PROCEDURES COMMITTEE

Tuesday 19 November 2002
(*Morning*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 19 November 2002

PROCEDURES COMMITTEE
15th 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

CLERK TO THE COMMITTEE

John Patterson

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 1

Scottish Parliament

Procedures Committee

Tuesday 19 November 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:01*]

Consultative Steering Group Report

The Convener (Mr Murray Tosh): Good morning. I apologise for our early start, but I have to chair part of the Nordic Council seminar later today. We have an apology for lateness from Ken Macintosh. Other members will no doubt join us reasonably soon.

Our one item of business today is consideration of the consultative steering group discussion paper, which contains core text and appears in members' papers as annexe A. Annexe B is a paper produced by Donald Gorrie, which will remain on the table for discussion at a later date—we were able to include it with this week's papers.

This morning, I received a paper from Fiona Hyslop, which we will put on to the agenda for the next meeting so that it will be on the public record and form part of our discussions. Fiona Hyslop requested that clarification in her e-mail.

As happened last week, members have received suggested amendments to the report, which I compiled into a working document for our meetings to finalise the report. Those suggestions are not yet in the public domain, but this meeting will put them there.

Donald Gorrie (Central Scotland) (LD): I do not have a copy of your paper.

The Convener: While papers are distributed, I repeat that the paper that Fiona Hyslop e-mailed late yesterday or this morning will be issued with the committee papers next week so that it is on the public record. Obviously, we can pick up on the points in the paper when we finalise the report. The same will apply to submissions from other members of the committee or our adviser.

The assistant clerks are distributing an additional paper, which was e-mailed to members yesterday. However, in case you have not seen it, copies of it are winging their way to you. I think that they have wung their way to you. I do not think that "wung" is the word, is it? It is "winged"—a hint to the official report staff.

Donald Gorrie: The papers do not have the convener's comments.

The Convener: Sorry, Donald. You should have a paper with the heading "CSG inquiry - discussion paper on accountability - proposed amendments by Murray Tosh MSP".

Donald Gorrie: I do not have that. I left my copy elsewhere and have not been given another.

The Convener: Do we have spare copies?

John Patterson (Clerk): We have spare copies.

The Convener: Do you have your copy, Fiona?

Fiona Hyslop (Lothians) (SNP): Yes. I have read it.

The Convener: Right. The report begins with an introduction and moves on to a section headed "Legislative matters". My first proposed change is to paragraph 11. I propose to reword it to make it a specific recommendation. I have not numbered the recommendation, because when I prepared it I did not know whether we would be considering other recommendations, which could have affected the numbering.

My suggested rewording of paragraph 11 is:

"We recommend in the light of the evidence taken in this inquiry, that such a review"—

which is referred to in the previous couple of paragraphs—

"covering both primary and subordinate legislation, should be undertaken by our successors on this committee, in collaboration with the Scottish Executive and the Parliamentary authorities, to ensure that the current legislative procedures and resources are fully adequate in the light of what will then be the Parliament's significant legislative experience."

My thinking is that we will make recommendations in the inquiry and in finalising the report. However, I think that there is justification, given all the evidence that we have taken, for a comprehensive review to be undertaken early in the next parliamentary session. Clearly, our successors in the Procedures Committee should do that. Therefore, I hope that that is a straightforward recommendation with which everyone is content.

Fiona Hyslop: Will you clarify that that would not preclude us from making specific recommendations about stages 2 and 3 in particular?

The Convener: It would not at all. As was the case last week, the intention is to add recommendations that are provisional and non-exclusive and that will give us something to work on when we finalise the report. Members can introduce other recommendations at final stages.

I have no suggestions for further changes until later in the draft report, because most of the first part of the report is simply an explanation of how the legislative process works, which is included for the reader who is broadly aware of what we do but might not have the fine grasp of detail. It also provides a platform for some of the later recommendations.

My next suggested change is to paragraph 37, which I propose simply to put in bold to establish the principle that, whatever specific changes are made, the time between the various stages of a bill must be sufficient for members to consider and lodge amendments. I think that that is an important statement of principle.

On paragraph 38, I propose to add at the end the rider:

"But we do consider that every effort must be made by the Parliamentary authorities to balance these competing requirements."

I suggest that that be put in bold. I believe that it is important that we charge the parliamentary authorities with the responsibility for resourcing the process adequately so that the tensions can be resolved more easily.

Fiona Hyslop: Obviously, some of the evidence was taken some time ago and situations are arising that back up much of what we are saying. There have been developments in subordinate legislation, in particular. Concerns were raised in last week's stage 3 debate on the Debt Arrangement and Attachment (Scotland) Bill. I know that there has been correspondence between the Subordinate Legislation Committee and the Executive. Those examples might help us to emphasise some of the points that we are making. Given that they are on the public record, can we refer to them in our evidence? That would help to explain the background to people's concerns about the competing demands of stage 3 debates and subordinate legislation.

The Convener: That suggestion is very sound in principle. The clerks take notes during meetings and we will be able to refer to the *Official Report* of this meeting. We will try to pick up the point that the member has made. Once the report has been seen in the round, it might be easier for us to decide where we will slot in additional text and what we will say.

Donald Gorrie: The intense timetable at stage 2 is also an issue. There is a problem not just between stages, but between meetings at which bills are amended.

The Convener: That is a valid point. I will examine the matter closely, but in principle I agree with you.

I suggest that we put into bold type the quotes in the next section, entitled "Evidence from Committees". All those quotes—in paragraphs 39, 40, 41 and 42—make significant points about difficulties that have been encountered. I suggest that in paragraphs 40 and 41 we separate the quote from the preceding text, so that it stands out more clearly. That is a minor point, but it would help.

I propose that after paragraph 43 we add a new paragraph that refers back to an issue that was raised earlier. The paragraph states:

"We have already highlighted the concerns expressed by the Equal Opportunities Committee about the pressures which it has encountered in discharging its obligation to assess all the legislation put before it."

For the sake of completeness, it is reasonable in this section to refer back to that previous evidence. The reference to the previous paragraph cannot be supplied until we have a consolidated document.

I suggest that the quote in paragraph 44, under the heading "External evidence", should appear in bold. The quote is from Ian McKay of the Educational Institute of Scotland and concerns the lack of time for civic society to be involved in the legislative process.

I suggest a form of wording for paragraph 49 that makes the same point, but more strongly. The new paragraph reads:

"One of the major benefits to Scotland of having a Parliament with legislative competence, as the Presiding Officer's remarks imply, was the increased opportunity to legislate in a context in which legislative quality would be assured by enlightened models of consultation, pre-legislative activity, and sufficient time for all stages in the process."

That statement is strong enough to merit being placed in bold.

Fiona Hyslop: I agree. However, I am not sure that we mention the fact that we are a unicameral Parliament. That fact adds weight to many of the arguments about why it is important to have consultation and time for the legislative process until stage 3. That may be an obvious point, but we have not built it into the report.

The Convener: That is a significant point, but I am not sure that the summary of the external evidence is the right place in which to make it. When we reflect on the evidence, we would be well advised to write your comment into the text.

Mr Gil Paterson (Central Scotland) (SNP): Convener, did you refer to pre-legislative scrutiny or pre-legislative activity?

The Convener: Paragraph 49 refers to "pre-legislative activity", but it may be more accurate to refer to pre-legislative scrutiny. I am not sure. In

the report as a whole, we will not suggest that the committees' role should be confined to scrutiny of proposals. I anticipate that in the last section of the report we will propose that committees and civic society, as well as the Executive, should become more actively involved in pre-legislative work. We should not simply react to initiatives by the Executive. For that reason, it may be more appropriate for us to use the word "activity". We will draw a line under that and debate the precise term later on, but that was well picked up.

Paragraph 50 contains a quotation from Sir David Steel, which he gave in evidence, and I propose to put that in bold. It remains to be seen in the new parliamentary session whether the lessons about the four-year legislative term will have been learned, but the point is still valid. We are under pressure at the moment because we have to finish by the end of March.

09:15

I do not quite understand the point of paragraph 51, because it comes in the section in which the evidence is being summarised. It is a bit like the unicameral point—it is a response to the evidence. In deleting it, I am not suggesting that the views of the Presiding Officer are insignificant. My view is that the point should be made differently, which takes us to paragraph 56. The rationale was to blend in the point and add the following new text:

"We consider that the view of the Presiding Officer is significant, and note that it is borne out by a substantial body of evidence received. We do not challenge the right of the Executive to propose a substantial legislative programme, but we consider that it would be unacceptable for Bills to be brought forward at a rate which undermines that ability of committees, civic society and the general public to contribute adequately and to conduct proper scrutiny of proposed legislation."

That is a clear and definite restatement of something that is said earlier in the report.

Fiona Hyslop: On the previous point about timetabling and the views of committees, we are reflecting external evidence that we have heard. At some point, however, we have to come to a judgment and use our experience. What is not included is the fact that the Parliamentary Bureau would rarely withstand a request from a committee convener to have more time. There seem to be two sides. The committee conveners think that they are in a timetabling straitjacket, but the bureau does not hear much from the conveners saying that they would prefer to work differently. That should be reflected, although I realise that it is a point for debate and decision. It is additional information that someone would not know unless they had sat on the bureau and understood its workings. It would be wrong for me to agree to something when I know that a different perspective should be reflected in the report.

The Convener: I do not know the answer, but I am aware of the discrepancy in the perspectives of the two sides. I have heard conveners complain about the lack of time, but I have also seen the bureau allocate whatever time the conveners say that they need. I do not know whether the answer is that the conveners need to be more aware of their strength in asking for sufficient time. The point was made in the paper of suggested amendments that you e-mailed to us and I would be keen to discuss it at the appropriate point.

Moving on from that section, I propose to amend the text in paragraph 63. It, too, deals with the handling of bills and the time allocations and I suggest that we amend it, and put it in bold, to say:

"We consider that there can be no question of imposing rigid constraints, and we do not propose any standing orders changes ahead of any full inquiry into legislative processes in the next Parliament. However, we do recommend that minimum periods for Bill Stages should be introduced on a voluntary basis."

The thinking behind that is that, if the next Procedures Committee reviews the legislative process, it might take a year to complete a report, given everything that is involved. The pressures are such that the parliamentary authorities should examine better timetabling from the beginning of the next session and anticipate some of the recommendations that our successors might make. The amendment is a way of ensuring that, in referring the matter to the next committee, we are saying not that nothing should be done, but that people should look at what they could do voluntarily in advance of any changes to standing orders.

Fiona Hyslop: I would be interested to hear what other members think, particularly Donald Gorrie, who has pushed this matter in the committee before. However, because we have heard such strong evidence, I would be saddened if we did not make some firm recommendations for changes to standing orders.

I recognise that we do not have much time until the dissolution of Parliament. We will have to see how much we can do between now and the end of March, but I think that we should grasp the nettle and make stronger recommendations. If we start work on this matter in the next session and the inquiry takes a year, it will have been two years since people sat in the committee and gave evidence. Of course, I realise that my suggestion might cause problems for the clerks and that we will have to check to see what it will be possible to do.

The Convener: Paragraph 63 relates back to examples that are in the previous paragraphs. That gives us the basis for a good discussion. I believe that you are flagging up the fact that we

should spend some time in this area when we come to finalise the report, as the issue concerns the important tactical point of whether we want to lay down markers or say something specific in the report and present that as a challenge to the Parliament.

Fiona Hyslop: Yes.

Donald Gorrie: In effect, we have consulted about the legislative process because we have sat in this committee for hours listening to people's views on the matter. I therefore think that we should suggest a timetable. I accept the point that time is short between now and the dissolution of Parliament, but given that the Scottish Parliament has been criticised for having report after report and reports on reports and so on, we should say that, in our view, there should be X days for this and Y days for that.

The Convener: It would be helpful, in that case, if someone made a firm proposal and supplied some text and time limits before we finalise the report. Are the time limits that are set out in the preceding paragraphs the ones that you would like or would you want other ones? If we are to come up with a recommendation, we will need to be specific.

I was going to make a specific recommendation to amend the text of paragraph 64 to read:

"The time allowed for the passage of Bills at Stage 1 and Stage 2 needs to take account of the requirement to consult the public adequately and to consider the rationale for amendments fully. Two calendar months for Stage 1, and 1 calendar month for Stage 2 could be reasonable. We recommend these as minimum periods, but we consider that much longer periods will be required in practice for Bills which are complex, wide in scope or which attract substantial numbers of amendments."

I am conscious that, in laying down minimum recommendations, we must underline the fact that they are minimum and would not be seen as acceptable when dealing with a complex bill. As with the previous paragraph, we would be making a recommendation that people could implement on a voluntary basis. If we were to make specific recommendations, we would have to consider further which time periods we would want to be built into procedures.

I suggest that we replace paragraph 65 with something else reasonably specific:

"For similar reasons, and with similar qualifications for extremely complex and wide-ranging Bills, we recommend an increase in the minimum time period that must elapse between the day on which Stage 1 is completed and Stage 2 starts, perhaps from 7 whole sitting days to 21 whole sitting days. This could give a more realistic opportunity for Members and civic society to consider the Bill and any amendments."

Those are suggestions as the basis for discussion. Members might be content with those or might feel that other time periods would be appropriate. However, that is the platform for the substantive discussion.

My suggested wording for paragraph 66 develops the same point:

"Equally, we recommend increasing the minimum period between the day on which Stage 2 is completed and the day on which Stage 3 starts, perhaps from 9 whole sitting days where a Bill is amended at Stage 2, and 4 whole sitting days where it is not amended at Stage 2, to 18 whole sitting days and 9 whole sitting days respectively. Such an extended period would provide members"—

as we are talking about members of the Parliament, we should perhaps have a capital "M" there—

"and civic society with more time to consider any outstanding issues and for any proposed amendments to be worked up."

I was then going to suggest an additional paragraph, because it is important to recognise the interests of all the stakeholders, to use that cliché. The paragraph is:

"We consider that these more flexible time allocations would also assist the Executive, allowing Ministers more time to master their briefs, and their advisers more time to analyse proposed amendments and engage in meaningful exchanges with MSPs to refine amendments to the point where they could be accepted by the Ministers."

That picks up on the lack of engagement between MSPs and civil servants when it comes to the drafting of amendments that might be acceptable other than for technical deficiencies, as we discussed earlier. If there were more time at that stage, there would be more scope for everybody to do their job a little bit better.

I was then going to re-examine the wording of paragraph 67 and replace it with a stronger conclusion and specific recommendation, which is:

"Finally, where a committee is consulting at Stage 1 of a Bill, we recommend a 'normal' period of consultation, perhaps no less than 6 weeks. It might be argued that that could provide a better balance between the pressures on consultees and the legislative momentum."

In these tentative recommendations and conclusions, I am suggesting that the whole period be set out more generously, with minimum time scales that would be accepted and used as the basis for a voluntary approach until we change the standing orders in the next session. Alternatively, we could go for a tougher approach, depending on the committee's final conclusions.

Donald Gorrie: The timetable that you have set out goes a long way towards meeting the points, although we could argue a little bit about the figures. The one thing that is not covered is the frequency of meetings in which committees are dealing with amendments. It would help a bit to have 21 days before the stage 2 process started, but it would certainly help to have the process

more spaced out. Committees could alternate meetings to discuss amendments to the bill with meetings to discuss the report or something different. The other thing that I mentioned in my notes was that having a guillotine for the timetable for debate at stage 1 and stage 3 is unacceptable in a unicameral Parliament, but that is a separate issue.

The Convener: We will come to the stage 1 plenary meeting later in the report. Your other point about time for committee meetings between and during the stages is well made. I am a bit sceptical about whether we should lay down rules, but it might be reasonable for us to put that in recommendations and guidance. I envisage circumstances in which a committee might agree to a timetable and find that it wants to programme in an additional meeting. It should not really ever be part of the game plan that committees meet in the evenings and twice a week so that they move through the bill at such a pace that members do not have time to absorb the substance of the amendments that they are discussing. We could cover that with additional text and guidance to committees. The point is fair.

Paragraph 70 deals with the point that Donald Gorrie made about the guillotine on the stage 1 debate. I suggest that we toughen the existing text and make a specific recommendation, which is:

"We acknowledge that the Presiding Officers attempt to ensure balanced debates within the constraints of limited time, and that the allocation of sufficient time for Stage 1 and Stage 3 debate is always a matter of judgement. We are concerned that Stage 1 and 3 debates have on occasions been allocated insufficient time to accommodate the members who have asked to speak, and we recommend that timetabling arrangements should normally be made to allow all MSPs who wish to speak once in a Stage 1 debate to do so."

The thinking behind the recommendation is that it would be possible for us to run a little bit later on Wednesday afternoons if we found that there was strong pressure to speak. The idea came from Alex Neil's evidence that a considerable number of members who wanted to speak in the School Meals (Scotland) Bill debate could not be called because of time pressure.

I remember vividly the stage 1 debate on the Land Reform (Scotland) Bill, in which every member was able to speak, bar one or two at the tail-end. However, that was achieved at the price of allocating members only three minutes, which we felt was difficult to justify. It is difficult enough to tell members that they can speak for only four minutes on a bill, so cutting their time to three minutes was quite severe. That is the basis for that recommendation. Do members have any thoughts on it?

09:30

Mr Paterson: Your attempt to toughen up the recommendation actually weakens it. The word "convention" is much stronger than the word "normally", which can be abused. We could either drop "normally" or leave in "convention".

The Convener: I was not sure what a convention was. Is it a formal thing, or—

Mr Paterson: It is almost a rule.

The Convener: Is it something that grows by use, want and practice? It is fair to ask about the phraseology. We can certainly reconsider that point.

Donald Gorrie: The text is heading in the right direction. There seems to be a convention in the Parliament that a debate starts at a certain hour and finishes at a certain hour on the same day. I do not see why debates should not continue for more than one day. In my view—with which I have often bored you—we spend too much time on piffling motions. We could lose some of them and spend more time on proper scrutiny of legislation at stage 1 and stage 3.

The Convener: We could add to the text by pointing out that it is perfectly possible for debates to be carried forward from the morning to the afternoon or from one day to the next. Indeed, we held some such debates in the early days of the Parliament. I am not sure that it is always good to have an interval in a debate, but if more members want to speak than can be accommodated in the available time slot, that is a reasonable solution.

Fiona Hyslop: I led an all-day debate on housing that started in the morning and ended in the afternoon but that died a death after question time because of the interruption. That does not mean that we should not allow debates to be resumed after a break; however, that is our experience to date.

I fully support the sentiment behind that paragraph and what it is trying to achieve. Nevertheless, we must think through some basic practicalities before we include it. The way in which business operates is almost like a chicken-and-egg situation. Business managers are left trying to guess how popular a stage 1 debate might be while they are making the decision on its timing. We need more time for those decisions. If we know that a stage 1 debate is coming—we invariably do, as we will have timetabled its required completion date—it could be flagged up on the Parliament's intranet and members could register their interest in advance. That would give us a better idea of how much time needs to be allocated to allow more people to speak in the debate.

I have frequently argued successfully for more time for debates because I have anticipated that some debates will be more popular than others. Some stage 1 debates collapse early because of a lack of interest; therefore, flexibility and practical thinking are required. I suggest that we ask the clerks to discuss with the people who organise the timetabling of debates some practical suggestions for ways in which the system could work better. We should not put that recommendation in the report without working out the practicalities of how it would work; otherwise, it would be easy to knock down.

Thursday morning is when we have most room for manoeuvre in a popular stage 1 or stage 3 debate. Wednesday afternoon is a problem. Two and a half hours is just too short if we are discussing something that is important and in which many members have an interest. If we want the system to work, we may have to think about extending the Wednesday afternoon slot. We are missing a trick in limiting ourselves to short debates of two and a half hours. We need a bit more flexibility. That relates to what we are discussing, but I am not sure where it fits in.

The Convener: Those points fit in to this part of the report, and it would be appropriate to think up some text for them. You are right: people have to make judgments, which are better these days. Few debates have collapsed recently through lack of interest and it has become easier to anticipate whether a debate will give rise to a huge amount of controversy. The pressures are all at the other end. For example, there is a lot of pressure on members to speak in a debate on a bill that excites strong views. However, in such cases, we do not allow members to speak and we sit heavily on those whom we select because we are acutely aware of the pressure of time. That is the principal pressure point, and your practical points about how we gauge that better are well taken. As I worked through the report, it became increasingly apparent how our progress on the issue gels with our parallel work on reviewing the shape and scope of the parliamentary week. All of this fits into a pretty rigid time straitjacket. However, that is a separate issue.

Donald Gorrie: The time limit that is set for the stage 1 debate on a bill is self imposed—it is not a statutory requirement. If the Parliamentary Bureau says that stage 1 consideration of bill A will finish on 3 December, it can then change its mind and extend consideration until 10 December. Is that correct?

The Convener: Yes, except that there is a plan for the rest of the session. In particular, the Executive has a plan for when it would like business to be completed. Everything has to be accounted for; for example, time has to be allocated to committees and to Opposition parties. We need a sense of the time that is at our disposal. If something slips, it creates difficulties, because either an issue that was to be discussed later has to be pulled forward to fill that space or something else has to be invented if time has been allocated to do something that no one is ready to do. If we slot what we were going to do on 1 September into 10 December, we are faced with the problem of what happens to the business that we had intended to do on that day. It is not easy to shuffle business around at short notice.

Fiona Hyslop: I do not think that we can decide to extend stage 1 consideration of a bill by a week or 10 days only when we find out in the course of a stage 1 debate that the debate is popular and that members want to speak in it. That would need to be decided in advance. However, when it has become clear that additional evidence is required or that the subject is more of a hot topic than was expected, conveners have asked for more time for stage 1 consideration. After all, the bureau meets weekly. If the problem is simply allocating more time in the chamber for a debate, there is no reason why we cannot put that argument to the bureau so long as people receive notice of what is coming up and it is clear that many members want to take part in the debate.

Donald Gorrie: Unless the bureau changes its mind, we are about to have a debate that will collapse. Three hours has been allocated to the stage 1 debate on the Title Conditions (Scotland) Bill, and the Justice 1 Committee is of the unanimous view that that is far too long. It goes both ways.

Fiona Hyslop: I know from confidential discussions within the bureau that business managers from different parties argued that point on several occasions; it was helpful that the Justice 1 Committee gave information about that. As the Parliament was told last week, we will also debate our 39th Sewel motion, on the UK Extradition Bill, after that debate. Committee feedback strengthened the case of business managers that three hours was too long for that debate. Perhaps we should encourage the Parliament and the committees to give us more information about what they want from the timetable.

Mr Paterson: I tend to agree with Fiona Hyslop. I have seen the difficulties with trying to structure the progression of work. Perhaps we should be given earlier notice of debates, instead of being informed a week or 10 days in advance. If we extended that period, it would give MSPs the opportunity to decide, "This is something that I'm going to be hot and bothered about, and I'm going to be involved in the debate." We should examine that issue, rather than preclude the idea of an

overlap. In this case, I am with Donald Gorrie. If it is a really big debate, the sky will not fall in on us if we knock out the next day's business by extending the time for the debate.

I am also concerned that the pressure that is on us to use more time takes away from the family-friendly Parliament that we have. Many people with families want to get home. I do not think that extending evening sittings is a good option. I do not want to follow Westminster's example; after all, it is now trying to pull in the number of evening sittings that it has. We should consider carefully giving earlier notice, which would get round a lot of the problems.

The Convener: So you think that it would be important at some stage in the report to consider opening up the forward planning of business. Clearly, officials know much further ahead than we do what the outline business and the allocation of time might be. If we all possess more information about that, it might help members to work out what they want to say and exchange ideas about the pressure to take part in specific debates.

Donald Gorrie: Fiona Hyslop made a good point. If the group whips trawled their groups and asked, "We are going to have a debate in 10 days' time on such and such. Would you want to speak?", they would know whether five or 50 people wanted to speak, and timetable accordingly.

Fiona Hyslop: Some of us do that.

Donald Gorrie: We are told that we have two speakers or three speakers and that is it, which is a different exercise.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): Various references have been made to the shape of the parliamentary week, and the convener pointed to the parallel work that we are doing on that. Where and how will that issue be commented on further, and how will it feature vis-à-vis our CSG report? It is a bit of a false separation for us not to address it more fully in our report.

The Convener: As you know, a questionnaire was sent out at the end of the October recess that posed a number of questions to test attitudes to potential changes to the parliamentary week. I understand that we have had replies from 35 MSPs. We are going to make a fresh push to try to get replies from at least half of the Parliament because that would give us a basis on which to report members' views to the committee and an indication of any changes that appear to be possible.

It would be premature to bring that report to the committee now, but it would not be impossible to produce a breakdown and analysis of it to inform our concluding sessions on our CSG report. I do not know that we have done enough to be able to say that we could proceed definitively on what has been suggested, but we could include suggestions for further work to be done. The questionnaire is part of a tiered approach, the first part of which is probing people's attitudes. That provides the basis on which to ask further questions and make specific proposals. As I said, in going through the CSG inquiry it has become clearer that greater flexibility would allow many of the programming and timetabling issues to be resolved more efficiently.

Susan Deacon: I simply express the view that our report has to go a bit further in addressing that issue. We cannot simply draw a line and say that it is a separate piece of work. The issue falls into the category of work for which the Parliament in general, and this committee in particular, could be criticised. We have asked a lot of questions over a period of four years but we have not finalised proposals, views or recommendations, if not conclusions. I would like to see a short note about that from the clerks over the next month.

I expressed a number of views to John Patterson and his colleagues on the earlier questionnaire. I was not sure how far that questionnaire alone would take us in relating technicalities, such as the length of debates, to some of the bigger questions—on which members have touched today—such as the subject matter and flow of debates. To look at the world from the other end of the telescope, or from the viewpoint of people who listen to us, the end product is shaped by how all the issues intertwine. The report should reflect that a wee bit more. I would be grateful if a summary of the findings from last year's questionnaire and some embryonic findings from this year's were made available in some form, which would allow us to weave comments on them into the report.

09:45

The Convener: We can do that on the basis of the replies that we have received. Thirty-five out of 129 members have responded and, if one knocks off the ministers—I presume that none of them has replied—that is a reasonably high proportion in statistical terms. I would like more replies, simply to have a better party balance. Whatever the evidence is, we will try to analyse it. We will find the answer to the $64,000 question in the questionnaire, which is whether members are prepared to extend plenary time into Wednesday morning, which might have consequences for committee time and other work. The answers to that question will give us the parameters for possible changes.

We should explain more clearly what paragraph 72 attempts to do, which is to streamline the stage 3 proceedings. I suggest that we say:

"The time-tabling motion for Stage 3 proceedings does attempt to allocate time fairly among all the major aspects of each Bill, and sufficient time for the final, formal debate. It is clear that Stage 3 proceedings have often been time-constrained, but it is less clear that more generous overall time allocations are required for them. If debate does not consume the time allocated, the debate can simply end early, but the Presiding Officer has no scope to allocate additional time if pressure to debate amendments is greater than was anticipated. It is not unusual for debate to have been severely constrained in parts of a Stage 3 process where the overall time allocation has been adequate."

That situation arose with the bill that we passed last week; we finished at the predicted time, which was about 7 o'clock, but within that we were severely pressured on one part of the process, during which members were not called to speak and we proceeded with short statements from ministers and rapid votes. Fortunately, by collapsing some of the later stages, we were able to accommodate a much longer formal stage 3 debate than had been programmed; half an hour was allocated for the debate, but it lasted for 40 or 45 minutes. The overall time allocation was not far wrong, but rigidities within it prevented members from being called on some issues.

The timetabling people try to anticipate and avoid pressure, but it is clear from my perspective in the chair that we do not always manage to avoid it. If a timetabling motion that says that we will reach a certain point after two hours and 30 minutes has been agreed to, there is no flexibility to add 10 minutes, even though that might resolve the pressure.

Although I want to flag up the issue, I do not have a clue what the answer is, which is why I suggest an additional paragraph, which states:

"We make no specific proposals at this point, pending a full review of legislative procedures, but we do recommend that the Parliamentary authorities should review time-tabling arrangements with a view to allowing the Presiding Officers maximum freedom in allocating time during Stage 3 proceedings."

Fiona Hyslop: I have been involved in decisions on timetabling motions and I know that it is difficult to anticipate which areas will be the most contentious. We try our best, but situations such as the convener described have arisen. The Parliamentary Bureau is reasonably flexible. If we know that an area is contentious, we try to expand the time available for it. During a debate, members have every right to press their request-to-speak button if an issue that they are concerned about arises.

We should consider the rigidity of the timetabling. Perhaps we should use the "followed by" convention that is often used on Thursday mornings when there are a number of items for debate. That convention gives the chair discretion to wait and see where the debate is going and to provide a bit more flexibility in timing.

A change in one of our other procedures might also help. If there were more of a gap between the final date for lodging stage 3 amendments and the debate, there would be more time to anticipate where the difficulties might arise. At present, there are only a couple of days left to do that. Trying to anticipate with your lead spokespeople where those areas of tension might arise is quite constrained logistically. Another of our proposals may help with that. I have made two suggestions.

The Convener: That is a useful point. There are sections of bills to which people do not lodge amendments. Time may be allocated for speeches and debates, but if amendments are not lodged, debates will not be held or votes taken. That means that consideration of such sections can proceed very quickly, yet, in other sections, every issue is fought over, every vote is pushed and the business managers agree in advance to a two-minute division. If every amendment is pressed, that can lead to a 30-minute period during which half the time is spent waiting for members to vote. That is quite difficult to manage. I am not saying that timetabling it is easy, but we must try to find ways of managing it more effectively so that time is not spent watching members wander into the chamber to vote, but listening to what members say about contentious amendments.

Donald Gorrie: Presumably, it is possible to brigade more amendments together or to have more than one group, which would overcome the need for a two-minute notice.

The Convener: There is pressure to do that to speed up business and avoid new debates and votes. The counter-pressure is that, if there are aspects of bills that the clerks see as quite distinct, the desire is to protect separate debates on particular issues. There is always some tension there. The selection of amendments, the subsequent groupings and the time spent allocating several groupings are debated endlessly. It is quite important to ensure that a distinct and important aspect of a bill is seen as a debate in its own right. In addition, the mover of the principal amendment has the right to sum up at the end of the debate. That is lost when many debates are squeezed together. If amendments are compressed too much, it does not necessarily do justice to some of the distinct and important parts of a Bill. It is difficult to draw that balance.

Fiona Hyslop: I completely agree with that last point. I am strongly against collapsing groups of amendments. If anything, it takes away the opportunity to be accountable. The separation of groups allows more amendments to be pressed

and debates to be led by back benchers and others who have the lead amendment. If groups of amendments were collapsed, that would give the Executive more advantage and would prevent distinctive debates, some of which are quite specific. There is a judgment call about the grouping of amendments; sometimes it is right, sometimes it is wrong. The grouping of groups, so that there are distinct debates, is getting better. I feel very strongly about not collapsing groups of amendments.

The Convener: I will let Donald Gorrie reply to that.

Donald Gorrie: I would not choose that option. I propose a package of measures. The timetable should be for guidance only, and not statutory. It is helpful to the Presiding Officer and members to know the general timetable, but if business goes on later, it goes on later. Any member who wants to speak on an amendment should be called. The way that some amendments have to be treated is just not satisfactory.

We could consider the possibility of every mover of every amendment having a right to reply. That would get over the business of separate debates. It is essential that the Presiding Officer has flexibility—if the debate goes on, it goes on. As you say, it often works itself out because members talk themselves out on issue A, so they do not talk so much about issue B.

Susan Deacon: I will take a step back from the detail because I am becoming increasingly uncomfortable with certain aspects of the discussion. It reflects the discomfort that I have with certain aspects of the report as it stands.

We are, perhaps rightly, drilling into tremendous detail on certain matters. Other issues that have arisen in our discussions and in the evidence that we have taken are conspicuous by their absence. On this subject we are drilling into a lot of detail, but we are not making the connection between the technical processes of the Parliament and the political realities of the Parliament. Someone who had just arrived from Mars—even from Musselburgh—to listen to the discussion could be forgiven for thinking that decisions on legislation are argued from first principles in the chamber and that we all sit and thoughtfully ponder them before deciding which button to press. The reality is that, as we know, 99.9 per cent of our votes are whipped. That applies across all the major parties.

It has become increasingly apparent to people who listen in to and observe our proceedings that how we organise as parties is one of the key determinants—if not the key determinant—of the output of Parliament. I am not suggesting that we start to unravel the entire basis of representative democracy and party politics and so on, but I find it difficult to know how I, as a committee member, can address the point by submitting a one paragraph amendment to the report. If we are going to be honest in the report and place the detail in an appropriate context, we must acknowledge that there is a direct relationship between the party political processes and their impact on the Parliament. It is true that it is important that on certain amendments time is made available for different views to be recorded, but it is often about recording views rather than winning an argument. In the vast majority of cases members will be sitting with a wee note in front of them stating what way their party is going to go. I want to make the point that we would be rightly criticised were we to go into this level of detail on the legislative process without, at the absolute least, acknowledging the extent to which party political processes and the whipping system impact on the end product.

I ask a genuine question about how, if at all, it is possible for me as a member or for the committee more generally to enter into that terrain to contextualise this element of the report. I feel that putting in a two-paragraph amendment to the report might not balance 20 pages of detail on the technical process—important though that is and I would not want to detract from that.

Fiona Hyslop: Susan Deacon has a point, to an extent. One of the matters on which we must ensure balance in the report is on the accountability principle. The Parliament and the Executive should be accountable to the people of Scotland; most of this section of the report is about how the Scottish Executive should be accountable to the Parliament. That is why we have the procedures that are laid out. We have legislative power and we must take our responsibilities seriously in respect of how we organise the final stages of the process on legislation that will have a major impact on people's lives. Susan Deacon might be happy to say that all that we do is decide that the Labour party and the Liberal Democrats combined have more votes than the SNP so whatever they do goes—why bother sitting through seven hours of debate? When we talk about matters such as debt attachment, as we did last week, and whether Parliament was abolishing poindings and warrant sales, time is needed to ensure that views are exercised and the vote taken.

In my party, there are occasions when we listen to the debate and our lead spokesperson says "I want to change my mind on that." It does not necessarily happen often, but it happens. We fail in our responsibilities if we do not take the Parliament's legislative powers seriously and make serious proposals that would enhance or detract from them. That does not mean that the balance of the report should ignore the fact that

we should be talking about the Parliament being accountable to the people, but we ignore at our peril our responsibilities to come up with sensible proposals that enhance the Parliament's legislative process.

10:00

Susan Deacon: With respect, that is a disappointingly defensive response to what I just said. It is also a misrepresentation of what I said. The last thing that I was arguing was that the Parliament's ability to debate the issues should be curtailed. I was saying that the reality is that a very high degree of whipping operates across all the parties. It ill behoves Fiona Hyslop's role on the committee and the generally very positive contribution that she makes to suggest that one party is somehow better or worse than another on that or to suggest that I am attempting—or that anybody else is attempting—to make life easier for the Executive. In fact, what I said would be highly unpopular with the Executive.

I am saying that we must be honest with the people and say that we have a highly whipped system in our Parliament. Some of us are of the view that we ought to have less whipping over time and that that would free up the debate in a range of different ways. However, I will not allow it to stand in the *Official Report* that anything that I have said this morning suggests that the Parliament's ability to debate should be constrained. I am arguing fundamentally the opposite of that.

It is at best disingenuous and at worst dishonest for us to imply that the whipping system does not exist when we come to consider how the Parliament reaches decisions. I hope that Fiona Hyslop and I could agree on that, although, as she is a party business manager, perhaps she is more beholden to the whipping system than I am.

The Convener: We do not want to pursue the political aspects of that much further, but I make the point that there might be scope for us to refer to the whipping system in the report. I perfectly well understand why, at the stage at which it wishes to finalise legislation, the Executive would whip its supporters to achieve important outcomes that it has considered. That has been part of legislation and, I suspect, every Parliament in the world for a long time.

I wonder sometimes about the extent of the whipping of which I am conscious at stage 2 and whether members might not be a bit freer to discuss amendments on their merits at that point. The report makes reference to cross-party voting, and there is some evidence of that in the committees, but perhaps not as much as there should be.

It may be relevant for us to consider whipping as something on which we should comment, accepting it for the purposes that it serves, but seeking to place it in context and expanding the rights of committees, conveners and back benchers against the whips. That might be well within the spirit of what we are trying to do.

Fiona Hyslop: I look forward to Susan Deacon's specific proposals on the matter, because I agree with the convener that we should have something on whipping. It should cover whipping not only at stage 2, but at stage 3.

The Convener: I might even come up with specific proposals myself on that. If we all have proposals on it, we can debate around it and try to come up with something on which we all agree.

Donald Gorrie: If Susan Deacon wants to join the we-must-reduce-the-power-of-the-whips society, she is welcome and we might have a majority on the committee.

The Convener: I do not think that she was aware that she had to take out formal membership.

Susan Deacon: I am trying to avoid joining things at the moment.

Mr Paterson: Note that Fiona Hyslop is the only whip here and that I have not spoken on the matter.

The Convener: Are you guarding your counsel until the real thing comes along?

We have probably exhausted that discussion.

We have reached paragraph 73 of the report. I simply suggest an amendment to the text to make it clearer. I suggest that we take out paragraph 74 and put in:

"We noted above the difficulty reported by the Transport and the Environment Committee. From time to time, we have been advised by subject committees of procedural difficulties that they have encountered in connection with subordinate legislation. We invite subject committees who experience any similar future difficulties to bring these to the attention of the Committee."

The thinking behind that paragraph is that we have regarded all issues of subordinate legislation as primarily a matter for the Subordinate Legislation Committee. It is right that we should do so. However, those matters fall within the ambit of parliamentary procedures: we have a role to play in modernising subordinate legislation procedures. It is appropriate that, when we consider legislation in general, we should consider subordinate legislation issues in their totality.

I want to remove the existing text in paragraph 75 and to make a specific recommendation. The new paragraph, which deals with subordinate legislation, states:

"We recommended above that our successors in the next Parliament should review all aspects of legislation, including subordinate legislation. In the case of subordinate legislation, we note that the current system is wholly derived from the Westminster model and was established for this Parliament through the means of a Transitional Order in the Scotland Act 1998. We recommend that the next Parliament should take the necessary steps to replace the Transitional Order with primary legislation to establish subordinate legislation procedures fit for the purposes of this Parliament."

I am responding to a number of points that have been made by Donald Gorrie and from other quarters about the time scales for statutory instruments, the amount of scrutiny to which they are subject, the inability of committees to amend them and the difference between negative and affirmative orders. What is the rationale for all those provisions? We had to have in place legislation setting out statutory instrument procedure; it was reasonable that there should be a transitional order and that we should adopt Westminster practice. However, four years down the road we should return to first principles and ask ourselves how we ought to deal with statutory instruments and codes of guidance. We should ask ourselves whether our current practice is right. We may conclude that it is, but the matter needs to be considered. It is important that we should build that recommendation into the report.

Mr Kenneth Macintosh (Eastwood) (Lab): I have nothing against that suggestion, which seems very sensible. However, it is difficult for us to make a recommendation on this matter when we have not taken any evidence on it. Until now, we have heard no arguments for or against current practice, although general concerns about it have been expressed to us. Would it not be more sensible to suggest that this matter form part of a future review of legislative procedures? We could say, "One suggestion could be that the next Parliament should take the necessary steps to replace the transitional order with primary legislation to establish subordinate legislation procedures fit for the purposes of this Parliament." It does not matter hugely which approach we take, but it would be odd to make a recommendation in the report of the sort that the convener has proposed.

The Convener: A considerable number of transitional orders were made under the Scotland Act 1998. One set out the standing orders of the Parliament, which within a year we replaced with our own standing orders. The Scottish Parliamentary Standards Commissioner Act 2002 replaced a transitional order. We are working through transitional orders. It is intended that in the fullness of time all transitional orders will, by definition, be replaced. It is intended that the transitional order governing subordinate legislation procedures should be replaced, but the matter has not progressed as the Parliament's priorities have been elsewhere. I suggest only that in the next session we should consider replacing—and, ideally, should replace—the transitional order concerned.

Mr Macintosh: I thank the convener for that helpful comment.

Susan Deacon: Ken Macintosh asked whether we had heard evidence about the current subordinate legislation procedure. It is important that we should continue to think of proposals, suggestions or solutions to problems or issues that have been mentioned to us in evidence. It is incumbent on us to move on to the next stage of dealing with issues such as this.

The Convener: We are approaching the end of this section.

It has been suggested to us from a number of sources that people from outside the Parliament should be enabled to lodge amendments that we would debate. The arguments for and against doing that are set out in paragraph 78. However, my conclusion, with which members may disagree, is what I have said in the suggested new paragraph 79:

"We do not recommend any changes to the Scotland Act 1998 to allow non-MSPs to lodge amendments, and we suggest that individuals and outside bodies who wish to promote amendments should do so through MSPs."

Many organisations send us e-mails and papers with suggested amendments and we currently have difficulty finding time to consider those. However, members who are engaged with a bill probably find the time to do so. I know that I did with bills with which I was engaged. If we have more time between the various stages of a bill and more time at stage 2, we will be better able to respond to external stimuli. To be blunt, however, if an amendment is proposed and no MSP feels that they want to sponsor it, should that amendment be debated? I think that the existing system is pretty open and flexible.

Fiona Hyslop: I agree with the convener's recommendation. However, we might want to suggest a pecking order of MSPs to whom organisations could go. There is evidence that such pecking orders exist, particularly when there is a strong whipping-in during stage 2. For example, if an organisation wants to persuade the Executive of something, it might go to Labour members. Then there would be a descending pecking order of MSPs to go to. Organisations want to know to which committee MSP they can go to propose something without getting involved in the partisanship at stage 2.

Perhaps deputy conveners could have the role of honest broker for organisations' proposals. A convener is obviously the honest broker within a

committee, but I do not think that it would be appropriate for a convener to lead a debate on an organisation's proposal. Therefore, perhaps it could be indicated to organisations that deputy conveners would be a point of contact if organisations want to propose amendments for which they want widespread support.

The Convener: If you can work up your suggestion, that might be an interesting matter to consider.

Mr Macintosh: As deputy convener of the Procedures Committee, I am not sure whether I welcome that suggestion.

Actually, I think that it is an interesting idea. I appreciate the difficulty that non-parliamentarians have in identifying a relevant MSP. That works both ways, of course, because if an organisation picks the most oppositional MSP on a committee to propose an amendment, it backfires on the organisation. An immediate reaction is provoked among the other committee members to the effect that the MSP's motivation becomes suspect, despite the fact that the proposed amendment might be of genuine cross-party interest.

I, too, agree that it is ultimately up to MSPs to press amendments. However, on that issue, there is an interesting recent letter from Pauline McNeill, the convener of the Justice 2 Committee. I am not sure whether the letter went to the convener of the Procedures Committee or to the convener of the Standards Committee, of which I am also a member. I suspect that the letter might have gone to the Standards Committee, but I think that it is more relevant to the Procedures Committee.

The letter is about the misunderstanding that many interest groups have about the ownership of amendments. The issue arose because of recent amendments to the Land Reform (Scotland) Bill. One organisation described amendments as being sponsored by it and was disappointed that the Executive rejected them. The convener of the Justice 2 Committee was concerned about the fact that there is a misunderstanding about who owns a lodged amendment and in whose name it is lodged, and the relationship between a body which suggests an amendment and the member who lodges it.

There is a lack of clarity about that and further work must be done on it. I would like that particular point to be included in the draft report, if possible. I would have to find the letter and the evidence from the Justice 2 Committee, but I think that that would be helpful.

The Convener: It would be helpful to see that. However, even without that evidence, I think that it is perfectly acceptable to add a paragraph on that issue to the draft report, perhaps after the bit about organisations which submit amendments by e-mail. We might want to encourage as good practice the idea that organisations and individuals could approach whatever MSP they like, but should advise all relevant MSPs of amendments that the body or individual propose.

Such guidance could also emphasise that if an MSP chooses to sponsor a proposed amendment, it becomes the responsibility of the MSP and is not the organisation's amendment, but that people's efforts are appreciated. We can do something that points everybody in the right direction. It would be helpful to see the Pauline McNeill letter. I do not think that it has come to the Procedures Committee.

Donald Gorrie: I agree with the convener and other members who raised interesting points on that issue. However, I think that we should continue to pursue the issue of somehow involving non-MSPs as members of committees. We have dealt with that issue previously and I do not want to surrender that point while agreeing to the convener's suggestion.

The Convener We dealt with that issue during the discussion on equal opportunities last week. I think that the issue also came out more clearly during the discussion on power sharing. Therefore, Donald Gorrie's point will not be lost sight of.

Okay, we can press on to my next point, which is on paragraph 90. I want to clarify the difficulty that is beginning to show itself in the area of non-Executive legislation. I propose to expand paragraph 90 to include

"We are aware that the SPCB has had to increase the level of resources allocated to the NEBU, and that the competing claims on resources for Members', Committee and Private Bills are likely to present even greater problems in the next Parliament. We do consider that the Parliament must be assured that demand and resources in this area are in adequate balance and that non-Executive legislation is not unduly impeded by lack of resources, and we call on the SPCB to keep the levels of resources available to the NEBU under constant review".

The non-Executive bills unit has expanded in line with the increase in its workload. The shortage of parliamentary draftsmen has been a particular constraint in bringing forward legislation. The additional text provides that, in order to work productively with the promoters of bills, as the workload increases, the personnel must be adequately resourced, especially for staffing needs. It is partly accountability and partly power sharing to ensure that the promoters of non-Executive bills have the opportunity to work up their proposals.

10:15

Fiona Hyslop: Although I agree that the non-Executive bills unit must be properly resourced, I have some concerns about the perspective from

which the additional text was written. It implies that non-Executive bills are a problem and that the corporate body had to increase the level of resources. It further implies that if the number of members proposing private bills increases, that is likely to create even greater problems in the next Parliament. It should imply that there will be greater opportunities and give the message that problems arose because the non-Executive bills unit was under-resourced from the outset. Therefore, rather than imply that we took those steps under duress, the paragraph should state that there are greater opportunities. The tone should reflect that.

The Convener: I considered it from a management point of view. You are right; it is an opportunity, which highlights pressures—"problems" is the wrong word.

Susan Deacon: You referred to the availability of qualified draftsmen—perhaps draftspeople is more appropriate.

The Convener: We will probably put the word in inverted commas and accept it for the purposes of the discussion.

Susan Deacon: My understanding is that it is a resource issue not merely of the pounds, shilling and pence that are required to employ such people, but of the availability of people who possess the skills to support the existence of a legislature in Scotland. In other words, it is as much an issue for the Executive as it is for the Parliament.

I do not feel that I have the necessary skill to craft a paragraph that would capture that sentiment, but it would be helpful if the committee could address that point. I know not the career path to becoming a parliamentary draftsman, nor what the average school's career service would say if a pupil said he or she wanted to become a draftsman. I do not know where the solution to the shortage lies, but if that shortage is acting as a real impediment, it is incumbent on the committee to acknowledge that.

The Convener: That is a fair point. I assume that draftsmen are mostly lawyers. The issue is that until the existence of the Parliament there was little demand for such skills in Edinburgh. A certain amount of draftsmanship would have been available to the Scottish Office to facilitate the progress of its bills in Westminster. However, the fact that the Scottish Parliament has passed approximately 40 bills in four years has put a lot of pressure on the few people with the necessary skills.

As time goes by, presumably more people will find employment in the area, because it is a job opportunity. In the meantime, we must acknowledge that there is an issue for the Parliament and the Executive, both of which depend on a reasonable supply of appropriately qualified people. There is no point in our paying more to get draftsmen from the Executive and leaving the Executive short—we cannot have a football transfer market in that respect. The answer to the problem is to increase supply.

Donald Gorrie: We should indicate that a career path is open to many people. I have found NEBU helpful but totally overwhelmed. My efforts to introduce a bill were miles down a huge queue.

A way to advance is mentioned in the convener's next suggested paragraph. Perhaps some Executive people could help to draft a bill. I am waiting breathlessly to find out whether I will receive their help to draft an amendment to a bill.

I have found that there is great pride among draftsmen, but they do things in different ways. Sometimes, NEBU will draft something, but the Government people will think that it must be drafted differently. That is a waste of effort. Irrespective of who is right or wrong, there should be co-operation. I do not suggest merging NEBU with the Executive, but greater transfer and co-operation would be helpful.

The Convener: That was the thinking behind suggested paragraph 91. Members will know that the First Minister indicated in Aberdeen that he would provide Executive assistance for the Dog Fouling (Scotland) Bill and the proposed high hedges bill, I think. If the Executive assists members, there will be less work for NEBU. Streamlining the process seems to be important. It is important that a mechanism exists for members to be able to establish whether the Executive agrees with their bill, whether it will support it or whether it will take part of its ownership or even part of the work. The system can then work better. That is why I have suggested replacing paragraph 91 with the following:

"The Executive has facilitated committees' and members' Bills on a number of occasions. A current example of this is the Executive's detailed support for Keith Harding's Dog Fouling (Scotland) Bill (SPOR Col 15145)."

I do not know whether that reference is to what the First Minister or Peter Peacock said in the chamber. The suggested replacement paragraph continues:

"We applaud support in this way for Members and Committees' Bills, and we recommend that the Executive considers issuing guidance to members about the circumstances in which it might offer such support, the nature of support, and the mechanisms open to Members to open up discussions with the Executive about obtaining such support."

I also see that as a mechanism for members to approach the Executive and say, "I have lodged an amendment, which I think goes with the spirit of your bill. Do you agree? Can we talk about it?"

Some members seem to be able to get the Executive to back their amendments, whereas other members do not. That does not necessarily seem to be a party-political matter—perhaps it is more a departmental matter. That we should all be clearer about what the Executive might contribute is part of the accountability process as well as part of the power-sharing process.

When I sat on committees that dealt with bills, I used to get annoyed when somebody said that a suggestion was fair enough, but that the amendment was technically not effective, as it would have this, that and the other effect. I always thought that that was unfair. If ministers do not like an amendment, they should knock it down on policy grounds. If it is technically defective, they should say how it could be changed to make it technically effective. There should be more of that working throughout the system.

Donald Gorrie: A minister's standard argument against any amendment that they do not like can be reduced to, "Nice idea, but not well drafted." There should be a total blow against the forces of conservatism.

The Convener: Indeed. There should be no hiding place for lazy ministers—not that any ministers are lazy. I suggest that we move away quickly from that matter.

I suggest that paragraph 92 should be put in bold. If we do not handle legislation in such a co-operative way, we will not meet the CSG principles.

Mr Macintosh: I sympathise with NEBU and understand that it is overwhelmed by the number of bills with which it must deal, but I am not entirely convinced that the criteria on which it makes decisions in respect of which bills to support are clear to members. Further work is needed in that area. NEBU should be far better funded and should support back benchers in all parties to carry out their work.

There is always a danger that NEBU could be used almost as an alternative Executive. I do not think that that has happened, but the danger would exist if NEBU were to become a far more efficient organisation that could put forward a raft of legislative proposals containing an alternative policy. We could get round that by redrafting the criteria on which NEBU can support members' bills.

Fiona Hyslop: Discussions are taking place about the operation of NEBU and the criteria that it uses. The Scottish Parliamentary Corporate Body has agreed informal criteria, which I know that my party's members are angry about. The current criteria would in effect allow the Executive the opportunity to say to NEBU that it could not progress any further on an issue that the Executive was consulting about. Quality-of-life issues such as fireworks and litter are good examples. The Executive could use a consultation as a reason for saying to NEBU, "Hang on. You cannot go any further." The Executive could kill off any debate simply by taking an active interest in an area on which a back bencher had started drafting a member's bill.

The corporate body, the Parliamentary Bureau and members are being consulted as part of that discussion. That makes it difficult to decide what to say in our report, as the subject is under active consideration. Ken Macintosh was right to point out that we need to make it clear that there must be cross-party agreement on the criteria on which NEBU gives members support. If we include the subject among the generalities of our report, we may be overtaken by events that are happening concurrently.

The Convener: At this stage, we can only flag up the issues. Fiona Hyslop's point anticipates the next change that I was about to suggest. Paragraph 93 refers to precisely that point, which is that members' proposals may be put on the back burner if the Executive is about to take action in the area in question.

After dealing with resource issues in paragraph 94, we might say that we consider it unlikely that the provision was introduced for resource-related reasons. We could suggest that the reasons for the provision should be considered carefully in the proposed review of legislation procedures. We would then be absolutely clear about the justification for saying that a member's proposal for legislation must stop if the Executive intends to take action. The provision may be reasonable, but if that is the case, after a full discussion we should be broadly in agreement about why that happens.

Is everyone happy about that?

Members *indicated agreement*.

The Convener: The next point refers to the provision that members may introduce no more than two bills in the same session. That issue is also exercising minds, because the pressure on NEBU is increased if members come up with many legislative proposals. There is a discussion about whether two is the right number or whether it should be greater or less than that. I do not know the answer to that, nor am I sure that the evidence that we have taken entitles us to say that we know the answer.

As the issue has been raised, I suggest that paragraph 97 should say that rule 9.14.2 is a somewhat arbitrary constraint on a particular legislative route. It should say that we recognise that, if the number of bills that a member could introduce were raised, there would be pressure on all kinds of resources and in particular on the

draftsmen—I apologise for the lack of gender-free expression—and on committee and plenary time. However, we suggest that the rule should be considered carefully in the proposed review of legislation procedures.

For both this point and the previous point, that would be a way of saying, "Why do we have this practice? Who thought it up, and for what purposes? Has it worked? Let us get back to first principles and, after reassessing everything, agree on a new approach." The approach might be the same but at least, having gone over all the issues, we would know why we have adopted the provision.

Mr Macintosh: Has a member tried to introduce more than two bills in one session?

The Convener: I am not sure.

Fiona Hyslop: No, unless Tommy Sheridan, who has already introduced two bills, tried to introduce another.

The Convener: I assume that the provision is not very effective when one can get someone else to put their name on what is, in effect, one's own proposal. I do not know how many bills Alex Neil has co-sponsored, but he has introduced only two in his own name. We need to consider whether the rule is working.

Before we consider what our paper calls "Post enactment legislative scrutiny", we will look at the final paragraph in this section. Paragraph 99 is simply a comment on committee bills. A lot of evidence that we took said that people were disappointed that more committee bills had not been passed. Having explained that no one ever envisaged that the bulk of legislation would come through that route, I suggest that the final paragraph of this section should say:

"Given this background, and that the Parliament is in its first session, we do not believe that the small number of Committee Bills passed to date is a cause for concern, but we do think that it would be reasonable to expect the numbers of Committee Bills and Members' Bills to rise in future years."

We all accept that there is a learning process for everyone, and that there was pressure on the Executive to pass a lot of bills in the early couple of years. It is a question of saying that we can hold back and see how it works. We expect that there will be more committee bills, and the matter could be reviewed after the next parliamentary session.

10:30

Fiona Hyslop: It would be fair to say that people are disappointed that there have not been as many committee bills as expected. It could be helpful for us to reflect that by saying something like,

"Although we recognise that there is a disappointment that there have not been many committee bills, it is not a cause for concern because we anticipate more in the future."

Would that not reflect the evidence that we received?

The Convener: We have said that we do not believe there is cause for concern, but if you want to toughen the wording, I am happy to entertain a proposal to that effect.

Mr Macintosh: What do you want to do?

Fiona Hyslop: I just want to reflect that people were disappointed that only one committee bill, or possibly two, has emerged. That is the evidence that we heard. It is understandable why that has happened, and that is pointed out in the text, but we should reflect the disappointment that there has been.

Mr Macintosh: Is that not pointed out in paragraph 83?

Fiona Hyslop: Yes, it is. That is fine.

The Convener: There may be something to be said about the order of some of the paragraphs, but we tend to run through what people say and then, towards the end, pick up on that and make comments and recommendations.

On post-legislative scrutiny, I suggest that we expand the wording of paragraph 101 to say:

"We consider not only that the Parliament is accountable for the quality of the legislative process but also that it has an inescapable interest in the substance of the subordinate legislation, codes of conduct and guidance, which often flow from primary legislation. It also has a legitimate interest in the effect of legislation, whether it has achieved the stated purposes, whether it has had unanticipated consequences, and whether further legislation might be required."

In many cases, I think that there is scope for committee work on the back of Executive legislation to do a bit of fine tuning and tweaking where things have not worked out as expected. I was impressed by the evidence from the Social Justice Committee about its post-legislative work on the Housing (Scotland) Act 2001, which is reflected in some of the changes that I have suggested.

Susan Deacon: I strongly endorse the section and the approach that the convener has taken to it. Indeed, I would be keen for us to go further still. On a quick count—this might be a crude measure—about two pages of the report are devoted to the post-enactment scrutiny, compared with about 11 pages on pre-legislative scrutiny and the legislative process itself. If only one point implicitly and explicitly came through from the range of discussions and evidence sessions that we had—and should come through from our own

experience of the Parliament—it was the need to shift the balance massively towards examining the effects of what we do.

I do not have an issue with what has been said about how we enable either individual members or committees to initiate legislation. However, although that is something that exercises the minds of parliamentarians and organisations that are close to the Parliament, the majority of the electorate is much less concerned with who initiates legislation than with its impact on their lives and the question whether it works. What is starting to become apparent is that we are less strong as an institution on the implementation of legislation.

An example of a bill on which there was a lot of cross-party agreement and a huge amount of scrutiny through the earlier stages of the process was the Adults with Incapacity (Scotland) Bill. Profound issues are coming to the fore about the implementation of the Adults with Incapacity (Scotland) Act 2000 and its practical implications. Those implications are not just about resources; some raise practical and technical issues about how different parts of the system work. I do not think that that is a result of a lack of time, energy or effort on the part of the Executive, the committees or the various experts and organisations that contributed during the legislative process. We cannot identify certain things in the abstract before something is happening out there.

The Adults with Incapacity (Scotland) Act 2000 is a good example of where we could do much to add value and impact to our work if there were a quantum shift in emphasis by the Parliament and the Executive towards examining the implementation phase. I endorse strongly what the convener has done to strengthen this section of the paper. For example, paragraph 101 states that the Parliament has

"a legitimate interest in the effect of legislation."

If anything, I would phrase that paragraph much more strongly and say that the Parliament has an absolute interest in the effect of legislation.

I will jump slightly ahead in the paper. It is worth noting that the convener suggests that we delete paragraph 108, which notes that there is no systematic parliamentary approach to the issue that he calls post-legislative scrutiny and I call implementation—that is neither here nor there.

The Convener: I simply suggest merging paragraphs 108 and 109.

Susan Deacon: In addition to any amendments that any of us might suggest in this area, there might be scope for a structural shift in the report. The assumption is that members are comfortable with the general thrust of what I have said and what is in the report. We would do much to strengthen the report overall if we brought the issue of implementation to the fore. We could achieve lasting impact, through our report, if we were to move in that direction.

The Convener: The phrase

"whether it has had unanticipated consequences"

arises precisely from the Adults with Incapacity (Scotland) Act 2000, because I am aware of some of the discussions that are beginning to take place.

I will have to leave the meeting at about quarter to 11, because I have to chair part of the Nordic Council seminar. It is one of those cases in which my other responsibilities cut across. I plant in members' heads the idea that they might go on with the paper with the deputy convener, or they might wish to stop and deal with the power sharing next week, when I will not have to go early. I shall let members think about that. I just want to complete my thinking on this part of the paper and see whether we can conclude it.

I was going to suggest that paragraph 102 from the Commission for Racial Equality about post-enactment legislation should be put in bold, because I thought that it was a strong point. I was going to suggest that paragraphs 103 and 104 should be merged, so that the new text would be:

"We were interested in the extent and nature of post enactment legislative scrutiny conducted by committees, and, after discussion with these witnesses, we sought evidence of any ongoing work."

The clerk sent an e-mail to the other clerks and we trawled for evidence. The text would continue:

"The Social Justice Committee advised us of the post enactment scrutiny work that it is engaged upon currently on the Housing (Scotland) Act 2001."

That is the best example that we found.

In paragraph 109, I was going to say:

"The evidence obtained demonstrated that there is no systematic Parliamentary approach to this aspect of legislation. However, we consider that it is an obvious and essential part of the accountability function of the Parliament that committees should assess the impact of legislation and should keep track of, and where appropriate report on, all secondary legislation, guidance or codes introduced to give it full effect, in order to ensure that the aims intended by the Parliament in passing the primary legislation are achieved."

I have moved beyond saying that we have a legitimate interest to say that it is absolutely central to what we are doing. I am quite happy to go back and change the "legitimate interest" aspect, because it perhaps understates our obligations. That subsumes paragraphs 108 and 109.

In paragraph 110, I was going to change the wording in the first two sentences a wee bit:

"The Social Justice Committee has established a framework for scrutiny which provides for:"

then the bullet points would flow on from that. Paragraph 112, which rounds off the section, would state:

"We therefore commend and support the work of the Social Justice Committee and other committees engaged on such scrutiny."

Other committees are doing things, but there is nothing systematic. It would continue:

"We recommend that the *framework* for scrutiny established by the Social Justice Committee is adopted across the committees, and recommend that all committees should routinely consider whether to subject legislation which it has passed to post-legislative scrutiny."

The framework is as set out in paragraph 110. The paradigm—we should think of an alternative word to paradigm—is that committees look again at the act, at what has flowed from it, at what the secondary legislation and guidance contain, and at key indicators. The whole lot is evaluated. It is an intelligent and systematic approach, which the Social Justice Committee has worked up itself for its own purposes, and which might profitably be examined by all committees. In the round, that is what I propose for this section of the paper. That would also be a specific recommendation.

Finally, I recommend that we replace paragraph 113 with:

"We consider that this activity is of sufficient importance that the Standing Orders should require committees to give regular formal consideration to the need for post-legislative scrutiny and to report annually on all such work undertaken."

In this area, we want the standing orders to make clear the expectation. We want a clear accountability mechanism to ensure that the committees consider the matter and report on what they do. Such reports might state, "We looked at what we have passed this year. We don't think there is anything that we need to do at the moment" or "There's a backlog from previous legislation." The aim is not to force committees to do what they are not willing to do; it is simply to say that they have to go over the territory and include post-legislative scrutiny in their thinking and in all their forward planning. Those are my comments on the post-legislative section of the paper. We have time for a brief discussion before I go.

Fiona Hyslop: Paragraph 110 is crucial, because it makes a distinction between an examination of the primary and secondary legislation. One of the big debates on the Housing (Scotland) Bill was about what should be in the primary legislation and what should be in the secondary legislation. The examination of those matters is different from examining the policy impacts. It is important that those are differentiated. We should embolden paragraph 110, because the points are important.

The Convener: If, when members read paragraph 110, they are concerned that the two aspects are not sufficiently covered, they should come back with suggestions, but I am clear in my mind that it is not simply a question of considering the secondary legislation that flows from a bill; post-legislative scrutiny involves going back and asking, "Did the bill take the right approach? Has it worked? Did it achieve its objectives? Do we need more legislation?" As I said, this is an area in which committees might initiate or prompt further legislation when there are disappointments.

It is up to the committee: do members want to continue the discussion without me, or do they want to adjourn and deal with the paper next week?

Donald Gorrie: It is more fruitful if we have you in the chair, convener. Normally, I would be keen to press on with the deputy convener, but we are discussing your paper, so it is unfair to ask Ken Macintosh to defend it.

Mr Macintosh: I am keen to make progress, because once again I will have difficulty in attending next week, which is unbelievable. However, I would find it difficult to do justice to your recommendations, convener, and it would be unfair to you for us to consider them in your absence.

The Convener: I appreciate that. It has taken a lot of time. I had hoped that we might get this done this morning but, clearly, that was unrealistic. If members are agreed, I would prefer to carry over this item.

Fiona Hyslop: I agree to carry it over, but from my perspective—I am not sure about other committee members—the remaining part of the paper is not as contentious as some of the earlier parts, so I hope that we will be able to progress quickly at the next meeting.

The Convener: That would be helpful. There is a lot of stuff on power sharing. I have done a couple of days' work on power sharing, and I will bring forward some thoughts on it. I will not put a timetable on that matter, because I might not manage to achieve the objective.

Mr Paterson: I am with Fiona Hyslop on this matter. It would do the committee an injustice if we did not have the rationale behind your paper, convener, and you are the man to give us that.

The Convener: In that case, I thank members for their contributions this morning.

Meeting closed at 10:44.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 27 November 2002

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75
Special issue price: £5
Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178