

PROCEDURES COMMITTEE

Tuesday 2 December 2003
(*Morning*)

Session 2

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PROCEDURES COMMITTEE

8th Meeting 2003, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)

*Mark Ballard (Lothians) (Green)

*Bruce Crawford (Mid Scotland and Fife) (SNP)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Linda Fabiani (Central Scotland) (SNP)

Robin Harper (Lothians) (Green)

Irene Oldfather (Cunninghame South) (Lab)

Mr Keith Raffan (Mid Scotland and Fife) (LD)

Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

David Cullum (Scottish Parliament Directorate of Clerking and Reporting)

Mark Richards (Scottish Parliament Directorate of Legal Services)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 4

Scottish Parliament

Procedures Committee

Tuesday 2 December 2003

(Morning)

[THE CONVENER *opened the meeting at 10:30*]

The Convener (Iain Smith): Good morning. We have received apologies from Jamie McGrigor, who cannot make it today, and Karen Gillon, who is stuck in traffic, but is on her way. I have not heard from Bruce Crawford, so I hope that he will appear at some point.

Before we start the meeting, I draw members' attention to the papers that were circulated for information. I have received a further letter from the standards commissioner, who has advised me that the Standards Committee considered our committee leak at its meeting on 25 November and decided that, in the absence of clear information about who was responsible for the leak, it would not take the investigation any further. The standards commissioner is clear that there needs to be a more comprehensive approach to the investigation of leaks and will take that up with the parliamentary authorities. I will circulate the letter to members with the next set of papers.

Non-Executive Bills

10:32

The Convener: Agenda item 1 concerns the start of our inquiry into non-Executive bills. We have with us representatives from the Parliament's non-Executive bills unit. David Cullum is head of the unit and Mark Richards is the senior legal adviser to the unit. David Cullum may say a few brief words of introduction.

David Cullum (Scottish Parliament Directorate of Clerking and Reporting): As ever, I defer to my legal adviser.

Mark Richards (Scottish Parliament Directorate of Legal Services): We agreed that I would open. David will be able to supply a practical insight into the process, but I would like to make some introductory remarks.

We welcome the opportunity to provide information to the committee, which we hope will help the committee in its inquiry. The extent of NEBU's involvement in prioritisation is to assist in any way that it can in a system being decided on and put into place. We are pleased to have been invited to assist in the process and to share with the committee NEBU's experience of dealing with members' bills and proposals.

The paper from the committee's meeting on 18 November suggested that there were three options. It is not our role to comment on the merits of the options—those are matters for the committee—but we can explain the practical implications to allow members to consider which option might be most suitable to recommend.

The paper that we have produced concentrates on the period from the initial contact or idea on the part of the member to a bill's being introduced. We are conscious that there are two parts to the matter: the prioritisation of NEBU bills and parliamentary time. We cannot add much on parliamentary time, which is more a matter for the committee. Our role relates to the prioritisation of assistance to members by NEBU.

Once NEBU was established, we saw all but one of the introduced members' bills at some stage of their development. That gives an indication of the level of our input into the process.

We have not included in the paper information about committee bills, as they are subject to the same considerations. There were only two committee bills in the previous session, but I do not know whether that is an indication of how many there will be in the coming session.

David Cullum: There were three committee bills.

Mark Richards: Sorry, there were three committee bills.

Bills may be of different sizes and complexity. A small but complex bill might demand a lot of resources and a large bill that is relatively straightforward might also demand a great deal of resources.

We have put the papers before the committee and we are happy to assist you. David Cullum will probably answer most of your questions on the practicalities.

The Convener: Before we begin questions, I remind members that the witnesses from the non-Executive bills unit cannot express political opinions; they are here to provide advice and information about how the process works. I ask members to bear that in mind in framing their questions.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): None of the members present has detailed experience of working with the non-Executive bills unit, but in the corridors and the tea rooms, we hear that the team is busy and is weighed down with the volume of work. What practical difficulties does the team face?

David Cullum: There is certainly a perception that we are extremely busy.

Cathie Craigie: Is it only a perception?

David Cullum: I would not like to say that we do not have any work, although I am glad that we are not as busy as we were in the final year of the previous session of Parliament, when we handled six or seven bills simultaneously. In this session, many members have come to speak to us about their ideas. Our statistics show that we have had nearly as many visits in this session as we had in the two and a half years from our establishment in the previous session. In this session, we have spent a lot of time providing background information to members. If a significant proportion of those ideas are translated into bills, we will be in trouble. However, the experience from the first session suggests that many ideas do not lead to the drafting and introduction of a bill.

Mark Ballard (Lothians) (Green): Will you elaborate on what you mean by a significant proportion? What number would you classify as significant, given that you handled six or seven bills simultaneously in the final year of the previous session of Parliament? In the past two and a half years, how have staff numbers changed?

David Cullum: I will answer the final part of your question first. When the unit was set up in August

2000, there were three members of staff—me, an assistant clerk and an administrative assistant. Now, the team comprises me, two senior assistant clerks, an assistant clerk and an administrative assistant. We grew larger in the fourth year of the previous session, when we had an additional three staff.

Mark Ballard: Where did the additional three staff come from?

David Cullum: They were found for me by a combination of seconding people from within the Parliament and buying in temporary staff from outside. For example, we borrowed somebody from the Scottish Parliament information centre. Part of the problem with that is that our work involves a long learning curve. When we get staff from outside, or staff who are new to the unit, they need a lot of support and assistance.

On the first part of your question, in year 4 of the previous session, we handled six bills that were running in the Parliament, which brought huge pressures of time. Ideally, each member of staff should not be asked to handle more than one bill that has been drafted and introduced, while working at the same time on the preparation of another bill. Given the existing resources, that suggests that we could probably handle four bills running and four bills in preparation. However, that figure needs to be taken with a pinch of salt because it depends on the size, scale and scope of the bills. Ideally, a member's bill should involve a fairly small and tightly constrained single idea.

One or two of the pieces of work that we did last year did not fall within that definition. The deputy convener will know about the Commissioner for Children and Young People (Scotland) Bill, for example. Although that was not a large bill in terms of the number of sections, it consumed a huge amount of resources.

The Convener: You made a distinction between bills that are in the process and bills that are in preparation. I want to clarify under which of the stages in annex 8 you refer to the preparation of bills. Is that included in the consultation period or is it part of the post-consultation period?

David Cullum: The post-consultation period is when we get into the serious work of preparing instructions for a draftsman and working on drafts to convert the idea and the results of consultation into a bill that is fit for purpose, which can be introduced in the Parliament.

The Convener: In addition to having four bills in that phase and four bills before Parliament, for how many other bills would you be assisting with preparation and consultation? Perhaps there is no problem with that aspect.

David Cullum: That very much depends on the resource implications of handling and preparing the bills. Since the beginning of May, we have considered about 35 proposals and have done research on all of them, but during that time we have been developing only two pieces of work for introduction. One of those has been introduced and the other is not far away from being introduced. The more that we do on bills that have been introduced, the fewer resources we have to do the initial development work. Experience suggests that that might tail off a bit—we might have had the first flush of new ideas from members. I suspect—and hope—that we will not get quite as many over the next 12 months as we have had in the first five or six months.

The Convener: That is useful.

Mark Ballard: According to the statistics for the first session in annex 3, of the 10 proposals that were lodged after NEBU was established that led to the introduction of a member's bill, five were drafted by NEBU and five were drafted outside NEBU. In this session, there have been two proposals leading to the introduction of a member's bill, one of which NEBU drafted. Will you give us a picture of how much support work you have to give bills? I am aware that that there are support implications for bills that you do not draft.

David Cullum: That very much depends on the member concerned. The bill that has been introduced without our help is the Prostitution Tolerance Zones (Scotland) Bill, which is exactly the same bill as was introduced in the first session.

Mark Ballard: Did the Faculty of Advocates help with the drafting of that?

David Cullum: It was drafted by two members of the Faculty of Advocates. I had some—although not a lot of—involvement. I spoke to Margo MacDonald several times after she started the drafting process; I gave her some thoughts on one of the drafts and I spoke to the advocates once, but my input was fairly minimal. I had quite a few conversations with Margo MacDonald before she reached that stage, particularly during the consultation phase. She occasionally phoned me up for procedural information.

Mark Ballard: How typical was that of the five bills in the previous session that were introduced, but which you did not have a hand in drafting? Was the pattern similar?

David Cullum: It varied—there was no set pattern. I can take you through those five bills, if you like. We had no involvement in the Council of the Law Society of Scotland Bill.

The Convener: I suppose that you would not dare.

David Cullum: I am trying to remember what the other bills were.

The Convener: One of them was the University of St Andrews (Postgraduate Medical Degrees) Bill—a very good bill it was, too.

David Cullum: We gave a little assistance on that one—it was one of the ones that we drafted. In the early stages, I spoke to Tricia Marwick quite a lot about her Proportional Representation (Local Government Elections) (Scotland) Bill. She showed me her first draft of the bill, which was radically rewritten thereafter, although I had no input to the second draft or subsequently. We also had one or two conversations about procedure. That bill was more typical, in the sense that it was not resource intensive from my point of view.

I had some preliminary meetings with Tommy Sheridan on the School Meals (Scotland) Bill. I certainly spoke to him when the scope of his original proposal was being considered; thereafter, I do not think that I met him at all in relation to the bill. I had nothing to do with the Tobacco Advertising and Promotion (Scotland) Bill, beyond an initial meeting.

Mark Ballard: Would it be fair to say that in those cases the process was not particularly resource intensive?

David Cullum: It was not.

10:45

Bruce Crawford (Mid Scotland and Fife) (SNP): I want to ask a small question on the back of that. Forgive me if it is difficult to answer. You may not have had many discussions about or much involvement in the bills that were drafted outwith NEBU, but the quality of their drafting is an important issue with which we need to concern ourselves in a longer discussion about how we arrange resources through NEBU and how those resources are focused. Are you in a position to comment on that issue, or is it a delicate area?

David Cullum: Perhaps I can answer the question in this way. We have just finished a tendering exercise for the members of our drafting panel. We advertised in the principal legal journals north and south of the border and received about 30 initial applications. We have ended up with a panel that is the same size as the original panel, consisting of six people. There has been only one alteration to the membership of the panel. There was widespread interest in becoming a member of the panel, but in our estimation people outside the panel do not have the skills and abilities to do the job. That is not to say that the people who are drafting externally do not have the necessary skills

and experience—I do not think that any of them applied to join the panel. However, we are fishing in a very small pool for people with the skills to draft legislation competently.

Bruce Crawford: That is a useful answer.

Richard Baker (North East Scotland) (Lab): My question relates to annex 3. Why were the unsuccessful lodged proposals unsuccessful? What prevented their introduction?

David Cullum: They did not have 11 supporters.

Richard Baker: It is as simple as that. Is it fair to say that the majority of your time is spent preparing to introduce bills that will not become legislation? Is that what happened in the previous session?

David Cullum: It is a matter of perception. In the previous session, we produced five members' bills, two of which are on the statute book. It will be easiest if I go through the other three one by one.

The Public Appointments (Parliamentary Approval) (Scotland) Bill was defeated at stage 1, but the Executive introduced a similar piece of legislation that probably does much that the member originally intended.

The Organic Farming Targets (Scotland) Bill was also defeated at stage 1, but prior to that the Executive gave certain promises in relation to organic targets. Again, those seemed to go a long way towards meeting the member's aspirations.

The last bill that did not reach the statute book was the Gaelic Language (Scotland) Bill, which ran out of time. The Executive is now planning to introduce its own Gaelic language bill. My measure of success is slightly different from Richard Baker's.

Richard Baker: I accept that. In future, we want to make the best use of NEBU's time. There were 43 successful lodged proposals, of which only 16 led to introduction. Presumably, most of the work is done before introduction.

David Cullum: The bulk of our work is done between the end of consultation and the introduction of a bill.

Richard Baker: So a large amount of work was done on the 43 lodged proposals.

David Cullum: Probably not. Members have a variety of reasons for lodging proposals. Sometimes the aim is simply to raise awareness of an issue. Currently we work under the requirement that consultation is carried out. Members do not produce many consultation exercises. We ask members to produce a first draft. If they do that, we will work with them to produce questions and to knock the exercise into a normal shape. The

production of a consultation exercise seems to be a blocking point for members. It is quite a time-consuming task and many proposals stop at that point.

Richard Baker: That is very helpful.

Bruce Crawford: I will continue on that theme, because it gets to one of the core matters on which we will have to decide: prioritisation and what processes we will use to prioritise. If I understood correctly the flow chart that you provided for us and your response to Richard Baker's question, the real work begins at the end of the consultation and when instructions are given to the drafter. I am not saying that you are not working before that, but that is when the real impact on your unit begins, which suggests to me that it is the area of prioritisation with which the committee needs to concern itself. Perhaps you would like to comment on that statement.

With that point in mind, what difficulties does the lack of a political prioritisation process create for your unit? At the moment, a lot of your work is done through the rules that the Scottish Parliamentary Corporate Body lays down, which you need to interpret, which must create some difficulties for officials.

Have I got the summary of where the hot spot in your work is right? Is that where we should think about prioritising resources? What difficulties does the lack of a political prioritisation process create for you?

David Cullum: I will start to answer that question by talking a little about the value of consultation. Because there are five of us in my unit, we are not specialists in anything, in contrast to the thousands of people in the Executive, many of whom are specialists in individual subjects. I do not know what the next person to come through my door will want to talk about, and inevitably—or invariably—I know little about the subject when we start the conversation, so consultation is vital in gathering information from experts throughout the country to inform the process and in focusing on the issues, providing information on where opposition might come from and identifying the major difficulties that we and the member might not pick up.

I cannot stress more strongly the importance of consultation for my unit. From a parliamentary point of view, it is also extremely important for the committees, because, whenever we assist a member with a consultation exercise, we make all the responses available to the lead committee at stage 1, which, we hope, saves that committee a little bit of work and helps to narrow the focus of its initial inquiry.

The SPCB rules are useful for me as a backstop. I have no political involvement at all. I

am completely neutral and I make no political decisions or value judgments on proposals. If a member wants to proceed with a proposal and has consulted, and if the proposal falls within the criteria that we have been given, we will work on it for the member.

We have used the SPCB in two main areas. First, we have been back to the SPCB twice to ask about proposals that we knew would be massive pieces of work. The Commissioner for Children and Young People (Scotland) Bill was one, and I think that the proposal for a charities bill this session was the other. Those proposals had huge resource implications for us, and there were clearly issues about whether they fulfilled the criteria. In each case, the SPCB's involvement led to a decision. We were given additional resources to produce the Commissioner for Children and Young People (Scotland) Bill for the bill committee, and we spent 4,500 hours working on it.

The other useful long stop from the SPCB is that one of its criteria is that a proposal must be within the Parliament's competence. Sometimes, that is not clear, but if a proposal is clearly outwith competence, we will go back to the SPCB, say, "The member is pushing to do this, but it is not competent," and take our lead from the SPCB. So far, it has not asked us to produce a bill that is not within the Parliament's competence. Have I answered your questions?

Bruce Crawford: That was useful. I think that you are telling me that if the committee decides to have a prioritisation process that goes beyond what the corporate body already has in place, that should come after the consultation process, because it is only then that we will be able to get a feel for what the bill could be about and the possible drawbacks. Only that process can properly inform any political prioritisation process.

David Cullum: It is probably fair to say that, and it is also possible that it is only at that time that a member has a view of the bigger picture of many of the ideas that are being proposed.

Bruce Crawford: That is very useful.

Mark Richards: I could mention where it fits in in the legal context. When proposals for bills come in, David Cullum will often seek advice from us. In a sense, that is a relatively small part of the work because it is neatly confined to considering the proposal and advising whether it would be competent, for instance. The bulk of the legal work comes at the stage when drafting instructions are to be prepared. At that stage, the consultation will have been completed, so the member's policy will have been worked up fully and we will have something that we can use to prepare a bill. The consultation has to have been completed before

we get to that stage, otherwise the member might find that a lot of changes are required to their proposals. It is inappropriate to work on the draft of a bill without having a consultation and working up the policy.

Bruce Crawford: That is very useful; thank you.

Mark Ballard: We started talking about annex 5, the current non-Executive bills unit prioritisation criteria. The first point is that

"only proposals appearing to be broadly within the legislative competence of the Scottish Parliament should have drafting assistance".

So far you have not been presented with a bill that is outside the Parliament's competence.

David Cullum: We have not produced a bill that has not been given a positive certificate by the Presiding Officer.

Mark Ballard: Have you been approached with proposals that you did not think were competent?

David Cullum: Yes.

Mark Ballard: We have dealt with external consultation; it is a necessary stage.

David Cullum: We would give members some assistance with consultation, even for those bills that appear to be outwith competence. However, we would make it clear at the outset if we were convinced that the proposals were outwith competence.

Mark Ballard: Has the likelihood of legislative action been a hurdle for many bills?

David Cullum: It certainly seems to be an issue from time to time. I am sure that Bruce Crawford could tell you about that.

Mark Ballard: You mentioned going back to the corporate body in relation to the potential size and scope of a bill. However, it seems to me that the first three criteria mentioned in annex 5 are more to do with negotiations between NEBU and the member who is proposing the bill. Have you had to go back to the corporate body with questions about those first three criteria?

David Cullum: Not as such, but the initial consultations and discussions that I have with members always include at least two themes: we will comment on the competence of the proposals; and we will comment on the time that the exercise will take so that members do not expect us to produce a bill within two or three months of the first meeting. Incidentally, the time scale to turnaround is why members went on their own with a couple of the bills during the previous session.

Mark Ballard: The final paragraph of annex 5 says:

"The Corporate Body also agreed that other factors which need to be taken into account where demand exceeds capacity are:

- the breadth of support that a proposal has attracted; and
- the potential size and scope of a Bill."

In those situations, you have gone back to the corporate body. Is that correct?

David Cullum: We have not gone back to the corporate body on breadth of support. I suspect that that would be an overarching issue if there were 10 pieces of work competing for an exercise. It reserves that option.

Mark Ballard: The corporate body?

David Cullum: Yes. However, we have gone back to the corporate body on the size and scope of bills.

The Convener: Would it assist your unit if aspects of annex 5 were to be written into the standing orders? One example is consultation. Although consultation is expected, the standing orders do not specify that there has to be consultation before a bill is introduced. Would it be helpful if the standing orders were to say that consultation had to form part of the bill process?

David Cullum: As I said, I think that consultation is vital to the exercise. Beyond that, I cannot say. I am paid to deliver what I am told to deliver.

11:00

Bruce Crawford: Would it be in order for us to ask questions about the options for prioritisation criteria, or is it too early in the process for that?

The Convener: I think that it would be a bit difficult for officials to give evidence on that.

Bruce Crawford: Okay.

The Convener: Obviously, we may have to come back to the unit on the implications of what we propose to do, but it would not be fair to ask officials to express views on the options.

Bruce Crawford: Perhaps I am trying to move things on a bit too quickly.

The Convener: I have a question about work load. When a bill has completed stage 1, what involvement do you have in the amendment process at stage 2 in respect of the bills that you have drafted or those that you were not involved in drafting?

David Cullum: We examine the issues, instruct the draftsmen and prepare draft amendments for member's bills or bills that have been identified as necessary. We also prepare a purpose and effect note and background papers for the member, in the case of a member's bill.

By stage 2, it is fairly clear that we are going to end up with an act, so there is likely to be liaison between the unit and Executive officials. Our experience to date has been that, where the Executive plans to lodge amendments, we offer to draft the amendments. We do that because the person who drafted the bill knows what the unintended consequences of amendments would be. We also analyse amendments that come from elsewhere. We also give advice to the member on whether there is any difficulty with amendments that they have drafted and whether they might create problems in respect of the member's original policy intention.

We have quite a lot of involvement at stage 2. Stage 2 can be fast moving and involve fairly late nights, particularly when amendments come in late and there are a lot of them.

The Convener: Thank you both for coming this morning; it has been very helpful to set the context. I am sure that you will be happy to return later in the inquiry if we require additional information. We might also require a written submission.

That concludes the evidence session on the non-Executive bills unit. We need to think about the further evidence that we might wish to take, and I would be happy to hear suggestions. My initial thoughts are that it might be helpful to hear evidence from a member of the corporate body on how it considers prioritisation of resources for NEBU. We should also speak to Parliamentary Bureau members, either as bureau representatives or as business managers, to take their views. I know that there are different opinions amongst the bureau members—we will not have them all here together—but we might be able to get together a couple of panels.

Bruce Crawford: I would add only that it would be wrong not to include back benchers. Although it would not be possible to have a representative group, we could ask some back benchers to give us their perspective. We could ask a few who have not been involved in the bill process and some who have been involved at different stages.

The additional resources that we heard about will begin to make an impact and to improve things. I would like to take the back-bench view of prioritisation and what happens if demand exceeds what can be done with the existing resources. Prioritisation is the nub of what we are discussing.

The Convener: You are talking about members who have gone through the process of introducing a bill—

Bruce Crawford: I mean some of those who have gone through the process and, in particular, those who have felt frustrated by the process.

NEBU will be able to tell us who they are. There will be some obvious back benchers and others who, although they may be less obvious, will be more appropriate.

The Convener: We can certainly look into that and see what we come up with. That might relate to bills that have gone through the whole process and we might need to consider people who are no longer members of the Parliament, such as Keith Harding, who got the Dog Fouling (Scotland) Bill through with support from NEBU.

Bruce Crawford: Mike Russell was involved in the Gaelic Language (Scotland) Bill, which was considered right up to the last minute, but did not quite make it. I am sure that he will have frustrations.

The Convener: Those are the obvious people. We will see whether we can come up with suggestions for our next meeting. We can consider inviting business managers and representatives of the corporate body to come to that meeting. At a subsequent meeting, we can speak to back benchers once we have had a chance to consider some names. Are members happy with that? Are there any other ideas about people from whom we might take evidence?

Karen Gillon (Clydesdale) (Lab): Would it be appropriate to hear from an organisation that has sponsored a bill? Mike Watson's Protection of Wild Mammals (Scotland) Bill was supported by an outside organisation rather than by NEBU. Perhaps we could examine how that worked, because that would give us a different perspective.

The Convener: That might be possible. We can consider who has supported bills and speak to the members in charge of such bills. We will bring forward suggestions on that for our next meeting. In the meantime, we will invite business managers and representatives of the SPCB to give evidence at our next meeting.

Work Programme

11:06

The Convener: Item 2 is consideration of our work programme. Before we consider the paper that is before us, I remind members that we are still carrying out a number of pieces of work. I hope that we will be well down on the oral questions by the end of the year. At the beginning of next year, we will have to consider the timing of First Minister's questions, which we agreed to review after Christmas. The clerk and I will write to the various parties involved, such as the journalists and broadcasters, to get their views on the changed timings and the information that we need on audience figures. We are in the middle of our inquiry into the non-Executive bills unit, and an outstanding, relatively small, item on emergency bills is due to emerge shortly.

I am interested in members' views on the next major inquiry that we might want to undertake and whether they think that we should undertake any minor inquiries in parallel with that. Members have a paper on the work programme and a summary of some of the main points that arose in last week's debate on the consultative steering group principles. I invite comments.

Bruce Crawford: The paper is useful and gives us a good outline of the tensions that we face in drawing up our work programme. We will hear feedback from the Scottish Civic Forum event shortly. By necessity, we need to take on board what members are telling us, because we are here to make procedures work best for them. However, we also have to think about people outside the Parliament.

My perception of last week's debate—I do not know whether Richard Baker will share this view—was that the time scale for bills, particularly at stage 2, was a primary issue. Points were raised about whether stage 2 was too quick, whether there might be ways to do it smarter and how we can involve people more by giving them feedback. That issue should be a priority.

I am not sure whether the issue of Sewel motions is as high up the agenda as it was previously, because we have a generally agreed procedure for dealing with such motions. I am not diminishing the importance of Sewel motions, because there are issues around them that we have to consider. We also have to consider members' bills.

Two issues that arose in the chamber debate and the Scottish Civic Forum event could take higher priority in our work programme than options 2 and 3 in the paper. One of those issues is committees meeting in private, on which there was

a lot of discussion and divergence during last week's debate. There was also discussion at the Scottish Civic Forum event about the difficult problem of whether we should provide general guidance for committees on how they should deal with issues in private and when that would be appropriate. I do not know whether we could take action on that quickly, but we should not sweep the matter away just because it is not easy. I do not feel comfortable with the issue, but it has been raised so we have to think about it.

Secondly, a number of members commented last week on whether the Parliament is in control of its procedures to the extent that it should be and on matters such as what we call ourselves. Given that the Scotland Act 1998 is about to be reviewed, there might be no better chance for us to sort out a matter that is not politically sensitive—it should not be politically sensitive if what everyone said in the chamber was true about our needing to take more control of our procedural affairs. If we can get that on the agenda now, given that the Scotland Act 1998 is about to be amended, we might be able to deal with the matter. If, however, the matter was seen to be political in the context of the Scotland Act 1998, it would not have a hope in hell of flying and it would not be worth doing. Others might think that it is not worth dealing with such procedural matters now; I think that it is, but I recognise the constraints around me.

It would be useful to add those two matters to a discussion about where our priorities lie.

Cathie Craigie: The purpose of last week's debate was for the committee to sit back and listen to what members were saying. There was much consensus around the chamber on a number of issues. However, it would be worth while our looking through the *Official Report* of the debate to see whether we can pick out some headings for our discussion before we agree to take action on anything. The committee paper that is before us does not go into the analysis of chamber business.

The Convener: There is a summary of the main points in annex B, although that is not included in the work programme paper. We do not have to make final decisions on our work programme today, but if there is consensus, we can start doing some of the background work on one or two of the big areas outlined.

Cathie Craigie: The work programme makes the point that we should allocate some time—not just as part of another agenda item—to speaking about what members said in the debate last week and seeing whether we can deal with their points.

Karen Gillon: I am relatively comfortable about doing some work on the legislative timetable because there have been times when we have all

been frustrated, particularly at stage 3, when we have had to consider amendments and new measures that have been introduced at that stage. That is the main priority for me. We are in a good period of the parliamentary year to consider the legislative timetable, because most of the bills are still at stage 1. As we progress into the parliamentary year, there will be more pressure on getting legislation through.

I am not convinced that we will ever be able to reach consensus or offer advice about committees meeting in private. The advice exists that we should only ever go into private session when the committee believes that it is absolutely necessary. If the committee decides not to go into private session to discuss a report, that is for the committee to decide. Every committee must take a balanced decision. We must be careful that we are not forced into decisions that will lead us into problems in the future. There are people who are vocal about what they would like to happen and that could pressurise us into doing something that might not be the best thing for the Parliament. We need to leave the decision to committees, which must exercise their judgment; each committee must live by the decisions that it makes.

Mark Ballard: One of the issues that came out of the Scottish Civic Forum event was about the timetables for stages of bills and the need to ensure that a proper opportunity is provided for people to feed back on consultation exercises that are conducted both before a bill's introduction and at stage 2. That is another reason for thinking about changing the timetables, but it is not mentioned in the list of reasons that we have.

The Convener: The Scottish Civic Forum met only last week, so that issue has arisen since the report was prepared.

11:15

Mark Ballard: Yes, but I emphasise that as an additional reason for considering changing the timetables. Some Green party members are concerned about specific Sewel motions, and Patrick Harvie may have lodged a motion suggesting that amendments to Westminster legislation should be allowed to come from committees of the Scottish Parliament. When Patrick asked me about that, I read what I could find but was not able to give him particularly good advice. Perhaps we can get clarification of what the procedures and possibilities are, and the process of clarification might come up with some areas that might have been missed.

The Convener: Do any other members have any thoughts?

Bruce Crawford: Can I just reverse a wee bitty? I threw in private stuff because I know that we will

have to discuss it at some stage. I share a lot of Karen Gillon's concerns, but if we are not going to produce guidance on committees meeting in private, we must reach a firm conclusion on that.

Mark Ballard raised an important issue on Sewel motions. The other issue on Sewel motions is the financial implications that the Westminster bills will have on the Scottish Executive's budget. Although the Executive's memorandums have improved considerably, they do not yet tell us in a significant way what the bill's implications will be for finance, sustainability or equal opportunities. We could do a bit more work on those three areas before we say whether a Sewel motion is acceptable or not. We need a bit more information, and we could still usefully do some work on that.

The Convener: I accept all those points. My inclination is to recommend to the committee that we deal with option 1, the legislative timetable, as our next major inquiry. We can ask the clerks to draft a paper on how we might handle that. We can then consider Sewel motions as our next inquiry after that, on the grounds that we might want to allow the present procedure to bed in a bit to give us a clear idea of what is and is not working within the revised procedures. We would not be throwing out that issue, but addressing it slightly further down the track.

We can probably deal with the specific items that are referred to in option 3 rather than hold a wider inquiry on public bills, and we can address the issue of flexibility in the rules as an under-the-wire thing. A lot of the background work can be done and the proposals for the required changes to the standing orders can be produced without our holding a full inquiry, as the two bullet points under option 3 are largely technical matters. We may look at the whole private bill procedure in more detail at a later date.

I suggest that we proceed on that basis. Are members content with that?

Bruce Crawford: I am reasonably content. However, there is one issue that I want to come back to: whether we have enough powers to do what we should be doing. Would it be possible for us to ask Westminster what the time scale for the lodging of an amendment to the Scotland Act 1998 is likely to be? If the amendment needs to be lodged soon, we might miss out on influencing that debate.

The Convener: We will find that out and bring a paper to the next meeting to let the committee know what the position is. I agree with what you are saying in principle, as it seems like a good opportunity. However, I am pretty sure that the Westminster Government wants to have a specific bill that deals only with the issues on elected members and that it does not wish to open up any

other areas of the act. Even if we agreed to do what you suggest, it may be difficult for us. If the bill is timetabled to be introduced next month, there will be no chance for us to do anything; if it is to be introduced in May, we could have a look at it.

Bruce Crawford: We need that information before we can make a decision.

The Convener: We will try to find out.

Bruce Crawford: Sometimes, ye dinnae get if ye dinnae ask.

The Convener: I appreciate that, but I suspect that we will not get in any case.

Mark Ballard: I was wondering about option C, which relates to the review of the parliamentary week. We have been considering specific elements of the parliamentary week, namely the two question times, and we also have to consider Dennis Canavan's point about the allocation of non-Executive business, in option 7 on our work programme paper. I am aware that that is a hefty item for consideration, but do you think that we might discuss that at some point in the future?

The Convener: The legislative timetable, which might throw up a few issues about the timetabling of business, and a few other developments suggest that we might have to consider the issue at some point in the not too distant future, either in an ad hoc way or as a full inquiry.

Mark Ballard: It would be better if we could avoid taking an ad hoc approach, as there might be knock-on effects.

The Convener: Absolutely. It could be a major piece of work, of course. The main issue is whether the parliamentary week is long enough or whether it should be reshaped across the parliamentary year. There have been a few comments about the subjects of the parliamentary debates at this time of year, when there is not a lot of legislation going through, while there never seems to be enough plenary time in May and June, when we are trying to get bills passed before the summer. We might have to consider how the Parliament balances its business. That would be a major inquiry, however.

Mark Ballard: I agree, but some of the issues relating to the fact that there are six parties and four independent members in the Parliament will become quite difficult by June. There might be pressure for us to consider how the available speaking time is divided up in each debate.

The Convener: My information is that we should leave that to the Parliamentary Bureau and the Presiding Officers at this stage. The allocation of time in the chamber is at the discretion of the Presiding Officer and I am not sure that we should be too prescriptive in that regard. However, we might have to discuss the matter.

Mark Ballard: But sometimes the standing orders change. With regard to First Minister's questions, a standing order change was required to give the Presiding Officer the flexibility that he needed.

The Convener: That was mainly to do with the time scale, though.

Mark Ballard: Yes, but other issues might affect that matter.

The Convener: Those points are noted.

Are there any items on the draft work programme that members think we should drop at this stage on the ground that we need not consider them further?

Karen Gillon: Option 5.

The Convener: Do we agree to drop option 5? Items that are dropped do not drop off for ever and can be dealt with at a later date.

Members indicated agreement.

The Convener: What about option 6, on petitions?

Karen Gillon: I think that that is a fair point. The Public Petitions Committee is supposed to be a vehicle by which the public can gain access to the Parliament. It should not be used by MSPs, as they can use various methods of bringing the attention of the Parliament to issues of concern. If the issue that the MSP wants to raise is of concern to the general public, I am sure that a member of the public will be equally able to submit a petition.

The Convener: It is a question of whether we should leave the matter on the work programme. If members are happy to leave it on, we shall do so.

What about Dennis Canavan's point, in item 7?

Cathie Craigie: Is rule 5.6 being complied with?

The Convener: Perhaps the clerk can explain exactly what the rule is.

Andrew Mylne (Clerk): The rule requires the Parliament to allocate time to all the political parties. As independent members, Dennis Canavan and the other independent members are not entitled to any time under that rule. His argument is that they should be. There is no dispute about what the rule means; the question is whether the rule should be changed to extend to independent members the rights that are enjoyed by parties.

Cathie Craigie: So the rule is being complied with. Option 7 asks us to find out

"whether Rule 5.6.1(b) is being complied with".

If the rule is being complied with, I assume that the independent members would have to take their opportunity in members' business sessions, the same as any other back bencher would.

Mark Ballard: You can imagine why it might seem anomalous for the Scottish Senior Citizens Unity Party to be given time but not the independent members for the Lothians and Falkirk West, or the member who stood for the campaign to save Stobhill hospital.

Cathie Craigie: But they would just need to add "party" at the end of their name and they could argue that they were eligible for party time.

Andrew Mylne: I do not think that it is as simple as that.

Cathie Craigie: It would be quite simple to form a party. We have seen how simple it is to do that.

The Convener: I am not sure that it is as simple as that. It might be possible for Jean Turner and Dennis Canavan, because they were elected on a constituency basis. Anyone who is elected on a list has to be a member of the list on which they are elected. The question is whether we want to keep the issue on our forward work programme as something to consider in future, or whether we are happy with the present process.

Karen Gillon: Is it our responsibility?

The Convener: The Dennis Canavan point would require a change to standing orders.

Karen Gillon: I know that there is a slight anomaly because in the first session Tommy Sheridan and Robin Harper got a whole lot of time in the chamber to promote themselves and what they wanted to be, yet other people who were equally elected to the Parliament were unable to do that because they were independent. That is an anomaly. Tommy Sheridan and Robin Harper benefited politically from having the time in the chamber to showcase what they stood for. It may not be a priority, but there is an issue for the independents if they are unable to do that.

Mark Ballard: There is a wider issue to do with what constitutes a party, because the definition in standing orders applies to the Scottish Senior Citizens Unity Party but not to a platform to save Stobhill hospital. However, if there had been one more independent member they could technically have come together as a group and got a place on the bureau as a political party. They might have had a place on the bureau, but they might not have had access to members' business. It is a complex issue, because there are two different definitions in standing orders.

Andrew Mylne: For clarification, rule 5.6.1(b) provides a right to any political party that is not represented in the Scottish Executive, regardless of size and regardless of whether the party is represented on the bureau. That covers the Scottish Senior Citizens Unity Party and any group that is formed under rule 5.2.2, which is what you are talking about. However, independent members

do not become a political party by becoming a group. If there are fewer than five independent members, or if they choose not to group together, they do not qualify for a share of time under rule 5.6.1(b).

Bruce Crawford: Is your advice that the Scottish Senior Citizens Unity Party could sit on the bureau?

Andrew Mylne: No. The Scottish Senior Citizens Unity Party is entitled to a share of non-Executive debate time under rule 5.6.1(b) simply by virtue of being a political party, regardless of the fact that it has only one member.

Bruce Crawford: So when there are four of them they can get on the bureau.

Mark Ballard: Five of them.

Karen Gillon: And do they get a share of the time according to their size?

Andrew Mylne: The rule says nothing about how the time is distributed among those who qualify.

Karen Gillon: Who decides?

The Convener: The bureau, but essentially it is by agreement among the non-Executive parties. They allocate the time proportionately.

Karen Gillon: So essentially it is a case of saying that one week out of 10 the independents can have the morning.

Mark Ballard: But there is a question about non-Executive time.

The Convener: The time comes out of the existing allocation for non-Executive time, which means that the existing non-Executive parties could lose time, and they might not be happy about that. A number of issues have to be addressed, and we should do that as a proper inquiry, rather than as part of the discussion about the work programme.

Are there any other issues that should be included in the work programme but which have not yet been included? We can pick up stuff from the debate on the committee's consultative steering group report, which is already contained in the annex.

Scottish Civic Forum

11:28

The Convener: Item 3 is the Scottish Civic Forum event last week. I thank Richard Baker and Bruce Crawford for attending on behalf of the committee. Mark Ballard also attended. I am sorry that I was unable to attend, but the Local Government Committee overran. Do any of those members wish to say anything about the event?

Richard Baker: It was very useful. It was great to hear so many distinctive voices in the chamber. It was a different and refreshing debate. We all enjoyed it because of that change. I would have found it even more useful if the use of time had been structured slightly differently. In particular, I would have liked there to have been more verbal reports on and discussion of some of the points that were raised at the regional meetings, as well as written reports on those meetings. If the event is held again, consideration should be given to the structure of the discussion. Perhaps people should be helped to focus more on specific issues, instead of there being speeches of five or six minutes. Some of those speeches were very interesting and explained why individual organisations were attending but, if we want to research the founding principles, more focus on issues relating to those would be useful.

I do not know how the Scottish Civic Forum could do this, but it would be helpful if it could present more specific, detailed recommendations. Many general opinions were expressed. For example, people wanted there to be less whipping in the Parliament. In my view, if there is to be a campaign to increase participation, it should have achievable, realistic goals. Ending whipping is a lovely idea in a utopian atmosphere, but it will not help the Procedures Committee to find practical, realistic ways of achieving access, participation and the other founding principles more effectively. However, overall, the event was hugely useful and I hope that it will be repeated in the future.

Bruce Crawford: I support much that Richard Baker has said. I, too, found the event very useful. However, I was slightly surprised by the number of representative organisations—to put it as kindly as I can—that attended. Perhaps that is just the nature of the beast and the way in which the Scottish Civic Forum operates. There were not as many ordinary people from throughout Scotland in attendance as I thought there might be. That surprised me. The Scottish Civic Forum is representative of organisations, but it needs to consider how to become more representative of people. I do not know how it can do that, but it would be useful if it could.

We discussed a number of issues. I have already alluded to the issue of committees meeting in private, about which some interesting comments were made. In particular, there were comments on the issues of transparency and accountability and whether committees were in a position to feed back properly not just on what decisions were made but on the procedure that was used for making them and on how conclusions were reached. It is obvious that some groups are frustrated about that.

There is also frustration about the ability of groups to contribute at stage 2 of bills or to earlier evidence-taking sessions when they are determined to do so. Some people believe that they have been cut out of the process. I do not know how Richard Baker feels about that, but it did not leave a very good taste in my mouth. I do not know how representative it was of the whole organisation, but one particularly powerful contribution was made on that issue.

Another strong point was made about party whips. I was struck less by the view that was put than by the lack of awareness of the realities of the Parliament. I do not know how we can communicate back the way to help people to understand those realities. In future, Parliamentary Bureau members could attend meetings to enable people to understand some of the dynamics, issues, tensions and conflicts that exist in the Parliament. It might not be a bad exercise to raise awareness by exposing more of the Parliament's inner workings to them. I am not saying that raising awareness would change people's minds, but they would at least come to a view with a greater sense of what it is really like to operate in this place. We find it difficult, so God knows how they sometimes view the matter.

As Richard Baker indicated, the most important point is that it would be very useful for us if the Civic Forum presented more specific, concentrated, focused proposals for change that the committee could begin to debate, rather than groups of frustrations about how a process does not seem to be working. I understand those frustrations and see where people are coming from, but it would be helpful if we helped the Civic Forum to create a process that is rather more focused, pointed and specific.

Mark Ballard: I very much agree with what Richard Baker and Bruce Crawford have said. Interesting points were made about consultation. The committee's consultative steering group report contained some broad headings on improving consultation, but there was a lack of clear proposals. That was matched by the lack of clear proposals in the Scottish Civic Forum debate.

We need to look at the parliamentary consultation processes: how do they work, what is

the experience of people who have been consulted directly and can we come up with a better system? The Civic Forum's criticism was that consultation tended to be conducted with representatives of representative organisations, which is a criticism that could also be made of our own consultation procedures. It would be worth looking at how the Civic Forum and the Parliament could get round the problem of talking to the same people. I am not sure whether guidance is in place at the moment on how committees should consult. If so, is it worth looking at it again?

The Convener: A number of consultation templates and suggestions are available from the Parliament's participation services, which try to give advice to committees, as they did to us when we did our oral questions inquiry. Advice on the different types of consultation is available, although I do not think that there is a guidance document as such; it is more of a series of option papers that address different circumstances.

Karen Gillon: There is some information about consulting young people, which the Education, Culture and Sport Committee drew together as a result of its experience of consultation in that area.

I am interested in the comments that Mark Ballard made. However, I think that those who complained are the very people who would complain even more if we were to go beyond the representative organisations and the usual suspects—they are the people whom we consult. An interesting dilemma could arise if we were to move beyond the people whom we consult at the moment. We should do that because representative organisations are not necessarily representative of the general public. It is the public I want to consult.

When we complete our report on oral questions, we will have to decide what weighting to give to the views of the ordinary people we spoke to across the country together with the views of the usual suspects, who gave us their views anyway. That will be an interesting dilemma for us.

It must be frustrating to watch the process from outside the Parliament. It is sometimes frustrating even for those of us inside it—we do not always get what we want. Part of the problem with politics is that people sometimes think that if they suggest an idea that they think is a good one, we should accept it automatically. Sometimes the idea is not the best way forward. We have to take responsibility for the decisions that we make and we have to live by our decisions. That said, consultation should be done properly and openly.

I am interested in what Mark Ballard said about stage 2. I might ask him for a bit more information on that after the meeting. By stage 2, we are at the stage of changing legislation. Politicians have to

live with the changes that are made; they are going to be on the statute book for a number of years. I will be interested to hear more about the criticism of the stage 2 process.

Cathie Craigie: To return to consultation, my experience of consultation from the previous committees on which I have served is that the people who have been involved in the consultation process, whether they are from professional or voluntary organisations, welcome the process. Some voluntary organisations might feel that they are weighed down by the number of Parliament or Executive consultations but, if the issue is important enough, they will take the time to respond to consultations.

I return to Mark Ballard's point about getting to more than the usual suspects. The Communities Committee is taking evidence on the Antisocial Behaviour etc (Scotland) Bill. Given the Social Justice Committee's experience of taking evidence from too many umbrella groups and not from the real people on the ground, the Communities Committee made an effort to get out and speak to people around Scotland.

Instead of inviting only organisations and bodies to give evidence, we invited people who work at the sharp end in the field. Of course, we also have to invite the organisations and bodies. As Karen Gillon mentioned, some of them might be unhappy if we did not do so. However, from speaking to members of other committees, I think that in the second parliamentary session we have more experience of how to take evidence and consult. Members now have the confidence to ask for the opinion of the ordinary man and woman in the street.

The Convener: I should have mentioned the mainstreaming equalities guidance, to which the committee is signed up, which covers how we try to ensure that people from disadvantaged groups get the opportunity to voice their opinions too.

Mark Ballard: The key problem for many groups was feedback. As Cathie Craigie said, they were keen to be consulted and voice their opinions; they were just not sure what had happened to their input. That is where stage 2 came in. They felt that they were involved in the bills process at the pre-legislative stage, but they did not realise that they had a chance to contribute when bills went to stage 2. Amendments took out a lot of the measures that they supported and they did not understand why, because meetings were often held in private.

The Convener: Not at stage 2.

Karen Gillon: Never.

Mark Ballard: Measures were discussed at meetings about draft reports or at stage 2 and the

groups did not have time to be involved in the process. That is perhaps a communication problem, as people do not understand the process. I am just trying to feed back what people were saying, in response to specific points that Karen Gillon and Cathie Craigie made.

Cathie Craigie: When the Communities Committee goes out to take evidence or invites witnesses along to give evidence, those witnesses are engaged in the process. Their names are in the committee's database and they get information back on how the committee has responded or what it has done with the evidence given.

Bruce Crawford: I just want to respond to the points that Karen Gillon made about stage 2, because there is an issue to be resolved there. We are talking to each other and we are convinced, but the public need to be convinced about changes to our procedures—it is an awareness issue. In effect, there were two complaints about the process. One related to the Land Reform (Scotland) Bill. A gentleman who was involved with an organisation—forgive me, but I cannot remember which one—said that it had put a lot of effort into doing research on and considering in detail a particular part of the bill and had applied to give evidence, but was denied, which it was quite angry about. I am not saying that everyone can give evidence, but the issue for that organisation was that it did not understand why it could not give evidence, because it was never given real reasons. That goes back to the feedback issue.

The complaint about stage 2 was that it is okay for the non-governmental organisations that are well resourced and can bring forward amendments. They can be more focused about specific changes that they want to see in legislation and some of them were effective at doing that in the previous session—WWF Scotland was effective in that way during consideration of the Water Environment and Water Services (Scotland) Bill. However, the ordinary people who are not part of representative organisations do not have the resources, understanding or knowledge to help them to bring forward amendments even if they have given evidence suggesting that amendments might be required. That is to do with ordinary communities not having access to resources that they require to make changes.

Karen Gillon: Maybe the issue is to do with ordinary communities not having access to their MSP. It is MSPs who have to lodge amendments.

Bruce Crawford: I am not arguing about who is right or wrong.

Karen Gillon: I know. I am saying that perhaps what we have to get back to and what we have

started to lose is people speaking to their elected representatives and saying, "We have been involved in this process at this point. We know you are our MSP"—there are many to pick from—"and these are the issues." The MSP has the resources, through NEBU or whoever, to lodge an amendment. Perhaps we have to get that process across to people. I do not know how we do that.

In an ideal world, every community group would have the resources to put forward amendments, but that is not going to happen, so we need to find a mechanism to deal with the issue. There is a big flaw in what happens at the moment: unless I read through the documents, I never know who in my constituency has contributed to an Executive consultation. I would find out if I was sent all the documents and they were quoted but, let us be honest, we are not going to do that. Perhaps we should be alerted that certain groups in our constituencies have contributed to consultations. The onus would then be on us to make contact with them and ask them what they think. Perhaps we should consider that in consultation with the Executive to see whether it is practical or possible.

The Convener: Those are useful comments. We will send a copy of the *Official Report* of the meeting to the Scottish Civic Forum—

Karen Gillon: Oh dear.

The Convener: No doubt it will get back to us with any thoughts that it has.

Item in Private

11:45

The Convener: Item 4 is to ask the committee to agree to take in private our final draft report on oral questions at the next meeting. Do members agree to do that, given that we have already agreed to discuss the draft report in private as our next agenda item?

Bruce Crawford: I know that we agreed at our previous meeting to take our draft report in private today and I will not challenge that. However, the report sets out the options so well that had I seen it then, I am not sure that I would have taken the decision to discuss it in private. Until we reach the end of our discussion on the draft report I will not be sure that we need to discuss it in private at our next meeting. Do we need to make the decision today?

The Convener: The trouble is that we have to make that decision in public.

Bruce Crawford: Can we make the decision in public at the beginning of our next meeting if we need to?

Karen Gillon: We are supposed to publish whether we are going into private session in advance of doing so.

The Convener: It is clearly preferable to make a decision before the next meeting. There are issues about whether the draft report is public.

Bruce Crawford: In that case, can I agree with reservations? I might challenge you at our next meeting, because, having read the draft report, I do not think that we have to discuss it in private today. However, now that we have made the decision to do so, it is a bit difficult to go back on it.

The Convener: I note those points. Do members agree at this stage that we will take in private the draft report at our next meeting? We might review that.

Members indicated agreement.

11:47

Meeting continued in private until 13:30.

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