

# **PROCEDURES COMMITTEE**

Tuesday 11 February 2003  
(*Morning*)

Session 1

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## PROCEDURES COMMITTEE

### 5<sup>th</sup> Meeting 2003, 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

#### SENIOR ASSISTANT CLERK

Anne Peat

#### ASSISTANT CLERK

Lewis McNaughton

#### LOCATION

Committee Room 2



# Scottish Parliament

## Procedures Committee

*Tuesday 11 February 2003*

*(Morning)*

[THE CONVENER *opened the meeting at 09:33*]

### Consultative Steering Group Inquiry

**The Convener (Murray Tosh):** Good morning, everyone. As we are now quorate, we are ready to start. Our business today is to try and get as near as we can to the finalisation of our report on the consultative steering group principles. In addition to the latest edition of the full draft report, members should have a very brief additional paper with three numbered suggestions, which I tabled this morning. I will come on to where those suggestions fit into the report.

Members should also have a single sheet, which contains Donald Gorrie's 12 proposals to amend the report. I have taken a note as to which sections of the report his comments relate to and I will try to bring them into our discussion as we move through it. However, I charge Donald Gorrie to raise his points if I jump past them.

I envisage that we will attempt to agree the wording of this part of the report. I advise members that I have drafted a final concluding section, which I propose to circulate later today or tomorrow. I propose that we consider that section at our final meeting. We have the opportunity at our next meeting, which is a fortnight today, to consider any further changes that members may wish to raise following today's business. Today's meeting is therefore not our final consideration of the report, although I hope that we can finalise as much of the text as possible.

I propose to go through the text on the basis of the points that are set out in my paper. Members are invited to raise anything at any time in the course of the voyage that I plan to steer through. My first point relates to page 5 of the report.

**Mr Kenneth Macintosh (Eastwood) (Lab):** I do not wish to cast a damper over the opening of the meeting, but I think that we are being over-optimistic. That said, let us see what progress we make today. I have quite a few concerns about the overall report. Given that we have spent so much time on it, we should not rush our agreement at this stage. I am not saying that that is what is going to happen, but I want to put the comments that I plan to make as we go through the report in context before we start.

**The Convener:** We have been discussing the final report since October.

**Mr Macintosh:** Indeed.

**The Convener:** At every meeting we have had since that date, which have by and large been weekly, I think that I have flagged up that there would come a point at which we would need to take decisions. I invited members to submit alternative texts for sections about which they are not happy and I would have expected that that would have happened.

**Mr Gil Paterson (Central Scotland) (SNP):** I have to support the convener: it is make-your-mind-up time. We have been talking about the report long enough. We have raked over the coals on most of the issues a couple of times. It is time to come to closure.

**The Convener:** Points that we have debated before will be raised over the course of the discussion. I hope that members will not seek to redebate issues but seek to find the basis for agreement. Let us see how we get on.

As I said, my first proposal relates to page 5 of the report. I am aware that there is a typo on that page, but we can pick up typos on the way past. I am sorry—I am talking not about page 5 but about page 4. I beg your pardon.

I suggest that we insert a brief new paragraph—which is the underlined paragraph number 1 on the single additional sheet in my name—between the heading "Overview of the Evidence" and paragraph 21. I propose to insert:

"We took evidence across all four principles, and we tried to ensure that the views we received were as representative as possible of Scottish society. We have tried to respond to these views in the recommendations which we have made, but this is not intended to be only a reactive report, and many of our perspectives and findings will emerge from our own experiences and insights, and further research done into, and considerations given to, the issues as we concluded our report."

During the protracted exercise of going over the wording of the report, we asked for further information and we carried out little bits of research. Members contributed a lot of perspectives from their own experience, which did not come from the evidence although it is perfectly appropriate for us to provide evidence. I thought that we should make that point. Perhaps the wording is a bit pedantic, but it covers us against criticism that we have looked at stuff that did not arise from our evidence-taking sessions.

**Mr Macintosh:** Is the paragraph not to be inserted instead of paragraph 20?

**The Convener:** No. It is a new paragraph. I suggested that we insert it before paragraph 21.

I also propose to add to paragraph 21 the phrase

"particularly in relation to access and participation and power sharing".

Members will find the phrase underlined in paragraph 2 of my paper.

**Mr Macintosh:** My only reason for asking is that the phrase

"but this is not intended to be only a reactive report"

is to be found in paragraph 20. It would seem that we are repeating that text in the new paragraph.

**The Convener:** Yes. Thank you. Paragraph 20 will need to be edited down. The text that I propose to insert before paragraph 21 came into being as an alternative to paragraph 20. Some of the wording of paragraph 20 reappears in the new paragraph, which means that we will need to edit down paragraph 20 to avoid any clumsiness.

**Mr Paterson:** I missed that point.

**The Convener:** Every time we read the report we discover bits that overlap or duplicate other text. I have no doubt that there are still lots of similar overlaps or duplications in the report.

My next suggestion relates to page 5. I propose that we remove paragraphs 30 and 31. Although in much of the evidence that we received, especially in the early stages of considering the report, there was a substantive discussion about procedural matters, not a lot found its way into the report. I remember the stricture that was made early on against sounding too self-congratulatory and yet the paragraphs serve no purpose other than to be self-congratulatory. The changes that are consequential on removing paragraphs 30 and 31 are to amend "fourthly" to "thirdly" in paragraph 32 and "fifthly" to "fourthly" in paragraph 34.

**Mr Macintosh:** I suggest that we delete the words "of course" in the first sentence of paragraph 29.

**The Convener:** After all, it is not a requirement for newspaper coverage to be negative—it just happens to be so. That is a fair point. Are members happy with those changes?

**Members indicated agreement.**

**The Convener:** Thank you. My next point relates to page 7 of the report. I wish to draw two paragraphs to the committee's attention. The first is paragraph 40, which was one of the paragraphs that was circulated to members by e-mail in early January when we asked for certain routine changes to be cleared. Almost no one came back to us on that e-mail clearance, but paragraphs 40 and 42 were left underlined until we were able to accept them formally.

The basis for the changes addresses a point that I think Ken Macintosh raised, about emphasising the importance of representative

democracy. Paragraph 40 is a reworded version of an earlier paragraph. I draw paragraph 40 to members' attention for agreement, I hope.

Although I do not think that the text that is underlined in paragraph 42 was circulated, it addresses a point that I think Ken Macintosh made strongly that political parties are vehicles for participation—many people participate because of their membership of political parties. Also, Donald Gorrie used the example of the Abolition of Poidings and Warrant Sales Bill to make the point that people who are not members of political parties will nonetheless lobby parties to make them see their point of view. That is the reason for introducing the text about people seeking

"to influence them in order to influence policy and legislation".

Two influences in one clause is perhaps inelegant, but the principle is not affected. Are members happy with the text?

**Donald Gorrie (Central Scotland) (LD):** I have one small point. Does the "it" at the end of the third last line refer to

"The traditional apparatus of western politics"?

**The Convener:** Yes.

**Donald Gorrie:** We can do without our apparatus, but—

**The Convener:** Just "traditional western politics"?

**Donald Gorrie:** The main point of the first sentence is important. Would it be possible to alter the last sentence to read, "The parties still serve the purposes of drawing people into participation"? It is the parties and not the foolish behaviour of some politicians on some occasions that is important.

**The Convener:** Okay. Are members happy with the text?

**Members indicated agreement.**

**The Convener:** We will amend the last sentence as proposed.

My next point relates to page 8. Members will see that additional text, which is underlined, has been added to paragraph 44. The text was included in the e-mail that was sent to members in early January for clearance. The implication of the original text was that the Executive would be sharing out all of the Scottish assigned budget almost on an equal basis with Scottish civil society and the Scottish Parliament.

The point that we wanted to make was that the duty that we are seeking to impose is to ensure that the Executive is satisfied that the organisations with which it deals are sufficiently

resourced to be able to engage with it. We are referring to the grants that are made to the Scottish Civic Forum and other organisations that choose to take part in participative or consultative work. Are members happy with that?

09:45

**Mr Macintosh:** I have a couple of points on that page and the next page. I am not sure that the point in paragraph 48 is very well made. I wonder whether there could be a better example of the inequality being demonstrated tellingly. There are organisations that have better revealed the differences in the resources and help that is available to different structures of the Parliament and the Executive.

My next point is more substantive. The first sentence of paragraph 49 reads:

“The preponderance of Executive inspired legislation is a good indication of the extent of the dominance of the Scottish Executive in the Parliament.”

I do not have a problem with that, but I am concerned about the way in which the next few paragraphs develop. I believe that the

“preponderance of Executive inspired legislation”

is a good indication of the extent of the dominance of the Scottish Executive over the legislative programme, not necessarily over the Parliament. I would argue that the Executive does not necessarily dominate the Parliament, especially in comparison with the Westminster model. The Executive does not dominate Parliament in that way, as we have a different structure here.

**The Convener:** The sentence could state that the

“preponderance of Executive inspired legislation”

indicates how the Executive dominates legislation.

**Mr Macintosh:** The next three paragraphs—50, 51 and 52—in effect build up to a series of points that begin in paragraph 53 and conclude with the recommendations in paragraphs 55 and 56. We make a series of criticisms. For example, paragraph 53 includes the phrase “criticisms were made that”. All the criticisms are phrased in an entirely anti-Executive way and the whole section is directed entirely at the Executive. That makes the section one-sided, and the criticisms do not reflect the nature of the role of the Opposition.

For example, a criticism could be made of oppositionist—not just Opposition—behaviour whereby members oppose any recommendation or action that is proposed by the Executive for various reasons. I do not want us to get into a party-political argument, although I concede that it is difficult not to do so, as it is a sensitive area. However, much of the argument that we have in the Parliament is phrased in terms of constitutional

powers. It may be anti-Executive, but it may also be an argument that the Parliament does not have enough powers. It could be an argument about the Parliament’s powers or the role of the constitution. I do not think that that is reflected in this section. Bullet point 2 in paragraph 53 refers to “adversarial party politics”, but that reference is buried in the text.

The overall effect of the section, as I read it, is an implication that the Executive is at the root of our problems and that the fact that our legislative programme has been Executive led is the fault of the Executive, rather than the fault of all of us—if fault is the right word to use. I suggest that we either drop the entire section—paragraphs 49 to 52—or that we balance it with some reference to the fact that it is not just about the Executive versus the Parliament, but about Executive-supporting parties and non-Executive, Opposition parties.

**The Convener:** We discussed this issue fairly thoroughly before. We amended the wording of the first two sentences of paragraph 53, when we agreed that, rather than appear to endorse those comments, we would note that those were criticisms. That change has already been made.

The purpose of this section, which is headed “The Responsibility of the Executive”, is to highlight the extent to which the Executive drives the agenda. The point that is being made about personnel is just a shorthand way of saying that there are 5,000 civil servants and 200 parliamentary staff whereas only 20 people work for the Scottish Civic Forum. We could perhaps even insert those figures, but the purpose behind this thumbnail sketch is to say that the Executive is a powerful and well-resourced organisation and that its partners’ resources are pretty threadbare by comparison. That is a fact, not a value judgment. I do not suggest that the Scottish Civic Forum needs 5,000 people or that the Executive could cope with 20.

The only point that is being made about Executive-inspired legislation is that it is a fact that the bulk of legislation comes from the Executive. That is not a criticism. The next-again sentence says that we should not see that as a departure from the principle of power sharing because all the legislation is consulted on. Where else would legislation come from by and large? However, the point that we will make later on is that the extent and volume of legislation put pressure on the Parliament. We have had specific evidence from various people that has suggested that it would be a good thing if the tide of legislation were to ease a little in future sessions. All that is pretty value-free. I certainly did not intend it to be censorious when I wrote it. It is simply a fact that the Executive initiates legislation.

In paragraph 50, we point to the way in which that is tempered by committees, so that the question becomes one about balancing out the available time. Paragraph 51, which describes how the Executive is entitled to command the initiative because it won the election, underscores the legitimacy of what happens. However, there are tensions, as paragraph 52 makes clear. We expect there to continue to be an ambitious and substantial legislative programme. The quotes in paragraph 52 are things that people have said to us. Paragraph 53 summarises the points that people made to us. All those points were raised and some were raised very frequently. I would have no difficulty with including "the Opposition parties" in the second bullet point, if that helps.

**Fiona Hyslop (Lothians) (SNP):** I think that paragraph 53 is one of those things in which people see the glass either as half empty or as half full. The paragraph can be read in different ways. It reflects the fact that the Executive dominates parliamentary time, which is what should happen because the Executive has a majority of the votes. That is just a fact of life.

For much of paragraph 53, it depends on which lens one looks through. The first bullet point says:

"Parliament is over-dominated by Executive business and the management of legislation".

However, that is as much the responsibility of the non-Executive parties and of the committees. Committees have perhaps not been strong enough in demanding more time in which to develop their own business.

The second bullet point mentions

"'Chamber' politics, and adversarial party politics".

However, it takes two to tango, so the Opposition is as guilty as the Executive—if that is meant to be a criticism of the Executive.

The third bullet point mentions that

"committees are weighed down by legislation and scrutiny".

However, it is up to the committees to set their own agenda, so the committees are as much at fault as anyone else.

The fourth bullet point mentions that "party whipping is excessive", but that is a criticism of all parties, not just of the Executive.

The fifth bullet point states:

"excessive power is wielded over the parliamentary agenda by Business managers and the Bureau".

All major parties are represented on the Parliamentary Bureau, so that is a criticism of the business managers of all the parties.

**The Convener:** Indeed, the most criticised business managers are those from the SNP.

**Fiona Hyslop:** The criticism probably applies to all three of us who have been SNP business managers. I think that the first one was a member of the Procedures Committee when it first started on this inquiry.

To me, paragraph 53 is a criticism not only of the Executive but of how all the parties operate. It depends on how one looks at it.

**The Convener:** Instead of saying "criticisms were made that", we could say, "criticisms were made of all parties that". Everybody would then be tarred with the same brush or brushes.

**Mr Macintosh:** I could be wrong on this, but I believe that some of the changes that have been made to paragraph 53 were specifically to address some of the concerns that I and others had raised when we discussed the issue before. However, I think that some further changes could be made, such as the one that has been suggested. We should make it clear that criticisms were made of the behaviour not only of the Executive but of all parties in the Parliament.

This is a difficult issue, because the same thing happens in other parts of the report. I agree that it is legitimate for the Executive to take charge of its mandate and to use its majority to put its business through Parliament. However, comments are made about the Executive, followed by comments about the operations of the Parliament. That implies that the Executive is responsible for the fact that the Parliament has not functioned in the manner that we hoped. Most of the criticisms set out in paragraph 53 relate not to the Executive but to the functions of the Parliament. I have no doubt that they have a place in the report, but I am not sure that they should be located in a section on the Executive. The implication is that the criticisms are a consequence of the Executive's role. I do not agree that that is the case.

I do not mind our using the term

"the dominance of the Scottish Executive",

as it reflects a reality. However, it does not reflect the reality that is expressed in paragraph 53. The juxtaposition of the term with paragraph 53 implies that the dominance of the Scottish Executive is responsible for all the criticisms that are listed in paragraph 53, which I do not accept. I would not mind moving paragraph 53 to a different section of the report.

The conclusions set out in paragraphs 55 and 56 are fine in my book. Paragraph 55 recognises

"that the Scottish Executive is committed to the CSG model and its principles."

Paragraph 56 recommends that the Executive should continue to have those principles

"inform all of its actions and policies."



In paragraph 54, we say that the criticisms may be overstated, which is a good point. I am uncomfortable with the juxtaposition of a series of overstated criticisms with an accurate point about the role of the Executive.

We should move paragraph 53 to another section, although at the moment I cannot think which. I would be much more comfortable with that.

**The Convener:** A huge amount of my life since October has been spent going over the *Official Report* of previous meetings—I am that anorak—reading what members have said in committee, trying to interpret their wishes, redrafting text, adding new text, repositioning text, reorganising sections and inserting new headlines. I hear what Kenneth Macintosh is saying, and I am not unsympathetic to the point that he makes. He is suggesting that this section reads in a way that I did not intend. However, I do not know whether I can interpret much more for the member. I invite Kenneth Macintosh, when we meet in a fortnight to sign off the report, to make a specific proposal either for textual amendment or for reorganisation, so that members can examine it in advance, know what the point is and have a sense of whether the proposed change is reasonable. I could wrestle with the text for a week, but Kenneth Macintosh would still not like what I had produced. I suggest that he comes up with some wording of his own.

**Mr Macintosh:** This is a huge, 200-page report, which is quite unwieldy. It is difficult for you to ask members to find the time to redraft every change that they would like to make. In most committees the clerks do some of that work. Having made my point, I recommend that the clerk helps me to find a place in the report to which paragraph 53 may be relocated.

**The Convener:** I am sure that the clerk would be delighted to help you.

10:00

**Mr Paterson:** I do not share Kenneth Macintosh's interpretation of the section. It is a stark reality that the Executive has dominated the legislative programme—that is a fact and that criticism was made to us. No comment is made on the quality of the programme, which is certainly ambitious. It may be ambitious because this is the first session of the Parliament. Regardless of whether the Government is Labour or Liberal, it should not be criticised for trying to be ambitious.

We have to realise that, in the early stages of the Parliament, we had to split one committee into two—the Justice 1 Committee and the Justice 2 Committee—because of the rush of legislation that was going through. The creation of the second justice committee caused a reshuffle of the entire

committee system and was necessitated by the amount of legislation that the Government was pushing through. I think that people are a wee bit sensitive about the idea that we are discussing, which is legitimate. The idea of putting this marker down is wholly in keeping with Jack McConnell's desire that we should all do less, better. We are dealing with the stark reality of what has happened in the first four years of the Parliament.

**The Convener:** I think that the need to do less, better is the overwhelming message of this report.

**Mr Paterson:** I think so. We are not knocking anybody, merely stating the situation. As I have said before, I think that things will be much slower in the next session.

**Mr Macintosh:** I do not disagree with what you have said, nor do I disagree with much of the sentiment in the document; I disagree with the way in which it is put together.

Paragraphs 107 to 126 deal with external evidence, as do paragraphs 261 to 269, although I do not have any difficulties with them. In effect, those paragraphs highlight concerns that were raised by people who were giving evidence to this committee. However, they do so by including them in our text in a way that implicitly gives them the endorsement of the committee. The problem could be quite easily addressed with regard to the paragraphs that I have mentioned, but I am uneasy about paragraph 53. I have no problem with these points being made in the document, as they are all points that were made to us. However, without them, the section reads better and is more balanced.

As I said, we should be trying to reflect an accurate view on the dominance of the Executive and the balance that therefore has to be formed in Parliament. There might still be room for a line that says that, often, the Executive is responding to Opposition parties rather than leading. However, there are a series of criticisms, particularly in paragraph 53, that do not flow from that. I do not want to take them out of the paper; I simply do not want to imply that the committee agrees with them.

**The Convener:** I am quite happy with extracting the paragraphs that you have a problem with and putting them in a section of their own, but that would make them much more prominent and I am not sure that that is what you want to happen. We have discussed the issue substantially twice. I do not think that there is a great difficulty in this, but if you want to come up with a counter-proposal, the clerk will be perfectly happy to assist you with composing something to bring to a later meeting.

**Donald Gorrie:** I will try to assist. Instead of the second sentence of paragraph 53 reading,

"However, criticisms were made that",

we could say: "Disappointment was expressed by those who had high hopes of the Parliament that it was failing as a whole because". That would make it clear that we were criticising the Parliament as well as the Executive.

Looking at this paragraph with much more care than I did previously, I see that the second-last paragraph is, possibly, critical. It reads:

"openness and accessibility are sacrificed in the interests of delivering the Executive's programme".

That might be read as a reference to wickedness by the Executive. It could be rephrased to say that the pressure of delivering the Executive's legislative programme reduces the opportunities for making Parliament as open and accessible as people wish. What do members think about that? That makes the point without saying that the move was deliberate. If those are peace offerings, I humbly supply them.

**The Convener:** We will leave those suggestions sticking to the wall. That might be where we will go next time. Ken Macintosh will have an opportunity to reflect on those words of which we might, in the circumstances, ask the official report to give us a quick draft.

My next point was on page 14. Paragraph 76 was rewritten, but I mention it only because of the extent of the new wording. I have added a new sentence at the end of the paragraph, which I thought that I should run by members. I do not think that it changes the meaning.

**Mr Macintosh:** I have a series of comments on page 13. My first comments are about participation. Paragraph 68 says:

"The general picture that emerges ... is that the use of these techniques has had limited success."

That refers to techniques for encouraging participation in the Parliament. I would like the report to expand on that. The section on access and participation says that we are expanding participation to encourage greater engagement with the political process and to counter the disengagement that has happened in this country and throughout western Europe. Participation for its own sake is meaningless, but so far, although we have encouraged greater participation in our Parliament, we have had limited success in reversing the process of disengagement, in reaching out to huge numbers of people or in interesting them in the Parliament's day-to-day work. We have also had limited success in giving people the opportunity to exercise or share power.

We argue that the solution is more of the same and that encouraging even greater participation will have the desired effect. In particular, we say that the Westminster model from which we are

evolving is a constitutional drag. The report says that the structure on which we have based our reforms holds us back and that if we adopted a more participative model, instead of a representative model, we would achieve the desired objective. That is not entirely clear. The point is slightly academic, but it is only fair to reflect both sides.

I suggest that paragraph 68 should be expanded to say that perceived or genuine barriers to participation might not be what turn people off politics. Better or more effective representation might be equally important. People's disaffection with politics might be a reflection of wider forces in our society, such as increased individualisation and the prominence that is given to consumer choice over social good. We should put it in context that although we are engaged in an "experiment"—that is the word that is used in paragraph 69—it is not entirely clear that encouraging access and participation will have the desired effect.

The middle of paragraph 70 says that

"There are inherent tensions"

with

"the conservative working practices inherited from the pre-devolution era."

I suggest—this is, perhaps, more important—that conservative or negative attitudes to political participation have been inherited from that era. There is a lack of tradition of active engagement in politics, which is as much a barrier to getting people to engage with the Scottish Parliament as the actual barriers that stop people doing so.

I should point out that we have not all agreed to the example in paragraph 71 of the co-option of third parties on parliamentary committees as highlighting limitations on progress. Even though I am sympathetic to that idea, I am sure that there are plenty of better examples and I wonder whether we could choose something else that we can all agree to. Unfortunately, I have not been able to think of an example, but I should be able to do so with some suggestions from the committee.

Finally, I want to expand on a point that I made earlier. Later in this section, we say that there is an "appetite ... for interaction", but we should not delude ourselves about the scale of that demand. Huge numbers of people are not waiting for the opportunity to take part in politics. As important as removing barriers is, encouraging or building capacity is equally vital.

**The Convener:** I have no difficulty with any of those suggestions. We will get the wording from you, Ken; I presume that, as you have been referring to it, you have the text with you. We will build it into the report.

**Fiona Hyslop:** My only concern is that we are just editing an analysis of access and participation. I am not necessarily running out of patience, but I am very keen to complete the report. We could keep rewriting and rewriting paragraphs, giving our own views and angles and editing our analysis. However, we have been fairly restrained and have allowed the convener to make suggestions instead. I sincerely hope that we will not be plagued with having to rewrite paragraphs over the next few weeks.

**The Convener:** Ken Macintosh's suggestions seem quite reasonable to me and I am happy to build them into the report.

Do members agree to the changed text in paragraph 76?

**Members indicated agreement.**

**The Convener:** My next points relate to pages 21, 22 and 23. Does any member have any points to raise before that?

**Mr Macintosh:** Paragraph 107 on page 17 begins the section on external evidence. I wonder whether we should include something about the status of the points that are made in that section. It is unclear whether the committee agrees with all the criticisms, points and observations that were made by external bodies on the issue.

**The Convener:** That can be read into the conclusions that we draw. After all, we make a list of points later on. If we build a recommendation on a comment that has been made, we have clearly taken the point into account.

**Mr Macintosh:** I wonder whether we could spell that out in the section on external evidence. I do not have the wording, but perhaps we could add a comment to the effect that "We thought that the following points were worthy of note or attention. We have not necessarily endorsed these views."

**The Convener:** Rather than say that, we could say "We highlight the following points and return to many of them in our recommendations".

**Mr Macintosh:** Yes, but I think that we should say that we did not agree with all the points. That is my point: I do not agree with all the points that have been made in this section.

**The Convener:** We must allow people to say things that we do not agree with and have them on the record.

**Mr Macintosh:** Indeed, but I am not sure that the committee agrees with every point that has been made in this section.

**Mr Paterson:** If we use the form of words that the convener suggested, does not the issue take care of itself in the recommendations?

10:15

**Mr Macintosh:** There is an issue about why we are including these particular points, to which we will give a certain status by including them as suggested. It is not a huge point; it is just about the need to find a form of words to emphasise the fact that the section refers to external evidence to the committee.

**Fiona Hyslop:** The section does say that.

**Mr Macintosh:** It does, but some people read things and some people gloss over them. The points read as if they are committee points, not as if they are external evidence points. We should highlight the fact that they represent the views of others, but not necessarily those of the committee.

**The Convener:** Every paragraph says that it came from the Scottish Retail Consortium, Unison, the United Nations Children's Fund, the Modern Studies Association, the Scottish Pensioners Forum, J Russell Thomson, and so on. Nobody who reads them will think that they are committee points.

**Mr Macintosh:** As I say, it is not a huge issue. However, it is unclear in my mind.

**The Convener:** We will introduce some wording that highlights the points and builds on the recommendations. I am sure that we can do something.

**Donald Gorrie:** It is important that the wording does not disparage the evidence in any way.

**Mr Macintosh:** I was not suggesting that it should do anything of the sort.

**Donald Gorrie:** It would be dangerous for us to disclaim the evidence. As I understand it, this is the way in which all committees operate. They take evidence and say, "X said this; Y said that; Z said that; and our conclusion is A." That is how the procedure goes, and that is what we have done.

**The Convener:** I have scanned through the section quickly, and nearly all the points in it seem to build towards recommendations that we make in later sections of the report.

**Fiona Hyslop:** In a section that is about access and participation, it would be a bit ironic for us to start censoring the access and participation of witnesses who expected their views to be recorded.

**Mr Macintosh:** We are not doing anything of the sort.

**The Convener:** Okay. We have agreed what we will try to do.

My next point is on page 21, picking up on paragraphs 136, 137 and 138. Those three paragraphs were circulated for clearance in my

January e-mail. Because I did not receive much of a response to that e-mail, I have kept the paragraphs as underlined text for approval. John Patterson and I subsequently reconsidered the third of those paragraphs and, rather than have it simply talk about MSPs networking, we made it a recommendation to make it clear that we endorse networking. You will remember that Paul Martin was especially keen that we build up the idea that MSPs should be involved with a range of local community organisations and that they should play a greater role in their communities. When the paragraph was circulated to members, it was simply a comment; however, we have since made it a recommendation. Paragraphs 136 and 137 are identical to what members have seen previously. Are members happy with those paragraphs?

**Mr Macintosh:** I am not hugely in favour of having a rigid code, although the thrust of what is said in the paragraphs is fine.

**The Convener:** We discussed the matter before and agreed that we would include the word "guidance". As we already have guidance, we decided to talk about "expanded guidance", which is the phrase that is used in paragraph 138. I thought that all references to a code had been taken out, but I see that the word "code" is still there in paragraph 137. Let us take the word "code" out and insert the word "guidance".

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** I apologise that I was not here at the beginning of the meeting because of another commitment. I ask the convener please to clarify for me what approach the committee has taken to minor textual amendments. I have one or two textual amendments to the paragraphs that you have highlighted; however, I do not feel that they merit committee discussion, because they do not concern the substance of the paragraphs. I would be happy to submit those amendments in writing.

**The Convener:** We are refining the paragraphs as we go through them. Donald Gorrie has made comments about some clumsy text here and there. As long as the amendments do not change the substance of the paragraphs, we will be delighted for members to assist in that way.

**Susan Deacon:** In that case, I will be happy to submit a few points in writing.

**The Convener:** Paragraph 151 on page 24 of the report was previously discussed and circulated. It is about beefing up our recognition of the education service and ensuring that it is resourced so that schools in Scotland can access the service in one form or another. However, because we did not get sufficient responses to clear it, I have left the text underlined so that it can be approved today.

**Donald Gorrie:** I am not sure whether school parties will be adequately accommodated in the public gallery in the new Parliament.

**The Convener:** That is outwith the committee's remit.

**Mr Macintosh:** I am not sure whether this is the time to discuss paragraphs 185 and 186, which deal with the expansion of access for the media. The media have access, with virtually no restrictions, to nearly every area of the Parliament. We should not let it be said that the media are restricted—they are not. In fact, the amount of access they have means that one can sometimes end up with a journalist in one's soup.

However, media access is linked to a broader point. I am not sure whether we addressed the formality of Parliament, the occasional informality of proceedings and our relations with the media. In his last letter to the committee, or perhaps in a letter to the newspapers, the Presiding Officer talked about whether we should drop the informal use of first names in the chamber in favour of the use of surnames. That point did not come out in the report.

I would have been against such formality when I first came to Parliament, but we are in danger of being inaccessible and not formal enough on occasion. When one watches proceedings on television, one hears members refer to each other as "Gil" or "Donald". That is an exclusive way of going about business, and it sounds very matey. Members of the public do not know to whom members are referring.

Media access is important. I believe that Parliament made the decision early that every comment that a member makes is on the record; there are no such things as off-the-record briefings. As human beings, we politicians can discriminate between our formal statements and jokey comments. However, we have an occasional tendency to indulge in gallows humour. Reporters might then cast us in a bad light. We enjoy friendly relations with the press because we work together at close quarters in Parliament and are relaxed—we are being human as opposed to being politicians. However, that closeness means that we must differentiate between being humans and being politicians, because sometimes that is unclear. That is, of course, assuming that we change from being politicians to human beings.

I am not drawing any conclusions, but I would like to discuss the connected point about formality and informality in our proceedings.

**The Convener:** The formality and informality issue is not really about media access. However, we could change paragraph 185 and suggest that we are generally in favour of media access. It is not really our responsibility to define what bits of

the building are on and off limits. That is an issue for the Scottish Parliamentary Corporate Body; I believe the matter has been under discussion for some time.

**Mr Macintosh:** Robbie Dinwoodie observed that there has been a restriction of access—I think that he was referring to the fact that some of our committees meet in private, although I could be wrong. I share his concern, but it is worth stating that the Parliament is very accessible to the media—the media have access to virtually every area of the Parliament—and that any comment made by any politician in Parliament is on the record at all times.

**The Convener:** That clarifies considerably what you mean. We will amend paragraph 185 to make it clear that it refers to the issue of committee confidentiality. We will pick up in a new paragraph your point about the extreme openness with which we operate. We will refer later to the section about committee meetings. That is a clearer way to deal with the issues in paragraph 185.

**Susan Deacon:** I will comment briefly on what Ken Macintosh said and then raise a separate point. In the interests of accuracy it is important to say that it is not the case that the comment of every individual politician is on the record.

**The Convener:** I was not thinking of including that exact phrase.

**Susan Deacon:** There is a factual correction to make to what Ken Macintosh said. If what he said were the case there would not be pages and pages of newspaper commentary attributed to “a source”. However, it is the case that briefings are on the record, which is part of the earlier agreement. One of the remaining points of dispute with the media, which came up during the evidence sessions, but which is not referred to here, relates to the point that Ken Macintosh highlighted about improving access. There is still an issue about whether briefings are on camera, which is a point of continuing disagreement. I recall that that point came up during the evidence sessions and the original expert group addressed it. An earlier paragraph recommends the establishment of a media working group, which could address further the point of detail. It is important to acknowledge the issue.

The other substantive point of omission—

**The Convener:** Are you proposing that we include in paragraph 167 the example of clarifying the issue of access to being on camera?

**Susan Deacon:** No. I do not think that that point should go in paragraph 167. Our saying that a mechanism for addressing the point further should be developed stands alone. Although I accept Ken Macintosh’s point about how accessible the

Parliament is in general, it should be noted that the specific issue about briefings on camera remains. I do not want the wording to be any more prescriptive than that, because it would be worth revisiting the evidence. The point has not been captured at the moment.

**Fiona Hyslop:** I raised that point specifically in my questioning of the BBC.

**Susan Deacon:** I turn to a substantive omission, which definitely falls somewhere within the section. I do not want to suggest exactly where this should go, but I jotted down points somewhere around paragraphs 182 and 183 on page 28. If my reading of the section is correct, we have missed the important point that media representatives raised about Executive media engagement specifically. There remains an issue, which relates to what I have just commented on, about whether briefing sessions conducted by spokespeople are attributable and whether ministers ought to be engaged in more direct briefing of the press. I will not go into that further today, but both the evidence sessions and my experience suggest to me that that is another issue that ought by rights to be acknowledged, even if it does not become a recommendation.

10:30

**Donald Gorrie:** Susan Deacon raises a legitimate issue. The fact that nobody of any intelligence in this country ever believes what they are told by any Government reflects badly on the Parliament, because people do not distinguish between the Government and the Parliament. Although the issue is concerned with the Government rather than the Parliament, it has some impact on us. However, I am not sure how one would put that in the correct terms.

**The Convener:** We could extrapolate that from what we have agreed we will do to paragraphs 185 and 186, which hang on the issue of lack of access. We could say that one of the areas about which the media have concern is their perceived lack of access on the appropriate terms to ministers, who are parliamentarians. I think that Susan Deacon’s point could be built in with that peg. We would then get a degree of continuity between what the report already contains and Susan Deacon’s suggested additions. That will take care of both points.

My next point relates to page 36.

**Susan Deacon:** I am sorry, convener, but I wanted to raise a query about page 31. Do not slap me down—

**The Convener:** Would I do such a thing?

**Susan Deacon:** You might.

I am conscious of having raised the issue previously. Did we reach an explicit agreement on paragraph 204?

**The Convener:** We did, in that we agreed that the paragraph would go in the report, but I think that you said that you had reservations about the Scottish Civic Forum issue.

My view is that I would not go to the stake for the Civic Forum as it is—either for the organisation or the name. I am simply using the Civic Forum here as a surrogate for a concept. My point is simply that, because a mechanism has been agreed, it should not be changed until it is disagreed to. We are not trying to say that the Civic Forum—as it is, was and ever shall be—is one of the great sacred totems of dialogue between the Executive and the rest of Scotland. I do not want to get into an argument about the merits and demerits of the existing structure, because my aim is more to defend the concept at this point. I simply want to say that the Parliament ought to be intimately involved with whatever is done between the Executive and whoever else is out there.

**Susan Deacon:** That was perhaps just some way short of slapping me down, but I will live dangerously—

**The Convener:** I simply wanted to clarify how I see the issue, but I appreciate that Susan Deacon is not entirely happy.

**Susan Deacon:** I have absolutely no problem with the essence, or spirit, of what the convener has said but, for the record, I was surprised to see the point that was made in paragraph 204 continue into this stage of the report. I was not sure that we had reached consensus that the lack of a concordat was a significant omission, or that our report would be as directive as to say that such a concordat should exist.

I have no problem with the convener's clarification or, indeed, that such a suggestion should be made. However, without wanting to revisit a discussion that we have had at least twice before, I did not think that we had reached consensus about where the role of the Civic Forum lay. For the record, I stress that I believe that the Civic Forum has an important role to play, but I do not think that we have quite captured where that might sit.

**The Convener:** We could reflect that by saying that we believe that there is scope for evolution of structures and relationships and that, as they evolve, we hope that the Parliament's engagement would be deeper.

**Mr Macintosh:** I have concerns about the fact that paragraphs 202, 203 and 204 seem to focus on the role of the Civic Forum only in terms of

resources. The implication is that the Civic Forum is not working properly because it receives insufficient resources. I am not entirely sure that we had any evidence to that effect or heard such a plea from the Civic Forum.

I can think of many things that we should do. At various points in the report, we make detailed recommendations about encouraging outreach and engaging with individual members of communities as well as groups. Although we touch on resourcing that process, we do not deal with it as explicitly as we deal with it in relation to the Civic Forum.

In paragraph 204, we seem to have reflected a direct piece of lobbying by the Civic Forum. I do not mind that, as I am highly in favour of the Civic Forum, but it seems to be getting preferential treatment.

**The Convener:** We tried to take account of that concern by amending paragraph 203, so that it referred to

“the use of multiple ‘gateway organisations’”.

That was an acknowledgement of the fact that we were talking about not just the Civic Forum. Paragraph 202 is not really about the resources that are available to the forum; it is about the resources that are available to the process and the capacity of the forum.

In paragraph 204, we state:

“the Parliament and the Executive should ensure that the Forum is resourced adequately”.

That might not follow on clearly from the previous sections. We should say that the gateway organisations through which we operate should have sufficient resources generally and the capacity to do the work that they are charged with doing.

It might tidy things up to everyone's satisfaction if we were to make the two proposed amendments and to stress the evolutionary nature of the relationships, the multiplicity of the gateway organisations and the generality of the resourcing issue, rather than give the impression that we are making a specific response to a specific bid. I see nodding heads, so that idea is a winner.

**Donald Gorrie:** The point could be strengthened by putting in bold the first two sentences of paragraph 203.

**The Convener:** I would be happy with that.

**Donald Gorrie:** Some people have concerns about the forum's monopoly position. It is important that the forum does not have a monopoly.

**The Convener:** We will put those sentences in bold.

My next point is on page 36. I have made changes here because, when we discussed the issue the last time, we said that we wanted to build up the text to stress the importance of MSP training. We agreed that such training should go beyond equal opportunities, into other areas. Susan Deacon and Ken Macintosh raised the issue of parliamentary support services for regional and constituency offices. Paragraphs 229 to 231 have been drafted to reflect those points. Although they were included in the e-mail that was circulated in January, we would like members to have a last look at what we have suggested.

**Mr Macintosh:** I appreciate the work that you have done. The January e-mail is taking on mythical proportions.

**The Convener:** This is the last suggested change from that e-mail.

**Mr Macintosh:** I appreciate that an attempt has been made to reflect members' concerns, including mine. I would like paragraph 231 to be beefed up further and, if possible, I would like the point that it makes to be made somewhere else in the report.

I have a more general observation about our report. We have focused on the workings and the mechanisms of the Parliament in Edinburgh more than we have focused on the Parliament's operation as an organic entity. It is easy to see that now. We have missed the opportunity to take more evidence on the relationship between individual MSPs and their local areas, which is key.

I repeat that I would like to beef up paragraph 231 and that I would like the point that it makes to be reflected at another point in the report, such as the introduction or the conclusion.

I will read out my suggested wording, which I might have over-egged:

"The direct contact and help given to constituents by MSPs and their staff from local offices has been at least as successful, if not more so, in building support for the Parliament than many of the inward-looking activities revolving round Parliamentary headquarters in Edinburgh. Where the Edinburgh Parliament encourages MSPs to focus on politics, and party politics in particular, constituency work is far more liberated and reflects far better on MSPs as public representatives."

I am not sure that I have got it right.

**The Convener:** We should put that in the self-congratulatory section, with all the other bits that we have deleted.

**Mr Macintosh:** The point that I am trying to make is that the individual relationships and the interaction that all MSPs have with people locally have perhaps not been an undiluted success, but have been successful. The reason why it is

important to say that is that we do not resource such activity. Paragraph 231 says that

"We are concerned that there may be disparity of treatment".

I appreciate why you have worded the paragraph in that way, and I am aware that there is a disparity of treatment. We did not take enough evidence on the issue.

Also, all the training issues come up under equal opportunities. Recently, there were a couple of first aid courses. While such initiatives are helpful, they are all directed at staff based in Edinburgh, despite the fact that most of our work is done elsewhere. We have not reflected that. That point does not come out strongly enough.

**The Convener:** I wonder whether it would not come more appropriately after paragraph 829, in which we reflect on the relationship between MSPs and their constituents. Effectively, what you are saying is that the work done in constituencies is important and has contributed significantly to the development of a relationship.

**Mr Macintosh:** Such work is an access point. Almost everyone I know accesses the Parliament via their local MSP—that is the first thing that they do. Some take other routes, but almost all of them go first to their MSP. It is odd that that is not flagged up in the chapter on access. We are almost there, but just not quite.

**The Convener:** Can you give us wording for that suggestion?

**Mr Macintosh:** I beg your pardon. We are on the equal opportunities section; we have gone past the access section.

**The Convener:** We have. Your point is about training, IT support, mutual respect and parity of esteem within the organisation. I am not unsympathetic to that point; I am simply suggesting that it might be better elsewhere.

**Susan Deacon:** I welcome the inclusion of the point in the equal opportunities context. Other than needing a wee bit of refinement and strengthening—and again, I am happy to provide suggestions for minor textual changes by e-mail—the equal opportunities section is fine.

I support Ken Macintosh's view that his point should also be strengthened elsewhere. Your suggestion that we add something around paragraph 829 is a good one. If the committee is generally supportive of that, perhaps we could come up with some wording together.

**The Convener:** I suggest that Ken should give us the wording by e-mail. We should consider inserting it after paragraph 829 where we can make the point that it also relates to access. We have repeatedly said that a lot of our points come

under more than one heading. It would be appropriate to make the point where I suggest, as it relates to back benchers—indeed, to all members—unless Ken can think of somewhere better having had an overview of the report. We can refine the point once Ken has done that.

**Susan Deacon:** I agree with that, but we must recognise that this is about something deeper than an access point. The report has not really captured Ken's point that most individuals will engage with the political process by first going to speak to their MSP. That raises particular issues for constituency MSPs, because, according to evidence, the public are much more likely to access a constituency member.

Perhaps that is why those of us who are constituency members are labouring the point somewhat. We are conscious that such a stream of people seek us out as their constituency member that the need for us to have the systems and support in place to respond to that effectively is paramount, not just for what we do as individuals, but for what we do collectively and corporately. I want to reinforce that point, although I am happy with the way of progressing that has been outlined.

10:45

**Donald Gorrie:** At the end of paragraph 231, could we add something about ensuring that staff in other locations are treated equally with staff in headquarters, particularly as regards training?

**The Convener:** When we say "equally" we cover everything, but when we refer to one aspect in particular, we almost devalue the others.

**Donald Gorrie:** Staff could be offered training to explain parts of the parliamentary system, because people working here get to know it, but people working in an office might not.

**The Convener:** You are suggesting that some central staff might need a bit of training in the needs of remote staff, so that they are aware of perspectives and requirements.

**Donald Gorrie:** Even at Westminster—which, of course, is pretty anarchic—there was a mechanism whereby people could travel from constituency offices and get taught about a new system. I think that it was to do with information technology. That is pretty amazing for Westminster.

**Fiona Hyslop:** I have two points to make on paragraph 230, on training, one of which might have been dealt with, so please let me know if it has. The first sentence talks about the importance of training in personnel and equal opportunities issues to help with various duties. I read "duties" as meaning constituency duties, such as being

aware of how to assist constituents with visual impairments when we are in our offices. We should add an explanation that the reason why MSPs need personnel and equal opportunities training is to help them to carry out their responsibilities as employers. We had very strong evidence on that. Unlike at Westminster, our responsibilities are more as employers than as members of the Scottish Parliament.

My second point might have been knocked back, so please let me know if it has. I am strongly of the view that the release of resources from the corporate body—allowances and so on—should be dependent on people taking part in the training.

**The Convener:** That was discussed thoroughly at a previous meeting. A lot of members had difficulty with it and we agreed that we would not include it. Your first point seems perfectly reasonable and we can add something after the phrase "various duties" to highlight responsibilities as employers.

**Mr Macintosh:** Paragraph 240 is a bit loosely written.

**The Convener:** Yes. I have made a comment there that there is something missing that has not been picked up on.

**Mr Macintosh:** Yes, and there is a query over the page on equality groups.

**The Convener:** My question was about what we mean by equality groups—well spotted. There were later comments that I took out between drafts, because the bullets went in. That might have been misinterpreted.

**Mr Macintosh:** There is nothing wrong. The points that you make are accurate, but the paragraph needs to be worded more tightly.

**The Convener:** We will revisit that and see whether we need to tidy up the paragraph further.

I have amended paragraph 271, simply because more text was underlined than was not underlined. The paragraph is not hugely amended from before. We said that we were impressed by the scale of activity on equal opportunities matters, and in the light of the comments about our being over-complacent or self-congratulatory, I amended the paragraph to say that we recognise the significant work that has been done. I have picked up the point that you raised about other external evidence and making recommendations based on points raised by witnesses. I am trying to reflect the fact that the witnesses were generally supportive and complementary but still saw scope for further changes. The paragraph is there because of the extent of drafting, but I do not think that it should cause anybody difficulty.



My next point is overleaf. Page 42 has some entirely new stuff, which members will not have seen before. The reason for that is that I thought that it would be better to update the reference to the work that was recommended at the SPCB meeting at the end of October 2001. The additional line in paragraph 278 simply explains that all the recommendations have now been carried out, with the exception of the provision of a local rate textphone number.

The equalities manager provided the additional information that is included in paragraph 279. I thought that it was worth including, as it demonstrates that a lot of purposeful work has taken place. The recommendations stem from some points that I received about on-going work and on-going requirements. In particular, there is a recommendation that the one item that is identified in paragraph 278 as not having been done—the establishment of a local rate textphone number—should now be done. The text is new, but it is essentially an update because we have taken so long in producing the report.

If everyone is happy with that, my next point relates to page 47. Before we get there, I think that Donald Gorrie has a point about page 46.

**Donald Gorrie:** That is correct.

**The Convener:** Before Donald Gorrie begins, let me check that Susan Deacon has the additional paper that Donald Gorrie circulated. She has.

**Donald Gorrie:** Like several of my other proposals, the thrust of my suggestion concerns what happens when the committee examines an issue and recommends that it be examined further. The problem is that the issue then goes right back into the melting pot, and boils—or whatever one does in a melting pot—for a long time before anyone does anything.

On page 46, we suggest that there should be a thorough review of the sphere, which is fine. However, we should also make it clear that the useful suggestions that we make should take effect while that more thorough review is being carried out. That is the gist of my point.

**The Convener:** Donald Gorrie's suggestion is to add at the end of paragraph 295,

"but that this should not delay implementation of the specific changes we propose."

I am not unhappy with that, but I suggest two minor changes to reflect the fact that we are suggesting not a set of detailed proposals for implementation, but that there should be wide consultation so that agreement can be found on the way forward. I suggest that, instead of saying that this "should not" delay implementation, the text should say that this "need not" delay implementation. I also suggest that, instead of

referring to "the specific changes", the text should refer to "any specific changes". In other words, if the wider parliamentary community is happy to embrace our suggestions, it should feel free to do so through the appropriate mechanisms and need not wait for the fundamental review. I am not so much charging the fences as opening up the way to a flexible approach.

**Donald Gorrie:** So "should" would become "need" and "the" would become "any".

**The Convener:** Yes.

**Donald Gorrie:** I could live with that.

**The Convener:** If people are happy with that, we will agree to that motion as amended—or, to use the right terminology, to the amendment as amended.

Like me, Donald Gorrie also had a suggestion about page 48. I will let him go first.

**Donald Gorrie:** Paragraph 312 currently states:

"The 'lead' committee reports to the Parliament on the principal purposes of the Bill (the 'general principles'), but not on its detailed provisions."

That is not correct. In my experience, committees can say that the bill as a whole is okay but there are particular points about X and Y that are not right and need changing. Therefore, I suggest that, after the reference to the committee reporting on the general purposes of the bill, we should say that the committee

"comments on those parts of the Bill that it believes will need amendment and gives reasons why the Bill should not progress to stage 2".

**The Convener:** The intention behind saying that committees do not report on the detailed provisions at stage 1 was to explain that they do not go through the line-by-line scrutiny. It is clear that committees consider many of a bill's provisions. Even if they do not consider every detailed provision, they might highlight a number of important provisions. Therefore, I think that it is sensible to delete that.

There is a choice between simply removing those words and leaving it that the committee reports on the bill's principal purposes. Alternatively, we could describe, as you have, what the committee does, which is to highlight the need for amendments. You say that the committee should give good reasons why the bill will not progress. Obviously, the committee usually says that the bill should progress, so that proposal should say, "should or should not progress" to cover both options.

**Donald Gorrie:** It was typed at speed by an amateur.

**The Convener:** I know the feeling. I am happy to make the changes, subject to that adjustment.

Paragraph 319 talks about “sufficient time” between stages 1 and 2 and stages 2 and 3, and we had worked up text for that. The point was made at a previous meeting that we also need time during stage 2 itself. The text provides added clarification.

We have divided paragraphs 332 and 333 into two. We have changed the first line of the text in paragraph 332, which said:

“We consider the view of the Presiding Officer is significant”.

I do not remember whether Ken Macintosh used the word sycophantic, but he felt that we were crawling to the Presiding Officer. Therefore, rather than saying that his view is significant, which of course it always is, I suggest that we say that we agree with a certain view. I thought that we should then spell out that view. The text clarifies what we agree with.

Paragraph 332 is about the pressure on committees and all those who engage with them, including witnesses and so forth. Susan Deacon brought up the point that parliamentarians are not the only people who are under pressure, and I have since encountered that. Civil servants also often work through the night to draft amendments and briefings for bills. Everybody who is engaged in the work is under pressure, which was the Presiding Officer's point.

**Fiona Hyslop:** Should we include parliamentary staff? If we mention civil servants, we should also point out that the committee clerks, in particular, are under a great deal of pressure.

**The Convener:** I would have included them in committees, but I agree that, as we are singling out civil servants, we should also mention parliamentary staff. Obviously, they work long hours as deadlines draw near.

**Mr Macintosh:** I have a small point about tone. The use of the word “unacceptable” in paragraph 333 and of the word “failure” in paragraph 334 is perhaps not diplomatic or is overly hostile. Such things are hard to pin down. The paragraphs make the point, but we do not have to make it in that manner. Paragraph 333 in particular could be redrafted to make the point in a more measured way.

**Fiona Hyslop:** We mean that the lack of time is counterproductive. The Executive needs to ensure that committees treat it properly, and committees and others must also be satisfied. Perhaps the word “counterproductive” is also too aggressive for Ken.

**The Convener:** How about including a form of words that stresses the importance to all concerned of ensuring that when bills are introduced, people's ability to do their job properly

is not impeded? We do not want to suggest that that does not happen. I can see Ken's point about the word “unacceptable”.

11:00

**Susan Deacon:** There is a case for putting a positive construction on things. Nowhere in this section have we said simply and explicitly that the overarching objective must be to achieve robust and effective legislation. In other words, while we are talking about dangers and problems, there is a positive statement to be made about the fact that we parliamentarians are committed to framing robust and effective legislation, particularly since we do not have a revising chamber. Both in that paragraph and elsewhere, we might want to make a positive statement of that nature, as an overarching point for the section.

**Donald Gorrie:** We have already added a positive statement in paragraph 331. That could be embellished to make the point that Susan Deacon suggests.

**The Convener:** How about instant rewording of paragraph 333, from the second clause of the first sentence, so that it reads, “but we consider that it is essential for Bills to be brought forward at a rate which allows committees, civil society and the general public to contribute adequately and to conduct proper scrutiny of proposed legislation”? That makes it all perfectly positive.

**Mr Macintosh:** I wish Susan had been here when I went through this section earlier.

**The Convener:** Yes, she could have been your nuance consultant.

**Mr Macintosh:** Indeed.

My difficulties with this section have often been to do with whether points are expressed negatively or positively. Paragraph 334 could also be expressed in a more positive way. We could say, “The committee endorses the Presiding Officer's suggestion to use to greater advantage the four-year legislative cycle, and encourages the Executive to take advantage of that opportunity.”

**The Convener:** That is quite a sensible and positive way to word that. It will not cause us too much difficulty to turn that round. I will not draft it off the top of my head, but we will make that change.

My first change would be in paragraph 336, and would build in something we mentioned in the first run-through. Fiona Hyslop observed that people have been frustrated that they have not had enough time—they have agreed to meet a deadline but in a few cases they have come back to say that they are struggling and need longer. We want to avoid saying that that is the fault of the

bureau; we need to stress that it is up to committees, through their conveners, to negotiate with the bureau. No one has ever decided to impose an unrealistic deadline; in fact, deadlines are negotiated, and people agree what they think is feasible for them. When they find that they are struggling, they are reluctant to say that it is taking longer than they expected. The rewording is an attempt to express that.

**Susan Deacon:** I am happy with that. As you all know, I have a general concern that procedural points in the report often read as if we are interested in process, participation and engagement purely as an end in themselves, rather than as a route to robust legislation and good outcomes. Paragraph 336 states that the timetable may fail

“to provide a full opportunity for all interested outside bodies and individuals to contribute fully to the legislative process.”

When I read that, I endorsed it, but I also wanted to add to it.

Paragraph 337 mentions the Mental Health (Scotland) Bill, which is an excellent example of a bill in which the detail is critical. I am making a quantity-versus-quality point. We are not just out to make lots of opportunities for involvement; we must make sure that the time and methods of consultation are such that they ensure that the right people are in the room advising on what might work.

Previously, I mentioned the Adults with Incapacity (Scotland) Act 2000, which is a good example of something that the Executive, the Parliament and outside organisations spent a considerable amount of time debating. There was no real party-political divide on its substance, but significant operational problems are still coming to light with details of the legislation's impact.

I am not sure whether we have captured the point that we are not simply interested in having lots of involvement for its own sake. With detailed and technical bills in particular, there is a real hard edge to the need to get the right experts in the room and to give them enough time to consider the proposals that we as parliamentarians are developing. I am sorry that again I have not given a specific formulation of words.

**The Convener:** You are not far off doing so, in that you have suggested that we should add to the recommendation to ensure that legislation is of the highest quality. You have suggested that we must build in the sense that MSPs should have a careful dialogue with people who are authoritative in the field and can ensure that the detail and precision of the legislation have been fully considered. I have not put that very elegantly, but we can rework those words for the paragraph. In order to

highlight the point further, I suggest that the section be put in bold, as that would direct attention to the importance of the matter.

**Fiona Hyslop:** We are all proposing that there should be a greater gap between the end of stage 1 and the start of stage 2. Committee conveners should also be made aware of the range and details of duties that they will have to carry out at stage 2 and the time that they will have in which to carry out those duties. That should make for better decision making all round, by conveners in their recommendations and in agreements for timetables. The points are almost two separate ones. Perhaps the second sentence in paragraph 336 should be in bold, but as a separate point, as it is important enough in itself.

**The Convener:** That can be done.

Paragraph 337 is entirely new text. It was included because, on reading the draft, I was aware that the Health and Community Care Committee is meeting three times every fortnight—there are two meetings in the first week and one meeting in the following week—as it tries to finish consideration of the Mental Health (Scotland) Bill. In one sense, that is a good example, although, in another sense, perhaps it is an unfortunate example, as there is understandable pressure to complete the work before dissolution.

In some respects, it is as if we have returned to the first year of the session, when we rushed bills through before the summer so that we could say that we had passed them. I understand entirely why the Executive wants the bill done and dusted before the dissolution, but it is still unfortunate for the quality and integrity of the process that such committee reaction has been necessary at this stage in the cycle. I am not blaming or criticising anybody. It would have been better if consideration had been six months earlier and everybody had had enough time. I simply thought that the example is a pertinent contemporary point on which to hang the overall issue.

My next recommendation is on page 52. In our earlier discussions, it was suggested that we need to establish a degree of consistency within committee work in respect of minimum time periods and consistent standards for pre-legislative consultation. The additional wording was designed to reflect the particular comment that was made without making a detailed recommendation.

**Mr Macintosh:** I think that I missed the specific decisions on paragraphs 344 to 347. Like Susan Deacon, I want to make a point about detailed recommendations, as opposed to broader points. Paragraphs 345 to 347 suggest that certain timings would be reasonable, but the wording

suggests that perhaps we could do this or perhaps we could do that. The points in those paragraphs are not specific, although I agree with their general thrust. We make specific recommendations at paragraphs 353 and, I think, 355. I agree with the general thrust of the points in paragraphs 345 to 347 and, although I do not have a problem with the numbers that are attached, we did not really go into that detail in our discussions.

**The Convener:** The important point is that we should have minimum standards; the exact periods are not important to the sense of our point. We flagged up the numbers as examples, but other people might suggest entirely different figures. It would be reasonable to drop the examples.

**Fiona Hyslop:** Do members agree with the recommendations, with the proviso that, before anything goes into standing orders or guidance, more detail is required on how the changes would work in practice? If we all agree and are sold on making changes, perhaps we could strengthen the wording but recommend that further work be done on the detail.

**Mr Macintosh:** I do not disagree, but I am not confident about making such thorough recommendations. I do not mind having examples, but I am slightly uneasy about the numbers. We might go for those timings, but I would be more confident about making such recommendations after a discussion with the bureau and others, including the Executive. As we have not discussed the numbers and they are not firm recommendations, it is not clear what status they have. Are they recommendations or exemplars?

**The Convener:** I suggest that we take the specific suggestions out of paragraphs 345 to 347, which might be amended after detailed work on the issue. However, we should pick up on Fiona Hyslop's point and insert after paragraph 348 something along the lines that, pending a review, we encourage the bureau to reflect on and produce for discussion and agreement proposals for minimum periods between the various legislative stages. We do not have to say what the periods should be, but we should say that the bureau should not wait a year and a half for our successor committee to review the legislative process. Instead, the bureau should consider the issue early in the next session and come up with suggestions.

**Fiona Hyslop:** Could we include that point and give the figures as examples?

**Donald Gorrie:** I will fight to the last to keep the figures in, although not necessarily in the present form. If we take a feeble approach and suggest that we should do something some day, we will have failed. The convener's suggestion is okay,

but the report should contain the suggested timings as a basis for discussion. I could live with that.

**The Convener:** We could do that.

**Fiona Hyslop:** I agree with Donald.

**Susan Deacon:** I am now entering the realm of nuances of nuances, but, in essence, I agree with Fiona Hyslop and Donald Gorrie. I also agree with Ken Macintosh that, at this stage, we should not say that the timings in the report should prescribe the way in which we operate in future. We know that more road testing should be done and other people should be involved in case we have missed something.

However, we should work on the presumption that, if there are not good reasons against making the proposed changes, they will happen quickly. The note of urgency is important. I share the convener's concern that if some of the changes are not made early in the new parliamentary session, the existing practices will continue as the default position and, before we know where we are, we will be not just months but years into the session before improvements are made.

**The Convener:** Do we have the basis of an agreement?

**Members indicated agreement.**

**The Convener:** My next suggestion is on page 53 and is essentially a point that Donald Gorrie has raised on a number of occasions. I want to draw out the point that allowing more time between stages 2 and 3 will provide opportunities for meetings, discussions and further external consultations and will build a breathing space into the process. That is my bid to respond to your point, Donald. I do not know whether you are happy with that.

**Donald Gorrie:** Yes. That is okay.

11:15

**The Convener:** Paragraph 352 has been reworded, but I do not think that there is anything significant on which to comment. However, I felt that, because about 50 per cent of the paragraph is underlined, I should show it to members. Again, paragraph 352 makes a point that has been made previously.

The paragraphs on the next page build up points that have emerged during our discussions. We should anticipate the pressure to speak during stage 1 debates and we should try to provide time for everybody who wants to speak. We would do that in conjunction with greater forward knowledge of the proposed business programme, which we encourage later in the report. We would create an intranet facility that would allow MSPs to place a

message quickly saying that they wanted to speak during the stage 1 debate. The chamber people could quickly work out how much time would be necessary for a stage 1 debate.

Once that facility is up and running, the suggestion is that we might do that for all debates. However, I would not want us to be in the position of recommending that party business managers should not provide the Presiding Officers with advance intelligence about who wants to speak, because we could run into management difficulties. We might find that some debates were under-subscribed. Business managers do an important job in ensuring that there are speakers for some debates. Ken Macintosh has often spoken of occasions when he was asked to represent the cause on an issue that was not perhaps at the top of his agenda.

**Fiona Hyslop:** That is all predicated on the advance notice, because decisions cannot be made about timetabling if it is not known how many people want to speak.

**The Convener:** So we should put a cross-reference to the later relevant paragraph. That would be helpful.

**Susan Deacon:** I, too, think that we should be explicit about the point that the convener has just outlined eloquently and diplomatically on the interrelationship between the suggested approach and the role of the party business managers. Again, this is one of those areas where we are silent on the realities of what goes on. I do not say this to be obsequious, but I genuinely think that the way in which the convener expressed the point—while slightly tongue in cheek—was good. We ought not to come across as suggesting somehow that the dark hand of party business managers is a dreadful act of control freakery that is all about stifling debate.

Much of the business managers' function is a necessary oiling of the machinery of debate to ensure that sufficient people are prepared to come in, for example. I think that it is important for us to be explicit and honest about the extent to which there is a crossover between that function and deciding who is allowed to speak in a debate. The process is not just an open one in which everybody bids for time. Party machinery exists around that area, too.

**The Convener:** That will take a new paragraph after 355, but I think that it would be a relatively straightforward one to draft and bring back.

**Donald Gorrie:** There is a deep point here—indeed, it might be too deep for the report at this stage. It involves the fact that the Presiding Officer has to make a difficult choice. A party might, for example, put forward three people who are on message and who will express the party line. The

party is entitled to do that. However, a couple of members of that party might have a different view. Does the Presiding Officer call them, or does he call the team set out by the party? An interesting balancing of one's concept of democracy would be involved in such a situation.

**The Convener:** If, for example, seven people are nominated to speak in a debate that has room for seven people, the easiest approach is simply to take the nominated people. The Presiding Officers would assume that the issue had been discussed within the party group and that people were happy with the nominations. However, if the Presiding Officers were aware of a split in a party over an issue and knew that members who one might not call authorised speakers wanted to speak, they might consider calling one of them, even if that meant dropping one of the nominated speakers from the party list. We might do that, as it would allow an aspect of the debate to be heard. Much of the time, we do not know about that sort of thing: people do not come to us saying, "We had a hell of a row on our group yesterday. We thought that you might want to hear about that." The Presiding Officers have to try to judge those situations.

Other members never go through their party whips. We have to try to judge whether their bid to us to speak results from their not wanting to play the game or whether they have been excluded because they are not on message, in which case we would look sympathetically at their bid. It is difficult to judge these things. Much of the time, we do not know where people are coming from. I am probably telling secrets that I should not tell, but our script designates members who are nominated to speak. It also shows members who have bid to speak without having gone through the business managers. We try to get a feel for why that has happened and include members in such cases.

However, a member might crop up every week saying, "I want to speak and I don't go through the business manager." They might say that they wanted their name to go down as a starred member to show that they were speaking outwith the spirit of whipping or party nomination. I do not think that the Presiding Officers should accord with that. However, on an important issue about which a member is known to have a legitimate view, we would try to build them into the debate.

**Mr Paterson:** You have missed out a third category, which is what I deem collusion between the parties and the Presiding Officer—I am talking about whichever of the Presiding Officers is in the chair, and not only Sir David Steel. When it comes to the big debates, the same members get to speak. The Presiding Officers are fairly guilty of accepting the lists that are provided to them by the parties. They should be a bit more flexible in picking members to speak.

**The Convener:** Most of the time, we call all the members who have been nominated to speak. Pressures can arise, however, if a debate starts late. Thursday afternoon is a classic example of that, as we have time to call only seven speakers in the open part of the debate that afternoon. If eight or nine members ask to speak, we have to decide which members not to call.

The issue is complicated by the fact that the SNP often nominates slightly more members than could be said to be its share. However, when the SNP realises that, it is very good and pulls a member out. There are one or two members who we could name who are very willing to drop out if the situation comes to that—others are forgiving if it happens to them.

We are trying to juggle, but I do not think that, as Presiding Officers, we are conscious that we are calling the same members all the time. I think that we are conscious that the parties regularly nominate certain members, but if that is what is discussed and agreed at group meetings and if everybody is happy with it, what is wrong with that?

**Mr Paterson:** I am saying that a bigger list of names is often provided. I think that the Presiding Officers take into account the fact that certain members never put their name on the lists, but I do not think that they take account of the number of members who press their request-to-speak buttons but are not on the list provided by the party. Those members want to get into the big debates, but because of the party list system and the pressures within parties to have certain members speak in debates, the same people speak all the time.

**The Convener:** It is difficult for the Presiding Officers to know about those pressures.

**Mr Paterson:** Yes. I know that, but we should reflect in our report that that is the element that the Presiding Officers do not take account of.

**The Convener:** In general, we do not take account of things that we are not aware of.

**Mr Paterson:** By the nature of what happens in the Parliament, I suggest that the Presiding Officers should be aware of the matter.

**The Convener:** We can only be aware of things if people come and tell us that they have a problem. I do not think that that has happened much.

**Fiona Hyslop:** The Presiding Officers call members who are not on party lists.

**The Convener:** We do.

**Fiona Hyslop:** That can lead to people on the party lists falling off the list, which is something that happens more often than people are aware of—people do not know that that happens.

**The Convener:** I do not think that it happens all that often, but it happens.

**Susan Deacon:** I am intrigued by Gil Paterson's conspiracy theory, but I tend to the view that problems in the world owe more to cock-ups than conspiracies. Our current approach has some inadvertent consequences, which are a further reason for turning a spotlight on the party list of speakers system. The issue of spontaneity is important in that regard and ties in with issues that we have discussed relating to strict timing of speeches and the fairly rigid structure that we have created for chamber debates. There are times during debates when even the most on-message politicians—or even particularly those ones—might want to contribute but will sit back because they have not been placed on the list. We could improve the quality of debates more easily if it was more widely recognised that some of the strictures that make up the corset could be loosened a bit.

**The Convener:** One way by which members can loosen the corset is for them to submit a note to the Presiding Officer asking to be allowed to make a one-minute speech in order to make a specific point. If there is time, people will be called in such circumstances.

**Mr Paterson:** The balance is wrong. We have all spoken of the restrictive nature of debates and said that the debates are too short. To me, the big debates are the ones that are allowed the least time and, often, meaningless debates are allowed the most time. I am not saying that parties should not be able to put forward lists of people who will be speaking. However, it would ease the concerns of people such as me if there were simply more time available in which to speak. That would ensure that there was a balance.

**The Convener:** We discussed that matter last week and we are bringing material on that subject to the committee.

**Mr Paterson:** I appreciate that. However, I am suggesting that, if nothing changes, the Presiding Officers need to examine the situation much more closely than they do at the moment.

**The Convener:** The next point on that page relates to Donald Gorrie's third point, which deals with paragraph 357.

**Donald Gorrie:** I agree with the proposition but seek to strengthen it. I suggest that paragraph 357 should be reworded to say, "We make no specific proposals at this point, pending a full review of legislative procedures. We therefore recommend that the timetabling for a stage 3 debate should be advisory only, so that the Presiding Officers can be flexible in allowing members to speak on amendments for which not enough time has been allocated and in extending, if necessary, the

overall time required to debate all the amendments.”

During a recent stage 3 debate, the consideration of amendments was hurried to meet an intermediary deadline even though, following that, more time than was needed was available for consideration of subsequent amendments. Overall, the amendments would have been dealt with in the time allowed, but we were not able to do so because the Presiding Officer is constricted by the requirement to get to amendment 30 by 5 o'clock or whatever. Debates are too crowded and, in the absence of a revising chamber, it is important that the stage 3 debate allows for full consideration of the amendments.

I make that suggestion as a step towards allowing more flexibility during the debate, accepting that it could have the effect that the final deadline is not reached. It may then be possible to truncate slightly the full—I do not know the technical term—stage 3 debate on the bill as a whole, as that is usually called *re-het*. I am not sure how to spell that.

**The Convener:** R, E, hyphen, H, E, T.

**Donald Gorrie:** Anyway, that is my proposal. It is important that every amendment should be properly debated.

**The Convener:** I have not worked this through, but my impression, from chairing stage 3 debates over the past year, is that what you are suggesting would have worked in all cases except the Protection of Wild Mammals (Scotland) Bill stage 3 debate, which would have overrun. There were restrictions in a lot of stage 3 debates that finished within the overall time, and there were sections in which I did not call members or asked them to make very brief points. On one or two occasions, we voted on amendments without any debate at all. The worst example of that was during the stage 3 debate on the Protection of Wild Mammals (Scotland) Bill. However, generally speaking, the bureau and those who make the calculations get the overall proposal correct.

**Susan Deacon:** I wonder whether I could ask a question.

**The Convener:** This is *déjà vu*. I read that yesterday in the *Official Report* of the previous meeting. I said then that you are always free to ask a question.

**Susan Deacon:** I want to question you wearing your other hat as a Presiding Officer. In general terms, or specifically in relation to the issue that Donald Gorrie has raised, to what extent do you feel that the standing orders constrain your ability to manage the debate effectively? We are looking at this from the other end of the telescope, but you are one of the few people who has had the

experience of trying to manage the process. You have given us a bit of feedback and have said that what Donald has suggested would have worked in all but one case. I am interested to know whether the Presiding Officers sit there thinking, “If only we were able to do X or Y, we could make all this work so much better.” I have no insight into that.

**The Convener:** It is not a huge problem. The important thing to realise about the timetabling motion is that nobody is trying to constrain debate. It is based on an estimate of how long the debate will take and is drafted with the best will in the world. When it goes wrong, that is because an error of judgment has been made. The most conspicuous errors of judgment are the overestimates. For example, last Wednesday's debate finished much earlier than anyone had anticipated. At one point, we had done in half an hour what we expected to do in an hour and a half. It is difficult to get it absolutely right. Most of the time—as was the case last Wednesday afternoon—there is plenty of time and we could have longer speeches and more people taking part in the debates on the amendments. However, every now and then the misjudgment goes the other way.

As for Donald Gorrie's suggestion that the timetable becomes advisory, I have not discussed the matter with my fellow Presiding Officers, but I think that it would probably work reasonably well. It is not the case that an hour's worth of debate is being suppressed; it is perhaps one member talking about one amendment in a particular debate. The only time that I can remember our proceeding to a new grouping and going straight to the votes with no debate was during the stage 3 debate on the Protection of Wild Mammals (Scotland) Bill, when there was a lot of pressure from members to take part in the debate. Usually, the debates involve a handful of committee members who have been involved with the bill all the way through. They know what they are talking about and everybody else is happy to follow their lead. Now and again, there is a difficulty, but generally there is not.

**Fiona Hyslop:** It is the terrible business managers who have to try to anticipate how much time is needed in timetabling debates. To be fair, the Executive is good at ensuring that there is opportunity for debate, and there is no attempt to try to truncate anything. If more time was allowed between the lodging of stage 3 amendments and the debate itself, that would allow us to anticipate much better where the areas of contention might be.

For example, last Tuesday the bureau had to make a decision about how much time to give to the Criminal Justice (Scotland) Bill stage 3 debate three days before the deadline for the lodging of

amendments. Basically, we are flying in the dark and do not know how many amendments will be lodged. However, we can get a feel for how contentious certain issues are and whether our colleagues want more time in specific areas.

That deals with the allocation of the hours that are available; then there is timetabling. Susan Deacon made a point about spontaneity. There was a tremendous amount of spontaneity in the Adults with Incapacity (Scotland) Bill stage 3 debate, with members challenging amendments. I have admiration for the Presiding Officers who had to steer us through that, as things could have been horrendous in some instances.

Advisory timetables could work. One of the problems is that the standing orders stipulate that the timetabling motion has to be agreed. Therefore, we may need to change the standing orders. If we have a longer gap between the lodging of amendments and the stage 3 debate, we can have a process that works, allows more opportunities to speak and has the flexibility for which Donald Gorrie and Susan Deacon are looking.

**The Convener:** We got into a bit of a fankle on the first day of the Land Reform (Scotland) Bill, because of the high number of two-minute divisions when amendments were pressed. We resolved that and caught up on lost time in the following two days by agreeing to have one-minute divisions. Although it is not a matter of standing orders, we used a two-minute division for the first vote and one-minute divisions thereafter, freeing up a considerable time. We will probably run with that until dissolution, because there are so many bills and so much ground to cover.

**Mr Macintosh:** This is a very interesting discussion—

**The Convener:** Yes, but we have wandered off the point.

**Mr Macintosh:** It is illuminating, however. I would like to get consistency here. Donald Gorrie has done all the work; he has come up with a series of recommendations that he has clearly thought out, and I am conscious that I do not know enough about the views of the Presiding Officer and others about this. As regards timetabling, I agree that no one should be prevented from speaking when they have an opinion to air. That eminently commendable principle runs through all the recommendations.

There is, however, a discipline to be applied to parliamentary business, which the Presiding Officer and the bureau wrestle with all the time. I wonder whether we could be consistent on paragraph 357. I do not have a problem with it, but I do not know enough about whether an 'advisory timetable' would be sufficient. Could we use the

formulation that Susan Deacon suggested earlier, to the effect that, although we are calling for a full review, these particular recommendations merit urgent attention in the next session of the Parliament? We might then list them as discussion points. I am not trying to water them down; I am just trying to be consistent, so we can get them agreed and make sure that they are on the top of the agenda. I feel slightly unsure about saying that this is definitely the way to go when we have not in fact tested it. It sounds like we could agree on this proposal, but we have not run it past anyone else.

**The Convener:** We could say that we therefore recommend that urgent consideration be given to providing for the timetable for stage 3 debates to be advisory only. That would flag up what we think might be the answer, while allowing for the possibility that there may be something else that we have not thought of. We have not given this very detailed consideration.

**Donald Gorrie:** Yes. To try to meet Ken Macintosh's point, we could say that the idea should be given a trial. If it does not work and we are all here till midnight, we can do something different.

**The Convener:** You would not be able to do that on a trial basis, because you might have to change standing orders to allow it. Clearly, if the Parliament did that and it did not work, there would be an urgent request to change it to something else or change it back.

**Fiona Hyslop:** I take it that in general we are looking at a review of the legislative process. We are making general recommendations about lengthening the time scales for different things and so on. Once the report goes through and is debated and, we hope, approved by Parliament, I presume that the next step will be to draft the changes for standing orders. It is then that we would expect the next Procedures Committee to look at those changes and take evidence from the clerks and others, who could say, "Hang on, I know that you want the timetable to be advisory, but there are other considerations." That is the failsafe mechanism. It allows us to be stronger in what we say, but nothing will happen until the next Procedures Committee agrees the changes to standing orders.

**The Convener:** I have extracted the four paragraphs about subordinate legislation from the general section, grouped them together under a new heading, and put in a new sentence to introduce them so that they are coherent in their own right.

I inserted in page 55 another sub-heading about moving amendments, because that was a reasonably coherent set of points that could be labelled separately. Nothing there will cause any difficulties.



**Donald Gorrie:** For my fourth suggestion, I would like to add to paragraph 365, which says that we do not recommend allowing non-MSPs to lodge amendments, and that,

"The longer timescale we propose would provide enough time for proper consultation on amendments."

That suggests that we are trying to meet the spirit of the point but that we cannot accept the specifics.

**The Convener:** Although that paragraph starts on page 55, I suggest that it might fit in better with everything on that page. Members should consider the following sentence:

"We do not recommend any changes to the Scotland Act to allow non-MSPs to lodge amendments".

We should add the words, "and we believe that the longer time scale we propose would provide enough time for proper consultation on amendments. Individuals and outside bodies that wish to propose amendments should therefore continue to do so through MSPs." Are members happy with that?

**Donald Gorrie:** Yes.

I should like to discuss paragraph 394 on page 60. I want to deal more seriously with Sewel motions by suggesting that we add the following:

"In the meantime we recommend that all Sewel Motions should be sent to the appropriate Committees for consideration and recommendation to the Parliament. Where a Committee believed that the issues involved were of sufficient importance to warrant further study, it should be allowed time to examine it adequately before it is sent to the Parliament."

That would be a way of dealing more satisfactorily with Sewel motions in the interim. The relevant committee would "own" the Sewel motion, as it were, and would not feel that it was something that was parachuted in from on high. That might improve the atmosphere around Sewel motions. Some are important and some are trivial, but the important ones could benefit from committee scrutiny. There may be a problem about the time; I do not know why these things must be passed before Westminster has a second reading, but it should be possible if wheels are set in motion early enough.

**The Convener:** In her memorandum of last week, Patricia Ferguson suggested two things that are pertinent to what you said. She suggested that the Executive might bring the notice of the Sewel motion forward earlier. It has to be lodged before the final amending stage at Westminster, but it could be brought in after the introduction at Westminster, which would give a longer time for consideration here. The timetabling issue would normally be capable of being resolved by what the Executive has suggested.

Further, Patricia Ferguson wrote that the Executive has no difficulty with the establishment of a practice whereby proposals for Sewel motions would normally be considered by the relevant committee.

Clearly, the Executive thinks that an important issue is involved. Ultimately, it wants to propose through the bureau whether a debate should take place in the chamber or in a committee. It envisages that, if a motion were debated in a committee, it would not come to the chamber.

The Executive appears to agree with the principle of what you are saying, Donald, but would probably have trouble with the word "all" before "Sewel motions" in your proposal. If you were content to say, "In the meantime, we recommend that it should be normal practice for Sewel motions to be sent to the appropriate committee," that would allow for the possibility that, every now and again, it might be appropriate for one to go to the chamber. I do not think that the Executive would have any difficulty with that.

I would also make a minor textual suggestion. I recommend that "it is sent" be replaced with "reporting", so that the sentence would read, "the committee should be allowed to examine it adequately before reporting to the Parliament."

11:45

**Fiona Hyslop:** I do not agree. I am more in favour of what the Minister for Parliamentary Business suggests. There is a danger that Sewel motions could get buried in committees and never see the light of day in the chamber. They can relate to contentious issues, such as terrorism, which the whole Parliament should have the opportunity to debate. I accept that we have not had the chance to hear from the minister in person, but I am more comfortable with the wording that is in the report. I do not want us to make a snap judgment that everything should always go to the committees. We need a system that is flexible. We need to be notified earlier about the Sewel motions and there should be an option to take the motion to a committee that wants to deal with it, but there should also be an option to take the motion to the chamber. I think, therefore, that we are safer with the wording that we have in the report. Our on-going inquiry will allow us to take a more balanced and considered view.

**Susan Deacon:** I disagree with Donald Gorrie's suggestion for similar reasons. There is a horses-for-courses issue involved. There is a danger that we will end up being overly mechanistic if we adopt a blanket approach. While the intention is good, the consequence could hinder rather than help over time.

Paragraph 392 is a blunt account of the concerns that pertain to the Sewel motion process. It is an important paragraph for that reason and because it identifies the tracking process, not just the initial consideration. Thus far today, we have spoken only about what is done when the motion is initially introduced, but the tracking process is an important element. Sometimes, depending on what happens during the passage of the bill at Westminster, tracking does not become important. Occasionally, however, it is a significant issue and the Scottish Parliament has to develop mechanisms to track the Westminster legislation and revisit some of the issues if necessary.

I suggest that we do not accept Donald's proposed change but that we put paragraph 392 in bold, which would help to flag up those concerns.

Although I disagree with Donald's specific proposal, I agree that paragraph 394 could be strengthened. That paragraph could be made into the flip-side of paragraph 392 in that it would ask for solutions to the concerns that were raised in paragraph 392.

We have to strike the correct balance. In one regard, we are saying that these issues will be addressed as part of a much bigger review that will take two years but, in another regard, we do not want to be forced to leap to any hard conclusions that we are not yet ready to come to.

Once the appropriate wording has been finessed with regard to our previous discussion about asking the parliamentary authorities to consider as a matter of urgency making immediate changes to the way in which the legislative process is handled, perhaps we could mirror that in relation to Sewel motions.

**The Convener:** We could add something that would acknowledge the fact that some Sewel motions are appropriate for committees and some are appropriate for the Parliament, as Fiona Hyslop said. Pending any fuller and longer-term evaluation, we could ask the parliamentary authorities to come up with an agreed mechanism for fitting horses to courses quickly or, indeed, urgently.

Donald, how do you feel about that?

**Donald Gorrie:** I am a sort of half-a-loaf politician—from bitter experience. I feel that my proposition has been misrepresented. I suggest that Sewel motions go to committee and then to the Parliament. It seems, from what the convener said and from my recollection, that Patricia Ferguson is suggesting that some Sewel motions that would go to the committee would not go to the Parliament. My proposal is stronger.

I can live with somebody considering a Sewel motion seriously and rapidly. I feel that the

Parliament is seen at its worst when dealing with Sewel motions. We have a long constitutional wrangle and usually do not discuss the issue. I propose avoiding that by sending a Sewel motion to a committee that would discuss the substance of the issue; then the motion would come to the Parliament. If it were a trivial issue, it would be nodded through; if it were not trivial, there would be a serious debate about it. However, if committee members want to go with what the convener just suggested, I can live with that.

**The Convener:** It is not a question of misrepresenting anyone's point of view. You have a clear idea of what result you would like the work to have. I am not gainsaying any of that. However, having agreed that we would consider all the issues and complexities, it is difficult to say, "Let us look at this in the round," and then say, "But this is what we will recommend." That is jumping to conclusions. We are trying find a way in which we can better deal with the issue, while accepting that sorting out the niceties will take a bit of time.

**Mr Paterson:** There is much merit in what Donald Gorrie is saying. At the previous debate on the issue, I suggested that there be a thorough investigation of the issue of Sewel motions and how they impact on the Parliament. In particular, we should examine tracking, which is probably more important than anything else. Donald is suggesting that the key words are "in the meantime." In other words, some action should be taken just now. I was about to say the same thing as Donald, which is that if a committee considered a Sewel motion in a more structured fashion than what happens in the debating chamber, that would help considerably to dispel some of the fears about such motions. There is no suggestion that the Parliament would make the final decision.

**The Convener:** There are normally two types of committee reports. If a report is on a statutory instrument, it gets nodded through at decision time. It gets moved at a minute to 5 and gets nodded through with no further debate. If we have proper committee reports and then debates on such reports before the process is finished, that will either sacrifice a lot of committee time, which is defined and limited at the moment, or we will have to create a new category of committee time and devise rules to frame all that.

All those matters require a lot of thought, negotiation and calculation to take into account all the unforeseen consequences, which we do not think about when we simply say, "This is what we would like to do." That, of course, is why we agreed that we would do a review of the issue, which would allow us the time and opportunity to discuss with everybody what the implications would be, so that we can come to a decision. There is a danger in saying too much that is too

specific on this point. I would rather leave everything open. However, I am happy to beef up what we say along the lines that Fiona Hyslop and Susan Deacon suggested.

We could say that we acknowledge that there are difficulties and have spelled out some of them, and that within the parameters of what we are doing at the moment we think that we could manage Sewel motions an awful lot better. We could suggest that early attention be given to managing Sewel motions better, but that the Procedures Committee's full recommendations will require a wee bit of research and take a bit longer. I would not like to hold off from changing the Sewel process just because the successor committee might take a year to review the issue.

**Fiona Hyslop:** Once we have got the Minister for Parliamentary Business to come to the committee, as we have agreed, in the next few weeks—we want her to come before dissolution—we should talk through her correspondence about the practicalities. I suspect that we could arrive at agreement. However, there is a danger in leaping to conclusions just now. Because of the current timing of the introduction of Sewel motions, it may not be possible to do what Donald Gorrie wants, as there would not be time for some of the motions to go to committees in the current ordering. I think that the ordering should be changed to allow more time so that that can happen. However, from a practical point of view, I do not think that what Donald is suggesting would be deliverable, and it would be wrong for us to put stuff in reports that we know cannot be delivered.

**Mr Macintosh:** We all share the concern that Donald Gorrie has raised about the fact that Sewel motions reflect badly on the Parliament because we are always arguing over the process. I am tempted to agree with what he proposes. However, we are not ready to propose a solution. I wonder whether we could add a line stating that we agree with the Executive's proposal to give us more time on Sewel motions as an interim measure—

**Fiona Hyslop:** But that we should consider sending more of them to committees.

**Mr Macintosh:** Exactly.

**The Convener:** We could respond in that way. We could refer to the letter and the memorandum and include them in the evidence, referring to the fact that the Executive has made tentative suggestions about how more time could be created and how committees could become involved. Nevertheless, Donald Gorrie is quite right. If we accept the offer of the committee process on the Minister for Parliamentary Business's terms, that will appear to close down the parliamentary option or the committee-plus-

Parliament option. That is a matter that our successors will want to consider in detail. We have three basic points to make in addition to what is written here, without accepting Donald's lead too far. Is that agreed?

**Members indicated agreement.**

**The Convener:** My next amendment is on page 61. I do not think that members will have any problem with it. It is just a bit of rewriting. After that, my next amendment is to paragraph 450 on page 70. I am struggling to remember, but I think that paragraph 450 is rewritten original text.

**John Patterson (Clerk):** Ken Macintosh made a point at a previous meeting about the final sentence of the paragraph, about recommending a fundamental review and importing from the Westminster system.

**The Convener:** You are absolutely right. That is it.

**Mr Macintosh:** I recognise it now.

**The Convener:** So, this is a Ken paragraph. Are you happy with the way in which it has been redrafted, Ken?

**Mr Macintosh:** I am happy that we address the fundamental operation of parliamentary questions as opposed to the constant tinkering that we are doing. As good as I think the constant improvements are, there is a serious issue to be addressed. I thought that we had agreed to include a recommendation to change the inspired PQs—

**The Convener:** We did, but that comes later on. I am not quite sure where. [*Interruption.*] It is on page 74, at the end of the section.

If members are happy with paragraph 450, let us turn to paragraph 452. Paragraph 452 is entirely new and is intended as a response to a committee discussion. Donald Gorrie raised a point about the need for ministerial surgeries. We did not go fully with the idea of ministerial surgeries, but we agreed to comment positively on the idea of ministers' holding ad hoc meetings with relevant members. We cite as good practice the meeting on foot-and-mouth disease. Are members happy with paragraph 452?

**Members indicated agreement.**

12:00

**The Convener:** Paragraph 454, which is also on page 71, was the last paragraph that we included in the e-mail that we sent round for clearance, and the underlining has disappeared. Paragraph 454 should be underlined for members' consideration. It deals with officials' feeding back to members the fact that they do not really follow what a question

is about and encouraging contact so that some certainty can be established. We are saying that we want answers to be given and that, when people do not understand the question, they should contact the member and sort it out. I apologise: that paragraph should have been underlined.

**Mr Macintosh:** Paragraph 457 is quite a long quote from Brian Jamieson of Scottish Enterprise. The last point in the paragraph is that bodies such as Scottish Enterprise are devoting a considerable additional resource to answering questions. I think that that is probably true of the civil service, too.

I attended a meeting of health service managers and workers who were unhappy with parliamentary questions, as they did not understand what was required. The questions procedure put them under enormous pressure, as a great deal of importance was attached to answering the questions—which is right, as they should be accurate and speedy, as Brian Jamieson acknowledged. However, I suspect that that involves a disproportionate amount of effort considering the use of parliamentary questions in our system. I wonder whether we could bring that point out; it is buried in the paragraph. The quotation is fine, but that particular concern is not given enough attention.

**The Convener:** We could do that in two ways. We could put the paragraph in bold print and we could include a paragraph—although I am not sure where in the section—that would cross-refer that comment to the work that we later suggest should be done in relation to the scrutiny of arm's-length agencies. We can suggest that there is evidence that those agencies are finding the PQ process burdensome and that PQs should be considered in the round in considering the scrutiny of the agencies, so that we can have more efficient and resource-sensible ways of going about the process. I would struggle to find the right wording off the top of my head, but I agree generally with what you have said.

**Susan Deacon:** I strongly endorse what has been suggested, including the convener's suggested course of action. In addition, mention should perhaps be made earlier in the report—possibly in the methodology section—of the fact that we did not take in-depth evidence from Government agencies, non-departmental public bodies, arm's-length agencies, and so on. The committee had informal discussions about its plans to do so but, for various reasons, that did not happen. Scottish Enterprise was the only body that gave oral evidence on the point that Ken Macintosh has raised. Consequently, that is only one of a number of issues that we did not fully explore, concerning the impact of the Parliament on such bodies. It might be helpful for us to acknowledge that fact up front.

In particular, devolution and the Parliament have had a massive impact on the health service's way of working and its work load, as Ken Macintosh has highlighted. Although I agree that it would be good to mention that in the context of parliamentary questions, we should recognise that it is part of a bigger point that we ought to acknowledge. That would be appreciated by the various people and organisations involved.

**The Convener:** We have on pages 85 and 86 a section on the arm's-length bodies. We touch on the scrutiny issue and quote Scottish Natural Heritage on a number of cognate matters.

Paragraph 549 begins:

"The question of with what rigour and success, and how systematically, the Parliament is scrutinising such bodies is not one that can be judged at present."

We could replace that paragraph with one that acknowledges that we came to the conclusion that there were huge areas of scrutiny of such agencies that we had not considered and which require further evaluation, not least in relation to the way in which we deal with the agencies directly, the way in which they report to us, the way in which we question them and whether we are making the best use of resources. That would point forward to the recommendation in paragraph 550 that there needs to be a scrutiny framework and that that should be an area of some priority for the successor committee.

**Susan Deacon:** I am happy with that. However, we still ought to flag up—in what I will loosely refer to as the methodology section—the fact that we did not take oral evidence. An awful lot of the references in the section that you have just highlighted derive from written submissions. The kind of worries that we are talking about were under-represented in the oral evidence. For example, the health service was conspicuous by its absence.

We committee members are only human and tend to place greater emphasis on what we have heard directly from witnesses. That is why we should acknowledge the form that our evidence-taking process took.

I do not disagree with anything that the convener said, however.

**The Convener:** At the beginning of the meeting, we inserted a paragraph that will become paragraph 21, which refers to our attempts to ensure that the evidence was representative. We could draft some text to insert at the end of that paragraph to state that, at the end of the process, our conclusion was that there were imbalances in the evidence that was taken. We could cite the examples that you have given and include a cross-reference to pages 72 and 85.

**Donald Gorrie:** In order to try to meet the point that Brian Jamieson makes in paragraph 457, perhaps we could extend the idea—which we agreed earlier—about having better contact between civil servants and MSPs about questions? If, somewhere on the machines that we have on our desks—or on a piece of paper, for people like me—there were a list of contact points in quangos and other such bodies, people could contact appropriate people and get a reasonably rapid answer. That would help to reduce the number of PQs about quangos.

Most politicians are highly suspicious of quangos and try to give them as hard a time as they can. However, the point is that we could save everyone a lot of time if ministers did not have to answer PQs about quangos because there was a network that was in place that enabled MSPs' questions to be asked more directly.

**The Convener:** I will have to turn the matter over in my mind. Perhaps that suggestion could be fitted in with the point about developing the departmental committee liaison officer service so that the DCLO is not simply the link for the committee but for all MSPs into the division or department that he works for. That might not be the best way, however.

If we were to set up a system whereby members could get information, and a parallel system whereby committees could get information, we would probably end up with an inefficient system.

**Susan Deacon:** That is another point on which we probably all agree in principle. However, it is a question of getting the mechanism right. It is a good idea to have access to the civil service. The suggestion about the DCLO is good, as long as an approach can be facilitated and co-ordinated that does not become obstructive. The idea of a one-stop shop or gateway through which MSPs can go is good. That would mean that one is not always searching round the system looking for Executive directories or the appropriate official. That merits further exploration.

Donald Gorrie also mentioned having quangos, NDPBs, and agencies and so forth as central points of contact for questions. However, we should not be that precise. A blanket response could ultimately have an adverse consequence, not least that agencies could potentially respond quite mechanistically.

Culturally, there is often a tendency in the health service to say that the patient liaison officer should deal with complaints. That should not be the case—the whole organisation should think about how it responds to such matters. A greater objective is to ensure more ongoing engagement between different public bodies and MSPs. That is mentioned in the report, but I have lost track of

where it is. It is horses for courses; different agencies will have different ways of doing that effectively. However, establishing sensible communication mechanisms for different types of inquiry is a natural consequence of meaningful dialogue between members, the local enterprise company and the health board or whatever.

Some of the process is about soliciting information and some is about accountability. If it is about soliciting information, having a relatively low-level contact point in the organisation—in hierarchical terms—purely to provide a fact or a figure is one thing, but someone might want a matter raised formally at board level for accountability purposes. There is no one-size-fits-all approach. However, we can capture the spirit of Donald Gorrie's proposal by expanding that paragraph about the relationships with Executive agencies and so forth.

**The Convener:** I think that you are referring to paragraph 550.

**Donald Gorrie:** I would like to be clearer about the rules. Technically, if I wish to raise a point with the man in charge of the prisons, do I have to write to a civil servant who will then write to the chap in charge of the prisons, or can I write directly to the chap in charge of the prisons?

**The Convener:** Ministers would prefer that you write directly to the man in charge.

**Donald Gorrie:** I normally do that, but I wondered if I was offending against some written procedures.

**The Convener:** Generally, ministers try to push such matters further down the chain to someone who is paid a big salary to be responsible. On policy matters, of course, if you ask the wrong question of the person in charge, he or she will refer your enquiry back to the minister. The lines are quite clear. One should direct enquiries about matters that are connected with quangos, health boards, operational issues and so on to the relevant health board or hospital. One would not necessarily want to go through a departmental gateway to do that. That emerges from the work that we suggest should be done to paragraph 550 to clarify all of those points.

**Donald Gorrie:** That is very helpful. I dislike antagonising people unintentionally.

**The Convener:** You have no scruples about it when it is deserved. *[Laughter.]*

We shall proceed to discussing the insertion of a phrase in paragraph 490. It goes against what we said earlier about Ken Macintosh's point on the stages between bills. However, we had previously agreed that we wanted to draw back motions, and Donald Gorrie suggested that we should also specify a minimum period for amendments.

12:15

**Donald Gorrie:** I am an early-notice person, but accepting that things change, I was about to suggest that we add to paragraph 490 the suggestion that we could change a motion entirely—subject to the agreement of the Presiding Officer—to take account of a topical issue's having arisen since the motion was lodged. It would encourage people to go for the earlier notice if they knew that, if we were to invade Iraq in the meantime, whether the SNP have a motion saying we should not invade or the Conservatives have one agreeing that we should, they are not precluded from—

**Fiona Hyslop:** Use a different example.

**Donald Gorrie:** We are not allowed to put forward any motions on that subject, anyway.

Anyway, there should be an opportunity for people to change motions if a serious issue arises. That would strengthen the argument for giving earlier notice.

**The Convener:** I would not want to expand what is already a very long sentence. We might have to add a caveat to the effect that the Parliamentary Bureau would always have the power to advance the revised business motion to give it the flexibility that it currently has.

**Fiona Hyslop:** That rarely occurs.

**Donald Gorrie:** If that makes the point—

**The Convener:** Now that you have clarified what you want, I think it does.

**Susan Deacon:** Correct me if I have missed a section, but I think we have lost from an earlier discussion the distinction between the precise detail of a motion and the theme of the debate. I am not uncomfortable with the suggestion that the detail of the motion should perhaps be known a minimum of four sitting days before debate, but in an earlier discussion—

**The Convener:** That is paragraphs 486 and 487.

**Susan Deacon:** No; those paragraphs are about trialling debates without motion. I am talking about being able to flag up the themes of standard Executive or opposition debates—if not the text of the motion—further in advance than is currently the case. That is a scheduling issue. Many interest groups have become deeply frustrated. If there were, for example, a debate on art in primary schools, interested groups would be able to give us briefing material in advance. Now, everything seems to have been truncated.

Is not there a separate point to be made about attempting to identify the subject matter of debates earlier—even before the terms of the motion are refined?

**The Convener:** It is helpful of you to give us the example of art in primary schools, which is much more interesting than Donald's usual example of the colour of curtains that we would hang in a committee room somewhere.

**Susan Deacon:** Let us say the environment, then, for argument's sake.

**The Convener:** No. It is a perfectly fair point. What we did was to recommend in paragraph 762 that we develop a further forward business programme, and that while it would be subject to amendment and refinement, it would guarantee times and allocations. In that context, we may have discussed a desire that the subject matter of debates be identified much further in advance, but we have not put that into the text.

If the committee wished that to be flagged up as one of the beneficial consequences that could flow from greater foreknowledge, I would be happy to have a stab at putting something in. However, it would be logical to put it in the section in which we have flagged up the forward business programme.

**Fiona Hyslop:** I agree that the section on the forward plan is the appropriate place to mention advance knowledge. However, we need to distinguish between Executive time and Opposition time. We anticipate that the Executive will know well in advance what the subject of many of its debates will be—the response to a consultation, for example. It is easy for the Executive to be proactive and to anticipate events. However, because Opposition parties do not have the Executive's opportunities to make statements during answers to oral questions or in ministerial statements, Opposition time needs to be more flexible so that the Opposition parties can react to current affairs and topical circumstances.

**The Convener:** Opposition time is opportunistic, if we can say that without being unfair.

**Fiona Hyslop:** It is, without being negative about it. I agree with the sense of Susan Deacon's proposal. The convener has identified the right place to include it in the report. However, I would not close off the option of allowing a bit more spontaneity to deal with current events.

**The Convener:** Susan Deacon defined the proposal as giving those outside Parliament the opportunity to know what would be debated as far ahead as possible so that they could research and brief and try to influence the debate. For some debates, that is clearly possible—the knowledge exists, and it is a matter of sharing that knowledge. If the knowledge does not exist when the Executive wants to make an urgent statement on a matter that has just blown up, or when an Opposition party wants to use its time to debate a matter that has suddenly increased in significance, that cannot happen. When it can happen, it should

happen and that is the spirit in which we should approach the matter. We will include that suggestion, probably after paragraph 764.

**Mr Macintosh:** I am conscious that we have missed the opportunity to comment on the success of e-discussions that the Parliament has promoted. I wonder whether there is another mechanism that can be used. The example that was given was the debate on chronic pain, which was flagged in advance. The Parliament generated an electronic forum, which was hugely successful in generating public interest and participation. Although we half refer to it earlier in the report, we do not say that we could build on it. Would paragraph 490 be the point at which to say that?

**The Convener:** It would not, but there is a point earlier in the section on access when we make recommendations about developing IT and allowing people to follow proceedings on the web. Perhaps we could put it in there. I cannot find that reference off hand—I hope that members are impressed by my navigation around this blasted report. There is something in that section, but I do not see it immediately.

**Mr Macintosh:** I thought that it was a reference rather than a recommendation.

**The Convener:** There is somewhere a reference to encouraging a virtual Parliament.

**Mr Macintosh:** Right. Is that what that meant?

**The Convener:** I did not narrow it down, but I took it to mean that there would be a facility for people to exchange views, put opinions on a notice board and to try to get dialogue going. I think that that is what it meant.

**Susan Deacon:** Being specific about forums is terribly important. Some criticisms have been made that, sometimes, the forums have been successful despite, rather than because of, the Parliament's actions to promote them. Do not get me wrong: the Parliament has established the forums and has been supportive, but they are not actively promoted on the website or through other means nearly as much as they could be.

**The Convener:** The paragraph in question would be 147, 148 or 149. We could build in a cross-reference to the proposal to give a greater forward perspective on the Parliament's business and a suggestion that would allow people—not only lobbying bodies—to submit briefing notes to MSPs, allow the exchange of views and allow those who want to flag up points in advance of a debate the facility to do so. The clerk has told me that our view is that Professor Schlesinger's interpretation of "virtual Parliament" was that we should be doing that very thing. It is in the report, but it needs to be fleshed out in the recommendations.

**Susan Deacon:** I have two brief, separate points about that section.

**The Convener:** Which section do you mean?

**Susan Deacon:** The one that we are still on—paragraph 490 or thereabout. In the interest of consistency and given our earlier discussion about party lists for speakers, perhaps we ought to weave into paragraphs 488 to 490 a brief reference to that somewhere to acknowledge the relationship. The opening paragraph of that section is inappropriate and selective. An opening paragraph about general debates in the chamber ought to be much more positive. Rather than being almost critical of the Executive, it should say that general debates provide a showcase for the Parliament.

I am sure that my record shows that I am not interested in giving the Executive an easy time, but I think that only one side of the story is being given when we say that general debates give the Executive

"an opportunity to 'show case' its policies".

A few minutes ago, we acknowledged the fact that the Opposition will, quite legitimately, seek to use its time to exploit perceived weaknesses and pick up on current issues and controversies. If we are going to make that comment about the Executive, we have to be honest and acknowledge the way in which Opposition parties use their chamber time.

**The Convener:** The committee generally eschews unbalanced criticism of the Executive, so I think that we can amend the first sentence to say that the Executive uses its time to showcase its policies, and that the Opposition parties use their time to initiate debates that will criticise and probe Executive policy. I do not think that we need the points that the paragraph makes about the public's perception or the debates' being foregone conclusions. We need merely to focus on the fact that decision time is a mechanism that legitimises the decisions of the Parliament. That will put a positive spin on that paragraph—well, not a positive spin, but a more balanced approach. I was perhaps interpreting Susan Deacon's wishes rather than simply responding to them.

**The Convener:** The next point relates to paragraph 496, which deals with the selection of motions for members' business debates. We have two options. If anyone has an alternative, we can think about it.

The first option is that we create a panel to do that job and make some slots available for the commemoration of anniversaries. The second option is that we go for Gil Paterson's suggestion that involves an exhaustive ballot. A third option would be anything that anyone here can think of.

**Mr Paterson:** I am not happy with the way in which either option is structured. Option A suggests that the task be taken out of the hands of the bureau and be given in part to the Presiding Officer. That would be pointless. If we are going to have a back-benchers committee, it should deal entirely with the task. The words in the second last line that follow "petitions" could be replaced with the part in option B that deals with the commemoration of anniversaries.

As far as paragraph 496, option B, is concerned, I would say that the word "exhaustive" is missing. The fourth line should mention "an exhaustive ballot". I do not think that debates on anniversaries or other particular occasions should be determined by the Parliamentary Bureau.

12:30

If two types of members' business debate slots are in place, the selection should be determined by a ballot system. If a member is successful in securing one debate, in the interests of MSPs getting a fair share of debates over the parliamentary session, that member should drop out of attempting to have another debate. If the situation is left as it is, that would mean that a member who was successful in one ballot would still enter the next one, which would be wrong.

I pay tribute to the fact that, by and large, most folk do get an opportunity under the current system to secure a members' business debate. It took Ken Macintosh a bit of time to get a debate, but I have been fairly successful in that I have secured two debates, and I am happy about that. That is the result of a balance being struck at the Parliamentary Bureau. That is an asset but, without there being an exhaustive aspect to the system, some members might be precluded from getting a members' business debate, which would be unfair.

**The Convener:** We must decide whether we are unhappy with how the selection of members' business debates is determined at the moment. If we are not happy, we need to ascertain whether we need to make a change. If we make a change, can we find a practical option by which to do that, which commands sufficient general support for us to make a recommendation?

Where paragraph 496's option A falls down is that we have not found favour elsewhere in the report for the idea of forming a group of back benchers. Does a panel of back benchers make any sense for the purpose of selecting members' business debates? Would members agree to meet once a month to select the motions for debates? Is the matter important enough to make it worth forming a panel?

If we are not happy with that option and we decide to go for some form of ballot, I would not

get too hung up about the wording in the paragraph. We can kick that around. Will we consider a ballot, or are we happy to allocate slots to the parties on a more or less proportionate basis and let the parties themselves negotiate internally? One criticism of letting the bureau manage the system is that members who do not have a business manager are squeezed out. However, we have now allocated a time slot to Robin Harper in response to a request by him, and we previously allocated a debate to Dennis Canavan on the basis of a request from him. I think that theirs were the only specific requests, although I have not been on the bureau throughout the Parliamentary session, and am not completely certain about that. In any case, I am aware of those two requests and of the fact that they were met.

There is not necessarily much of a problem with representing those members who are unrepresented by business managers. The bureau has, I think, been quite fair about that so far. Mr Sheridan might not agree, but then many of his motions are designed to be very disputatious and, if they are not selected, I do not think that he can be too critical. He has other opportunities to bring forward his business. Are members in other parties aggrieved at how the system works at the moment? Is there a burning desire to change it? I am not conscious that there is, but I cannot say that such a desire does not exist.

**Fiona Hyslop:** Excuse me, convener, but I must leave the meeting. Before I go, I say that in the time I have been a business manager I have had very few, if any, representations to say that the current system works against people. By and large, members get their slots. I am reasonably relaxed about the proposals. I urge caution against exhaustive ballots, however, because it might sometimes not be possible to take a pressing constituency issue into account under such a system.

**Susan Deacon:** This is an area that ain't particularly broke, so we should not seek to fix it. We are attempting to build on existing strengths, so we should recognise the fact that the system has worked well most of the time. The end product is something that members and the public have found effective.

We ought not to make sweeping changes to the current way of working. I reject particularly the ballot proposal. I accept that anniversaries are one example of topicality, but motions are made topical for other reasons. An individual hand, if you like, is required to assess what would be the right time and place to debate certain motions. Making that a random process would remove the management aspect.



There is also an issue—again—about being explicit about the fact that the parties' hands are involved, in a neutral sense, in selecting motions for members' business. We ought to make that comment. For the sake of completeness, we ought to acknowledge that that is part of the process. I am not aware that the parties' involvement is hugely problematic, but there is a feeling that the party machinery still controls too much the selection of motions. One way of addressing that is to be a wee bit more transparent about the criteria that the bureau ought to employ when selecting motions for members' business. For example, one criterion should be the number of signatories to a motion.

**The Convener:** That does not play into it at all.

**Susan Deacon:** I hunted around previously for information about how to enhance the chances of getting a motion picked for members' business. All sorts of things came out of the woodwork. The situation had developed in which some issues are the types of issues that the bureau or the Presiding Officer might consider, and which might be relevant and so on. One aspect that breeds suspicion is the fact that the selection process is clouded in secrecy. There is something to be said for working up a bit of transparency around that.

There are criteria that members would generally feel to be fair—for example, having cross-party signatories to a motion. I am not saying that the criteria would have to be rigid, but criteria such as cross-party sign-up, the numbers of signatories and topicality are relevant. I feel that that is what is missing. However, neither options A nor B address those points. They start to unpick a bit of the process that actually works.

**Mr Paterson:** My initial suggestion was that a minimum of two parties must sign a motion before it would be considered for what I call a normal ballot, which is the one that is always rolling. I also suggested that, because we have two plenary evenings a week for members' business, one could be for constituency issues. However, someone must decide what is an anniversary type of motion. I suggested in that case that a minimum of two parties must sign a motion. However, I detected that members thought that that would be too cumbersome, so I did not speak in support of that suggestion.

There seem to be no criteria for choosing a motion for a members' business debate other than the fact that party managers are involved in the choosing. The title "members' business" is wrong because the parties within the bureau choose the business for debate.

**The Convener:** That is not fair—many of the motions are specific to members' individual concerns, or to their constituencies or regions. It is

certainly the case that the business managers select the motions, but that does not prevent the debates from being about members' business. Most of them are genuinely so.

**Mr Paterson:** Fine—that might well be the case. However, if the ownership of the decision about what motion will take priority over another is in the hands of business managers, the debates are clearly not members' business debates.

**The Convener:** You are defining the criteria that the business managers might use, which are defined nowhere at the moment. The issue is whether we want to be prescriptive. At the moment, as Fiona Hyslop explained, the situation is more or less negotiated, and members make their pitches to their business managers. The business manager has a degree of discretion, but also a degree of responsibility in that if the party gets so many slots the business manager has to come up with enough suitable motions that will command sufficient respect and interest to make a decent debate. I am not sure that that exchange is working particularly badly anywhere. The approach is, "If it ain't broke, don't fix it." All those criteria are interesting, but do we want to be specific? How would we or anybody monitor and enforce the criteria, and is doing so that important?

**Mr Paterson:** Things that are done in secret are things that are done wrongly. It is important that everyone can see how a decision is reached when there are three competing motions—each of which is as good as the others—from one party.

**The Convener:** A parliamentary mechanism does not exist in which that happens. The business manager simply notifies the bureau that the motion selected is motion X in the name of member Y. There are never three competing motions. There is never any dispute.

**Mr Paterson:** Of course there is. There are competing motions every week within the parties.

**The Convener:** Yes, but that is within the parties, and nowhere do our standing orders or rules govern what happens within party group meetings or within the dynamic internal relationships of political parties. That is not a parliamentary process. The parliamentary process is the nomination of the motion, not anything that happens before that.

**Mr Macintosh:** I am in total agreement with Gil Paterson on this issue. Susan Deacon made several points about transparency; there is a lack of transparency, which provokes suspicion. I agree with Gil that members' business is not members' business. I do not know whether the inhibiting factor is the bureau or the parties, but members do not have freedom at any stage in our Parliament to lodge a motion unencumbered by other influences,

whether it is parties or the bureau. Members at Westminster have such opportunities. There is a ballot for debates on subjects of members' choosing. That is an important freedom that we should all be able to exercise.

At the moment, to get chosen for a debate members have to produce a proposal that gets the approval of their party. Maybe that is a sensible restriction to have, but I am not sure that I agree in this case. Members should have the freedom to lodge ludicrous motions—as was suggested at a previous meeting—if they wish. I will not take that argument too far, but members should be allowed to lodge for parliamentary debate a motion of their choice.

I am taken with option B. It should not be the motion that is balloted but members, because ultimately the member's choice is the principle that I am trying to capture. If there are two debates a week, one motion could be balloted and the other could be chosen by the current system; that is, it could be determined by the bureau and could be topical, on a petition or on an anniversary. Even then, the criteria should be more transparent—at the moment they are not. Those are my recommendations. I disagree that there is no discontent. There is: the system is unsatisfactory and it could be improved. Option B almost gets it right.

**Donald Gorrie:** There is an important philosophical point about the involvement of parties in the allocation of debates. Ken Macintosh made some good points. Some members are regarded by a lot of other members as being well up the wall, but they still have something worth saying and they should be allowed their fair share of time to make points. To be honest, I feel that my own group has a reasonable way of dealing with things through discussion, but ultimately the whip makes the decisions.

12:45

Nobody has ever been clear about different types of motions. One motion might say that the bridge at Tillytudlum has fallen down and must be mended rapidly—that might be very important locally, and members should have the right to say so. On the other hand, the two motions that I have had debated—that instrumental music instructors get a raw deal and that banks are screwing people who are in debt—concerned general issues. There is a question of balance between those two types of motion.

The wording of my motions is usually given a red cross, in the school masterly sense, and corrected. Some wording seems to be acceptable and some not.

**The Convener:** Who corrects your wording?

**Donald Gorrie:** The chamber desk. It does so in a very nice way, and I am sure it does so correctly, but it has shibboleths and other rules that I do not understand—phylacteries too, probably.

**The Convener:** That famous political expression: the fly-blown phylacteries.

**Donald Gorrie:** I therefore prefer option A, because I have always been keen on the idea of involving back benchers in some way, and it would be the start of such involvement. If that option does not command general support, some system of ballot would be a good idea. We should recommend changes, and perhaps we could advance with two options—I do not see why we should not.

We are suggesting several things that will have to be agreed to by the Parliament and as long as we do not suggest seven options—or whatever the House of Lords was given—we might make progress. I think that there should be a change, and I could go with either option.

**Susan Deacon:** I have been persuaded by colleagues during our debate that there should be more change than I had thought at first. I do not mind admitting my previous lack of knowledge on this subject, and I am genuinely interested in learning the extent to which parties nominate subjects. I thought that there was more of a process than there is, in terms of the bureau evaluating the appropriateness of topics.

**The Convener:** The bureau does not discuss topics at all. Topics are nominated to the bureau, but I do not know the extent to which they are discussed in the pre-meeting of the four business managers. I suspect—I stand to be corrected—that the business managers simply agree the divvy up, and that it is entirely up to the parties which subjects they lodge.

**Susan Deacon:** I am genuinely interested to hear that. In a sense, we should all say that we rest our case that there is a need for greater transparency on the issue, especially if committee members can find parliamentary procedure that has passed us by. I am also interested in the convener's comment that things such as the number of signatories do not come into play.

**The Convener:** They may have some weight in the business managers' selection from what is available, but I do not know.

**Susan Deacon:** I understand that. Again, many members of the public would be disappointed to discover that something that commanded the support of two thirds of the non-ministerial members did not stand a chance of being called for debate because of who had lodged the motion.

I do not mind admitting that there is a greater need for change than I recognised in my earlier

comments. However, I do not think that we are in a position to take that on to the specific recommendations for change. The issue needs a wee bit more work. I wonder whether for the next meeting we could come back with a revision that captures the general principles that we want to adhere to. We might have to make specific suggestions to consider, as we have done in other areas.

Rather than kicking everything into touch for the successor committee to carry out a lengthy inquiry, we would like some of the improvements to be developed and tested early in the next session. Is there a process already or should we develop one to address the timing point, which we have returned to time and again and which I suspect is starting to register on the radar? Can we suggest immediate action to be taken after 1 May but before the summer recess, so that changes can be implemented after the recess, notwithstanding the successor committee's examining some of the issues in more detail later? I am not conversant enough with the procedures to know whether that would involve the bureau.

**The Convener:** We could build in a request. I genuinely do not know. Ordinarily, where a committee reports and that has a bearing on the Executive, the Executive will respond. The Executive might not respond in this case, however, given the time scale for the report. We could invite a response from the Executive after dissolution and the election. We could also invite various parliamentary bodies to consider recommendations that are pertinent to them. We, or our successors, will in all cases be dependent on others coming forward with responses and reacting to our recommendations.

Unless our successor committee decides that it will pick up the recommendations, force the agenda and encourage or stimulate debate, there is no mechanism through which what we have recommended will happen. Someone will have to decide that they want to make what we recommended, or bits of it, happen after the election. I hope that the successor committee will bid for time to debate our report, undertake the additional work that we have suggested and lodge motions to incorporate the appropriate changes to standing orders after the necessary consultation. I hope that the Executive, the bureau and the Scottish Parliamentary Corporate Body will say, "In response to the report, we would like to do the following things." We cannot control or drive that.

I do not think that there is anything like unanimity on the committee on the proposal for a panel of back benchers. There is more support for the idea of a ballot. Those who support a ballot or those who could live with a ballot probably constitute the majority of the committee, but I

might have misread that. In this section, we should go either one way or the other. We should either call for more transparency in the existing process and for criteria to be laid down, but still struggle with who makes the decision, or we should call for a ballot, in which case signatures and cross-party support would not have a bearing. If we go for a ballot, the issue is whether we ballot on the motion or ballot on the member and allow the successful member to lodge whatever motion they wish.

If we did the latter, we would get e-mails and letters from people out there who believe that they are pressing something on to the agenda by saying, "Please sign this motion." They would be wasting their time, I am sorry to say. The focal point of pressure would be to say to members in advance, "We see that you have a slot, how about bringing this motion forward?" However, members might not want to have that sort of pressure put on them.

There are fundamental decisions to be made. We are saying that we do not like the status quo. We accept that the status quo has worked, but it is perhaps not entirely pristine, spotless and free of faults. We would like to see something better, but I do not really see a clear consensus emerging about what we should put in its place.

The logical place to stop the discussion would be at the end of paragraph 499, but I suggest that, given that it is 12.55 pm, we would be forcing a decision if we tried to come to a conclusion on paragraph 496 at this stage. We have crystallised some of the thinking and we have clarified some of the issues. We have the opportunity to come back in a fortnight, start with paragraph 496 and move on from there. I see nodding heads, so I assume that we are agreed on that. I thank one and all for their attendance and their contributions.

*Meeting closed at 12:55.*



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