

PROCEDURES COMMITTEE

Tuesday 27 January 2004
(*Morning*)

Session 2

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PROCEDURES COMMITTEE

2nd 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:

Mark Ballard (Lothians) (Green)

Douglas Batchelor (League Against Cruel Sports)

Robin Harper (Lothians) (Green)

Carolyn Leckie (Central Scotland) (SSP)

Alasdair Morgan (South of Scotland) (SNP)

Tommy Sheridan (Glasgow) (SSP)

Mike Watson (Glasgow Cathcart) (Lab)

CLERK TO THE COMMITTEE

Andrew Mylne

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 27 January 2004

(Morning)

[THE CONVENER *opened the meeting at 10:17*]

Non-Executive Bills

The Convener (Iain Smith): We are quorate, so let us make a start. We have received no apologies. Mark Ballard will be giving evidence today and will not join the meeting as a committee member until he has done so, but he is here.

The first item of business is further evidence on non-Executive bills. We had hoped that representatives from the Conservative party would give evidence this morning, but unfortunately—because of Bill Aitken's continued indisposition owing to his injuries and because of John Scott's commitments with the Scottish Parliamentary Corporate Body this morning—they cannot. However, they will give us a written submission in due course.

We will take evidence first from Mike Watson, who was the member in charge of perhaps the most substantial member's bill and certainly the one that took longest to go through the parliamentary processes in the previous session—the Protection of Wild Mammals (Scotland) Bill. We will also hear from Douglas Batchelor, the chief executive of the League Against Cruel Sports, who assisted Mike Watson in presenting his bill. I ask Mike Watson to make opening comments on his thoughts about how the procedure works and could be improved. We will then have questions from members.

Mike Watson (Glasgow Cathcart) (Lab): Thank you, convener. I very much appreciate being asked to contribute to the committee's inquiry on an issue that is important and visible as far as the Scottish Parliament is concerned.

The first point to make is that my bill was one of the first to be introduced, or at least proposed, soon after the Parliament came into being in 1999—it was introduced in March 2000. At that time, there was no non-Executive bills unit, so I turned to the parliamentary staff for advice. One of the individuals concerned was Andrew Mylne, who is now clerk to the Procedures Committee. He was very helpful in examining issues and, of course, he had Westminster experience. Such experience was important for me, because the Scottish

Campaign Against Hunting with Dogs—the umbrella body that was supporting my bill—paid for and organised proper drafting advice from people who had Westminster experience. If that advice had not been available at the time, before the non-Executive bills unit was set up, I doubt whether I would have been able to continue. The situation has changed since then, but that period was important, because three or four bills were introduced at that time. I think that Tommy Sheridan's bill appeared at about the same time as mine; he, too, had legal support.

We must consider the links between the non-Executive bills unit and outside organisations that support a member's bill and can afford to provide some assistance. I am not suggesting that the choice should necessarily be an either/or one, but there could be some joint working between the unit and those who work on behalf of an individual member who is promoting a bill. That could result not only in cost savings—I do not think that that is the sole issue for the Parliament—but savings in terms of time and the demands on the non-Executive bills unit, which would assist members who do not have access to outside support.

I would like to make some suggestions, which could be drawn out in questions, about how we might go forward. Issues that arose in respect of my bill perhaps did not affect other bills. I have read the evidence given by Mike Russell and Keith Harding, who said that their bills took about two and a half years to go through Parliament, which is also about how long mine took. An important issue is why a bill should take that long to go through the parliamentary processes.

Specific issues arose in the case of my bill. I felt that the process was dragged out at stage 2. We should consider whether, when the lead committee effectively rejects a bill at stage 1, as happened with my bill—I am not aware of that having happened with any other member's bill—it is appropriate for that committee to be asked to consider the bill at stage 2. In the case of my bill, the Rural Development Committee, as it was then called, made clear its view at stage 1 that the bill was unworkable; I believe that my bill should have gone to one of the justice committees rather than back to the Rural Development Committee. That situation will arise rarely in the Parliament, but nonetheless the issue of what happens when a bill does not get the support of the lead committee at stage 1 must be addressed.

I have suggestions about prioritisation, but I finish where I started by saying that that was not an issue as far as I was concerned, because of the number of bills that had been proposed at the time and the fact that the non-Executive bills unit did not exist in 1999.

Douglas Batchelor (League Against Cruel Sports): I start by saying that we should not lose sight of the fact that it is a privilege to work with the Scottish Parliament in bringing forward such a bill. My organisation and I come at the debate having had the experience of trying for seven to 10 years to get private members' bills through the Westminster process and not succeeding. For all its difficulties, the process in the Scottish Parliament went from start to finish, with legislation on the statute book. Therefore, any comments that I make that sound negative are only negative in the sense that the process could be done better. However, thank goodness that the process worked. It was a privilege to be a part of that.

Obviously, time is money for any organisation that assists a member in bringing forward a bill. Therefore, the more drawn out the process, the more costly it is for everyone involved. In those circumstances, the Parliament could help through timetabling, by ensuring that there is proper inspection and that the process is not unnaturally dragged out. That would help everybody and it would help the parliamentary process.

Bruce Crawford (Mid Scotland and Fife) (SNP): I thank Mike Watson and Douglas Batchelor for coming along to give the committee advice and help this morning. The Protection of Wild Mammals (Scotland) Bill was drafted by an outside body and I recall that some members voiced concern about whether it had been drafted effectively. Whether it was or not is a side issue. I just wonder whether, with bills that are drafted by outside bodies, the non-Executive bills unit could provide improved liaison and help to allow the bill to be introduced in a more complete and appropriate form.

Mike Watson: The non-Executive bills unit performs an essential function. As I have said, it can be crucial in getting a member over the first hurdle of whether his or her bill is able to move beyond a mere proposal. Although the non-Executive bills unit had not been established when my bill was going through the Parliament, the Parliament's legislation team still had to go over the bill's detail to ensure not just that its wording was appropriate, but that what it was doing was competent. Moreover, the Presiding Officer had to provide his certificate of competence. Those levels were built into the process even then.

There might be scope for NEBU to liaise with the supporters of a member who is introducing a bill, if that is appropriate. After all, taking some load off the unit could be helpful for the Parliament in general and the unit in particular.

Bruce Crawford: Obviously, that would help the unit. However, how could the unit still provide procedural advice and guidance that would ensure that a member's bill was introduced in a

competent and appropriately drafted form?

Mike Watson: You are right to say that those issues were raised about my bill. However, I can say only that I am not a lawyer—and certainly not a parliamentary drafting lawyer—and that we benefited from the services of a very experienced draftsman.

I did not agree with David Cullum when he said in his evidence last December that he did not believe that anyone who was not in the unit was able to draft bills for the Scottish Parliament. Some people, who have such experience from Westminster, can be utilised in that respect, although I should point out that specific aspects apply to the Scottish Parliament. We can take a wider look at that issue. It is important that any bill is as clear as possible at the earliest stages. However, that is down to the lawyers, not the individual member, who, unless they are experienced in that field, which is unlikely, will not have the ability to decide whether the bill is as good as it can be.

Bruce Crawford: That is useful.

Mr Jamie McGrigor (Highlands and Islands) (Con): There were considerable difficulties with the drafting of the Protection of Wild Mammals (Scotland) Bill. In fact, I seem to remember that the situation ended up in court proceedings. If the bill had been drafted by the non-Executive bills unit instead of outside bodies, would you have faced fewer difficulties and would the bill have proceeded more quickly?

Mike Watson: No. That said, I remember spending two enjoyable days in the Court of Session while the question whether the bill was ultra vires with regard to the Scotland Act 1998 was considered. That was shown not to be the case. I do not want to put the committee clerk in an embarrassing position, but I should point out that he gave expert advice on the matter.

There were few changes to the draft bill; indeed, it was changed only as a result of the amendments that were lodged during its passage. As a result, the initial draft of the bill, which was produced by people with drafting experience, was not particularly at fault. I do not think that the situation would have been any different if the non-Executive bills unit had been involved. After all, the unit is made up of people who have similar experience.

With due respect to those who opposed the bill—as they had every right to do—I should say that the issue was that every possible avenue of opposition was explored and every mechanism utilised, sometimes more than once. That approach highlighted the extent to which the bill was inadequately drafted. However, I never believed that it was drafted as inadequately as

people alleged and, as I have said, it was changed by the amendments that members lodged rather than by anything else.

Richard Baker (North East Scotland) (Lab):

You said that you had some ideas about how you might change the process for prioritising members' bills, even though you introduced your bill at such an early stage that that process did not make any difference to it. Will you expand on some of those ideas?

10:30

Mike Watson: The ideas that I am about to outline are very much my own. Until I read the *Official Report* of the committee's meetings and the comments made by those who gave evidence, I had not appreciated that there had been such a rush of proposals for members' bills since last May. Perhaps that is understandable, given that the period was the start of a new parliamentary session. As those who gave evidence suggested, many of the proposals will not reach the point of being introduced as bills. However, the whole question of prioritisation has become important. I note that the Presiding Officer asked the committee in writing to undertake this inquiry, which means that he, too, clearly regards it to be an issue.

I have read the letter that the Minister for Parliamentary Business sent in advance of her oral evidence this morning. I see that she has suggested that the Parliamentary Bureau should make recommendations to the full Parliament on the matter. However, I feel that, although there should be a prioritisation process, it should not be carried out by the bureau or the Parliament. One of the strengths of the Scottish Parliament's member's bill system as opposed to the Westminster private member's bill system is the greater division between the Executive and the individual member. That division should be preserved. As members know, private members' bills at Westminster can be blocked by Opposition members talking them out on second reading or, if the bills get beyond that stage, by the Government deciding not to allocate sufficient time for their passage. The understanding in the Scottish Parliament is that time will be allocated for a bill, unless it is introduced in the dying days of a session when there is simply not enough time. Any decision about prioritisation should be made not by parliamentary staff but by elected members.

My preferred option—and the first of my three suggestions—might make committee members draw their breath. I believe that the Procedures Committee is perhaps as well qualified as any to make decisions about prioritisation. My second suggestion is that a specially convened committee of the Parliament, as has been proposed for the

House of Commons, could make such decisions. That committee would not have to meet all the time; indeed, it might have to meet only once a year. Finally, I suggest that the Conveners Group might be able to fulfil that function.

On the suggestion that the Parliamentary Bureau should make recommendations on prioritisation, we should remember that, for reasons that we all understand, the bureau has a political weighting. As the committees of the Parliament do not have that same weighting, individual members could consider proposals for members' bills on their merits rather than from any political viewpoint. After all, members of the Scottish Parliament should have a pretty well unfettered right to introduce bills. That right does not apply in the House of Commons, although it does in the House of Lords.

I am reluctant to have a ballot system, not because it is not fair, but because it does not necessarily mean that the bills with the most to offer are introduced. There is always the danger that something could happen in a ballot. I put it no stronger than that this could be a possibility, but, for example, if a member is drawn high enough on a list to get his or her bill through, the Executive could say, "We do not have enough time for one of our bills, so will you promote it for us?" That kind of pressure is applied in the House of Commons and removes an element from a system that should be about members' independence to promote bills for which they have identified a need and have garnered sufficient support inside and outside the Parliament.

Bruce Crawford: Your three suggestions are helpful; it is always good to have a bigger menu. That said, I was surprised by your suggestion about the Procedures Committee, although that proposal is always a possibility. As for your proposal for a specially convened committee, others have suggested that the Parliament could elect a committee of back benchers to consider prioritisation. What are your views on that matter?

Mike Watson: That is a distinct possibility. Indeed, I had not thought about how one might convene any such committee. It would certainly be fair for the Parliament to elect the committee's members. However, the point is that members' bills should not be considered on anything other than their merits. After all, politicians tend to think in similar ways and along similar lines and a bill might be prioritised because it achieved something that was in line with a member's political thinking.

I believe that individual members should have the right to introduce bills. If they can get support from within Parliament, those bills will proceed. Although it will be for the Parliamentary Bureau to timetable bills, it should not be for the Parliamentary Bureau but for another set of

members to consider which of those bills should proceed. That set of members will be able to consider issues in a different way from the Parliamentary Bureau, for reasons that we know and understand.

Karen Gillon (Clydesdale) (Lab): In relation to the suggestions that you have made, I point out that this committee is politically weighted and has a majority of members from the Executive parties.

Mike Watson: It has a majority of members from the Executive parties, but no one political party has a majority. Committees tend to operate differently from the Parliament as a whole. I would not say that this could never happen, but the record of committees has shown that it is less likely that what one might call an Executive vote would emerge from a committee than from the full Parliament—which, obviously, is what generally happens in plenary meetings.

Karen Gillon: So you accept that a committee such as this one would be acceptable.

Mike Watson: I think so. If we were to elect members of such a committee, as Bruce Crawford has suggested, I do not think that it would be acceptable if a whipped vote in the Parliament ensured that the majority of those members were from the Executive parties. The idea should be that members' bills can be considered objectively. By definition, such bills are distinct from Executive bills or committee bills. When an individual member introduces a bill, he or she should at least have a feeling that that bill has a wide measure of support—ideally in all parties. In the case of my bill, there were members who were opposed to it from pretty much every party and members who were in favour of it from pretty much every party. It is best to have broad support and that is best achieved if prioritisation is decided by a committee that does not see itself as operating under any kind of political bias. That would be the best way of ensuring that members' bills are separate entities from Executive bills.

Douglas Batchelor: Mike Watson has referred to the Westminster experience. There has been the risk of people from parts of the Parliament handing out a bill and saying to a member, "Will you bring this forward? It is not on the schedule." We will have to be careful how we regulate which bills are to go forward if that is part of the normal political process, as it certainly is at Westminster.

I would draw a distinction between what we might call members' bills and matters of broad conscience that the Parliament might want to deal with if they are not in the least bit political. The Parliament may decide that it wants to be able to deal with such matters. What generally agreed mechanism would it use, as opposed to the mechanism for members' bills? At the moment,

there are several hurdles for members' bills, such as the number of people who have to sign up to them—11 plus the sponsor. Then there is the potential of having motions across the whole Parliament for people to sign up to—like a sort of early-day motion—in order to show that there is a level of support for the bill. It is possible to place a hurdle so that 55 or 56 people have to say, "We want this to go further." A bill could go right across the Parliament before it got into the parliamentary political process, however you want to define that. There might be a useful way in which a committee such as this one could establish the will of the Parliament, before getting into issues of scheduling and priorities and everything else.

Karen Gillon: I am interested in the idea of handing down bills and the suggestion that it happens at Westminster but not here. When I say "handing down", I mean either from the Executive or within other political parties. I am under no illusion that many members' bills have come through as party-political ideas. I would hate people to hear us suggesting that we are much holier than Westminster on this issue. We have to be honest. Political parties have political priorities and they introduce bills that are based on those priorities. Members are a conduit for doing that.

Douglas Batchelor: I suppose that I was trying to be rather polite. If decisions on what bills will proceed are taken by the Parliamentary Bureau, members' bills will have difficulty in proceeding when they do not have a departmental backer.

Mike Watson: I accept the point about the Executive parties having to get legislation through and using members as a conduit for that. However, I am talking about members' bills that are separate from such a process. I believe strongly in that separation.

One of the papers for this meeting is a review of procedures in the Houses of Parliament. Paragraph 18 states:

"It is well known that many bills introduced as Private Members' bills are in fact 'handouts' from Government Departments—second-rank Government Bills which have not found a place in the main Queen's Speech programme."

If that ever happened in this place, I would argue that it was a corruption of the members' bills process. We are well ahead of Westminster in the way in which we operate and separate Executive business from members' business. That is exemplified in a number of ways, not least in the way in which we deal with Executive bills in committees. When a Westminster bill is at a standing committee—a strange name, but that is what they are called—the Government leads the campaign; a minister leads the bill all the way through the committee. No amendment to an Government bill at Westminster is ever agreed to

without Government support. In our committees, the only time a minister appears is when invited by the committee to give evidence on the same basis as anybody else. We should guard that jealously.

In my earlier response, I was trying to make the point that the separation between members' bills and Executive business is not meant in any way to interfere with the Executive's right and duty to get its business through. However, I would like members' bills to be kept, as far as possible, separate from Executive business.

Karen Gillon: I think that you are missing the point that I am trying to make. Other political parties use members' bills for their political purposes, just as the Executive may wish to do.

Mike Watson: Indeed, and I would not want members' bills to be politicised in that way, either. I would regard that as a corruption of the process. It is probably difficult to disguise that sort of thing. People will have their own political views and the motivation behind their bill will be up to them. I have not seen any evidence of the Executive trying to put a bill through as an individual member's bill—a committee bill may be used in that way, but not an individual member's bill. However, I take your point.

Mr McGrigor: In your case, did you consider yourself a conduit for Labour policy from Westminster, or was the bill your own?

Mike Watson: It was my bill; there was no Westminster connection. As committee members will know, I used to be an MP at the House of Commons. When I was there, a bill to outlaw fox hunting was introduced. It had the overwhelming support of individual MPs—not just Labour or Liberal Democrat MPs, but MPs from other parties. However, it was blocked because of the system. The irony is that, if the Westminster system had been able to operate efficiently and to reflect the views of a clear majority of members—and there was, in effect, a free vote—the bill would, as Douglas Batchelor has suggested, have become law before 1997. There would then have been no need for my bill in the Scottish Parliament, because the Westminster legislation would have covered the whole of the United Kingdom. The Scottish Parliament has a modern and responsive system, in which the views of a majority of members will prevail. That was not and still is not the case for private members' bills at Westminster.

The Convener: A proposal that we are considering is that the prioritisation of bills will be decided after the member has conducted a consultation on the proposal but before they have introduced the bill. Is that a reasonable point at which to carry out that process?

Mike Watson: Yes. One of the papers for today's meeting gives a criterion. It says:

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

- the breadth of support that a proposal has attracted".

It is not clear to me whether that means support among other MSPs or in the country at large. Are people meant to scan the letters pages of *The Scotsman* or *The Herald* to find out the views of the chattering classes, or are they meant to find some other way of determining whether there is broad support? I suspect that the paper refers only to MSPs and the parties. Any bill will be helped by having broad support, but there could be reasons why some bills that do not have broad support should still be able to be introduced.

Douglas Batchelor: The answer would depend on what was meant by consultation. If a consultation were to mimic the sort of full-blown consultation that is carried out for a Government bill, that would be labour intensive for the campaigning organisations and for parliamentary staff. I was suggesting that you might well want to have some process for finding out whether anywhere near a majority of elected members of the Parliament wanted the Parliament to address the issue, before getting into seriously large expenditure, which can be incurred just through a consultation. You may want the first hurdle to be 12 names. You may want the second hurdle to ask whether there is parliamentary interest in discussing the proposal further. If there is, you can allocate resources and consult more widely. However, leaping straight into consultation might prove difficult.

10:45

Bruce Crawford: The convener raised that issue because it is the hot point for the Parliament, in terms of applying its resources. Forgive me for saying so, but is not your idea that there should be another barrier, other than members having to sign up to a proposal in the normal way, a bit naive? If we asked a wider body within Parliament or Parliament itself to take an early decision, before the stage 1 debate, the Executive or a group of MSPs that wanted to kill off a bill before it had a chance to fly, and before consultation proved there was support for it, could do so. That would kill the bill before it had the opportunity to be discussed in Scotland.

Douglas Batchelor: There is a risk, but you take that risk with the full Parliament. Most bills have behind them a degree of public concern, however measured. You take a different risk if you simply go out to consultation, because a very small group has to decide beforehand which bills

are to be consulted upon. I was simply suggesting that there could be a process that let members of the Scottish Parliament sign up to a bill or not and say, "We want to know more about this before taking a decision on it."

Bruce Crawford: That is what stage 1 is about. That is when Parliament decides whether it will support a bill and allow it to continue to the next stage.

Karen Gillon: The bottom line for me is how this Parliament interacts with Scotland. If the suggestion is that we take out the consultation period because it causes financial problems for organisations that want to see in place a piece of legislation, I am sorry, but that argument is not good enough. I have seen bills go through the consultation process and be introduced, and the consultation changed the bill as introduced, which made the parliamentary process much easier, because people's views were taken on board before the bill was drafted and concerns were addressed. I experienced that with the Commissioner for Children and Young People (Scotland) Bill, which was a committee bill that was subject to wide consultation.

For me, the bottom line is that if there is no consultation before a bill is introduced, what is the point of introducing the bill, because you do not know what Scotland thinks? I think that what is being suggested is that we as MSPs should make a decision on the basis of 10 lines in the business bulletin that state that there should be a bill to do this, when we do not know whether Scotland thinks that it is a good idea.

The Convener: Ten lines would be something.

Douglas Batchelor: That is a fair comment. There might be a difference between a preliminary consultation and a detailed consultation. I can see exactly where you are coming from. The more detailed consultation would examine the legislative effect and how the bill would affect various organisations, which is a weighty process to put in place. Given the constraints on resources, the costs might mean that members want to pick and choose the first five or six bills before doing that, on the basis of less information. I was simply suggesting that you might want a system that enables you to measure the will of the Parliament, instead of going down the whole route only to find people saying, "We should never have been here. We've spent a fortune getting here. Why on earth are we here?"

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I can see where you are coming from. If the Parliament agreed the general principles, you would lengthen stage 1 and consult then, before the bill reached the floor of the Parliament. In your introduction, you said that you had some ideas

about how the process could be drawn in. As we have said, the process is lengthy—the wheels of justice turn slowly, but the legislative process also takes a long time. What ideas do you have for making the process smoother and easier?

Douglas Batchelor: From a business management point of view, scheduling when things are discussed and how long each period should take and determining whether or not it is appropriate to put a bill into a particular committee—bearing in mind its existing burden of work—or to set up another committee to deal with it, would provide a much more defined process. I noticed from reading the literature that various bills just ran out of time and fell while others were quite extensively drawn out.

I can understand that there would be conflicts in committees, with members saying that this is more important than that and asking why they are spending their time on this as opposed to that. Establishing a timetable for progress would give everyone a degree of certainty about the process and about when different stages would begin. That would be useful. If that meant establishing a special bill committee for a particular bill, that might be better than trying to put a bill into another committee, because at least the bill would have a clear timescale of its own.

Cathie Craigie: But the main role of the committees of the Parliament is to scrutinise legislation, so why would we have special committees to deal with particular bills? We already have such committees to deal with small bills—they existed in the last session and they will exist in this session.

Douglas Batchelor: Our bill was probably only one of five or six issues that the committee that we were dealing with was handling. For each meeting, the committee had to decide what it would spend its time on, where it would take evidence and who would provide evidence. Ours was one of several different pieces of work. It might have been a lot easier if the committee had had one job to do and a schedule by which to deliver it.

Cathie Craigie: Mike Watson made the point that the stage 1 report on his bill was produced by the Rural Development Committee and the bill was referred to the same committee at stage 2. He said that the Parliament should examine that and I agree with him. What effect did that have on the bill? Did it delay the process? Why did you reach that view?

Mike Watson: I cannot give you an impartial view, for obvious reasons. I felt that when the Rural Development Committee decided by six votes to five that my bill should not proceed—a view that was overturned by the full Parliament—and then got the bill at stage 2, that was not likely

to make stage 2 particularly productive. Stage 2 is when the amendments are lodged—of which there were hundreds, quite a lot of which were from committee members—and, in effect, the committee was saying, “Look, we’ve told you this can’t work. You’ve told us to go and make it work. We’ll do the best we can, but we are still of the view that it can’t work.” It would have been more appropriate for the bill to go to one of the justice committees, because many of the issues were legal issues to do with whether the bill was workable.

The situation was a one-off, because that is the only time that a member’s bill has been rejected by a committee at stage 1, but it needs to be examined. On whether what happened to my bill was appropriate, I feel that what happened was wrong.

I do not agree with Douglas Batchelor’s point about bills being referred to specific committees. They are referred already, and committees just have to work within their work load. In an ideal world, we would have longer committee meetings, or we might meet twice a week, but we cannot, so we just have to get on with it. My view is that the special committee would address prioritisation. It would not meet monthly. It might meet twice a year or something like that. I just wanted to separate those two views.

Karen Gillon: Prioritisation would deal with some of the problems. Whoever made the decision would have to ensure that the appropriate subject committee would be able to deal with the proposed legislation within the parliamentary timetable. If we are serious about saying that members’ bills are important, committees should give priority to them in the same way that they give priority to Executive bills, to ensure that they can make their way through the parliamentary process. Part of the prioritisation process should be to ensure that a committee is able to receive a bill and to deal with it appropriately.

Mike Watson: One idea that has been mentioned in some of the committee papers and which I think the committee considered in an earlier evidence session—I remember Cathie Craigie’s comments—is the possibility of Friday morning meetings to consider members’ bills. Such meetings would impact on individual members’ time relatively infrequently, as the need to attend would depend on the committee that was dealing with the bill. If the full Parliament considers a bill, it should do so on a Wednesday or a Thursday, but the committees might consider a member’s bill on a Friday morning—or at some other time; I do not have a fixed view on when. That is the system in the House of Commons—I think that 13 Fridays a year are used for private members’ bills.

Such a proposal might offer a way of unblocking the system to some extent. I am certain that it would not be popular with many members, but we must consider the importance that we place on members’ bills. Not all members would have to attend the Friday meeting; only a small number would attend and people would have to accept only a relatively small disruption to their normal Friday working. I make the suggestion, but I would have to consider its workability. It might present a way of securing more time for the consideration of members’ bills.

Mr McGrigor: When amendments to the Protection of Wild Mammals (Scotland) Bill were considered at stage 2, did you find—or did other people say—that the time between the lodging and publication of an amendment and the discussion of the amendment in committee was sufficient to allow amendments to be fully understood?

Mike Watson: The most honest answer is probably not. The timescale was very short—I think that the deadline for lodging amendments was Friday at 4 o’clock or 2 o’clock. There were also manuscript amendments and there were undoubtedly some fairly technical amendments that were difficult to consider without having had more time for preparation. That was an issue.

I stress again that this view is tendentious, but I felt that the process was dragged out, not least when the committee decided to have another evidence-taking session after it had dealt with amendments at stage 2. I do not think that the bill represents a good example of how bills should progress through Parliament—there are better examples. However, I hold up my hands and say that it would be worth while to examine and learn from my experience, from right at the start of the process, so that other members’ bills can benefit.

The Convener: To be honest, the issue that Jamie McGrigor raises would probably be better covered by the next inquiry that the committee has agreed to undertake, on the timetabling of legislation.

Douglas Batchelor: I will respond briefly to Mr McGrigor’s question. It can depend on the time and day of the week when suggested amendments are received, but if one has to consult lawyers about the meaning of an amendment and then go back to brief members about its implications, the process can take time.

Mr McGrigor: That is what I meant.

Douglas Batchelor: By and large, we managed to cope with those situations. However, to do so requires the involvement of an organisation of some substance, which has the backing of the right bodies. There will not be access to such facilities in every case. Timetabling could become a barrier to achieving the desired results.

11:00

The Convener: I thank Douglas Batchelor and Mike Watson for coming to give evidence this morning. The session has been useful and the questions that have been generated demonstrate that the committee will consider carefully the suggestions that have been made when we reach our conclusions in the inquiry.

We move on to hear from a series of panels of representatives from the political parties. First, Tommy Sheridan and Carolyn Leckie are here to represent the Scottish Socialist Party and Robin Harper and Mark Ballard are here to represent the Greens. We intended to have a second panel of representatives from the Scottish National Party and the Conservatives, but unfortunately the Conservatives cannot attend this morning, as I said earlier. We will also hear from Patricia Ferguson, who will represent the Executive parties.

I give the witnesses a moment to settle down and thank them all for coming along to give evidence. They may make a brief statement about their party's position on the proposals for the prioritisation of members' bills. We will then open up the meeting to questions from committee members. I will start with the Greens, as they represent the larger of the two parties.

Mark Ballard (Lothians) (Green): Thank you. As I knew I would be a member of this panel, I thought it more appropriate while Mike Watson and Douglas Batchelor were giving their evidence to attend the meeting as a panellist rather than as a committee member. I hope that that is okay with committee members. I will return to the committee when this part of the meeting is over.

I first encountered the issue about the non-Executive bills unit when I became the Green party representative on the Parliamentary Bureau. In the first session of the Parliament, the bureau agreed a proposal for dealing with the prioritisation of bills—committee members have seen that paper. The paper was passed to the current bureau, which could not reach agreement on it.

For the purpose of the current bureau's discussions, I had to go into some of the history of the proposal. It seemed to me that there were two key issues: the provision of parliamentary resources; and the availability of parliamentary time. There were specific bottlenecks in relation to both issues, so we needed to find a procedure that would deal with those bottlenecks and present a way of prioritising within them.

The bureau discussed the current, informal system of prioritisation, which was set up after NEBU had been established, when officials in NEBU asked the Scottish Parliamentary Corporate Body for guidance on how they should prioritise

bills. As the committee knows, the corporate body set out a prioritisation system that took account of five key points: first, whether the bill was within the legislative competence of the Scottish Parliament; secondly, whether there had been external consultation on the proposals; thirdly, the likelihood of legislative action on the matter by the Westminster Government or the Executive; fourthly, the breadth of support for the bill; and fifthly, the potential size and scope of the bill.

The bureau agreed that there was a need for a formal, rather than an informal, prioritisation system and for a discussion about how that formal prioritisation should be carried out. There was also a question about whether the answer would be a case of proposing a system for the prioritisation of NEBU's time or proposing a wider system of prioritisation for members' bills, as it was clear that the main bottlenecks—in particular, the bill drafting process—related to NEBU's time, although to some extent there was also a wider issue about the prioritisation of all members' bills.

Which bodies should make the decision? The business managers got together to try to reach a consensus on the bureau's position on NEBU. That discussion represented my first experience as a bureau member of an attempt by the bureau to go beyond its business of setting the Parliament's timetable, and it demonstrated the limitations of the bureau as a body for making such decisions. The bureau's function is to determine the Parliament's timetable and its meetings usually last for about half an hour. That is completely different from attempting to reach a consensus on a matter through discussion and taking evidence from witnesses. The bureau was not effective when it tried to do that.

I think that the reason why the Scottish Parliamentary Corporate Body does not want to do it is because it is not its job to take those kind of decisions. Its job relates to parliamentary resources and the parliamentary estate. That leaves us with the option of having either a new body of the sort that Mike Watson talked about or a committee of the Parliament—not NEBU, not the SPCB and not the Parliamentary Bureau—that decides on the matter.

A clear distinction should be drawn between stage 1, when the Parliament gets to decide on the principles of the bill, and what would happen in a committee whose job was to prioritise time and resources. I have discussed the matter with my members and the Green proposal is that there should be some kind of back-bench committee that takes limited evidence on NEBU bills, considers whether they meet the thresholds, discusses resources with the SPCB, discusses with the Parliamentary Bureau and the relevant committee the time issues and makes a

recommendation to NEBU on how the work should be prioritised. Similar processes would be needed for non-NEBU bills, but the recommendation would go to the committee that was dealing with the bill rather than NEBU, which would not be involved to the extent that it is with bills that fall under its remit.

We would have to be careful that the back-bench committee did not become a stage 1 committee. It would consider all the aspects of a bill, including the resource and time issues. We believe that our suggestion is the most effective way to retain the important provision of members' bills without appearing to develop a form of stage 0 process or to block the right of members to introduce bills.

The Convener: The Scottish Socialist Party representatives may now make a contribution. Tommy?

Carolyn Leckie (Central Scotland) (SSP): Just to let you know that, as the SSP's representative on the Parliamentary Bureau, I would appreciate the opportunity to talk about the process since the paper was first published.

The Convener: It is entirely up to you how you structure your presentation.

Tommy Sheridan (Glasgow) (SSP): I will be brief, which I hope will allow time for Carolyn Leckie to make a couple of comments.

The Procedures Committee is dealing with what I consider to be the jewel in the crown of the Scottish Parliament. Members must be dead careful to protect it. The right that was enshrined in the Scotland Act 1998 and the procedures that built this Parliament allow a back bencher to introduce an idea that could become law. That is an important aspect of our Parliament.

Mike Watson gave evidence about a bill whose intention was defeated in Westminster but was able to be delivered in Scotland. When Dennis Canavan tried in Westminster to introduce a bill to abolish warrant sales, it was defeated, but the Scottish Parliament managed to pass the Abolition of Poindings and Warrant Sales Act 2001. We are way ahead of Westminster in this regard, which is why I do not think that the use of Westminster examples is necessarily helpful. It has a bad system for dealing with back-bench proposals.

I hope that the committee examines carefully whether the system is broke before it tries to replace it. If there are questions about resources in relation to NEBU's ability to provide legal advice on the drafting of bills, should not resources be found to allow that to take place? Any prioritisation that is decided on by a committee—even if it is the proposed back-bench committee—will run the risk of being labelled as being political. Who would

have prioritised the Dog Fouling (Scotland) Bill? Who would have prioritised even the Protection of Wild Mammals (Scotland) Bill?

At the time, most of us heard the criticism of our constituents that the Parliament was not dealing with serious matters and was concentrating too much on section 2A and foxes. I thought that the Protection of Wild Mammals (Scotland) Bill was an important bill and Parliament had the right to decide that. However, if a committee had responsibility for prioritising bills, it might come under pressure from people such as those who thought that fox hunting and dog fouling were not that important and should not be a priority. I think that it should be the right of Parliament, not a back-bench committee or any other committee, to decide what priority to give bills.

I remind members that there is already a threshold. A member must get 12 members to sign their bill. That is an important threshold for every member, particularly members of small parties.

The committee evidence-taking process is absolutely vital for any bill. Even if members' minds are not changed by the evidence that is heard, their thinking is influenced by the information.

I appeal to the committee to be possessive about what we have developed. This jewel in our crown must be defended and we must be careful about any attempts to dismantle or undermine it.

Carolyn Leckie: Some of the issues involved in this matter are complicated. I have had to learn a lot since the paper was presented to the new Parliamentary Bureau. There has been a process of discussions and negotiations. The proposals that were made by the previous Parliamentary Bureau caused me concern. I still do not understand why the four parties that were represented agreed to those proposals in the first place, as they seem to undermine severely the rights of back benchers to introduce legislation.

It was difficult to ascertain the extent of the problem that was perceived to exist in the system. At the beginning, we were told that the big difficulty was the resourcing of NEBU. When we dug a wee bit deeper to try to find out how bad that problem was, it became apparent from the statistics that, although there was potential for a bottleneck to develop, as happened in the previous session, there was a possibility that the process could be managed. The number of bills that are proposed is much larger than the number that are consulted on and get to the drafting stage. If there is to be a change in the management of the system or the prioritisation process, it should be proportionate to the scale of the problem, in so far as there is one.

It became apparent that the issue was more to do with parliamentary time and parliamentary prioritisation than with NEBU's resources. I got the impression that there was pressure on NEBU and the resources of the Parliament at stage 1. I was not persuaded that there was a need for what might be thought of as a stage 0.

That brings me to the concerns that were raised in the meetings of the Parliamentary Bureau. The Parliament's founding principles were about engaging with the public, civic Scotland, trade unions and so on. It would not be appropriate for the Parliamentary Bureau to have a schedule of proposed legislation. As Mark Ballard said, the Parliamentary Bureau does not have the time to examine in detail the merits of such legislation. What would happen is that the bureau and the Parliament would be presented with a list of members' bills and then have to take a political decision on the merits of the bills. That would not allow civic Scotland, the trade unions and the wider community the opportunity to influence the process and, to be frank, to achieve legislative change through the Parliament. For example, the Abolition of Poidings and Warrant Sales Bill did not attract the support of the Executive initially but the pressure that was brought to bear on the process because the public were engaged in it meant that it was possible to have that legislation passed.

There must be a detailed and finite examination of the scale of the problem and at what point difficulties might occur. It should be understood that the problem does not occur all the time; there is merely the potential for a problem to arise. I acknowledge that there is the potential for prioritisation at that stage. Paul Grice's evidence was interesting with regard to the scale of the problem. I noticed that he acknowledged that the SPCB has given NEBU extra resources and has the facility to give it even more.

As for parliamentary time, we have to consider what has been scheduled in this session, since I was elected. There have been more debates with no vote at the end of them and debates on subjects that the public might not see as relevant to the work of the Parliament if they were to prioritise them. There may be some scope for more allocated time to consider members' bills.

I shall leave some of the more detailed comments until we come to questions, but I certainly felt when we had those discussions that what the previous bureau—particularly the Executive members—had proposed was a sledgehammer to crack a nut. There is a real risk of undermining the Parliament's founding democratic principles and the public's ability to influence what goes through the Parliament, which is essential to the Parliament's aspiration to be

much more open and democratic than Westminster.

The Convener: Thank you for your opening statements. Robin Harper will have the opportunity to pick up any other points when we ask questions.

Bruce Crawford: Each member can propose two members' bills. If that potential were used to its maximum, the prioritisation process that you examined would obviously need to become a reality. I realise that prioritisation issues would arise only if the circumstances that you have considered pertained, but, if that happened, what prioritisation process would you prefer? If the matter were to be decided by a committee of back benchers, how would that committee be formed?

11:15

Carolyn Leckie: Before any mechanism or process is implemented, there should be a serious assessment of need and of the difference between the potential and the reality of the situation. I have some principles in mind that I think could be fulfilled in a number of ways. I do not think that the bureau or the corporate body should handle the process, as there should be an examination of the merits of each bill. At that stage, a distinction should be made between competence and the bill's merits in an apolitical sense. It is absolutely crucial that the ability of the public and of civic Scotland to influence the legislative process should be, as Mike Watson put it, jealously protected.

The question is when the issue becomes party political. If priorities were decided by a back-bench committee, I hope that an obligation on that committee not to strangle a bill at birth would be built into the standing orders. Proposals should not be blocked on the basis of party-political motivation; they should be helped to progress. Before a party-political view is taken on a proposal's merits, the committee should take a genuine, overall look at that proposal, try to find the time for it and build it into the Parliament's schedule.

That whole process of engagement is the most important thing to protect. If there were a back-bench committee, I would prefer that it came into play only when necessary; it is not clear that it would always be necessary. The committee should not be party weighted, but should be made up of people who represent the parties. Let us face it, if it operated in the way in which the bureau operates, the Executive would dominate decisions on what business would be taken and how that business was programmed. Such decisions would be put to the Parliament in a business motion and the vote on it would be whipped in favour of the

Executive. That would strangle ideas at birth and would not be appropriate or in keeping with the Parliament's founding principles. I would prefer the committee not to be party-politically weighted. It should genuinely try to facilitate legislation, rather than thwarting it.

Robin Harper (Lothians) (Green): I will say a few words about NEBU. Its prioritisation of proposed bills in the previous session was not party political in any way; the priorities that it was forced to set were based on the available evidence and a rational appraisal of whether the bills would be fit for discussion. I pay tribute to the work that it did on the Organic Farming Targets (Scotland) Bill, which I proposed. NEBU was painstaking and accessible; without the work that it did on the bill, there would have been no bill. However, getting to the stage of introducing the bill took three years. I was well aware of the fact that NEBU had to prioritise, which must have taken up some of its time, as it had to remain aware of committees' programmes and occasionally negotiate quietly about whether there would be time for a bill to progress. That should not be NEBU's job. However, we must remember that, because of the flexibility that was afforded to NEBU, the system worked, although it was not entirely transparent.

Any new system needs to have flexibility built into it. The job of a back-bench committee would be not to decide which proposals will progress and which will not, but simply to do the same thing that NEBU has had to do: prioritising the proposals that are placed in front of it and hearing from committee conveners on their committees' work programmes and from the members who lodged the proposals. That process would have to be thorough and might be complicated, but the committee would meet no more than two times a year, if that. That is the bottom line.

Mark Ballard: Transparency is central. We have a prioritisation procedure at the moment, but it is not transparent and open; prioritisation is carried out by NEBU and the Scottish Parliamentary Corporate Body. From working with Robin Harper, I know that he was at times frustrated at the fact that the basis on which proposals were prioritised was not clear.

The evidence from the representative of the League Against Cruel Sports indicated that consultation is a major hurdle. To carry out a proper consultation takes time and effort. Because I worked with Robin Harper, I saw the thoroughness of his consultation on the Organic Farming Targets (Scotland) Bill and I suggest that that is not something that any member would undertake lightly or would be able to do more than once in a parliamentary session. Consultation is a key hurdle; it is about ensuring that the Parliament

is doing things that relate to what people outside the Parliament want done and that match the reality outside the Parliament. I take the point about the potential to introduce two bills in a parliamentary session, but running a proper consultation that would meet the standards of any prioritisation procedure, whether the informal one that we have at the moment or a more formal one, would be a major hurdle.

Bruce Crawford: One question that I asked has not yet been answered—I do not know whether our witnesses are trying to dance on the heads of pins or to avoid the answer. If a committee of back benchers is to prioritise bill proposals, how do we form that committee? Carolyn Leckie said that the committee should be non-party political, but that does not answer the question, which is the nub of the issue and to which we need an answer.

Tommy Sheridan: I know that you are asking the question for effect, in relation to considering what might happen, but surely we should also be asking why we did not have such a problem in the previous session and whether we will ever have that problem in the future.

Karen Gillon: We did have that problem.

Tommy Sheridan: Sorry, wait a wee minute. There are 129 members of Parliament. Take away our ministerial colleagues and there are 109. There have never been 218 members' bills. That is what I am saying in response to the question that you are posing. Every member has the right to oppose every business motion that is presented to Parliament and every member has the right to force a vote on every motion that is presented to Parliament, but that does not happen.

I hope that we have the maturity to deal with the reality of the situation. I suggest that, if a committee is formed, the process could become very political. For example, if such a committee prioritised 10 bills of the 20 that were before it and it so happened that none of the 10 bills came from a Scottish Socialist Party back bencher, a Green back bencher or an independent, the cry would be, "That is a politically weighted decision." Is the problem that NEBU cannot prioritise bills within its current resources? If that is the case, does NEBU need more resources? Do we need to have such prioritisation?

Bruce Crawford: The question was how we form a committee to prioritise bill proposals, if such a committee is needed. I understand that we might not need a prioritisation process, but if the Procedures Committee decides that a committee of back benchers is required to prioritise bill proposals, how would you form it to avoid the problems that you are suggesting might arise? I have not yet had a response on that point.

Mark Ballard: I would say, partly in reply to Tommy Sheridan's comments, that we already have a prioritisation procedure: it is informal and it is not transparent. We need a procedure that is transparent, because currently we cannot tell why, for example, it took Robin Harper's bill a long time to get through NEBU.

There are two relevant precedents. One is the mechanism for selecting members of the corporate body, which is elected by the whole Parliament, and the other is the mechanism for selecting members of committees to consider private bills, which I think is done through bureau motions. I do not have a preference; I can see that both mechanisms have advantages and disadvantages. We would expect members of such a committee to act not as party representatives but as representatives of the Parliament as a whole, just as we expect members of private bill committees or of the corporate body to act in that way.

Ultimately, if we all play the issue purely as a political game and do not bring in wider considerations, there is no chance of progress being made on anything. We must trust that, if members want that kind of responsibility, they will handle it properly. There are advantages and disadvantages to both the corporate body method and the private bill method.

The Convener: I ask Carolyn Leckie to deal specifically with Bruce Crawford's question. Members want to move on to other questions.

Carolyn Leckie: Specifically on the point that has been raised, it is crucial to make a distinction between a decision to allocate NEBU resources to a bill and a decision to allocate parliamentary time to a bill. That is where the issue becomes muddled and that is where I start to get a bit upset.

The Convener: There will be an opportunity to comment on that in answer to other questions. The issue that I would like you to address now is how a committee to prioritise bill proposals would be appointed. Bruce Crawford is asking about that specific issue. I am sure that there will be opportunities to raise other points.

Carolyn Leckie: If I am forced into expressing a position on that, I would say that prioritisation is not solely the remit of MSPs. There is a requirement to consult wider Scotland—trade unions and civic Scotland—about how it would like such a process to be conducted. Those people were in there at the founding of the Parliament and the issue has implications for everybody. Their views should be sought.

If pressed, I would say that my individual view is that, if decisions on prioritisation have to be separated from the staff of the Parliament and from NEBU—I understand that there is the

potential for pressure to be put on staff and for them to feel that they are having to make political decisions—the decisions should be taken by representatives of the parties and by the independents, but not on a party-proportional basis.

Karen Gillon: When do you think the financial viability and cost implications of a bill should come into play?

Tommy Sheridan: Could you repeat the question?

Karen Gillon: Obviously, any bill has a financial consequence. The assessment of the financial consequence is an important part of the scrutiny of a bill. When should that kind of information be made available to the Parliament?

11:30

Tommy Sheridan: The system has to operate as it does at the moment. Every bill has to have a financial memorandum attached to it, which has to outline as fully as possible the financial consequences of the bill. At stage 1, the Parliament needs to know what the bill's financial tag is. If a bill passes stage 1, the Executive can continue to oppose it on the ground that it would draw on the consolidated fund. That has never happened, however, and I do not think that it will happen, because it would be bad play for the Executive to do that. I do not think that the issue has posed a huge problem.

Robin Harper: The only problem in the case of the Organic Farming Targets (Scotland) Bill was that the financial implications relied to a great extent on variations in the common agricultural policy, so it was difficult to forecast exactly what the financial consequences would be over a period of six to 10 years. The timing of the introduction of the financial memorandum is perfectly correct, as is the demand that is made of us that we should at least make a reasonable assessment of how much a bill would cost.

Mr McGrigor: My question is for Robin Harper in particular, as it is about the passage of his bill. I have to declare an interest as a farmer. I think that the consultation process is vital, but, in the case of your bill, Robin, it might not have been undertaken deeply enough with the agricultural community. It appeared to those who were opposed to the bill that a lot of the stuff came out after the initial consultation took place. Was your consultation deep enough? If, at the start of the consultation process, you had known more about the opposition to the bill that emerged later, would you have gone about things differently?

Robin Harper: I think that our consultation was extremely thorough. We can rely only on the

responses that we get. There was plenty of time for all parts of the agricultural community to respond. If there were any gaps, I do not think that they can be blamed on the process that we engaged in, which was extensive. If anyone's views were not represented in the consultation, that was their fault; it certainly was not our fault.

The first meeting on the bill was held in this room. Seventy representatives of the agricultural community came from all over Scotland to listen to what we had to say. Some of them came to support us, some to reserve judgment and others not to support us. The consultation progressed from that point. I was a bit disappointed in the number of responses that we received. However, I do not think that the blame for that can be laid at the doors of NEBU or of ourselves. Everybody knew about the bill or at least we tried to ensure that as many people as possible knew about the bill.

Mr McGrigor: What I was trying to portray was the fact that everybody knew about the bill but nobody knew what the bill really meant. The initial consultation was not so much—

The Convener: We are beginning to stray into too much detail. We should stay with the general principles of the issue and not stray into the specifics of a bill. There might be a question about whether we need to consider how a bill's proposals and its general principles are framed, so that the consultation before it is introduced is more meaningful. That might be a way of phrasing what Jamie McGrigor is trying to get at.

Robin Harper: I think that I have grasped exactly what he is getting at—he was saying that there was a relatively short time for further consultation on the bill in its final draft. I take the point. We would have liked to have had more time, but we did not, because we had only a few months to go before the end of the Parliament's first session.

Tommy Sheridan: A bill becomes a bill only after the pre-consultation has taken place; the committee stage is the next stage of consultation. It would have been for the committee that considered the bill to have dealt with the point that Jamie McGrigor raised. I am not sure that the weakness that he is identifying is relevant.

Mr McGrigor: I am talking about what happened in practice.

Karen Gillon: A genuine concern that might reflect where Jamie McGrigor is coming from is that the fact that there is opposition to a bill does not mean that it should not get through stage 1. Not everyone will like a bill; there will be opposition to it. It is important that the consultation is able to reflect the fact that there is opposition as well as support.

If there were to be a prioritisation exercise, where in the process do you think that it should come? I do not think that it is acceptable that it takes a certain period for an Executive bill to go through Parliament but that it can take much longer for a member's bill to go through. Part of my argument on prioritisation is to ensure that a member's bill can get through Parliament in a reasonable time and be scrutinised and consulted on in the same way as any other bill, so that its consideration is not dragged out for party-political reasons. At what point do you think that the prioritisation should take place?

Tommy Sheridan: If you were to offer me a choice between a member's bill being considered, even though that took longer, and a member's bill being prioritised and never being considered, I would much prefer the former. In other words, if you are saying that any member who lodges a proposal for a bill that secures 12 signatures, who carries out a consultation and who then introduces a bill will have their bill considered, even though the cost is that that will take a long time, that is a golden guarantee. If, on the other hand, you are saying that there will be prioritisation and that, of the 20 members' bills that are introduced, for example, only 10 will ever be considered, that would be a big loss.

Karen Gillon: In that year?

Tommy Sheridan: As we run a system of parliamentary sessions, I think that we should make a determination for three and a half years rather than for a year. There is obviously a cut-off point in relation to the last six months of a session. If you are saying that a member's bill that is introduced will be allocated parliamentary time at some stage during the three and a half years, that is an important guarantee—as long as the proposal for the bill gets over the obstacles of securing 12 signatures and of being subject to a consultation. A committee might decide to have a small or a wider consultation on a bill; it should have the autonomy to decide that. However, the guarantee that a bill will be considered is dead important.

Karen Gillon: Your position is basically that you do not want any prioritisation.

Tommy Sheridan: My problem is that I cannot see how a system for prioritisation would be anything other than political. The existing mechanism for prioritisation is largely depoliticised, because NEBU carries out the process on the basis of resources; it does not prioritise bills on the basis of what party they have come from. My worry is that, if a committee is established, pressure will be brought to bear for political prioritisation. Members' bills were supposed to be taken out of that area altogether so that members such as Cathie Craigie and I

could present ideas on the basis that they might some day turn into legislation.

Karen Gillon: Prioritisation is not just about NEBU. If a member found someone else to draft their bill, that would take NEBU out of the equation, because in such circumstances it would have no role. I do not think that NEBU prioritises; when someone takes information on a proposal to it, it tries to take that information through the process. Although NEBU is under a lot of pressure at some points in the parliamentary session, it is probably not under such pressure at the moment, because, although many members have lodged proposals, those proposals are either going through consultation or they are not. You are saying that if we leave the prioritisation to NEBU and a member has the support of an outside organisation, their bill will go on to the parliamentary timetable much more quickly than anyone else's bill.

Tommy Sheridan: The example of what happened to Mike Watson and me is instructive in that respect. Neither of us could consult NEBU, because it had not yet been established. Fortunately, both of us had outside help: I was helped by the Govan law centre and Mike Watson was helped by the League Against Cruel Sports. It would have been impossible to have reached the stage that we did without that support. That is a fact of life.

However, instead of NEBU having to prioritise every proposal for legislation that it receives, it could simply say to the Scottish Parliamentary Corporate Body or whatever, "We've had X number of proposals. If we are to turn them into bills, we'll need to consult X number of people to draft them, which means that we need X amount of resources." The question is whether we provide those resources to ensure that NEBU does not have to prioritise or whether we say, "No, sorry, we can't afford all that, so we're going to have to cut the numbers by four or five." I am worried about the latter approach, because that is where the process will become politicised.

Karen Gillon: In the real world where I live, money does not grow on trees. At some point we have to take the costs of a proposal into account.

Tommy Sheridan: In the real world—

Karen Gillon: Hang on—let me finish. Why should a bill that has political support outside the Parliament—no matter whether we are talking about the League Against Cruel Sports, the Govan law centre or some other organisation—have priority over a bill that might not have the same political support or the same finances for drafting? Why should that bill not receive the same parliamentary priority as, for example, your bill did?

Tommy Sheridan: The simple answer is that it should receive the same priority. You are absolutely right to say that money does not grow on trees. However, none of the evidence so far has illustrated the depth of the problem or shown that the system cannot cope with the situation because it costs £5 million or whatever. Many assumptions and statements have been made, but no hard evidence has been provided. As a result, I am appealing to the Procedures Committee to ensure that no bill is made more of a priority simply because it is supported by business or other organisations outside the Parliament. If NEBU is required to draft a bill, it should be given the resources to do so.

Cathie Craigie: I mean no disrespect to anyone else, but my questions are for Tommy Sheridan and centre on how the experience from the previous parliamentary session compares with the experience in this new session.

In your introduction, you said that no one should try to remove an individual back-bench MSP's right to introduce a proposal. I do not think that committee members or anyone else in the Parliament would want to stifle ideas. The issue is how the Parliament manages the business of allowing those ideas to grow. NEBU and the chief executive and clerk of the Parliament have brought to our attention the possibility of bottlenecks and that the process could come to a halt or could be considerably slowed down. Are you saying that the system for members' bills in the previous parliamentary session was acceptable and that we should retain it?

I want to put to all the witnesses a question that Bruce Crawford asked earlier. Mark Ballard mentioned Robin Harper's experience in introducing the Organic Farming Targets (Scotland) Bill and wondered how any one member would have the time to introduce more than one member's bill in a session. Should we consider changing the rules to ensure that a member can introduce only one bill in a session? Would that help to prevent bottlenecks?

Tommy Sheridan: I suppose that I am asking the committee to ask itself how big the problem is before it determines how—

Cathie Craigie: We are asking ourselves that question and we have been asking for evidence. We know what we are going to do and I am asking you these questions, Tommy, so that we can gather the information we need to make decisions.

11:45

Tommy Sheridan: I am glad that you are asking, because the issue is vital. You ask me whether what happened in the previous session was acceptable. The answer is no. When we were

all first elected, there was no non-Executive bills unit. Karen Gillon's point about the disadvantage to a member who had an idea but was not supported by an organisation outside Parliament is valid. Members did not have anyone inside Parliament to approach. NEBU filled that gap. It was established to assist members in the specialised area of drafting bills. The question now is this: is NEBU resourced sufficiently? Can it manage the proposals that come to it?

There is a template for consultation on ideas. I think that when a proposal arrives, a consultation should be carried out to find out whether there is wider support for it or whether advantageous comments can be made about it. Once the consultation has been carried out and the member wishes to proceed towards producing a bill, I argue that the Parliament should be duty-bound to provide resources to draft the bill.

The Parliament should not say "Your bill can be drafted" to one member and "Yours cannae" to another. To me, that infringes the essence that I talked about earlier—the right of every back bencher to see an idea through to the stage of possibly becoming legislation. The Parliament may subsequently reject the bill—that, of course, is up to the Parliament—but the member should have the right to see their idea enshrined in a bill on which the Parliament can decide.

People say that that would take more resources. I do not know how many more resources would be required—I have not seen any evidence. But I tell you what—given what has been spent on the Parliament building—I would say that this bills process is much more important than where we actually meet. If we are to spend money on anything, it should be spent on supporting the right of a member to introduce a bill.

You asked whether we should change the rules and say that instead of having the right to introduce two bills, members should have the right to introduce only one bill. I do not know. Again, I would need to see evidence to show that the system was bursting at the seams and could not cope. I have not seen that evidence.

Cathie Craigie: Once NEBU was in place, it worked on a first-come-first-served basis, as I understand it. A bill would then go to the Parliamentary Bureau, which would timetable the bill into committee business and parliamentary business. Are you saying that we should leave things like that?

Tommy Sheridan: Any other system—especially the ones that have been discussed today—involves a politicisation of the process. The process that you have just described is depoliticised because it could be you, Cathie, or any other member of your party or another party,

who comes forward with an idea. A bill that is first in the queue will usually make quicker progress, although there can be complications that mean that some proposals take longer and fall back in the queue. However, there is a guarantee that, in the three-and-a-half-year period, the proposal will be considered.

Cathie Craigie: I am not a member of the Parliamentary Bureau, but I think that it was considering something similar to that and then bringing proposals to the Parliament with recommendations on how to proceed. Is that not acceptable to your group?

Tommy Sheridan: When we talk about prioritisation, we have to ask who prioritises and what the basis for prioritisation is. Do you accept that that will be political? Whoever sits on the body that decides will be lobbied by whichever members have bills. They will say, "Listen, gonnæ make sure my bill is high up the list? If you don't, I'm gonnæ speak to the rest of your colleagues in the group." You know that that happens. We like to think that we would all be above that but you know that we are all sometimes susceptible to that kind of thing. If you are asking me whether the system that is being proposed is preferable to the current one, my answer is no.

The Convener: I am conscious that we are running out of time. I ask members to keep any further comments as brief as possible.

Robin Harper: Okay. I will summarise. I do not think that we would be against the idea of a limit of one bill proposal per back bencher. That would be sensible. We need to address two things. First, there needs to be greater transparency in the way the system, including the corporate body and NEBU, works. Secondly, it would be sensible to set up a committee that would, at least once a year, take some of the responsibilities that are presently assumed by, or thrust upon, NEBU, either to homologate the decisions that it has made or—if things were becoming a problem—to take a look at some measure of prioritisation. As to how that committee should be selected, I go along with Carolyn Leckie's suggestion that its membership should not necessarily be proportionate to the number of members in each party in the Parliament. Perhaps there should be at least one member from each party on that committee and maybe two or three in some cases.

Cathie Craigie: Can you expand a wee bit? Why should not the committee's membership be proportionate to the number of members in each party in the Parliament?

Robin Harper: Not simply to allay any fears, but to ensure that the committee would not reflect Executive priorities.

Cathie Craigie: But why should the committee not reflect the democratic wishes of the electorate who elected every one of us to the Parliament?

Robin Harper: The committee would be composed of democratically elected members of the Parliament. That would be enough.

Cathie Craigie: Would not that be a dangerous precedent to set?

Robin Harper: The House of Commons Public Accounts Committee does not have a Government majority—and for a very good reason.

The Convener: I shall ask a final question that will give you the chance to sum up any other issues that you feel you have not had the chance to comment on.

I am concerned about the rights of all members in all parts of the Parliament. Some of the problems that I foresee are not so much to do with the resources of NEBU, as with Parliament time as a whole and committee time in particular. Committees have several roles in the Parliament: scrutinising legislation proposed by the Executive and members is one of them; others include scrutinising the activity of the Executive as a whole and conducting inquiries.

If the agendas of committees were effectively dictated by the fact that they receive members' bills in which they have no say, would that not reduce the right of the members of those committees to pursue the issues that they are concerned about? In that sense, is there not a need to have some form of prioritisation to ensure that a certain committee does not become overburdened by members' business that it has no say in, simply because that business happens to fall within its remit? Is not that a reason for having some form of prioritisation in the system, to ensure that the balance of business throughout the Parliament and among committees is realistic and allows the Parliament and the committees to conduct their entire business?

Carolyn Leckie: I will try to summarise and distil some of the issues that it is important to grapple with. In that circumstance and in the other scenarios that have been portrayed, there is a responsibility on the part of the committee, the bureau or whoever to demonstrate the scale of any perceived problem—any actual problem—and to ensure that it is quantified.

I refer to a paper that was published in October 2002, which gives some of the background and research that was used to inform the bureau that made the decisions and proposals for the next session. I hope that members have a copy of the paper. Paragraph 4 begins:

"In the absence of any build-up of empirical data"

on the problem or its scale. There is still an absence of empirical data. In all these considerations, you must ensure that the so-called "problem" is quantified. Whether that is NEBU, parliamentary time or committee time, it needs to be quantified, and any strategies that are considered to deal with it need to be proportionate to the scale of the problem.

The Convener: On that specific point, is it not better for the Parliament to have a system in place that could deal with the problem if it arises? If it does not arise, it is not a problem. You are suggesting that there will not be a problem, so there is no need to have such a committee. However, rather than crisis manage problems, would it not be better to put something in place that could deal with problems that might arise?

Carolyn Leckie: I would need to be reassured that such a system would kick in only when there was a proven problem, rather than in the way the Executive proposes. The point that I made earlier is important: there is a big difference between a decision about allocating NEBU resources to a member's bill and a decision not to allow such a bill to progress. The previous Parliamentary Bureau's proposals tried to encompass a bill's ability to progress and to tie that up somehow with NEBU resources, but the two things are different.

If the Executive's proposals were to reach fruition, every proposal for a member's bill—not just based on the decision about whether to allocate NEBU resources—would be in a list that went to the bureau and the Parliament. There would be no debate on the proposal, as parliamentary time for such a debate would not be allocated. Individual ideas would not get their day in the Parliament. The proposals use a sledgehammer to crack a nut and mix issues that are entirely separate. The committee issue is also entirely separate.

The other proposed criterion, which is, as far as I know, informally used by NEBU—although I am not sure whether it has caused significant problems up to now—is whether the Executive or Westminster intend to legislate at some time on the subject matter of the proposed member's bill. There does not even need to be a timetable for such legislation or an agreement on what its objectives might be, as the criterion says only that the member's bill must not cover the same subject area as the proposed legislation. I would strongly object to the frustration of any member's bill on the basis that either the Executive or the Westminster Government had put their hands up and said, "Oh! We might be considering legislating in that area some way down the line." We should avoid any such criterion at all costs, because there is potentially a big difference between what a member might propose and how Westminster or

the Executive might legislate on a particular matter.

I reiterate that the matter is fundamental to the founding principles of the Parliament and to our wider engagement with the public, trade unions and civic Scotland. I think that we should undertake work to quantify the scale of the problem—if there is one—and have a proportionate response to it.

Mark Ballard: Earlier, I said that when I first encountered the problem as a member of the bureau, two major bottlenecks were identified: the allocation of NEBU time; and the allocation of committee time. To some extent, two opposing solutions to those problems are currently in place. On one hand, committee time is entirely “demand-led”, as the clerk’s paper put it. If someone introduces a bill, they can demand the time from the appropriate committee. On the other hand, NEBU’s situation is resource prioritisation led. Tommy Sheridan argued strongly that that system should be changed, to make NEBU’s time as demand led as committee time currently is. We have to strike a balance; there will be situations in which prioritisation is needed and we need to have transparent systems in place to deal with those situations—in relation both to committee time and to NEBU time. Currently, we do not have a transparent system. A committee of back benchers could be transparent and ultimately accountable in a way in which the corporate body and NEBU are not.

Cathie Craigie: I am concerned that Carolyn Leckie suggests that people might go away with the impression that we are in some way trying to cut down on the Parliament’s consultation processes. I would certainly have no truck with that and I am sure that the bodies out there who are interested, such as trade unions or anyone else, are well aware of how the Parliament consults. If we have not had any feedback from wider civic Scotland on the issue, I am sure that that is because people regard it as a matter for the internal management of the Parliament rather than because this committee does not want to seek evidence. I would be happy to hear from anyone who has an opinion on the matter.

I do not know whether we have made it clear this morning that the issue is not just about NEBU’s resources; it is about the whole Parliament’s resources, including those of the committee system. We have been asked to consider the resources, not just in relation to the number of bills that the people in NEBU can process at any particular time, but in relation to how committees manage their business. Does Carolyn Leckie accept that we are talking about a resource issue for the whole Parliament?

Carolyn Leckie: I am concerned that all those issues are separated out. The problem that we found when we started our discussions in the bureau was that there was confusion. At the start, the rationale for the proposal was couched in terms of whether NEBU resources were allocated to the progress of members’ bills; parliamentary time and committee time were not an issue. Through the process, which we were chasing, it became apparent that the rationale related to a combination of those issues. It is incumbent on the committee to pick them apart and categorise them all. What are the issues, where is the potential and what is the proportionate response?

I am quite happy to put it on record that I think that the Executive’s keenness to promote its proposals from the previous bureau through the current bureau was politically motivated. There is a political concern about the ability of back benchers of all parties, particularly smaller parties, to gain public support for ideas and get legislation through. In the absence of empirical data to back up the need for what the Executive is proposing and the scale of it, that is the only conclusion that I can draw.

12:00

Karen Gillon: Is what you are doing not political, Carolyn?

Carolyn Leckie: Of course.

Karen Gillon: Exactly.

Carolyn Leckie: There is a difference between something contradicting the founding principles of the Parliament and what someone’s view of democracy is. This is a political point and you might not agree with me. My view of democracy is not that the power of an in-built majority is used at the beginning of a process to strangle an idea and prevent it from gaining public support. I uphold the right of Tories, Lib Dems, or members of whichever party, to promote an idea that I do not agree with, to garner support for it among the public and to get it to the stage where there is proper consultation and involvement.

Karen Gillon: I am interested in where you are coming from on this. Is it your fear that Tommy Sheridan’s bill on school meals, for example, would not have been prioritised, debated and rejected by the Education, Culture and Sport Committee and the Parliament? From a party-political point of view it is much better to explore and reject ideas in an open and transparent way than it is to reject them without debate. That is political debate. You are making arguments because you think that your bills will not be prioritised. Your bills are as likely to be prioritised as anyone else’s, because we would want to expose, from a political point of view, why those bills are not the right bills for Scotland.

Tommy Sheridan: Under your system, will prioritisation mean that time will be allocated so that a bill can be heard and it will just be in a queue, or are you suggesting that some bills will just not be heard?

The Convener: We do not have a system; we are conducting an inquiry. At the moment, we are looking at proposals that were originally discussed by the bureau as a basis for the inquiry. We are open to hearing other members' suggestions. The committee does not have any particular proposals at the moment. Our decision, which will come later, might be to maintain the status quo or it might be to introduce change. At present the committee has no view on the matter.

Tommy Sheridan: You talked about defending the rights of individual members. We all rely on the Procedures Committee to do that and I hope that you will continue to do it. If you are saying that the three-and-a-half-year guarantee will still be slapped on every member, that their bill might not be considered in the first year and they might have to wait until the second or third year, that is a different form of prioritisation. It is prioritising within three and a half years, rather than excluding.

The Convener: I am not willing to get into a debate on what this committee might conclude at the end of the day. We are beginning to run short of time. We need to draw this session to a close, because we need to take evidence from the minister—

Carolyn Leckie: Can I respond to Karen Gillon?

The Convener: No. If you wish to put anything else in writing to the committee, feel free to do so, but at this stage everyone has had a good chance to put forward their points of view. We have taken them on board and they will be taken into account. I thank very much the members of the Scottish Socialist Party and the Scottish Green Party for giving us their evidence. They have given us some important points for thought.

I ask colleagues not to go away. We need to continue urgently. The Minister for Parliamentary Business is, unfortunately, pushed for time, so I suggest that we change the order and take the minister next and Alasdair Morgan after that, if that is okay with members and Alasdair. Alasdair Morgan has just walked in and has agreed to be deferred for 20 minutes or so, because the minister has another appointment. I suspend the meeting for a few moments until the minister appears.

12:05

Meeting suspended.

12:07

On resuming—

The Convener: Following consultation with the minister's office, it appears that the minister does not have sufficient time to give evidence this morning. I seek the committee's agreement to ask the minister to come to our next meeting, which will give us more time.

Members indicated agreement.

The Convener: The Conservatives are indisposed this morning but, if they are available at a later date, they will have the opportunity to give evidence, too.

I ask Alasdair Morgan to come forward to give evidence on behalf of the Scottish National Party. Thank you for coming and sorry for keeping you waiting but, as you may be aware, we were having an interesting discussion with colleagues from other parties. I invite you to comment briefly on whether there should be a prioritisation system for members' bills, after which I will open the meeting to members for questions.

Alasdair Morgan (South of Scotland) (SNP): I had the delights of the Subordinate Legislation Committee to keep me going for some of the time, so it was not all wasted. I will be brief.

It is clear that prioritisation will be required at some stage because resources will always be limited. I suspect that the public would be concerned if huge amounts of drafting time were devoted to legislation that had no realistic prospect of seeing the statute book. That said, I do not have evidence that resources are a problem.

Help with consultation should almost always be given because it is part of the Parliament's wider duties to consult the public on important issues. However, after such consultation, any prioritisation must not be seen simply to give the Executive a means of controlling members' bills. That is why the SNP is inclined to support the idea of a committee that would have as its sole function the prioritisation of bills to which it is intended that drafting resources be given. I suspect that such a committee should be composed of back benchers from each party. I know that parties do not necessarily have a rigid definition of what a back bencher is, but I think that we could get round that.

Such a committee should certainly not be simply appointed by party managers. Consequently, the next alternative, which is that the Parliamentary Bureau should prioritise members' bills, is certainly not our favourite method of proceeding. If that method were to be used, we would need to avoid the perception that the Executive could control which bills were introduced. Clearly, if the bureau voted according to its current weighting, that would be a problem.

The third option would be to prioritise bills by some kind of ballot, as happens in the House of Commons. That is certainly not our preferred method of proceeding, but it is a possibility.

Let me make two other additional points. First, given the resources and the amount of parliamentary time that are available, the current allocation of two bills per session per member is totally unrealistic: there is a case for reducing that to one bill per member per session. Secondly, I agree with Patricia Ferguson's sensible suggestion that there should be a cut-off within the last year of any session beyond which there would be a presumption that no bill should be introduced or given the resources to proceed.

The Convener: Do you suggest that members should be able to introduce only one bill proposal or only one bill? There is a slight difference.

Alasdair Morgan: I suggest that they should be allowed only one bill proposal. We should give that a shot because it might focus minds on whether a proposal was reasonable. There is always the danger that bills simply become substitute motions.

Mark Ballard: You suggested a committee of back benchers. What ideas does the SNP have on how such a committee could be selected?

Alasdair Morgan: Ideally, if we could get some kind of all-party consensus on the issue, that would be the best way to proceed. We all live in the real world, so we know that party politics is involved, but members' bills are called members' bills because they are meant to come from individual members. They are not meant to be Opposition bills or any other kind of bill and we need to get as far away as possible from that idea. The more openness there is in proceedings, the better they will be. If we can achieve consensus on how such a committee should be put together and how it should be elected, there is much more chance that its decisions will achieve at least broad agreement, if not unanimity, in Parliament.

Mark Ballard: Have you any ideas on how such consensus might be achieved?

Alasdair Morgan: I suspect that some kind of single transferable vote might be appropriate. Why not? We use STV for other elections—

Karen Gillon: Too many elections.

Alasdair Morgan:—and it is the subject of a bill that is currently before the Parliament. It is clear that, whatever method is arrived at, it should be one that everybody has to sign up to. There is no point in simply imposing some kind of solution while not expecting that controversies will crop up every year: that is why the committee has had to investigate the issue.

The Convener: It is a good morning on the Procedures Committee. Earlier, we heard "homologate", which is a word that I have not heard since I left Fife Council, and we have just had "STV". That is excellent.

12:15

Mr McGrigor: There was some discussion earlier about whether members were being used as conduits for party-political policy. If the number of members' bills is reduced from two to one per session, do not we run the risk that members will be used as conduits for another member's second bill?

Alasdair Morgan: If every member had only one shot at it, either the member would be pliable about their proposed bill or—I hope that this would be the case—they would give considerable thought to the one shot that they would have every four years to get their name on the statute book. That would concentrate minds very well.

There is always the danger that members will be used to make party political points or to put Executive bills on the statute book. That is a common method, even at Westminster with its ballot system. Ministries have a list of small and fairly uncontroversial bills that they do not have time for, which they keep ready to allocate to members who put their names into the ballot without a clue as to what they will use the time for. Given that human beings are involved in the process, one can never avoid that danger. For members to be allowed only one bill per session would help to concentrate minds. It might help to avoid the problem rather than create it.

Mr McGrigor: I agree that such a rule would help to concentrate minds. However, it could be that the issue might not have come up or that events might prompt the need for a bill a year after someone introduced one. Is it right that a member in that situation should be gagged and prevented from introducing another bill? Surely the important thing is not the number of members who get their names on the statute book, but that good bills are introduced.

Alasdair Morgan: Yes, but that problem exists with the limit that we have at the moment and there is the potential that it will happen whatever the limit. If the limit is one bill, however, we will simply run into it slightly sooner. It is sensible to concede the point on the limit of one bill, because it recognises that certain practicalities are involved in the allocation of parliamentary time and resources. The limit might also make members think before they jump during the first year of a parliamentary session.

Mr McGrigor: Do you appreciate that NEBU has not said that there is a problem?

Alasdair Morgan: Yes. In my earlier remarks, I said that I had not seen any evidence of that.

Mr McGrigor: On that basis, do you still think that would be better to limit the number of bills to one and not two per session?

Alasdair Morgan: I think so. Although NEBU might not have a problem at the moment, I suspect that we might have a problem if 109 members were to introduce two bills in any one session; 218 bills would be a problem.

Karen Gillon: One of the issues that exercised our previous witnesses was how we can ensure that there was no party-political bias in the prioritisation of members' bills. Is 11 an appropriate number for signatures to a bill proposal or would a larger number show that the bill would be more likely to make its passage through the Parliament, as it had greater cross-party support? Would that be one method of trying to cut down on what goes where, when and how?

Alasdair Morgan: There is some merit in that suggestion. I would not put the number so high as to say that a bill could not be introduced until it had 65 signatories, which would give it a majority at that stage. Clearly, until members see the detail of a bill, it is not possible for them to make up their minds on whether to support it. At that stage, we would be talking about what would go forward to a consultation with the public and not about the exact form that a bill would take.

You are right to suggest that, if a proposal was struggling to get more than 11 signatures, it would be fair to ask whether it was worth proceeding with it. However, I would not put the figure as high as 60; 20 signatures or thereabouts might be more appropriate, just to ensure that there was a fair bit of support.

Cathie Craigie: In the previous session, it was proposed that the Scottish Parliamentary Corporate Body—I am sorry, the Parliamentary Bureau—would present recommendations to Parliament. There seemed to be some sort of political agreement on that. In your view, or the view of your group, what is wrong with that suggestion?

Alasdair Morgan: I am sorry, which suggestion?

Cathie Craigie: As far as I understand it, the suggestion, as discussed by the business managers in the previous session of Parliament, was that the Parliamentary Bureau would present recommendations on the prioritisation of bills to Parliament, and then allow the full Parliament to accept or reject its recommendations.

Alasdair Morgan: Are you saying that the Parliamentary Bureau would make proposals on each bill or make proposals on a mechanism?

Cathie Craigie: It would make proposals on the prioritisation of bills for the parliamentary session.

The Convener: Instead of there being a back-bench committee doing the prioritisation, the Parliamentary Bureau would do it and then make recommendations to Parliament for approval.

Alasdair Morgan: I am glad that it is not the corporate body, as you said at first, Cathie, as it has enough problems.

Cathie Craigie: Yes, I am sorry about that slip of the tongue.

Alasdair Morgan: In the Parliamentary Bureau, deliberately, and for good reasons, the balance is in the hands of the Executive parties. I do not think that there would be any prospect of getting away from the suspicion that the Parliamentary Bureau's decisions on members' bills were simply an extension of Executive policy. To expect otherwise of a body that is dominated by the Executive—not by members of Executive parties but by the Executive—is to hope for too much from human nature. There will always be some bills that Government ministers might prefer not to see.

We are not talking about Government bills or Opposition party bills; we are talking about individual members' bills. We should not put such bills in the hands of a body that is made up of the business managers of all parties. I have spoken about the bureau reflecting the domination of the Executive, but there might equally well be an Opposition party that does not want one of its members to introduce a particular proposal. The relevant business manager might use their weight in the Parliamentary Bureau to stop it. These decisions have to be in the hands of ordinary members. It is appropriate for ordinary members' bills to be in the hands of ordinary members.

Cathie Craigie: All the committees in the Parliament—although perhaps I should not say all—reflect the make-up of the Parliament.

The Convener: They all do; they are required to in standing orders.

Cathie Craigie: If you had a CBBC—a committee of back-bench committees—how would it be made up? Who would decide?

Alasdair Morgan: I deliberately left that open when I responded to the earlier question.

Cathie Craigie: That is why I asked again.

Alasdair Morgan: I said that we should really try to seek some kind of consensus among the parties and come up with an idea for the make-up of that committee that is acceptable to all. I accept that all the other committees are made up to reflect the balance of the parties. However, although we are talking about back-bench bills, and some 20 members are clearly not back

benchers, I do not think that we would want the committee necessarily to reflect the balance of the other 109 members. We should strive to get consensus rather than have something dictated to us.

Richard Baker: We heard the opinion earlier that there is no huge problem after all. However, we also heard in earlier evidence that NEBU would have had a significant resource problem if Jackie Baillie's proposed bill on charity law had gone through. Therefore, is it not necessary to have a prioritisation procedure in case something similar happens? Further, is the best place to decide prioritisation not the democratic forum of the parliamentary chamber? Parliament is under the scrutiny of the media and the public, so would that not deter members from making decisions that are unduly biased towards the Executive parties?

Alasdair Morgan: Are you suggesting that there should be no prioritisation to start with but that there should be later—or what?

Richard Baker: I am suggesting that there may be a need for prioritisation if a member's bill similar in size to Jackie Baillie's bill progressed, and that the Parliament should decide the prioritisation. It is up for debate at what stage that should be done, but is the chamber not the most democratic forum for prioritisation?

Alasdair Morgan: In theory, the chamber might be the most democratic forum, but I cannot envisage how a plenary meeting of Parliament could sensibly discuss issues surrounding the prioritisation of several bills. That would not be a sensible or flexible method. There are good reasons for delegating matters to committees. Once we get into the detail of many matters, the only sensible way to handle them is to have committees of seven, nine or a dozen members deal with them. When we get down to the consideration of detail, a committee of 129 just does not work—and when we are talking about the prioritisation of bills, we are talking about detail.

Bruce Crawford: At what stage of a member's bill should the Executive decide whether to support it? Do you agree that the appropriate time for the Executive parties to decide whether to support a member's bill is at stage 1? Any Executive involvement before then could undermine the whole stage 1 process. If the Executive did not support a member's bill, it could vote it down at stage 1.

Alasdair Morgan: That is implicit in what I said about an all-party committee allocating resources. That clearly implies that the Executive would not be taking a hard line on a member's bill. Obviously, ministers will be asked—on or off the record—what they think of certain proposals and

there is no point in kidding ourselves that that would not necessarily get into the public domain. However, I still think that prioritisation decisions should not be made by the Executive or by any committee that might be seen to be dominated directly by the Executive.

Mr McGrigor: I agree with much of what you say. However, returning to the idea of allowing each member to propose only one member's bill in a parliamentary session, I am struck by the fact that the member's bill system is one of the few areas in which members can break out of the d'Hondt system. The member's bill system is more individual and should not be party political. If each member were allowed to propose only one member's bill in a session, would we not be shoving ourselves back into the party-political mould?

Alasdair Morgan: No, I do not think so. We are all equal in the Parliament as members. I do not see how allowing each member one chance to propose a member's bill during a parliamentary session would affect that equality. I think that that proposal is a practical matter, rather than anything else.

Karen Gillon: Anybody who tries to pretend that all of us do not operate in a political way, whether party political or for individual political gain, is kidding themselves. We are here—I hope—because we are political and our decisions are either political with a small "p" or made with a party-political hat on.

I am interested in your idea of a back-bench committee. You made an important distinction, which struck a chord with me, between the Parliamentary Bureau being dominated by the Executive and the parliamentary committees being made up of Executive parties. That is an important distinction. I have taken decisions in committee that were not the Executive's decisions but were the decisions of a member of an Executive party. There is potential in exploring the role of a committee such as the Procedures Committee or the Standards Committee, which has shown that it can be impartial and make decisions in the best interests of the Parliament rather than of political parties. What are your views on that?

Alasdair Morgan: Do you mean on committees in general?

Karen Gillon: No. I mean on whether a committee whose composition was like that of the Procedures Committee could exercise the prioritisation function.

Alasdair Morgan: Do you mean that the existing committee could exercise that function?

Karen Gillon: Yes.

12:30

Alasdair Morgan: Again, I come back to the point that I made that we should try to come up with a mechanism that attracts the greatest degree of consensus possible. If that idea were to attract that consensus, that would be fine. I do not know whether it would as this is the first time that I have heard it floated. The important point is that if we have a system in which a substantial minority of members have no confidence, it is doomed from the start as we will continue to become involved in the wrangles in which we have been involved in the past. We should strive to achieve some sort of consensus. If we cannot do so, we will have to return to the idea of setting up a committee in the way that other committees are set up. I do not know whether establishing a new committee would be the best solution or whether it would be better if this committee were to handle the work. You know your work load better than I do.

Karen Gillon: I am interested in the idea of the members having confidence in the system. The evidence that we have heard has convinced me that it does not matter what you do and how you set up the system because, if people do not get what they want, they will say that the reasons are party political. If the system does not prioritise my bill, I will say that, for party-political reasons, those in charge of the system do not want my bill to get through. That is politics. Unless everyone gets what they want, I do not think that there is a system that will not generate conflict.

Alasdair Morgan: I can accept the view that individuals will think that their bill has not been prioritised due to political bias rather than because it is rubbish. However, that does not mean that other members or even the individual's close colleagues will share that view. They might say to your face that they think that you have been targeted by political interests but, when you are not around, they might say, "Fair do's, the bill wasn't worth a candle." I must stress that I am not passing comment on any bill that you might have introduced, Karen.

Mark Ballard: Earlier, a witness suggested that we retain the current system. What is your party's view of the way in which the current, informal system of prioritisation has worked? Is it working adequately?

Alasdair Morgan: I am not too clear about what the informal system of prioritisation is. I have not lodged a member's bill and have therefore never been directly involved in the process. Clearly, there have been some problems—I assume that your investigation of the system is not a symptom of your being short of things to do. If there is a problem with the system, it would be sensible to consider alternatives.

The Convener: I think that that exhausts the questioning. I am sorry to have kept you waiting so long. I am sure that your comments will be taken on board by the committee.

I hope that members received the papers that were circulated for information from the Hansard Society and the extract from the House of Commons report. It would be useful if members could tell the clerk before the next meeting if they have any ideas on other areas that we might want to examine as part of our inquiry. That will enable a paper suggesting our next steps to be prepared for that meeting, at which we will talk to the minister and, hopefully, the Conservatives. For example, it might be useful to get some more information on the Canadian system, which is referred to in the House of Commons report.

Suspension of Standing Orders

12:33

The Convener: Agenda item 2 concerns a brief note from the clerk on the issue of the suspension of standing orders. The note concerns a further issue relating to compatibility with the Scotland Act 1998 that has arisen in the preparation of draft changes to rule 17.2. I felt that it was important that members had a look at the note and agreed whether to include it in the report that we are about to consider. Are members happy that the suggestions in the paper be included in the draft report?

Members *indicated agreement.*

The Convener: For information, I draw members' attention to the letter that was circulated this morning, which is a reply from Patricia Ferguson to Richard Lochhead's letter regarding Europe and external affairs.

With that, I conclude the public part of this meeting. At our previous meeting, we agreed that the next items would be taken in private.

12:35

Meeting continued in private until 13:25.

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