-recess period. To talk about the reasons for that and to say whether we could consider additional areas would draw me too far into speculation.

Andrew McNaughton: We acknowledge that MSPs have the right to ask questions and to take responsibility for the questions that they ask. The increase in parliamentary questions since 1999 has resource implications, but we are improving our performance in coping with questions and responding to them in good time. That is in part because of the co-operation that we have with the Procedures Committee and the changes that have been agreed. We hope that that will continue. Some of the changes that have been proposed will lead us towards better performance. We see ourselves working in harmony with the Parliament.

Susan Deacon: I am grateful to Andrew McNaughton and Hugh Flinn for their comments. We will continue to consider the increase in the volume of parliamentary questions in relation to the other pieces of work in which we are involved.

Paul Martin (Glasgow Springburn) (Lab): We must be clear about what action we can take. Susan Deacon has raised relevant concerns about the increase in the volume of questions. However, the point that the Scottish Executive representative made is that MSPs have the right to ask questions. I appreciate that Susan Deacon and others have concerns, but what action can we take, apart from preventing duplicate questions from being submitted? I know that similar questions have been submitted on a number of occasions. The process of asking written and oral questions is helpful in that it creates a public record of information. That method is particularly helpful to MSPs.

I welcome the new approach to dealing with the time scales. I have decided not to submit written questions on a number of occasions because of the time scales that are involved in getting responses. I recall submitting a number of questions that were answered months later. They could have been answered in a shorter time scale. The answer might have been relevant to a constituent.

I know that Susan Deacon is not suggesting that we prevent MSPs from asking questions. We could continue to investigate the increasing number of questions and produce many documents like the one before us, but we will never solve the issue; it is a matter for members. We could compare ourselves with Westminster, which I know we have done in previous papers.

Fiona Hyslop: I have a question and a suggestion. Do the statistics that we receive on the Executive's speed of response within certain deadlines include holding responses?

My suggestion is about the small issue on which we have to take a decision, which is the last week of the recess. It occurred to me that if the last week of the recess had a 21-day deadline or a 15-counting-days deadline, it would mean that if the Executive received a question in the last week of the recess, in effect it would have the same amount of time as it would have had had the MSP waited until the first day back. In fact, the Executive would have a longer period, but the member would not be put at a disadvantage if they did not wait until the first week back after the recess. The last week would be a transition week, which would give the best of both worlds. I say that in the spirit of co-operation. Why cannot the system for the last week of recess operate on a 15-counting-day basis, which is midway between the summer deadline and full operation?

My question was on the statistics that we get on the speed of response, and picks up Paul Martin's point. What percentage of responses are holding replies?

Andrew McNaughton: I cannot comment on the statistics on holding replies and so forth, because I do not have the figures to hand. Hugh Flinn may be able to respond. I am not so quick-witted as to be able to follow your calculations on the counting days, but it sounds as though it is a compromise that may be worth considering. Rather than having a complete cut-off and going back to 10 days, you are proposing a 15-day period.

Fiona Hyslop: Yes, for the last week.

Andrew McNaughton: That is better than nothing, and it is better than where we are at. It is a compromise that we would want to consider.

The Convener: It is not a proposal that is before us today, of course, and it would be inappropriate to put the suggestion through the committee without members having examined it and its implications and without having collected views from the various participants in the process. We can leave the proposal hanging on the wall as something that we might come to in the light of our experience of any changes that we agree to today.

At the outset, I aimed to discuss these matters in groupings, which worked only partly. One issue has not been addressed, and that is clarification on the applicability of junior ministers answering questions. Before we proceed to the recommendations, I invite members to comment on the matter.

Donald Gorrie: Junior ministers already answer questions.

The Convener: Yes. The changes are recommended simply to make it absolutely clear that the standing orders permit us to operate in the way that we operate. The change seeks to remove the potential for someone to misunderstand what is done, why it is done, and what is allowable.

Fiona Hyslop: The change is helpful, because if one wants to pursue an issue—perhaps by writing or contacting the minister rather than via written questions—it is helpful to have a steer on which junior minister is dealing with it, if it is not the minister.

The Convener: We have a set of recommendations on changes to standing orders, which we are required to agree to or not agree to. I will take them separately, as they may raise different issues.

The first proposal follows the recommendation in paragraph 9 to amend standing order 13.5, and change 14 days to 10 days and include a definition of counting days. Do we agree to that recommendation?

Members *indicated agreement.*

The Convener: The next point is not a recommended change, but a request simply to note that we do not recommend a change to the 28-day deadline. Do members agree that the deadline should be retained?

Members *indicated agreement*.

The Convener: We are asked to decide whether to amend standing order 13.5.2, as set out in paragraph 17. The suggestion will mean an improvement in the answering of questions within the deadlines. However, the improvement will come only through extending the deadlines. There is a balancing factor and it is up to the committee whether to accept the recommendation. Do members agree to the recommendation in paragraph 26.3?

Members *indicated agreement*.

The Convener: The committee is also asked to take a view on the issues that are raised in paragraphs 19 and 20 about whether we should have a 14-day or a 28-day deadline for answers to questions that are lodged in the final week of recess. We had an interesting discussion on that issue.

Fiona Hyslop: Does the committee operate on the basis that members cannot make a suggestion for a compromise during the meeting? Do we simply have to vote yea or nay on the recommendations that are before us?

The Convener: When we have a paper that analyses the reasons why something should be changed and which contains a proposal, it is reasonable to take a view on that proposal. If the committee wishes to consider a 15-counting-day alternative, that is perfectly reasonable, but it would also be reasonable for us to circulate that proposal. Andrew McNaughton is here to speak for the minister, but neither the minister nor her department, nor other people who are involved, have been consulted on the implications of a 15-counting-day deadline. It would be appropriate for such a suggestion to be raised later, when people have had time to consider the implications.

Andrew McNaughton's immediate reaction to the proposal was that something is better than nothing, but that was an off-the-cuff remark. I do not suggest that Fiona Hyslop is trying to bounce a proposal through, but the committee has never bounced through changes to standing orders; we always try to consult fully. The paper asks whether we want to make a change from 10 counting days to 20 counting days. If we do not, we can discuss subsequently whether 15 counting days is acceptable. That is a reasonable way in which to proceed.

Fiona Hyslop: On that basis, I propose that we have a 14-day deadline for questions that are lodged in the final week of the recess.

The Convener: That is essentially the status quo.

Hugh Flinn: No. The status quo would be a 28-day deadline.

The Convener: Okay. Fiona Hyslop proposes a change to standing orders. Are there any other views? The matter is complicated.

Donald Gorrie: Is not it possible to continue—if that is the correct terminology—the issue and to obtain a further report on the 15-day option, along the sensible lines that you suggest?

The Convener: That is a perfectly competent amendment to the proposal.

Fiona Hyslop: I support Donald Gorrie's suggestion.

The Convener: What we are saying is that we would like to consider the issue again. We would like to gather views on Fiona Hyslop's timing suggestion. We will consider that item separately, perhaps at the next meeting if it is possible to get further thoughts quickly enough. If not, we will consider the matter as soon as possible.

Members should simply note paragraph 26.5. Paragraph 26.6 recommends that we accept the change to legitimise junior ministers. Do members agree to that change?

Members *indicated agreement*.

Fiona Hyslop: Were junior ministers not legitimate before?

The Convener: The recommendation refers only to their role in answering questions.

Standing Orders (Conveners Group)

The Convener: The fifth agenda item concerns the constitution of the conveners group in standing orders. Members have a draft report on the changes to standing orders, which we have discussed before. I invite members' approval of the changes, but if they wish to raise or clarify anything, this is the opportunity so to do.

Donald Gorrie: The draft report reflects the discussion that we had. I am happy with it.

The Convener: Are members happy with the draft report?

Members *indicated agreement*.

The Convener: Before we conclude business, I inform the committee that this is the final meeting at which Mark MacPherson will be with us. He is going off to pursue his career elsewhere. I thank him for his work and I am sure that the committee endorses that. We wish him all the best in the future.

Meeting closed at 10:30.

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