PROCEDURES COMMITTEE

Tuesday 13 January 2004
(*Morning*)

Session 2

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PROCEDURES COMMITTEE
1st Meeting 2004, 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:

Frances Bell (Scottish Parliament Directorate of Clerking and Reporting)
Paul Grice (Scottish Parliament Clerk and Chief Executive)
Keith Harding
Michael Russell

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 13 January 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:15*]

Interests

The Convener (Iain Smith): As it is gone 10.15 and we are quorate, we will start. We have apologies from Karen Gillon. I am pleased to welcome Irene Oldfather to her first Procedures Committee meeting as a substitute member. Does she have any interests to declare?

Irene Oldfather (Cunninghame South) (Lab): I have no relevant interests to declare.

Non-Executive Bills

10:16

The Convener: Agenda item 1 is on witness expenses. Does the committee give permission for decisions about witness expenses for the non-Executive bills inquiry to be delegated to me?

Members *indicated agreement*.

The Convener: Agenda item 2 is our first oral evidence session for our non-Executive bills inquiry. We are pleased to welcome Paul Grice, the chief executive and clerk of the Scottish Parliament, to give evidence on behalf of the Scottish Parliamentary Corporate Body. I ask him to make a few opening remarks, after which I will open the meeting to questions from the committee.

Paul Grice (Scottish Parliament Clerk and Chief Executive): I will keep my opening remarks brief, as I am here to answer questions. On behalf of the corporate body, I welcome the inquiry and the urgency with which the committee is undertaking it. As members know, the Presiding Officer wrote to ask the committee to consider the matter and the corporate body is grateful that the committee is doing so.

The non-Executive bills unit was established in 2000 to support members and committees. We also established a drafting panel, which was intended to replicate the capacity of the Executive's office of the Scottish parliamentary counsel. At the same time, we also made budgets available.

After the non-Executive bills unit was set up, it quickly became apparent that demand would outstrip the supply of resources. At that point, we alerted the corporate body to the problem. The non-Executive bills unit's support is not necessary to the introduction of every member's bill, but many members have used the unit. One key question is how to determine who has non-Executive bills unit support. That is one of the central questions that the corporate body looks to the committee to consider and take a view on.

In the previous session, the corporate body took the view that the non-Executive bills unit required some political management to ensure the appropriate use of resources. It therefore agreed criteria to guide decisions, of which the committee has been made aware. I am happy to discuss or answer questions on those broad criteria in more detail.

The criteria were not intended to place a straitjacket on resources. For example, the corporate body had to react swiftly to deal with the

Commissioner for Children and Young People (Scotland) Bill, which was a huge undertaking relative to the scope of other bills. We learned lessons from that about the process of supporting a committee and producing a major piece of legislation. That also showed quickly that with a relatively modest team, a major bill such as that can have an impact on other bills that are in hand. Nonetheless, the corporate body would always be willing to take a flexible view on the overall quantum of resources within the constraints that it operates.

As to the current situation, there is no crisis in resources at the non-Executive bills unit, but there is a significant number of proposals—around 20—in the pipeline, and the unit is working with members on the consultations for those, which is a service that we offer to all members. However, looking ahead, if all 20 proposals came to fruition, it is clear that we could not sustain the level of service demanded, given the unit's capacity. As you have probably been previously advised, the unit can produce perhaps between four and six bills a year, although that depends on the nature of the bills. With 20 proposals already in the pipeline and, of course, the possibility of many more, there is in the corporate body's mind a significant issue to be addressed as to which bills should get support, what type of support they should get and at what stage in the process they should get it.

I will leave it at that, convener. I am happy to follow the committee's lines of inquiry beyond that.

The Convener: Thank you for those remarks. My understanding is that, in the previous parliamentary session, the Parliamentary Bureau began to consider the resource issues because of a request from the corporate body to do so. Will you outline the nature of the concerns that led the corporate body to ask the Parliamentary Bureau to consider the matter?

Paul Grice: The SPCB was concerned on a number of fronts. The principal concern was the difficult issue of how one decides exactly which bills should be supported. We did some work on that for the SPCB, which was very aware of the Westminster approach. That approach is effectively a lottery, which has pros and cons; our approach is more first come, first served, and the corporate body has always been a bit uncomfortable with not being able to look ahead at all. There was always a risk that all the resources would be tied up in supporting two or three bills and that a more worthy bill—if I can use that phrase, although perhaps it raises the question what the essence of a worthy bill is—would come along a month or two later.

That issue arose over the Commissioner for Children and Young People (Scotland) Bill, which arrived quite late in the session. Thanks to the efforts of all concerned—the committee members, staff and others—it was possible to get it through the process, but that was done at quite short notice and we were not able to plan for it as well as we could have done.

The corporate body has always been anxious about not being able to look far ahead, but it has also been anxious because we have never taken a Parliament-wide view on the matching of the other key element of resources—parliamentary time—to demand. That prompted its original approach to the Parliamentary Bureau. Parliamentary time is not a matter for the corporate body, but it fully recognises that time is a constraint and wishes that, whatever solution the committee comes up with, recognition be given to the constraints on parliamentary time as well as on those of the corporate body's people and money resources.

Those were the two major concerns that prompted the corporate body to raise the issue in the first place.

Mr Jamie McGrigor (Highlands and Islands) (Con): Would it be better to have some sort of ballot of MSPs to prioritise what was considered to be important? Would you support that?

Paul Grice: I do not think that the corporate body would. We presented it with a number of possibilities and, although a ballot appealed because it produces a clear outcome, the corporate body's view was that we should be able to devise something that is a little more sophisticated and which attempts to produce an outcome that better meets the Parliament's needs and aspirations. Although the corporate body felt that a ballot was nice and clear cut and would certainly allow us to proceed pragmatically, its view was that we should set our sights a little higher and try to find a system that was a little bit more sophisticated.

Mr McGrigor: Such as what?

Paul Grice: The SPCB began by considering a quite mechanistic approach with regard to the standing orders that govern the number of bills that a member can introduce and the number of supporters that he or she requires. However, it moved away from such procedures because it recognised that no two bills are the same and that, in a political institution, such issues are highly political. At the end of the day, the SPCB felt that some judgment needed to be made in that respect and that a purely mechanistic solution was never likely to produce sensible outcomes.

As a result, the SPCB moved towards a mechanism by which a new or existing committee or the whole Parliament—or, indeed, both—would make a decision on some kind of forward programme of bills. Having wrestled with and

examined quite a number of different possibilities, the corporate body felt that that was a better way of meeting the Parliament's aspirations and ensuring that the use of resources was planned and exercised more sensibly.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): You have said that there is no current crisis within the non-Executive bills unit, even though there are 20 members' bills on the table. At the moment, members are able to introduce two such bills per parliamentary session. Could we sustain the situation if every member took that opportunity or should we take a more realistic look at that standing order of the Parliament?

Paul Grice: My comment about the lack of a crisis is timely. Although supporting members during the important consultation process is a demanding task, one can cope with a large amount of such work. However, if we were working with members on 20 consultations and dealing with half a dozen bills that were at the drafting stage, we would not be able to cope, given our current resources.

As clerk of the Parliament, I cannot really comment on whether it is appropriate for members to introduce so many bills. That is really a decision for the committee. However, I will say that with our current resources we could not sustain a situation in which, for example, 100 members each introduced two bills if—and this is the critical point—they all required parliamentary resources. Of course, it is still possible for members to bring in support from elsewhere; indeed, many members have already done so.

If 200 bills were running, NEBU would not have the resources and there would not be enough parliamentary time to support that level of work. On the basis of the analysis that we have provided to the committee, if all 20 current members' bills were to be introduced with NEBU support, they would probably tie up most of the current resources over the next three or four years of this parliamentary session. That should give members a broad idea of where current resources would go.

Cathie Craigie: If we sought to introduce a system in which Parliament decided the priorities and the bills that would go forward, how would that work? Would there be a deadline in any particular year by which a member would have to submit his or her ideas?

Paul Grice: From our point of view, it would be highly desirable if we had some of a committee's ability to produce a forward work programme, as that would allow us to deploy resources and to begin the process with members with an agreed timetable. Indeed, it would be as much in members' interests to have that approach as it would be in the staff's—it would be very helpful to all concerned.

There are a number of ways in which we can reach that point. For example, the advantage of the whole Parliament endorsing a work programme is that it gives everyone concerned a degree of comfort about the likely outcome of bills. I absolutely accept that it is not essential for every bill to be guaranteed passage—after all, there are other reasons why a member might want to introduce a bill. Nonetheless, such an approach would provide us with a helpful indication.

However, one of the major problems in that respect is how we supply members with sufficient information to allow them to reach such a decision. Cathie Craigie knows about that because she has had personal involvement with a bill, and the committee will have the benefit of hearing from two witnesses who have taken bills all the way through. The phrase "the devil is in the detail" comes to mind. If the whole Parliament is to be asked to take a view on proposed bills, a fundamental decision must be made about the level of information that is required before the Parliament takes that view. For example, would it be adequate just to have a proposal? Should there be more information than that? Should we go all the way to the extreme of requiring a draft bill? That big issue must be addressed; members must be invited to take a decision on a reasonable basis.

Working back in time, consideration must also be given to how members should be presented with the information. Should we have a system through which some committee aims to present a report to Parliament to provide members with the information and to give an idea of the likely availability of time? Obviously, there are a number of possibilities for such a committee, ranging from the bureau to the corporate body to a specially convened committee. In my judgment, we could devise a system to do that, but important decisions would have to be made. The fundamental decision, on which I could not really offer a personal view, would be about the machinery for making recommendations to the Parliament. The previous Parliamentary Bureau took the view that it could fulfil that role and the previous corporate body endorsed that view, but other variations could be developed.

Whatever the committee does, if Parliament is asked to give a view, it is essential that we take care to ensure that members are given a reasonable amount of information to allow them to take an informed decision.

10:30

Mark Ballard (Lothians) (Green): I would like to go back a bit in the process. In the past few months, I have tried to get to grips with the bill process. Stages 1, 2 and 3 are in effect political

stages, but we are talking about the time and resource implications of work before stage 1. Will you give a little more detail about your idea of the time and resource bottlenecks before a bill gets to stage 1? We are not talking about a single decision; we should identify bottlenecks and work out which decision-making processes are appropriate when such bottlenecks occur.

Paul Grice: You are right that a process is involved—the requirement for resources runs all the way through to stage 3. In answer to a previous question, I said that, although supporting members through consultation exercises requires a bit of input, we have the capacity to manage a few such exercises. The most demanding stage of any bill is the translation of an idea that has been informed by a consultation exercise into a set of drafting instructions for a bill. That process is intellectually and politically demanding and requires an awful lot of the member. I am mindful that the member resource is fixed. To some extent, we can put in more money and staff within the usual constraints and demands, but immense demands are made of the member. The translation of ideas, however well thought through they are, requires an awful lot of input either from parliamentary staff or an external source. The production of instructions for one section of proposed legislation, never mind for a complete bill, is a hugely demanding process. That part of the process will always be what you describe as a bottleneck, although I would describe it as a process that sucks in an enormous amount of resource.

The next stage is the drafting of the bill. Because our drafting panel system works well, if we get the instructions to the draftsmen right, the bill will be good. I learned in previous jobs before I worked for the Parliament that if we rush the process of creating instructions and they are not well thought through, we end up in a time-consuming and iterative process of trying to get the bill right. My judgment is that we should always put the maximum possible effort into making the requirements precise.

The next demanding stage is that of supporting a member in taking the bill through the process. If the bill is in any sense contentious, speaking notes will have to be produced and the member will have to receive support to respond to amendments, which must be considered. It must be asked whether the amendments are technically acceptable and the member must judge whether they are politically acceptable.

Mark Ballard: Is that at stage 2?

Paul Grice: That would most likely happen at stage 2, although there might be an element of it at stage 1 if the member wants to give commitments. The stage 2 process can be exacting on the member in particular, bearing it in mind that they do not have all the machinery that a minister has. That puts a significant demand on the staff who support them. Those two stages are probably the stages in which the effort that is required is intense.

Mark Ballard: Some members have gone outside NEBU for drafting—I presume that that also includes the drafting-instruction process. What implications does that have for potentially removing bottlenecks?

Paul Grice: It is important to bear it in mind that a member should always have the right to seek advice where they wish to do so, including on bills. Members going outside NEBU has a significant potential to relieve the burden on staff resources, although, of course, doing so does not remove the burden on the member, nor does it get round the issue of parliamentary time.

Much depends on the technical quality of the support. If a member has a bill produced that turns out to be politically well conceived but technically not well produced, there will be an enormous burden on the parliamentary system to try to rectify it. If the Executive picks up the bill, it will take on that burden. Therefore, going outside NEBU can potentially remove bottlenecks, but if the support is not particularly well developed technically, many benefits can be quickly eroded, as the bill would have to be redrafted.

The previous parliamentary session provides examples in which things have gone well in respect of impacts on resources. There are other examples of parliamentary staff having to do an awful lot of work to help to get a bill into the sort of condition required to get it on to the statute book. That is where we have a common goal. If members decide that it is politically right for a bill to go on to the statute book, we have a responsibility to support them and to ensure that the bill is technically competent. Obviously, it is in nobody's interests to get well-conceived but technically deficient legislation on to the statute book. The experience is a bit mixed, but the answer to your question is potentially positive.

Richard Baker (North East Scotland) (Lab): I have a short supplementary question on resources. Whatever the system prioritises, what flexibilities exist to provide additional resources to NEBU, which might have to deal with big bills?

Paul Grice: The best answer that I can give relates to the Commissioner for Children and Young People (Scotland) Bill. The scope of and timetable for that bill meant that it was obviously a demanding bill and I drafted in extra staff to support work on it. We have the capacity to do that. However, I add two riders. Staff had to be taken off other work—I am talking about broadly

the same clerks, lawyers and researchers who support members and committees on a range of matters. In addition, in the first parliamentary session, we had a pretty light number of private bills, which will certainly not be the case in the current session. As the committee is aware, a decision was taken to establish a private bills unit—it was recognised that private legislation is materially different from public legislation that comes from committees and members. Private bills will put extra demands on staff and certainly on members—as anybody who has been on a private bill committee will know—and parliamentary time will also be consumed. Therefore, although we can put in extra resources, and flexibility remains, there are quite tight constraints.

Irene Oldfather: Obviously, of the 20 bills that are being dealt with, some will have a better chance of success than others. Given past experience, is there anything that marks out the successful bills, such as cross-party support? I suppose that the most scarce resource is parliamentary and committee time. If so, can we develop criteria that would allow us to invest in the bills that have most chance of success?

Paul Grice: Before I answer that, I hope that you will allow me to start with a rider. Measuring success in terms of non-Executive legislation is tricky. Of course, a significant measure—perhaps the most significant measure—is whether a bill ends up getting on to the statute book, because Parliament has taken a view on it. However, in my experience, there are sometimes other objectives for non-Executive legislation that are very valid in a political process. I will confine myself to success in terms of getting a bill on to the statute book, because the other objectives get us into political waters, on which it is not appropriate for me to say too much.

So far, and with one or two exceptions, successful bills have been marked out as those that have had a measure of cross-party support, have not been too ambitious politically—by taking on too many big political issues—and, to go back to my earlier point, have afforded the member sufficient time to work through the bill, so that the i's are dotted and the t's are crossed.

With that combination of political support, modest—which does not mean to say unimportant—ambition and the time and devotion to the bill on the part of the staff and the member to get it right, there is an excellent chance of succeeding in terms of getting the legislation on to the statute book. If the member does not have that combination, the process is by no means impossible, but it is much more difficult. That goes back to one of the earlier questions. A lot of the work can be deflected until further on in the process, so that at stage 2, and perhaps even at stage 3, the member is still trying to get the bill right. That is difficult for the member and for us all.

That would be my advice on how to use the system in a way that is most likely to produce technically competent legislation that gets on to the statute book.

Bruce Crawford (Mid Scotland and Fife) (SNP): First, I apologise for being late. I cannot blame it all on the weather, although it is partly to blame. I also thank two colleagues who tried to bring me up to speed on an issue—political processing and decision making—about which I am concerned. I know that some evidence has been led on that, so I hope that I do not go over the same ground.

Additional resources have been made available to NEBU. That has been welcomed by everyone because it has helped to ease pressure. In the light of that, NEBU is now working in a new environment. Is there any real evidence that a prioritisation process in a political decision-making framework is actually needed? That question has been preying on my mind. If we are to have a mechanism, I want to be absolutely sure that it is required, but I have received no such assurance.

Paul Grice: The best thing to do is to look back to the previous session. It was my experience—especially towards the end of the session when demand outstripped supply, if I can put it in those terms—that some members were disgruntled and felt that they were not getting as much support as they wished. Staff were under enormous pressure and the SPCB felt that it was not in a position to take a sensible enough forward look. I drew a comparison earlier to a committee planning its forward work programme. Committees are under enormous competing pressures—from Executive legislation, their own ideas, and the public—and they try to look ahead, which is helpful.

There is enough evidence already—in terms of the number of proposed bills that members are seriously and legitimately pursuing—to make me unsure about how fair the system will be if we do not have some kind of political decision-making process. One could just say that it is first come, first served; we could literally take members in the order in which they walk through the door, or in the order in which they complete some process. In some ways, that would be like having a lottery or a ballot in that it would produce an outcome; however, I am sure that with flexibility, effort and dedication, as was evident on all sides in the first session of the Parliament, we will get through the process.

10:45

I do not think that I am pointing to a breakdown in the system. Looking ahead, however, I see that

we have an opportunity to put in place a better system, out of which more members would get more of what they want. From my perspective, that would also ensure that staff—particularly NEBU staff—were not put in the position of having to take political decisions. Staff cannot do that and should not be put in that position.

There remains a risk that that will happen, however, not because members are unreasonable, but because they quite reasonably want to pursue their own agendas. For a member of staff to have to judge between two members, each of whom has equally legitimate demands, is always to be avoided. Unless, that is, one were to say rigidly, "Regardless of anything else, if member X walks through the door two weeks before member Y, member X gets past the first cut."

I do not want to overplay the issue of whether I see the system breaking down, as that would be to overstate the matter. That said, there is demand in the pipeline that cannot be met within existing resources; it is likely that we have not yet seen the end of that demand. I envisage a problem on the horizon if all the members who are pursuing proposed bills—or even a substantial number of them—pursue them all the way and, as is likely, other members produce other bill proposals later in the session.

Bruce Crawford: Everyone would recognise that we do not want NEBU to have to undertake the prioritisation process. However, I wonder—in the light of experience—whether we will be unable to avoid bottlenecks irrespective of what we do in the run-up to the end of any parliamentary session. The nature of the beast, as it tries to clear all of its work towards the end of its life, is that that will always happen.

Now that staff and members have the experience of the first session, I would have thought that most members who wanted to propose a bill would do so at an early stage and would want to avoid a similar bottleneck arising at the end of this session. Perhaps we should wait to see whether the process can be managed properly in the light of experience. We may not need to introduce more mechanisms and bureaucracy into the system: I am not entirely convinced that that needs to happen.

Paul Grice: I agree that the end of any session will always produce a highly pressured situation. The Government of the day is bound to want to complete its legislative programme, committees will want to complete what they have been working hard on and the sponsors of any private or non-Executive bills will want to get their bills through. I agree that the last six months or so of any parliamentary session will be immensely busy whatever we do. I also agree that there is evidence that a lot more members are submitting a lot more bill proposals at this time in the session than was the case in the first session.

If a decision were made to make do with the current machinery and to deal with such matters case by case, I am confident that that could be made to work. That said, I believe that there is an opportunity—although I do not want to presume to say what the system should be—to consider whether a better system could be put in place. Quite often the best time to put in place a new system is before one is up against a problem, both because it takes time to do it and because one is more likely to take a sensible and sustainable decision if one is not trying to deal with a crisis when the decision is made.

I accept that judgments must be made, but we could put in place a system that turned out to be not essential. I continue to believe that we can put in place a system that will deliver benefits to the members who are promoting bills and to the staff who support them.

Mark Ballard: We heard in previous evidence that a set of criteria are used at present by NEBU and the SPCB. In terms of your remarks about not wanting to see members of staff having to take political decisions, is there an issue about who assesses bills against the criteria? Do the criteria need to be expanded?

Paul Grice: Without doubt, it most certainly must be elected members who take the decisions about the applicability of the criteria. Even to judge matters such as the size and scope of bills is difficult. One criterion is a bill's measure of cross-party support. At one level, we can look at names on a list, but members can only speculate as to where the bill will go. Judgments can be made at various stages in the process. Ultimately, of course, Parliament itself will make judgments case by case. However, there is certainly a political dimension.

The criteria have proved useful and quite durable, but it would be worth while examining them—I am sure that the committee will do that. Two former members will give evidence on how it was for them, so to speak, when they went through the process. Much can be gained from case studies in examining whether the criteria proved to be helpful. Even if they were helpful, it would be worth while considering whether they could be further refined and improved. My guess is that they could be, whatever process the committee decides should be used for applying them. Some of the criteria are straightforward, but many require judgments. There will need to be a political judgment as to which proposed bills meet whatever criteria are set out.

The Convener: If the committee was minded to introduce a prioritisation system, should it happen between the end of the consultation and instruction of drafting and briefing? How often should that prioritisation process take place to allow the forward planning to which you referred? When would be the best time of year to do that?

Paul Grice: It would be useful to get early indications, subject to the important caveat that it must be ensured that—whether the judgment is made by a group of members or by members collectively in the main chamber—members have sufficient information to make the judgment. Members' right to pursue their own agendas using their own resources must also be preserved. As you suggested, that should happen before the detailed process of instructing the drafting begins.

Going back to a point that Mark Ballard raised, I think that the process is probably a rolling, iterative one. Things will go off track and new things will come in and a system is needed to deal with that. However, taking stock would allow one to revisit where one had been and to look where one was going. That should happen at least annually or, possibly, a little more frequently. At the end of a session, all bills fall with the exception of private legislation. We should kick off any new session by allowing newly elected members a reasonable opportunity to take stock, consider what they want to pursue and initiate consultation. That suggests to me that we should wait six or nine months into the session, but not so late that the process starts to silt up. That method would point to such consideration's happening some time before the summer recess in the year after the election. We would have to revisit that depending on what the committee's ultimate proposals were. The machinery should follow the political will.

Bruce Crawford: One issue worried me there, Paul: you said that members could not be denied the right to use their own resources.

Paul Grice: Yes.

Bruce Crawford: I do not disagree with that, but could there not, in effect, be a twin-track approach? Some would use NEBU resources and some would use resources from outwith NEBU. The latter could continue with their bills and hope that they reached stage 1. Therefore, those who could afford to get a bill through, or who had the connections, would be able to do so, whereas the rest would have to put their bills into the mix and simply hope that they came out the other side. That seems unfair.

Paul Grice: Inevitably—with my SPCB hat on—my interest is in how we deploy the resources that the corporate body judges to be necessary, which is very much about NEBU, the Scottish Parliament information centre and the various legislation teams. That is a big issue that requires consideration. Parliamentary time is a matter for the Procedures Committee and the Parliamentary Bureau.

If I could wear a slightly wider clerk's hat, there remains a point of principle that members, individually or collectively, should have the right to pursue their own political agendas. I accept the equity points that you made, on which the committee might want to reflect. Nonetheless, to flip the situation the other way and deny members that right carries risks. I accept that, at some point, through the normal democratic process, decisions must be made about which bills should proceed. Certainly a decision must be made about how far along the line a member's bill can be taken. However, any decision that prevented a member from introducing a member's bill would be a difficult one to take in the kind of Parliament that we have. I hope that that is helpful clarification.

Bruce Crawford: That is very helpful.

The Convener: I thank Paul Grice for coming to the meeting. His evidence has been useful. There will be big decisions in due course about whether we will pursue prioritisation.

10:55

Meeting suspended.

10:57

On resuming—

The Convener: I am pleased to welcome a couple of old faces back to the Parliament: Mike Russell and Keith Harding. They will give evidence on their experiences of taking their members' bills through Parliament and on their use, or otherwise, of NEBU. I invite both of them to make brief opening statements about issues that they want to highlight, after which we will open the meeting to questions.

Keith Harding: Thank you for inviting me to the meeting. It is nice to be back for a short time. To be frank, though, I do not really miss the Parliament.

My experiences of NEBU were, in a word, excellent. The advice, support and co-operation that I got were outstanding. From the outset, I had a good rapport with the three people who dealt with my bill and the process moved smoothly over a long period. Unfortunately, it took nearly two and half years—Michael Russell and I had different experiences.

My only concern was that, towards the end of the process, I felt that we would run out of parliamentary time and that the bill would not get through after all the work that had been done. In

fact, the bill scraped through in the final month of the session. There is, as Paul Grice said, an issue about members' bills in the final six months of a session. Ultimately, the Executive, through the Parliamentary Bureau, determines parliamentary time. Obviously, the Executive will rush through its remaining legislation in the final months of a session. Therefore, Executive bills—as well as committee bills—take precedence at such times. Unfortunately, that means that members' bills, into which a great deal of time and effort have gone, will fall by the wayside.

As I said, my experience of NEBU was very positive and I could not commend it highly enough. I have nothing further to add. I will be pleased to take questions later.

11:00

Michael Russell: I want to reflect on a point that Bruce Crawford raised latterly and to which Paul Grice responded, on the absolute right of members to introduce legislation. Clearly, that right should be jealously protected and any changes to the present situation should ensure that that right is protected.

From my review of the briefing papers that the committee clerk was kind enough to send to Keith Harding and me, it seems that the issue is largely one of resources. I remember that when the convener and I were members of the Parliamentary Bureau, we discussed the resource issue even at that early stage. Resource solutions are required for resource problems; it seems that there are an awful lot of political solutions within the briefing papers, but I do not believe that they are the right solutions.

One or two things could improve the current situation. A member who wants to pursue a member's bill spends, for whatever reason, an inordinate length of time doing so and there is a variety of reasons for that. One must remember that much progressive social legislation in the House of Commons—for example, the abolition of hanging and legalisation of abortion—went through as private members' bills.

There is also the issue of closing loopholes. For example, in the previous session the leasehold casualties loophole was closed by a member's bill. We should also consider that there is campaigning on issues and forcing the hands of other political parties. Certainly, my bill—the Gaelic Language (Scotland) Bill—was an attempt to do something that had been promised but which had not been delivered. Such bills are the ones that Parliament is least willing to support, so the application of prioritisation already exists.

I had nothing but very good support from NEBU, but the bill process took a long time. Perhaps, rightly, bills that had a better chance of success and that were perhaps less contentious were given a fairer wind than the Gaelic Language (Scotland) Bill. However, I believe that we came within a couple of hours of having the bill passed. It would have been nice to see that happen.

I believe that the current process takes too long and that there could be more support for members who want to introduce bills. I also believe that applying political solutions to the situation might make it worse instead of better. There should be increased resources, members should be able to go outside Parliament for drafting support—that is essential and I do not believe that it would be divisive—and there should perhaps be recognition of the different types of bill that members want to introduce.

The Convener: Thank you for your opening remarks. Before my colleagues ask questions, I want to ask Mike Russell, in relation to his comments, whether he recognises that one resource that is a pressure point is parliamentary and committee time. The rules at present do not allow the Parliament any say in which bills should progress to stage 1. Essentially, when a bill is proposed, there is nothing to stop its progress until it gets to stage 1, even if nobody in the Parliament apart from the 12 members who signed the bill's proposal gives any indication that they support the bill. On that basis, is it fair that the Parliament's and committees' agendas should be dictated by the member's bill process rather than by the Parliament's having a say in prioritising its timetable?

Michael Russell: I am not sure that what you say is true. Standing orders require a process for bills, but they do not give a specific time scale in which they must complete that process. As former bureau members, the convener and I have seen the effect of business managers trying to block bills.

I also do not believe that there is a shortage of parliamentary time in the chamber. Members attend plenary meetings for only a day and a half. It would be perfectly possible to increase parliamentary time. Indeed, there have been discussions about, for example, Friday mornings being devoted entirely to either committee bills or members' bills. I accept that there is a difficulty about committee time, however: the two principal blockages are committee time and drafting resources.

On committee time, it is possible to conceive of special committees being established. I have always thought that a special committee should have been established for the Protection of Wild Mammals (Scotland) Bill. That would have allowed the bill to progress more effectively than it did. It would be possible to have a specialist committee,

or special committees, for members' bills—such as exist for private bills—which would be short-term.

Cathie Craigie: I want to pick up on your comment about members' bills taking too long to deal with. As someone who took a member's bill through Parliament, I agree with that. The wheels of justice might turn slowly, but the wheels of getting legislation into the statute book are even slower.

In answer to the convener's question, you spoke of special committees. However, where did you see the bottlenecks in the procedure? If the process is too lengthy, how would you truncate it?

Michael Russell: The answer to that is in annex 8 of the briefing paper, which gives the timings for preparing a member's bill. The central part of the process, from drafting the consultation paper to when a member holds the introduced bill and its accompanying documentation in his or her shiny little hands, takes an astonishing 14 months.

I accept Paul Grice's point that the process is intellectually taxing and puts a great amount of pressure on the staff of the non-Executive bills unit, but that amount of time strikes me as being too long. In the case of the Gaelic Language (Scotland) Bill, there had been extensive consultation for about 10 years prior to the proposal. However, it was insisted that we go through yet another lengthy consultation process from which we learned nothing. When we got to stage 1—this will back up the point that Mark Ballard made to Paul Grice—we went through the process yet again by inviting a comprehensive set of witnesses to give substantial evidence. I am sorry that Karen Gillon is not here, as she chaired that process. It seems to me that the process is too long in the middle.

The preparation of drafting instructions is lengthy, but it takes much longer than necessary because of the pressure of work on the non-Executive bills unit. It might be possible to tease out the committee bills from members' bills and to devote more resources to members' bills by setting up a separate team to deal with committee bills. It was unfortunate that my bill was being dealt with at the same time as the Commissioner for Children and Young People (Scotland) Bill, which was an enormous job—the non-Executive bills unit did a tremendous job in that regard.

Cathie Craigie: The resources issue involves not only staff, but time. You mentioned that it might be useful if other committees were to examine members' bills and that Parliament could sit on a Friday, as required, to enable it to scrutinise such bills. However, you and Keith Harding are well aware of the amount of MSPs' time that is taken up by constituency work and so on. Furthermore, one of the founding principles of the Parliament was that we would be a family-friendly Parliament—I do not know whether we are, but that was the plan. How do you envisage that members would split their time between their normal committee work and the work that would have to be done on a special committee to consider a bill, while continuing to fulfil their constituency work responsibilities? Of course, members who have sat on private bills committees have done that already.

Keith Harding: The problem could be addressed by taking up Mike Russell's suggestion that Parliament meet more often and use, for example, Friday for consideration of such bills.

I agree with the point that Mike Russell made about the length of time involved. In both our cases, the passage of the bills took two and a half years. That amount of time must be taken into account. I do not think that the non-Executive bills unit can improve on that a great deal with the timetable that it set out in annex 8 of its report.

On that basis, perhaps no member's bill should be accepted after the first two years of the session. Realistically, bills that are submitted after that date will not get through and the non-Executive bills unit will be tied down with unproductive and unnecessary work.

The Convener: I remind members that they received that report from the non-Executive bills unit at an earlier meeting.

Michael Russell: If the right of members to introduce bills is to be preserved, you cannot say that that right is exercisable only in certain months of the year as if it were akin to shooting grouse. The downside to the right of MSPs to introduce bills is that Parliament must make every effort to ensure that such bills are properly considered and given a fair wind. Of course, not every bill will be passed, but it was extremely frustrating to get unanimous approval for my bill at stage 1 only for the bill to fall because of lack of time in the last week of the session, in which we sat for less time than usual. It should be possible to extend sitting hours to deal with members' bills if Parliament values such bills.

As I was trying to say at the beginning, a lot of important legislation at Westminster has come in the form of private members' bills. There are signs that, in time, that might also be the case in Scotland.

Richard Baker: Are you saying that the issue is not one of prioritisation but of resources—for example, ensuring that members are able to get private support for drafting their bills—and of timing? We have been focused on prioritisation, but you are suggesting that that might not solve the problem.

Michael Russell: I want to raise an issue relating to prioritisation, which is largely political. It is a mistake that arose from the work of the consultative steering group. When it drew up its wonderful ideas for the Parliament, the consultative steering group was visionary, but it was sometimes wrong, which we saw from the first standing orders. To allow two bills per member over four years would be pushing it, and I think that a reduction to one single bill per member would probably be sensible.

I do not share Paul Grice's worry about a ballot. I am not keen to imitate Westminster at every possible occasion, but it seems that a ballot is in fact the best way forward for the sake of resources, which is what we are concerned with here. It is probably the fairest way. A ballot would be drawn for the allocation of NEBU's resources, and the first three or four bills drawn would get those resources. That would not prevent members from seeking help from outwith the Parliament, but it would mean that members knew whether they would get support from the Parliament or whether they would have to either give up the idea of their bill or go elsewhere. The ballot is probably the easiest and best way in which to determine that, because all other ways of making the decision, even if they are not political, might look political, which would be even worse.

The Convener: To be fair to the consultative steering group, it said that members should have the right to introduce two bill proposals a session, not two bills. The standing orders unfortunately did not reflect that.

Mark Ballard: As you know from having read the NEBU paper, to which you referred, there is an existing set of criteria for members' bills. How did the two of you feel about those criteria? Did they come into play with either of your bills? Could you reflect on the validity of those criteria in the process of effectively prioritising resources?

Keith Harding: I think that the criteria are quite sound. They are relatively simple, although they are lengthy to address. The criteria are needed in order to weed out some of the weaker bills or proposals, particularly ones with financial implications. They did not pose a problem for me; in the case of the Dog Fouling (Scotland) Bill, everything went through quite smoothly.

Michael Russell: I presume that Mark Ballard is referring to annex 5 of NEBU's paper, which is on the prioritisation criteria for bills. Those criteria are very vague. No member should be introducing a bill that is not within the legislative competence of the Scottish Parliament, because it will not be granted a certificate of competence by the Presiding Officer. There is therefore no point in doing that.

The one criterion that I fell slightly foul of was the one that says:

"There should be no likelihood of legislative action in the reasonable future either in the Scottish Parliament or at Westminster in the same area of law."

That depends on the what definition we use of "the reasonable future". That was one of the reasons why there was a slight reluctance with regard to my bill. I was being pushed as hard as possible to get my measures through, but the feeling was that there would be legislation on Gaelic eventually, so my bill might have been a waste of time and resources. In fact, my draft legislation, which almost made it but not quite, was influential in shaping the subsequent bill. I think that it will also prove to be useful for the debate on the issue. I suspect that the Executive's draft Gaelic Language Bill will go through much more smoothly. Many of the issues will already have been ironed out. The first bill will be seen to have been part of the process of changing the situation. As Paul Grice said, it was worth doing, even if it did not come off.

As I said, the criteria are very vague. I would be worried, however, about any other criteria being imposed if they seemed political—even if they were not. The idea that the Parliament as a whole might vote on prioritising bills, no matter what, will be viewed as political. Despite the presence of a business manager here, I would say that the involvement of the Parliamentary Bureau would be a very divisive step in trying to make prioritisations.

The Convener: Over to the business manager, Bruce Crawford.

Bruce Crawford: One of them, anyway. I want to pick up on Mike Russell's last point, about the Parliamentary Bureau. What would your view be if the bureau no longer functioned by weighted votes? Secondly, I know that Keith Harding thinks that the criteria for selecting members' bills are reasonable, but would you make any additions, deletions or other amendments to them? The convener said that there was nothing preventing a bill from making it to stage 1, but the criteria act as a brake. If we could improve on them, they might in themselves facilitate a weeding-out process, as long as the criteria did not become in some way political. I have forgotten my third question, but I might remember it by the time Mike Russell answers those two.

Michael Russell: I will deal with the first two now.

Bruce Crawford: We will see how we go.

Michael Russell: As there is little prospect of the Parliamentary Bureau moving from weighted voting to non-weighted voting, I am not sure how much time we should spend on that, but I still think

that business managers have enough power, perhaps more than enough power—it is perhaps heretical for me to say that as an ex-business manager. It would be wrong to involve them in the process.

It would perhaps be possible to consider increasing the level of support required for a bill. I do not think that that should be the ultimate criterion, because some very important measures may not attract a wide degree of support. However, an indication of the serious intention of the chamber to take the bill forward might be if it were supported widely across the political parties or heavily supported by the majority of back benchers. In the end, the allocation of resource—the non-political issue—would probably be best dealt with by a ballot for resources. That would leave members free politically and under standing orders to introduce their bills, although they might not have resources allocated to them in the Parliament simply because those are not available.

11:15

Bruce Crawford: That is what my third question was going to be about: the ballot, which is the method used in the House of Commons. On the surface that option seems attractive, but I wonder what happens if we dig down a bit. If we assumed that four bills were going to be successful in a ballot, it would take only one of the four bills to require considerable resources—perhaps all the resources—for the chances of success of the other three to be undermined. The ballot cannot by its nature take cognisance of the complexity of an issue or the amount of time that will be required to construct a bill. For example, the reform of charities bill that Jackie Baillie proposed did not get there—it should have been seen as an Executive bill because the scale of the subject is so significant.

Michael Russell: That difficulty also arises in the current system. One does not know what will arrive tomorrow that might pile on the resource requirements. NEBU would be—or should be—able to predict a modest number of bills that its resources could support over the next 12 months, given that it would perhaps take on committee bills if there is not a separate unit. That would establish the modest number of bills—two or three from a ballot—that would get the resources. A ballot is not ideal, but I suspect that it is fairer than any other system and I suspect that there are fewer grounds to complain about it than about any other system—particularly for the smaller parties that may feel disadvantaged.

Mr McGrigor: I have a question for each of my esteemed former colleagues. The first one is to Mike Russell, who referred to reinventing the wheel so far as evidence is concerned and to the fact there had been much discussion about the pros and cons of the Gaelic Language (Scotland) Bill before it was introduced. How would you get over that? Although the average MSP is not an expert on everything, he has to be able to ask questions and get practical answers from sources. How can that evidence be summarised to cut down on the amount of time that is needed?

Michael Russell: I have always deferred to Jamie McGrigor as an expert on many things and I know that he knows a great deal about nephrops in particular.

As far as the Gaelic Language (Scotland) Bill and general knowledge of the subject are concerned, my complaint is not that members were not able to get the information; it is about the paralysis of consultation that we have got into in Scotland. I noticed when I was listening to the radio this morning that we are now in apparently perpetual consultation on certain issues—I will not name the issues—so everybody gets consulted all the time.

A Gaelic bill had been consulted on for 10 years. There had been two major reports, the only weakness of which was that Comunn na Gàidhlig did not draft a bill at the end of its reports—alas; I wish that it had done so. Some people are beginning to do that and it is extremely helpful.

It was unnecessary to have a further consultation before taking detailed evidence at stage 1. It is a matter of judgment, but I think that on many bills the detailed evidence stage at stage 1, at which point there is a bill and there is flexibility to build and develop it, is as good as the type of open-ended consultation that often takes place, which often involves a statutory list of consultees—three quarters of whom do not know anything about the issue. The British Potato Council gets consulted on everything. It had very limited views on Gaelic and, in so far as it had any, it did not let me have them and did not reply.

In all those circumstances, I think that it would be better to have detailed stage 1 consideration of a proposal that is well developed. We must remember that if a member introduces legislation in a particular area, by and large they will be an expert in that subject or will have dealt with it for a long time. I know that Mr Harding is an expert in his subject.

The Convener: Do you want to add anything?

Keith Harding: I would endorse what Mike Russell says. I think that far too much consultation is going on; it is the biggest growth industry in Scotland. When my bill was being considered, there was duplication of consultation. We held an extensive consultation, which had a very high response rate of 70 per cent. All except one of the

responses were favourable. The witnesses whom the Local Government Committee called in were people whom we had already consulted. There is duplication, and eliminating that would slightly reduce the time taken. The results of the consultation could have been circulated to committee members and they could have read them in the spare time that Cathie Craigie says that they do not have; there was no need to call in witnesses.

Mr McGrigor: My second question was for Keith Harding. You said that your main worry in the final six months was that your bill would not have sufficient parliamentary time to go through. Will you expand on what the obvious factors were that showed that that might happen? Did you experience any other difficulties?

Keith Harding: The difficulty became apparent when NEBU told me that we were running out of time. In about October 2002, we ran into difficulties on a particular aspect of the bill—the legality of collecting on-the-spot fines—which required a change in another act.

When the whole process started, I naively thought that the bill would be a single-page amendment to the Civic Government (Scotland) Act 1982. That was the intention but, when the proposal went to NEBU, it suddenly blossomed into a 12-page bill and that brought with it a number of difficulties. It was necessary to repeal parts of various acts over the centuries and that was an interesting operation but, in about October, we ran into the difficulty that I mentioned. Many meetings were held at stage 2 to try to overcome that problem; they are not mentioned in the committee's lists, which refer only to meetings at stage 1. Those meetings involved the Executive, me and NEBU. I was fortunate in that the Executive supported my bill; it had indicated as early as the previous July that it would be supporting it.

The bill was supposed to be considered by the Local Government Committee in November 2002, but the committee had insufficient time and consideration was delayed for two weeks, which meant that we were into December. The Christmas period came and I recall being assured that the bill would be dealt with in January. We ran into another problem to do with legality, which was dealt with in a final amendment at stage 3. The issue was finally overcome after much discussion between NEBU's lawyer and the Scottish Executive's lawyers, who seemed to have great difficulty in agreeing—I think that that is common with lawyers. Eventually, matters came to fruition.

I was told that the stage 3 debate would be in February, but it was delayed because of a lack of parliamentary time. Ultimately, the bill was passed in the early part of March. There was a genuine worry that my bill, like Mike Russell's bill, was going to run out of time.

I had no other difficulties. As I have said before, I could not have asked for more support from NEBU, the Executive and the Local Government Committee. The bill went through extremely smoothly; other than the delay to which I referred, I had no concerns about the way in which the bill progressed through Parliament.

The Convener: Are there any other points?

Mike Russell: It is possible for the Executive to kill a member's bill by refusing to produce a financial resolution. That is what happened to my bill; it was not killed by a lack of time. If the committee is considering members' bills seriously, it will want to examine that issue. Although there should always be a power for the Executive to stop things happening, refusal to produce a financial resolution is fatal for members' bills; that is what killed the Gaelic Language (Scotland) Bill.

The Convener: I have a final question. You have both highlighted problems relating to the pressure on time towards the end of a parliamentary session. If there were some form of prioritisation whereby the Parliament indicated that it wished not necessarily to pass bills but to allow them to go through the various processes, would that ease some of the pressure on parliamentary time—unlike the present, rather unco-ordinated approach, which certainly puts pressure on committees?

Michael Russell: The bills that were successful in a ballot and had the resources would be the ones that the Parliamentary Bureau would prioritise in the timetable. That would be entirely natural.

I was working on the assumption that, at the very latest, my bill would be ready to submit to the Presiding Officer in September 2002. It turned out to be the very end of October, which was two months too late. We ran out of time by two hours, I think. The Executive refused to allow time to be allocated and to bring forward a financial resolution. It would have been nice to be on time.

Keith Harding: I have nothing to add to that.

The Convener: Thank you both for coming along and telling us of your experiences and giving us your thoughts. I am sure that they will be useful to the committee when we reach our conclusions in this inquiry.

First Minister's Question Time

11:25

The Convener: Agenda item 3—on First Minister's question time—should be relatively straightforward. We have a note—PR/S2/04/1/1—from the clerk on the evidence that has been gathered. I draw members' attention to another paper that has been circulated today, which gives a more detailed breakdown of the viewing figures for "Holyrood Live" since the change took place. I would like to get a view from the committee on how successful or otherwise the experiment has been and on how we should go forward. We must also consider how that ties in with our report on the proposed extension to question time. I intend to go through the evidence relatively quickly to see whether there are any questions or whether any clarifications are required. Paragraph 27 of the note from the clerk gives some options for the committee, which we will discuss. Paragraphs 1 to 6 give some background as an introduction. Are there any comments?

Cathie Craigie: How many MSPs responded?

The Convener: To the report on oral questions? The clerk will check that information and we will come back to it.

Paragraphs 7 to 10 are on the views of MSPs. Are there any comments on that summary of the evidence? We will be able to give Cathie Craigie the numbers in a moment. Meanwhile, we will move on to paragraphs 11 to 14 on the views of the general public. Most of the information comes from surveys that were carried out on people who attended question times.

Bruce Crawford: My comments refer to paragraphs 11 to 17, because the views of the school groups and the views of the general public were taken in a questionnaire given to people attending question time on certain days. The views expressed are the legitimate views of those people at that time, but had we taken the views of other people who had attended at a different time, I am not sure what the outcomes would have been. Therefore I am not sure how valid the evidence is—other than to say that it represents the valid views of those people. Had people in the gallery been questioned at 2 o'clock, we do not know whether we would have got the same answer. They would have been people in the gallery saying—because they happened to be there—that the time was suitable for them. In saying that, I do not want to downgrade the views of those people, because their views are important. I just do not know how valid they are or how they would compare with views taken by another survey at another time.

The Convener: That is a fair point. Paragraph 14 makes the same point in general terms.

Cathie Craigie: I totally disagree. We cannot discount—as paragraph 14 does—the views of 462 people who, it would appear to me, are interested in what is happening in the chamber as they took the trouble to come along. I do not want to sign up to paragraph 14. The committee agreed to survey people and we should not say that they are not necessarily representative of the public. They are representative—they come from the public gallery, which has all sorts of people.

Bruce Crawford: No. They are a cross-section of the public who happened to be in the public gallery, but they are not representative of the public.

Cathie Craigie: Those who were surveyed are a cross-section of the public. We did not hand-pick them. Such people go to the visitor centre or arrange to visit through their MSP. They are ordinary men and women from the street who vote for us. They are entitled to have their opinions taken as seriously as those of anybody else are.

The Convener: I understand what you say but, to be honest, if people who attend question time at 12 o'clock are asked whether having question time at 12 o'clock is suitable for them, they are likely to say yes. We are not finding out from people who were not in the public gallery at 12 o'clock whether that time is suitable for them. All that paragraph 14 says is that we must be careful not to read too much into the responses of people who were present at that time and who said that that time was suitable for them.

11:30

Cathie Craigie: The questionnaire that we gave people who were in the public gallery did not ask them only whether they liked First Minister's question time at 12 o'clock. It had a wider scope than that. We did not pick the people who were in the public gallery on the days when the questions were asked. What is the point of the committee consulting almost 500 people if we say that we should not necessarily regard them as representative of the interested public? I certainly would not associate myself with such a comment.

The Convener: I do not think that that is what paragraph 14 says.

Cathie Craigie: I have described my reading of the paragraph.

The Convener: The paragraph simply puts a health warning on the interpretation of the survey results.

Cathie Craigie: The paragraph says:

"It should be noted that these questionnaire respondents cannot necessarily be regarded as representative of the interested public more generally."

I do not see how that can be true.

The Convener: The respondents are representative only of people who attended question time at 12 o'clock. They are not representative of those who could not attend and who might think completely differently. The paragraph is simply a health warning that we should not read too much into statistics that derive from an unrepresentative sample. The sample was of people who happened to be in the public gallery at a particular time.

Mr McGrigor: If questions had been asked before the experiment started, more people would have been available to ask, because more people attended then.

The survey asked whether First Minister's question time should be at noon and whether it should be at 3.10 pm. Did the questionnaire ask whether question time should be at 2 pm? That is surely relevant. If that question was not asked, the survey is not very comprehensive.

The Convener: The survey questions are on the back page of the note from the clerks.

Mr McGrigor: I am sorry; I have not looked at them. I did not see the questions.

The Convener: No one suggests that we should disregard the public's views. Paragraph 14 is in a note by the clerk, not a committee report, and all that it is intended to do is indicate that the views came from people who happened to attend particular sessions, so they are representative of those people but not necessarily of people who could not attend at those times and might have preferred another time. The aim is to achieve balance in the interpretation of the figures.

Mark Ballard: The point is that if we had wanted to question representative members of the interested public more generally, we would not have done that by surveying only people who were in the gallery at 12 o'clock. However, gathering such views was not the function of our survey. Our survey's function was to find out what people who turned up at 12 o'clock felt, not to find out what the public at large thought. We must be clear about what the questionnaire was about and what it aimed to do.

Irene Oldfather: I approach the subject as a substitute member, so I might have a different perspective. The discussion raises the question why we undertook the survey in the first place if we did not feel that the responses would be representative. There are obviously other ways of testing that opinion to take into account the viewpoints reflected by members around the table. I do not know whether it was the committee or the Parliament that chose to do that, but that was how the committee decided to undertake the survey. I wonder whether that was the right thing to do, but that is how we have gone about it and this is the information presented in it.

The Convener: The survey was on wider issues about question time; the three questions that are summarised in the paper were part of a larger survey that was carried out to inform our report on question time in general. The timing issue was just one part of the survey, not the whole survey.

Cathie Craigie: I do not want to get bogged down any further. My views are clear. The question was not asked only at the 12 o'clock question time. As far as I can see, the questionnaire was circulated at question time and at First Minister's question time over two meetings. As I said, I do not want to get bogged down, but I want it on the record that I value the opinions of the people who sit in the gallery.

The Convener: With respect, Cathie, we all value their opinions and nobody is suggesting that we do not. Paragraph 12 indicates that there was a split between those questioned at noon and those questioned in the afternoon. Not surprisingly, those questioned in the afternoon were less in favour of noon than those questioned at noon were. Perhaps that invalidates paragraph 14 to some extent, but I do not want to get bogged down on that at the moment. For information, 47 MSPs in total replied to the questionnaire and 16 gave detailed responses.

Mr McGrigor: Having looked at the questions that were asked, which I had not seen before, I notice that a question was not asked on one of our options: that question time should start at 2 pm. That question was never asked so, as far as I am concerned, that makes the survey completely irrelevant.

The Convener: The survey is not completely irrelevant. A 2 o'clock start is not ruled out because we did not ask the public that question in the survey.

Mr McGrigor: Why did we not ask them that question?

The Convener: At that point, we were not considering that as an option.

Mr McGrigor: If that is the case, why did not we have the survey before we had the experiment in the first place?

The Convener: The survey was conducted as part of the exercise on the review of question times in general, not as part of the review of First Minister's question time. The questions about First Minister's question time were added to the survey because the survey happened to be being

conducted—they were additional questions to a wider survey.

Bruce Crawford: I do not want to labour the point, but neither do I want it to be thought that committee members do not see the views of members of the public who did not attend on that day as legitimate and valuable. The views are representative only of the people who were present and manifestly cannot be representative of the general public as a whole. However, the views that were given are certainly representative of those who were there. In that light, they have a value and are legitimate. We did the right thing by conducting the survey.

The Convener: Paragraph 18 covers the views of the civic participation focus groups. Paragraphs 19 and 20 give views of the BBC and of journalists. I remind members of the additional information from the BBC that has now been circulated.

Bruce Crawford: We have looked at the "Holyrood Live" viewing figures in isolation. However, we should remember that the BBC lunchtime news has an audience of 300,000. If an issue of significant import is raised in First Minister's question time, a 12 o'clock start ensures that it makes it to the news slot at lunch time. The evidence that we have from the BBC on audience participation is weak. We should have had information telling us that on X number of occasions when First Minister's question time was at 12 o'clock there were lunchtime news bulletins that 300,000 people listened to, for example. That would have been a significant factor in weighting the evidence towards a 12 o'clock slot for First Minister's question time, rather than a later slot. Evidence about who was in the public gallery would also have been useful for this part of the exercise and to ensure that we take an evidence-based view.

Mr McGrigor: Paragraph 20 states:

"Other journalists were also invited to offer views on the success of the trial".

How did we do that? I cannot remember.

The Convener: We contacted them through our media office.

Mr McGrigor: Who did we contact?

The Convener: I do not have the breakdown here, but I presume that we contacted the Lawnmarket lobby.

Mr McGrigor: Okay.

Richard Baker: Bruce Crawford has covered many of my points. I am impressed and surprised that the BBC can break down its viewing figures in the way that it has. Other broadcasters have not complained about the shift in time. Programmes such as "Scotland Today" and newspapers also have to be considered when we weigh up the impact that the new time has had on audience figures.

The Convener: Evidence from participation services has been circulated separately. There are no comments to make on that. Paragraphs 22 to 26 relate to another minor procedural issue, which we might need to address, depending on which decisions we make. Perhaps we can leave that until we make our decisions. If we make certain decisions, we will not have to address the issue, if you see what I mean.

Mark Ballard: I think that we need to address the issue anyway, because there is a strong possibility that the business motion will contravene rule 5.6 of the standing orders. That is a major issue of parliamentary procedure. We suggested a timetable to the Parliamentary Bureau that contravened rule 5.6. We know that there is an issue with the rule, but we have not communicated that to the bureau.

The Convener: Given that two business managers are present at the meeting, I am sure that the bureau will be informed of the problem this afternoon. My understanding from the legal advice is that there is not a problem, but that there is an issue about tidying up the rule. If we need to amend the rule, we should do so as part of our report—

Mark Ballard: I am also concerned that the recommendation that we might make today, based on the evaluation period, would contravene rule 5.6. Either we ask the bureau to continue with the current trial or we ask it to move to some other arrangement. However, whatever we recommend to the bureau should be in line with rule 5.6.

The Convener: It is for the committee to decide whether it wishes to suggest a change to rule 5.6, so that the half sitting day is a consistent period.

Mark Ballard: Such a change to the standing orders could not be made before it was debated. As far as I know, there are no plans for the change to be made.

The Convener: It is for the committee to decide whether we wish to suggest a sitting pattern that would contravene the rule and, if so, whether we might need to amend the rule to reflect that. When we have made decisions about the sitting pattern and the timing of question time, we can consider the consequential effects of those decisions; we do not need to get bogged down on the issue before we have made our decisions.

Bruce Crawford: I understand the point that you are making but, whatever we do, on Thursday there will be a First Minister's question time. This afternoon the bureau will probably lodge a

business motion to that effect. However, my reading of rule 5.6.2 of the standing orders, which is clearly laid out—and regardless of what paragraph 25 of the paper states; it seems to try to justify the move—is that, if the bureau proceeds in that way this afternoon, it might be in danger of breaching standing orders. It is amazing that we have got into such a situation. The lawyers might tell us something different, but at present all we have is a narrow description of the situation in three short paragraphs. The paper states clearly that, for the purposes of rule 5.6, a half sitting day is

"the period between 09:30 and 12:30 or between 14:30 and 17:00 on a sitting day from Monday to Thursday".

It goes on to mention Friday, which is not really relevant to our discussion. I do not see where the room for manoeuvre is for the lawyers. I will need convincing that we have not been breaking standing orders all along.

I do not want to labour the point, but the Procedures Committee must deal with the issue at some stage, whether that is right now or in a few minutes, because Thursday's First Minister's question time may well be against standing orders.

Cathie Craigie: You will have to take up the issue with the First Minister.

Bruce Crawford: The issue is not for the First Minister; it is not his fault.

Mr McGrigor: The issue would be a point of order.

The Convener: I am trying to get a decision in principle on when the committee thinks First Minister's question time should be held. We will return to the issue that Bruce Crawford raises, although at present the matter is for the bureau, not the Procedures Committee. Our task is to recommend changes if they are required in the light of proposals that we may make on First Minister's question time. The bureau must decide, based on the advice from its advisers, whether its motion is consistent with standing orders.

Bruce Crawford: Fine.

Cathie Craigie: Surely the issue would have been taken into account when we amended the standing orders to introduce the trial period. Can we ask for advice on that?

11:45

The Convener: We have been operating a trial period. The legal advice is that that is legitimate, but the bureau must clarify the matter with its advisers this afternoon. The matter is not for us. We must determine whether we wish to make permanent changes to the standing orders to take account of other decisions that we make about First Minister's question time.

On paragraph 27, the first decision that we must take is whether we wish First Minister's question time to remain at 12 noon on Thursdays. I seek an initial indication of members' views. It would be unfair to start with Irene Oldfather, as she is a substitute member, so I will start with Cathie Craigie and work from there.

Cathie Craigie: I would like to add another option to the options in the paper. We have had the trial period for the change to First Minister's question time and we are introducing a trial period for changes to question time—we will debate the recommendations in Parliament in the near future, although I am not sure of the date. I ask the committee to consider running First Minister's question time at 12 o'clock with question time, which will have general questions and themed questions, afterwards. That would give us a picture of the whole system. We could then review the system at the end of May or the middle of April or whenever. That would mean that, when we are getting ready to move business to the new Parliament building, we will have tried and tested all the options. At that point, we can collate the information and evidence about whether the changes are successful and make a decision on that basis.

The Convener: Whatever pattern we choose for question time, it will have to undergo a trial period. We have agreed that the new format for question time will be trialled.

Cathie Craigie: The options that I would go for would be option C for the trial period—

The Convener: I suggest that at the moment we stick specifically to considering whether First Minister's question time should remain at its present 12 noon slot or whether it should be moved to an afternoon slot. Once we have made that decision, we can consider the various options and patterns that have been suggested.

Cathie Craigie feels that First Minister's question time should remain at 12 noon at present.

Mr McGrigor: I am against the proposal that First Minister's question time should remain at 12 noon.

Richard Baker: I am in favour of First Minister's question time remaining at 12 noon.

Bruce Crawford: Jamie, what option would you prefer if you want First Minister's question time to be moved?

Mr McGrigor: I thought that we were only looking at—

The Convener: We need to decide first on whether we want First Minister's question time to remain at 12 noon; after that, we can consider the options. After all, there are a number of different patterns—

Mr McGrigor: Do you wish me to enlarge on my decision?

The Convener: If you wish to indicate your reasoning, you can do so.

Mr McGrigor: One of the main reasons is that the viewing figures have slumped dramatically. I just do not think that First Minister's question time is getting across to the public in the way that it was. It is important that the Parliament should be a window for the public; if they are not watching it, the experiment has failed and the system should be changed.

Richard Baker: My decision has the same basis as Jamie McGrigor's. However, given the new and different coverage that First Minister's question time receives on lunchtime news broadcasts and from other media, I do not think that the evidence on the viewing figures is clear. Moreover, there is considerable advantage for schools in having First Minister's question time at 12 noon.

The Convener: What do you think, Bruce?

Bruce Crawford: May I listen to the discussion for a little bit longer?

Mark Ballard: I do not think that First Minister's question time is working at 12 o'clock. Indeed, I do not believe that it is sensible to have it as the second or third item in the morning's business. It should be the first item of business to reflect its status and the fact that it is televised. Currently, even if the first item of business needs to overrun for entirely legitimate reasons, it has to be curtailed because of a timetable that has been introduced from without by the broadcasters and that says that we have to start First Minister's question time at 12 o'clock. I do not think that it is proper for the Parliament to be beholden to the BBC over when it begins its business. We could get round that problem if First Minister's question time were the first item of business.

That said, I do not believe that anyone would welcome having First Minister's question time at 9.30 in the morning. As a result, it should be the first item of business after lunch. As I can see the advantages of moving it to 2 pm or 2.35 pm, I am happy with option A or option F. It is important that we should begin a block of business with First Minister's question time and not have it in the middle of a block of business. That experiment has not worked particularly well. In particular, there has been a loss of atmosphere, which has been caused partly by the fact that First Minister's question time is not the first item on the agenda. As a result, I urge members to agree to move First Minister's question time to after lunch on Wednesday or Thursday. We ought to reflect on what the 12 noon slot is doing to the parliamentary timetable and how it affects our debates in the chamber; we should treat the viewing figures as a separate issue.

Bruce Crawford: The question is significant, because what we decide will have a material effect on what will happen when we get down to Holyrood. Whatever we do now, it must be right by the time we get to Holyrood. Given that, any option that we decide on today will require a trial period until the end of April or the beginning of May to give us another couple of months to decide on a final process before we move to Holyrood. I do not know how we will manage the timetable, but we have to give whatever option we choose a chance to work.

We should remember that we are setting First Minister's question time alongside a new procedure for ordinary questions. We do not know what the dynamics of that approach will be or whether the introduction of thematic questions will bring question time to life. Did question time have more life when it was linked to First Minister's question time and was the build-up to it? I do not know whether the issue was the format of question time, but we could have a trial to determine that. First Minister's question time works best when there is a warm-up in the chamber and when we do not go into the chamber cold. If First Minister's question time is the first item of business, it will not work, because everybody will just be arriving, which does not persuade me that it should take place at 2 o'clock on Wednesday. It will not work as the first item of business of the week. The atmosphere in the chamber would not have had the chance to warm up, which is an important issue.

I am also conscious that if we are to have a completely new type of question time, we should give it a chance to see whether it can stand and survive on its own, without the support of First Minister's question time. If it cannot, we have not got it right. However, if we stick the two question times together, the chances are that we will not know the answer, because each will always be part of a larger story.

It is taking me a long time to get round to what I am saying, but I am trying to lay out my arguments and show members that I have thought about the issue. I am persuaded that there should be another trial period. Nobody has mentioned at what time we will start question time in the afternoon if First Minister's question time stays at 12 o'clock. I think that we should opt for half past 2 to half past 3, because that will not interfere with the rest of the week for MSPs. First Minister's question time used to finish at half past 3 anyway. If we do that with question time, we will not be doing anything revolutionary, but we will be moving forward in incremental steps.

The most persuasive issue for me, on which I need evidence, is the audience shift. There is a considerable difference week to week, which

cannot be explained from the "Holyrood Live" viewing figures that we have before us. On 13 November, there were 6,000 viewers; on 20 November, there were 36,000. Something is not right, folks, in the evidence that we have been provided with.

Whatever decision I come to today, it will be based on evidence. However, as I said, I have not been given the evidence on the relationship between the timing of First Minister's question time and whether it features on, and the audiences for, the BBC lunchtime news. Such evidence would enable me to decide whether to move First Minister's question time to a 2 o'clock slot. In some ways, I would like that to happen, because it is what most of my colleagues want, but I am persuaded—in some ways reluctantly—that we should have First Minister's question time at 12 o'clock and question time from half past 2 to half past 3. Those timings should stay in place for a trial period, until we can ensure that we have got question time right, because we cannot see whether we have got it right if it is conjoined with First Minister's question time. I also want to take more time so that the broadcasting authorities can provide the robust evidence that we have not yet been given.

Irene Oldfather: Bruce Crawford has made many helpful comments. The old system was in place for four years, but if we had looked at it after only a few weeks we might have started pressing for a change. It is early days. We should see how the system beds down. I am persuaded by the argument that question time is a bit flat just now and that we need to change it, but we have plans to change it. Let us see how that works out before we go about changing other things. Let us pilot the system. A sensible period of bedding down, with a review in April or May, sounds reasonable to me, so that we get the arrangements right in time for the move to Holyrood.

The Convener: I will indicate my personal position. Liberal Democrat members support a shift back to the afternoon for First Minister's question time, because they do not believe that the 12 o'clock experiment has worked. I propose to support my members if the issue comes to a vote. However, the majority of committee members—four to three—is clearly in favour of retaining the 12 o'clock time slot, so our report should reflect that. There will be an opportunity for members to indicate their position in a formal vote when we consider the draft report.

Mr McGrigor: I do not know why Bruce Crawford wants more evidence on the figures. Paragraph 19 says that, since First Minister's question time was moved, average viewing figures for "Holyrood Live" have fallen from 46,000 to 18,000. The figures speak for themselves.

Bruce Crawford: I understand the point that Jamie McGrigor makes and, on the basis of the bald figures that we have been given, I would support his position. However, if he looks at—

Mr McGrigor: But we are talking about average figures. One might say, for example, that on 18 September there were 7,000 viewers and on 30 September there were 36,000, which would still mean that the maximum figure was 10,000 less than the average figure under the old system.

Bruce Crawford: However, we do not have any evidence of the impact of the rescheduling of First Minister's question time on viewing figures for the BBC's lunchtime news programmes.

Mr McGrigor: The Executive probably wants to retain the 12 o'clock slot because the First Minister receives a lot of news coverage at lunch time.

The Convener: Not all of it favourable, it has to be said.

Mark Ballard: I support Jamie McGrigor's point. We would always expect a fluctuation in viewing figures, depending on the film that was being shown on BBC2—

Cathie Craigie: I think that there is a business programme at lunch time on BBC2.

Mark Ballard: I mean that the figures depend on what other programmes are being broadcast. If we are looking at average viewing figures, we must expect there to be fluctuations around the average.

Mr McGrigor: I think that the public would be entitled to feel jolly cynical about our deliberations if we did not agree that there has been an enormous drop in viewing figures.

Richard Baker: It would be interesting to know what measures were used to calculate the figures. People say that it is done through a panel of people who have a box on their television—I am amazed that such a system could lead to such exact figures about the low audience share. I would be interested to know whether the BBC has a view on the reasons for the large discrepancy in the figures.

12:00

The Convener: I take your point, but the BBC mentions its methodology in its letter to the committee—although I am not sure that that makes the situation any clearer. A supposedly representative sample of viewers is used. I agree that it seems strange that the figures should vary so much from week to week. I am not in a position to be able to say whether the average figure is about right or whether the figures for the upper or the lower limits more accurately reflect the reality.

A majority of the committee has indicated a preference to retain the 12 o'clock slot for the trial period. We should move on to consider the implications of that.

Mr McGrigor: Should we have a vote on that?

The Convener: We could have a formal vote now, if members wish to do so. However, today we are just discussing what might go into our report. As everyone has indicated their position on the record, it might be better to have the formal vote at the next meeting, at the draft report stage.

Mr McGrigor: Okay.

Bruce Crawford: We might risk there being some changes of position before the next meeting.

The Convener: We will come back to the question of the implications of the 12 o'clock time slot for the half sitting day.

Let us consider the recommendation that we will make to the Parliamentary Bureau on the timing of question time. We should perhaps decide whether to recommend the Wednesday afternoon or Thursday afternoon option before we consider whether the session should start at 2 o'clock or 2.30 pm.

Cathie Craigie: I am happy to go along with Bruce Crawford's suggestion that we continue the trial of First Minister's question time from 12 noon to 12.30 pm, with oral questions from 2.30 pm to 3.30 pm on Thursdays.

Mr McGrigor: I do not want to make a recommendation, as I do not agree that First Minister's question time should continue to take place at noon.

The Convener: Yes, but the majority view of the committee is that it should take place at noon and members—including those who disagree with the majority view—have to take a view about the consequences. If we keep First Minister's question time at 12 o'clock, we have to make a decision about the timing of question time, irrespective of whether we agree with the 12 o'clock decision.

Mark Ballard: If I have got my maths right, option B—that is, question time on Wednesday afternoon—gives us three slots for debate: 1 hour 55 minutes, 2 hours 30 minutes and 2 hours 30 minutes. If we choose to have question time on Thursday afternoon, the debate slots will be 2 hours 55 minutes, 2 hours 30 minutes and 1 hour 30 minutes. I am concerned about having a debate slot of 1 hour 30 minutes in a Parliament with six parties. In my experience, that time is too squeezed for a debate that will include speeches from the smaller parties.

If we want to be fair to and inclusive of the smaller parties and to allow back benchers to speak, the relatively balanced option B—one slot of 1 hour 55 minutes and two slots of 2 hours 30 minutes—is better than an option that leads to a slot of 1 hour 30 minutes on a Thursday afternoon. If there is such a slot, I can imagine being told time after time by the clerks, "There is not enough time for one of your members to speak."

The Convener: I appreciate that concern. The two sets of recommendations that we have made would reduce by 30 minutes the overall chamber time that is available for debate and other business. We have taken 10 minutes off for First Minister's question time and another 20 minutes off for question time. We should try to find an additional half hour to compensate for that.

Bruce Crawford: I agree, but if we had decided to have First Minister's question time in the afternoon, that would have been the case anyway.

The Convener: It depends whether—

Bruce Crawford: I could say that you are changing your argument to suit your case.

The Convener: We could have one question time on Wednesday and one on Thursday, both starting at 2 o'clock.

Do members agree to option C, which is that First Minister's question time on Thursday at 12 noon—we have already agreed to that—should be followed by question time from 2 pm until 3 pm? It would run for a trial period, probably until the Parliament does its funny thing in May.

Bruce Crawford: If we run the trial until then, the problem is that there will not be enough time to test the solution and change the rules again before we move to Holyrood.

The Convener: The new arrangement will probably not be introduced until a couple of weeks after the February recess. The debate is likely to be on 11 February, so it will probably not be possible to bring in the new rota until the second week after the recess.

Bruce Crawford: Perhaps our report should reflect some of those issues before the exact timetables are decided.

The Convener: We can look at that in more detail before our next meeting and try to get an indication of when the experiments should run.

Having decided that 12 o'clock on Thursday will be used for First Minister's question time, at least in the meantime, we need to go back to paragraphs 22 to 26, on rule 5.6. We must consider the definition of a half sitting day and perhaps make some recommendations. The intention of paragraphs 22 to 26 is to ensure that a half sitting day is a period of at least two and a half hours. If we stick with the standing orders, having made the decision about question time, all non-Executive business would have to be on a Wednesday afternoon.

Bruce Crawford: May I ask a question? We are examining the issue as members of the Procedures Committee. Does the advice to us state that there is a problem with the standing orders and that they should be changed to accommodate having First Minister's question time from 12 o'clock until half past 12?

The Convener: I will defer to the clerk on such matters.

Andrew Mylne (Clerk): The issue is whether there is an incompatibility in what we have been doing and where that arises. There is nothing about scheduling First Minister's question time at 12 noon that in any way conflicts with the rules. The problem arises—if there is a problem at all—from the combination of doing that and allocating the remainder of the morning to non-Executive business, with the implication that that is counted as one of the 16 half sitting days to which the Opposition parties are entitled. In other words, the problem would occur at the level of the Parliament taking a decision on a Parliamentary Bureau motion to do both those things at once, not at the level of the committee making a recommendation as to when First Minister's questions should take place.

There is an issue as to whether the combination of those two things is inconsistent with the rules. From the advice that I have received, I understand that that is a matter of judgment. My advice to the committee is that, if the intention is to make the current arrangement more permanent or to extend it for a longer period, it would be advisable to remove any suggestion of a problem by regularising the description of a half sitting day in such a way as to provide more flexibility in scheduling and to ensure that the arrangement, which there is a political will to put in place, is not seen to be in any way inconsistent with the rules.

Bruce Crawford: I entirely accept your last premise that, if we need to change the rules to make things work, we should do so. However, we should not change the rules unless there is an absolute need to do so. You said that there was a grey area. I wish that there was a lawyer here to tell me what is grey about rule 5.6.2, which clearly defines a half sitting day. I for one am not in favour of changing the rules unless that is necessary, but you will need to prove that to me.

The Convener: The problem also affects rule 5.6.1(a), which entitles committees to 12 half sitting days. A committee half sitting day has often been taken as the period after question time. Some committee debates have been given only one and a half or two hours. The issue is whether we should provide for flexibility by defining a half sitting day as the period of business that is not question time.

Bruce Crawford: I understand that, but that does not remove the premise that we should not change the rules unless we need to do so.

The Convener: We have a lawyer present if you wish them to comment.

Mark Ballard: My understanding is that, if we are recommending option B—

The Convener: We are recommending option C.

Mark Ballard: I thought that we were going for option B.

The Convener: Under option C, question time would be on a Thursday afternoon from 2 pm to 3 pm.

Mark Ballard: None of the time slots recommended in option C matches the time slots in rule 5.6. That means that it would be impossible for the Parliamentary Bureau to allocate a half sitting day to a committee debate or a non-Executive debate in a way that would fit with standing orders. Is it viable for us to suggest a time that we know would make it impossible for the bureau to meet standing orders?

The Convener: We can recommend amending the definition of a half sitting day.

Bruce Crawford: That would imply that the current definition is wrong.

The Convener: It would imply that there is a potential for the definition to be interpreted as wrong.

Bruce Crawford: Come on. Stop dancing on the head of a pin.

Cathie Craigie: Correct me if I am wrong, but I recall that we had to make other changes when we agreed to the trial period for First Minister's question time. How did those changes affect rule 5.6 of standing orders?

Andrew Mylne: As I said, there is nothing about the scheduling of First Minister's question time at 12 noon in and of itself that contradicts the standing orders. The problem arises—if problem there is—when the Parliament, on the recommendation of the bureau, makes further decisions about the wider picture of the sitting pattern of the week.

Cathie Craigie: Is there a standing order that allows the Parliament to amend sitting times, or the time for debates, for a temporary trial period? Does another standing order allow us to do that?

12:15

Bruce Crawford: Andrew Mylne is right in effect that the issue is the 16 half sitting days that the Parliament chooses for debates by the political

parties that are not represented on the Executive. Is the SNP's half sitting day next Thursday the half sitting day that is recommended in the standing orders?

Andrew Mylne: That might be one conclusion that you could reach. However, if the parties are getting an allocation, does that matter?

Bruce Crawford: It matters fundamentally if a Parliament is not abiding by its standing orders.

Andrew Mylne: I am certainly not recommending that we should not abide by the standing orders.

The Convener: The paragraphs in the report are trying to set out the potential for a problem that we need to regularise. If we are to recommend a particular sitting pattern, we need to ensure that the standing orders are not incompatible with it. If a member wishes to suggest another pattern for First Minister's question time, it would be sensible to propose some draft amendments to the standing orders. We need to ensure that there is no potential for conflict.

Bruce Crawford: I am not sure that I am in a position to do that without further legal advice.

Cathie Craigie: We would have to have that clarified as soon as possible.

The Convener: There is no problem in getting that advice so that we have it when we decide on the recommendations for changes to the standing orders. We will do that at the next meeting, when we discuss the draft report.

Mr McGrigor: Surely Bruce Crawford's point is another very good reason for not having First Minister's question time at noon.

The Convener: With respect, it is only a matter of custom and habit that Opposition parties have had their half sitting days on a Thursday morning. They could just as easily have had them on a Wednesday afternoon. They cannot have them on a Thursday afternoon because of question time.

Mr McGrigor: Surely one of the options is to move question time?

Mark Ballard: Time for reflection is also not counted. If we went for option B, for example, it would be possible to have a time period that was 2.30 pm to 5 pm. We have to bear it in mind, however, that we cannot send a recommendation on a standing order change that members are not—

The Convener: I understand what you are saying but, if the committee is minded to recommend that the question time pattern is as we have already agreed, we need to look at the consequential effects that that will have on the rest of the standing orders. As part of the draft report, we will need to bring to the next meeting what those consequential changes would be. What we are trying to do in this report is to flag up the fact that there is a consequential change and that that needs to be looked at.

Mark Ballard: Yes, but is there not an issue of interpretation right now?

The Convener: I suggest that that is a matter for the bureau to determine when it looks at the business motion for next week. It is the bureau that must interpret the situation under the present standing orders. Our job is to ensure that, when we make recommendations for change, we also point out the consequential changes that are required to implement that change. I suggest that we bring a draft set of standing orders to the meeting in two weeks' time in order to regularise the possible conflict that has arisen.

Bruce Crawford: I ask for an explanation in simpler terms of the reasons for the possible changes to the standing orders and whether they are needed at all. I do not want the standing orders to be changed unless there is a problem.

The Convener: We will try to ensure that that is done. We might be able to circulate some information prior to the meeting to clarify what the problems are. Indeed, given that Bruce Crawford has raised the issue, the bureau might have to do that at its meeting today.

Let us move on and check through the rest of the note to see whether there are any other points that we need to consider. Looking through paragraph 30 and those subsequent to it, it seems that we have dealt with everything else. Are people happy—not necessarily happy, but at least agreed—that we draw up a draft report based on the majority views as expressed by the committee today?

Members *indicated agreement.*

The Convener: There will be an opportunity for members to indicate their particular views on the draft report when we consider it at our next meeting.

Emergency Bills

12:20

The Convener: We move on to item 4, on emergency bills. Frances Bell from the legislation team is here to answer any questions on the paper before us, which is an initial report. If there is general agreement on what it contains, it may be possible to produce a draft committee report so that we can consider the timetable for making any changes to standing orders on 11 February, when we debate the reports on oral questions. However, there is no pressure on the committee to do that; if we feel that we wish to take more time over emergency bills, we are entitled to do so. It would be useful if Frances Bell could give us an outline first, and we will then move to questions.

Frances Bell (Scottish Parliament Directorate of Clerking and Reporting): I do not have much to add to what is in the paper; I hope that it is reasonably self-explanatory. The main point to emphasise is that the paper refers to the distinction that chapter 9 of the standing orders draws between the general rules and the special rules. Rule 9.21, on emergency bills, is one of the special rules. The intention is that the general rules and special rules interact seamlessly when bills of one of the types that are mentioned under the special rules are considered. In practice, emergency bills have proved to be the only case in which rules have routinely had to be suspended. For that reason, it was considered worth while reviewing the operation of rule 9.21, which has resulted in the paper that is before the committee.

Most of the proposals are essentially tidying-up changes, which are not intended to have any major impact other than to remove the need to agree a motion on the suspension of standing orders each time an emergency bill is considered. As I mentioned in the paper, that has the added benefit of increasing the transparency of the procedure, in that we know in advance what it will be. That is all that I wish to say at this point, but I am happy to take members' questions.

Bruce Crawford: I do not have any questions, but I would like to say that the paper has been well laid out with regard to inflexibility. I do not have a problem with making a rule change to make the arrangements for a suspension of standing orders more flexible. However, I have some fundamental objections to some of the issues further on in the paper. We might want to divorce those issues for the moment, so that you can understand where I am coming from. Alternatively, would you like me to talk about those issues now? I think that there are some anti-democratic issues further on in the paper, which we need to consider very carefully.

The Convener: We will go through the paper in the normal way, after we have dealt with any questions for Frances Bell. Let us first consider paragraphs 1 to 5, on the current rule. There are no comments. Paragraphs 6 and 7 are on the case for change.

Bruce Crawford: Have I got the right paper here?

The Convener: We are looking at the emergency bills paper, Bruce.

Bruce Crawford: I am sorry: I was looking at the wrong paper. I apologise. I have given myself away now. On you go—bash on: it is a wonderful paper.

The Convener: Do you have a copy?

Bruce Crawford: I have it with me, but I was looking at the paper on the suspension of standing orders instead.

The Convener: Let us therefore turn to paragraphs 6 and 7, on the case for change. There are no comments. Paragraph 8 concerns the various possible changes. Is everyone happy with what is proposed?

Members *indicated agreement.*

The Convener: Moving on to other issues, the first bullet point in paragraph 9 is on whether taking all three stages of an emergency bill in a single day should be the default position. Are people happy that that should remain the default position?

Bruce Crawford: The day can be extended.

Frances Bell: Two of the three emergency bills so far have been taken on one day, and one has not.

The Convener: The next bullet point is on whether it should be possible to debate or amend a timetabling motion? At present that is not possible; it is all or nothing.

Bruce Crawford: Are we at stage 2 here?

The Convener: We are discussing the timetabling motion for an emergency bill: the second bullet point in paragraph 9 on the second-last page.

Bruce Crawford: I am fine with that.

The Convener: I need all members to be clear. Do you wish that type of timetabling motion to be open for debate or amendment? At present, such a motion is simply proposed and then voted on.

Bruce Crawford: Can you say that again, convener?

The Convener: At present, the timetabling motion for an emergency bill is merely proposed

and then voted on. There is no debate or opportunity to amend it. In other words, there is no opportunity to suggest a different timetable. Are people happy with that, or should such a motion be open for amendment?

Mark Ballard: There could be manuscript amendments.

Bruce Crawford: There would have to be manuscript amendments in these situations. Would that be acceptable?

Mark Ballard: But that gives the Presiding Officer the decision-making power in the—

Bruce Crawford: Every motion should be able to be amended. That should be the premise that we start from.

The Convener: Do members agree that motions should be open for amendment and that we should draw up a standing order to allow that to happen?

Cathie Craigie: Are we talking about the timetabling—

The Convener: The timetabling for emergency—

Cathie Craigie: We are not talking about amendments to the bill.

The Convener: It is for a motion—

Frances Bell: At present, if you were not going to follow the default one-day procedure, you would have a timetabling motion saying, for example, that stage 1 would be on the Wednesday afternoon and stages 2 and 3 on the Thursday. Somebody might say, "Okay, I agree that the default one-day procedure is not correct in this case, but I would rather see a week between stage 1 and stages 2 and 3." At the moment, you cannot amend the timetabling motion.

Bruce Crawford: Wherever a motion comes from—whether it is a business motion or any other motion—there is an opportunity to amend.

Frances Bell: That is correct.

Bruce Crawford: I do not see why this should be any different—although the Executive would win the vote at the end of the day, because it has the numbers. That is what happens.

The Convener: Okay. We will do that then.

The third bullet point is perhaps slightly more technical:

"Should it be possible to designate a Bill as an Emergency Bill even if it has already commenced or completed Stage 1 … ?"

Cathie Craigie: Under what circumstances would that happen?

Bruce Crawford: Is that a guillotine motion, convener? Is it designed to help the Executive to get a bit of legislation through that it is struggling to get time for?

The Convener: The answer to that is that perhaps we should consider this in the context of timetabling in the legislation inquiry that we are going to commence, rather than doing things without fully considering the issues.

Cathie Craigie: This morning, Mike Russell spoke about the stages of the consultation exercise. He said that that had been done before, so that might have given the bill a speedier passage.

Mark Ballard: The Gaelic language is not an emergency. The point about the emergency procedure is that it should be for emergencies and not for things that somebody—Mike Russell or anybody else—wants to hurry through the Parliament because they are running out of time. We have to keep the procedure for emergencies. I would be very worried about the potential for creating a route for hurrying something from stage 1 to stage 3.

The Convener: So the answer to the third bullet point is no.

Bruce Crawford: There are a couple of small technical points that do not affect the fundamental stuff in the paper. If we say in a specific rule that a stage 2 vote in an emergency bill should be cast using the electronic voting system, how would an emergency bill get through if the electronic voting system broke down?

The Convener: There is a general rule that covers what would happen in such circumstances.

Bruce Crawford: Would that rule still kick in although there was a specific rule that said that emergency bills must be dealt with by electronic voting, which the paper suggests?

The Convener: Yes.

Bruce Crawford: Fine. The other technical point that we have not dealt with is the question about the ability to amend emergency bills at stage 3. The paper states:

"The Committee may wish to consider whether there is any reason in principle why an Emergency Bill should not be open to amendment at Stage 3."

12:30

The Convener: I am sorry—you are right. I meant to pick that up. What are members' views on the matter?

Bruce Crawford: Provided that we can get the job done on the day, I do not see why stage 3 amendments cannot be lodged. Lodging stage 3

amendments might suit the Executive, as it often lodges amendments at stage 3 to improve bills. Removing that flexibility could cause difficulties for the Executive.

Frances Bell: Perhaps I could explain how the situation has arisen. If members want to keep open the possibility of lodging stage 3 amendments, no change is required, as the standing orders currently provide for that. Originally, the interaction of the general rules and the special rules in practice prevented stage 3 amendments to an emergency bill being lodged in most cases, as such amendments could not be lodged until stage 2 had been completed. If stages 2 and 3 took place on the same day—which has happened with every emergency bill—the practical operation of the rule meant that stage 3 amendments could not be lodged because they could not be lodged until after stage 2 and manuscript amendments at stage 3 were not permitted at that time. The rules were changed and manuscript amendments can now be lodged at stage 3, but as far as I am aware, when the previous Procedures Committee agreed to that change, it did not specifically consider the fact that it would have the effect of making possible manuscript amendments at stage 3 of an emergency bill.

Since then, standing orders have been suspended in every case in order to retain the original position, which was that stage 3 amendments could not be lodged. Retaining that position would require a change to the standing orders. Currently, standing orders must be suspended if stage 3 amendments are not wanted. In considering the issues, we thought that there might be some cases in which retaining the option of stage 3 amendments would be a good idea—for instance, where a non-Executive amendment is agreed to at stage 2, but has a technical deficiency that needs to be corrected at stage 3.

Bruce Crawford: As the convener knows, I am not necessarily one for bailing out the Executive. However, emergency legislation by its very nature means rushed legislation, which can lead to mistakes. If we can iron out any mistakes in the final part of the process before the Parliament signs off the bill at stage 3 and if we can give the Executive the opportunity to make corrections that help legislation, it would be unwise of us to allow a door to be closed. Who knows? A correction might be on the back of a helpful suggestion by the Opposition—perish the thought. We should allow as much flexibility in the process as possible to ensure that legislation that is being passed is as robust as it can be.

The Convener: I agree. We can produce a draft report and consider standing orders changes and recommendations—I hope that that can be done for the next meeting. That would allow us to consider changes to the standing orders at the same time as we debate the report on question time. Do members agree to that suggestion?

Members *indicated agreement*.

Suspension of Standing Orders

12:34

The Convener: Item 5 is consideration of a paper from the clerk on the suspension of standing orders. If members want a copy of the report on the issue that they received at our previous meeting, there are spare copies. Shall we go through the report section by section? We can discuss the issues that Bruce Crawford wants to raise when we reach them.

The section headed "Inflexibility of Rule 17.2" contains examples of when that inflexibility has caused problems in the past. Does anyone have any comments on that section?

Bruce Crawford: Given the discussion that we have just had about the problems with First Minister's question time in relation to standing orders, the more flexible we are the better.

The Convener: Are members content that we proceed to allow more flexibility?

Members *indicated agreement*.

The Convener: We have to consider how to do that. If we are not going to leave the rules unchanged, we must amend them either to enable smaller units of the standing orders to be suspended or to allow standing orders to be suspended to whatever extent is specified in the motion. We must also decide whether we want to add a rule that would allow specific additional rules to replace those that have been suspended. Which option of the two that I have mentioned would members prefer? The second option is the more elegant.

Bruce Crawford: The power to suspend standing orders to the extent that is specified in the motion would be quite a power to give the Executive; it would allow the Executive to move to suspend anything that it wanted to, without defining it first in specific words. If the specific words were defined first, that might bring more clarity to the process so that everyone could see exactly what suspension was being suggested.

If we allow smaller units of the standing orders to be suspended, that would enable us to do what we have to do and to achieve the changes that we are seeking. That option would provide more clarity than a catch-all provision would.

The Convener: That is a valid point. Perhaps I misinterpreted the second bullet point. Do members agree with what Bruce Crawford just said?

Members *indicated agreement*.

The Convener: The second question is whether we want to add a rule that would allow an alternative rule to be put in place on certain occasions.

Bruce Crawford: I do not know. I do not understand that bit.

The Convener: If a member wanted to suspend the timetable for lodging amendments, a separate rule could be put in to allow a new timetable.

Bruce Crawford: No, that is different.

The Convener: I shall ask the clerk to clarify.

Andrew Mylne: The convener outlined the intention behind the suggestion. If a specific limit, either in time or number, is imposed in the rules, then even if individual words can be suspended, the most that can be achieved is the removal of the limit that currently exists. The option of allowing an alternative rule to be put in place would allow members to substitute a slightly different limit for that limit, in such an instance. It would provide a definite answer rather than removing the limit that was already there. In certain situations, that might provide greater clarity of outcome. However, you might want to limit it to certain specific cases; we can consider that.

Bruce Crawford: All that I have said is subject to the caveat that I will talk about when we discuss the next issue. If we do not sort out that issue, I will go back on everything that I have said.

The Convener: Are members happy for a draft report to be produced that will outline the rule changes? We can then decide whether the power is too wide or not wide enough.

Members *indicated agreement*.

The Convener: We move to the slightly more contentious issue of the right to move to suspend standing orders. That is covered in paragraphs 11 to 17 of the paper, and in the second part of the conclusions.

Bruce Crawford: I have fundamental difficulties with this. Some of the narrative suggests that the power might be misused. Frankly, if we wanted to misuse the provisions for the suspension of standing orders, we could do so right now if we were in the mood. To my knowledge, on no occasion has a suspension of standing orders been misused. Fergus Ewing's motion related to a committee matter. There is no evidence that the Opposition or any individual has acted inappropriately or misused the process. That is a red herring.

To remove anybody's fundamental right to propose a suspension of standing orders would be anti-democratic and would remove important checks and balances. The Executive has a majority and if somebody were minded, for

mischievous reasons, to move to suspend standing orders, the Executive would win.

The paper says that such a motion could succeed only if it had general political support, so the process already contains checks and balances; otherwise, members would have misused the provision. The case is far from proved that we should give only the bureau, members in charge of bills, ministers or committee conveners that power. Doing so would remove a right of individual MSPs and I cannot accept that. Such a move would be wrong.

The Convener: The paper tries to reflect the two sides to the argument, which is not straightforward.

Bruce Crawford: I accept that.

The Convener: Standing orders differentiate between meetings and items of business. Another question is whether that distinction is required.

Bruce Crawford: That does not remove the checks and balances.

The Convener: I do not dispute that. I am just saying that we must consider whether we want to leave the rule unchanged, which would mean that at any meeting of the Parliament, any member could move a motion to suspend standing orders, but that on any item of business, only the bureau could do that. If we want to change that, do we want to apply the same rules to everything or do we want to differentiate between meetings and items of business?

Bruce Crawford: I want to protect the right of every MSP, in all circumstances, to move that standing orders be set aside.

The Convener: That means that you are suggesting an extension of existing standing orders to any member. At present, the ability is limited to the bureau in some cases.

Bruce Crawford: The power to deal with timetabling issues is limited to the bureau.

The Convener: Standing orders refer to suspension

"for the purpose of any item of business".

Bruce Crawford: Anybody can propose a suspension in relation to general business. I could stand up tomorrow and move such a motion, although it might not be accepted.

The Convener: At present, any member can move to suspend standing orders for a specific meeting. Only the bureau can do so for an item of business—for example, the bureau can propose that a rule should be suspended for such-and-such a bill. Do you suggest that any member should be able to do the latter? That would represent an extension of standing orders. I will let you think about that.

Mark Ballard: If I have understood what the convener said, under rule 17.2.1, any member could suspend standing orders

"for the purpose of a meeting of the Parliament or of a committee or sub-committee",

so a member could move for standing orders to be suspended at every meeting at which a bill was to be discussed. Rule 17.2.2 allows the bureau to suspend standing orders for the whole passage of a bill, for example. Rule 17.2.2 is an extra power only in so far as it allows the bundling of a set of motions that any member could move under rule 17.2.1. Is that right?

The Convener: That interpretation is reasonable.

Mark Ballard: The existing rule does not seem to be a problem, as any member could keep on moving to suspend standing orders under rule 17.2.1.

The Convener: However, a private bill committee, for example, would have to keep returning to the Parliament to suspend standing orders every time that it had a meeting, which might cause practical problems.

Mark Ballard: Right.

The Convener: In those circumstances, there would be a question whether to extend the right to include committee conveners, for example—although not necessarily to all members—as well as the bureau, for an item of business. The alternative would be to allow any member to have that right for any item of business, as well as for any meeting.

Bruce Crawford: I was arguing against the second bullet point in paragraph 17, under "Conclusion", which seeks

"to restrict the right to move such a motion to members of the Bureau only, in all cases".

Mark Ballard: That would mean deleting rule 17.2.1.

The Convener: I accept that.

Bruce Crawford: That is the key point—we cannot extend that power just to the bureau. I should have made myself clear when I started off on my rant.

The Convener: I understood that that was what you were referring to, but it is important to be clear about what the existing standing orders stipulate in relation to suspension and whether or not we want to change them.

Cathie Craigie: We are arguing that we should leave the existing standing orders unchanged.

Mark Ballard: If we are trying to improve flexibility, would it be worth adding references to

the member in charge of a bill, ministers and committee conveners to rule 17.2.2?

The Convener: I am not sure that I am interested in ministers having special status; I am more interested in the member in charge of a bill having such status.

12:45

Andrew Mylne: The paper sets out three alternatives. If the committee were minded to keep the option to move that standing orders be suspended open to any member, it would not be necessary to specify special rights for the categories that are listed in the third bullet point, because all those who are listed would be caught up by the phrase "any Member". Those categories would be covered automatically, if the committee preferred that option.

The Convener: That would involve extending rule 17.2.2 to include any member, which at the moment it does not. I am not sure that there is a willingness to do that.

Cathie Craigie: No, I think that we should stick where we were. Why was there a move for the proposed change? Where have we experienced difficulties?

The Convener: Two examples of where inflexibility has caused problems are given at the beginning of the clerk's paper, but I think that there is general agreement on how to deal with inflexibility. We are now trying to establish whether we want to amend the rules about who has the power to suspend standing orders. At this stage, I think that the general view is that we do not want to do that, because the rules are probably sufficiently flexible.

I want to clarify whether we agree that we will produce a draft amendment that will allow smaller units than full rules in standing orders to be suspended and that will, in certain circumstances, allow an alternative rule to be substituted—for example, on the timetable for lodging amendments. It is also suggested that we agree that there be no changes to the standing order on who can move that standing orders be suspended. Are those points agreed?

Members *indicated agreement*.

The Convener: We hope to produce a draft report on that for our next meeting. We can take forward any proposals on standing order changes to the debate on 11 February, although the committee is under no pressure if it wishes to give further consideration to that issue and to emergency bills.

Items in Private

12:48

The Convener: The final item on the agenda is to decide whether to consider in private the draft reports on the review of First Minister's question time, emergency bills and the suspension of standing orders.

Bruce Crawford: Why would we want to do that? We have had the discussions and heard the arguments in an open atmosphere. Why should we decide, at the last minute, to consider the reports in private? We must be sure about why we do such things. We will only be crossing the t's and dotting the i's.

Cathie Craigie: Are we going to be considering the draft reports?

The Convener: I hope that we will be able to get the reports signed off at our next meeting so that they will be available for the debate on 11 February.

Cathie Craigie: It has been our practice to take draft reports in private and I think that we should do so in this case. There is always the option, is there not, to consider them in public on the day?

Mark Ballard: We were not allowed to do that last time. We were told that if we had made the decision to take an item in private, we had to take it in private.

Cathie Craigie: I wanted clarification of that.

The Convener: If we decide to take an item in private, we have to take it in private. The issue is the publication of the draft report. If we take the item in public, the draft report will be public.

Mr McGrigor: I think that it should be taken in public.

The Convener: The issue is that the draft report does not reflect the views of the committee until it has all been agreed.

Bruce Crawford: I want to tease out the issue. The convener has outlined the procedure, but I am trying to establish whether we have a case for meeting in private. We should decide that case on its merits. We have had the arguments and the discussions and we know what our position will be. Why are we considering the report in private?

Cathie Craigie: Because the draft report will be prepared by the committee clerks based on what we have said. If we decided not to meet in private, the draft report would be published. As we know from experience, the draft report is likely to change, but if we discuss the draft report in public, we will not have the opportunity to do that as we would normally do when we discuss such reports.

Mark Ballard: We have, in effect, had the substantive debate on the draft report by considering the paper from the clerk.

Bruce Crawford: I suppose, however, that there is a danger that the draft report might be changed fundamentally and become unrecognisable, even though the outcome was the same. That would put the clerk in an invidious position.

The Convener: That is the danger. The press might treat the draft report as if it were the committee's final report, when it is not.

The question is, that we agree to consider in private at our next meeting draft reports on First Minister's question time, emergency bills and suspension of standing orders. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)

AGAINST

Ballard, Mark (Lothians) (Green)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

ABSTENTIONS

Smith, Iain (North East Fife) (LD)

The Convener: The result of the division is: For 3, Against 2, Abstentions 1. The majority is in favour of the proposal.

I draw to members' attention the papers that were circulated for information, particularly the evaluation of the public participation exercise.

Mark Ballard: Is it normal for participation initiatives not to talk about whether the groups that were consulted thought that they had had any impact on our discussions? That is what I was interested in and that is what I felt was missing. There were outcomes, but no consideration of—

The Convener: It is difficult to do that before conclusions have been reached. I am happy to go back to the groups and ask what they think of what we decide about question time and whether they think that their views were taken on board properly.

Mark Ballard: I very much welcome that. Thank you.

The Convener: I thank members for their time.

Meeting closed at 12:52.

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