

PROCEDURES COMMITTEE

Tuesday 10 February 2004
(*Morning*)

Session 2

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PROCEDURES COMMITTEE

3rd 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:

Patricia Ferguson (Minister for Parliamentary Business)

Ken Hughes (Scottish Parliament Directorate of Clerking and Reporting)

Fiona McClean (Scottish Parliament Directorate of Legal Services)

CLERK TO THE COMMITTEE

Andrew Mylne

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 10 February 2004

(Morning)

[THE CONVENER *opened the meeting at 10:18*]

Non-Executive Bills

The Convener (Iain Smith): Good morning and welcome to the third meeting of the Procedures Committee in 2004. I am pleased to welcome Patricia Ferguson, the Minister for Parliamentary Business, who will give evidence on agenda item 1, on non-Executive bills. I invite the minister to make her opening remarks, after which I will open up the meeting to questions from the committee.

The Minister for Parliamentary Business (Patricia Ferguson): I really do not want to say very much, except to thank the committee for inviting me to come along today to talk about the issue. The paper that I have already submitted contains much of what I would want to say, about which you might want to ask me, so I am happy just to take questions.

The Convener: Colleagues will recall that the minister sent a letter in time for our previous meeting, at which we were unfortunately—for various reasons—unable to take her oral evidence. I hope that members have brought that letter with them, and I open up the meeting to questions for the minister.

Richard Baker (North East Scotland) (Lab): The minister's letter says that a threshold should be established in relation to the progression of proposals. What should that threshold be, for example in relation to the number of members who support a proposal? Are there other such thresholds that might be used to ensure that bills have sufficient support to make them viable?

Patricia Ferguson: In the previous session of Parliament, when the Parliamentary Bureau discussed the matter and came up with its paper, business managers recognised that the securing of colleagues' signatures on a bill proposal did not present much of a hurdle at all. Although we did not suggest that the threshold should be lowered or done away with, because it is a good test, we were not convinced that raising the number of required signatures to 30—or any other arbitrary number—would make a difference. We were more concerned to establish firm criteria against which a bill could be measured before any decision was

made about it.

Richard Baker: So the ability to fulfil those criteria would inform the bureau's recommendations to the Parliament.

Patricia Ferguson: Absolutely.

Mark Ballard (Lothians) (Green): How would those criteria relate to those that are currently used by the Scottish Parliamentary Corporate Body to assess bills?

Patricia Ferguson: The bureau's advantage is that it oversees committee and parliamentary time, whereas obviously the corporate body does not do that. The corporate body considers the resources that need to be made available, but the bureau considers a different resource, by which I mean committee and parliamentary time. Both kinds of resource should be elements of the criteria, and the corporate body should feed in information about the resources that are available, after discussing the situation with the non-Executive bills unit.

Bruce Crawford (Mid Scotland and Fife) (SNP): We have seen the paper and it is helpful to have the Executive's outline of its view on the matter. Should the body that makes recommendations to the Parliament about the prioritisation of members' bills—whether that is the Parliamentary Bureau or another body—be involved in parliamentary timetabling in any way?

Patricia Ferguson: I am not convinced that it should—but I am not convinced that that is how members' bills should be prioritised, which influences my approach to the matter. At the end of the day, one of the bureau's key responsibilities is the oversight of parliamentary time and I do not envisage that the bureau would want to hand over that responsibility to any other committee.

Mark Ballard: On whether the bureau is the appropriate place for those decisions to be taken, the committee heard evidence from Paul Grice, who talked about the amount of detail that is required in order properly to scrutinise proposals. Clearly, to make judgements of the kind that you suggest in your letter, there would be a need for detailed discussions with NEBU, with the corporate body and, potentially, with the committees that would handle the bill. There might also be a need to take evidence on the bill and related consultations. The bureau does not seem to work in that way; bureau meetings tend to be very short—half an hour at most—and, as far as I know, the bureau does not normally take evidence. Does what you describe as the role of a committee that would assess bill proposals fit well with the way in which the bureau works?

Patricia Ferguson: I think that it does. You have been a member of the bureau in this session

of the Parliament and perhaps you have not experienced some of the discussions that have taken place at the bureau. There have frequently been occasions when, for example, committee conveners have come along to argue that they needed more time to consider a bill at a particular stage. In such situations, the bureau would debate the matter and make a decision about whether it was possible to allocate additional time to the committee.

We have had such discussions and we will probably have them again from time to time. Some of the information that comes to the bureau is informed by conversations between officials. If the committee clerks are happy with a proposed timetable, that view is fed into the bureau as a suggestion. You are right to say that unless there is a problem the bureau does not take evidence. However, there is no reason that it should not do so. It would be for the bureau to consider how it handled such cases. Given that the bureau is responsible for the overall management of the Parliament's time, it is important for it to be included in the process.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): If the bureau were responsible for recommending to the Parliament which bills should proceed, what tests would it employ when making its recommendations?

Patricia Ferguson: It may be worth while if I describe how the paper was originally formulated. The Parliament asked the business managers on the bureau to consider a method of prioritising bills, because of a backlog that was occurring. The business managers discussed the issue for three or four months and produced the paper that members of the committee have seen. The intention was that the paper would provide the outline for a proposal that would be firmed up by the parliamentary authorities and referred back to the bureau, the corporate body and the Procedures Committee. That would have allowed the proposal to be fleshed out in much more detail and to be given much more scrutiny.

No one has yet thought through fully how the bureau would proceed and what the criteria for prioritisation would be. Obviously, I have ideas about that. In the paper, issues that we flagged up for consideration were an assessment of NEBU's capacity; an assessment of the resources that the corporate body could assign to legislation; whether there would be parliamentary time for legislation; and how much time would be needed. There would also need to be an assessment of the amount of extra commitment that would be required from the committee that was responsible for considering a bill. If two bills happened to be referred to one committee, that would be a big piece of work, especially if the bills were referred

at the same time. The idea was that all those issues would be taken into consideration. It was also thought that consideration would be given to whether other similar legislation was in the pipeline, from the Executive or elsewhere. It was recognised that there might be Westminster legislation that would have to be taken into consideration.

We thought that a package of issues needed to be considered. However, how that should be done remains to be worked up. That would have been the next stage of the process, if the paper still had the agreement of the bureau.

Cathie Craigie: So in the paper that we discussed previously there was no question of making a judgment about whether legislation was worthy. Decisions would be based purely on the management of committee and parliamentary time. No judgment would be made on whether proposed legislation had majority support in the bureau.

Patricia Ferguson: Certainly not. However, it was recognised that there was a need for consultation to take place on bills at an early stage, so that the case could be made that legislation was needed. Consideration was given to testing whether there was already legislation in place that did the same thing as proposed legislation.

Bruce Crawford: I hope that you agree that the process for considering the prioritisation of bills must be open and transparent. It should be politically impartial, because at stage 1 the Government will have its say on whether a bill is consistent with its stance. Given that under the proposal party managers would be responsible for the prioritisation process, do you envisage bureau meetings at which bills were discussed taking place in public, so that the process could be seen to be open and transparent? How would the bureau ensure that the process was seen to be fair, open and free of political partiality?

10:30

Patricia Ferguson: The business managers were concerned to ensure that the process was sufficiently robust not to be challenged. Although one group of people may agree to deal with something in one way, another group doing the same job in the future may take a different view. We were concerned to make the process and the criteria as robust as possible, so that when an issue eventually came to the Parliament for decision—ultimately, such matters would be decided by the Parliament as a whole—the criteria and the judgments that had been made against them could be measured. It could then be seen that a proper assessment of bills had been made

and that the reasoning that had been given held up when tested against the criteria. We were concerned to make the process as open and transparent as possible so that when recommendations were made to Parliament they could be measured against the criteria and all members could see that those criteria had been applied.

Bruce Crawford: Do you envisage that the process would be sufficiently open and transparent for bureau members to take evidence in the public arena from proposers of bills?

Patricia Ferguson: The test of that will be in the Parliament. The bureau's recommendations will be made to the Parliament and members of the bureau will have to justify the recommendations that they have made. If the proposer of a bill feels that they have been dealt with unfairly, they will have plenty to say about it at that point. We were concerned to ensure that the process was robust, so that bureau members could justify their recommendations when those were debated in the chamber.

Bruce Crawford: The bureau is politically weighted. In that atmosphere, how do we ensure that proposers of bills can be confident that decisions were taken for the appropriate reasons against the prioritisation criteria, and that things are seen to have been done fairly? I accept the position of the current members of the bureau, but we are trying to put in place a process that will stand the test of time. What guarantee can be given that a future bureau will not knock out or not support a bill for political reasons?

Patricia Ferguson: None of us can give that guarantee, regardless of the mechanism that is chosen. The previous bureau agreed the paper to which I have referred, but the current bureau did not. Already we see that decisions vary depending on the people to whom one is talking.

We were concerned to ensure that the process was robust so that people would have confidence in it. That will happen only once the process is seen to be working, and people will not see how the process works until we have taken some bills through it. We will be able to build confidence because the bureau will demonstrate that it is dealing with bills according to the criteria that have been laid down and that it has the courage to justify its recommendations to the Parliament. No group of parliamentarians, regardless of affiliation, wants to put in place a process that leaves members open to such scrutiny if they are not confident about how it will operate.

Karen Gillon (Clydesdale) (Lab): I understand that pressure on NEBU resources has provided the impetus for consideration of this issue. However, as a committee convener I have been

on the other side of the table, trying to programme a committee's timetable around the introduction of a member's bill at a very late stage in the parliamentary session. That is a bigger issue for me. What consultation do you envisage the bureau having with committees about how members' bills will fit into their timetables? Obviously, committees have many other priorities.

Patricia Ferguson: Absolutely. By going through the prioritisation process and being able to identify earlier in the parliamentary year what pressures will be put on the committee, we would assist in the process, whereas we would not if we introduced bills at the last minute so that a committee had to rejig its entire work programme. The Executive has to consider where its bills are going in order to try to balance out the weight of that burden. It is important that there should be consultation with the convener and the clerks of a committee to ensure that any work that is suggested fits into the committee's work programme and that there is a reasonable expectation of such work being given a fair wind by the committee so that it can be taken forward.

Karen Gillon: There is a school of thought that the prioritisation exercise should apply only to NEBU bills. It is my experience, however, that bills that come from other organisations are not often drafted as well as they could be. That puts pressures on other parts of the parliamentary organisation and then on the committees when members try to lodge amendments at stage 2. Do you envisage prioritising the whole parliamentary timetable, rather than NEBU bills alone?

Patricia Ferguson: Do you mean prioritisation of all members' bills?

Karen Gillon: Yes.

Patricia Ferguson: Yes, I envisage that. If one does not apply the process to all members' bills, it means that bills that are being drafted elsewhere would have an unfair advantage compared to those that are drafted in-house.

In addition, some bills that were drafted outside were not as well drafted as they would have been if they had been drafted by NEBU. As I understand it, NEBU has been left to correct that bad drafting and to give additional assistance. If we are looking at bills that will impact at some point on the work of NEBU—even if that does not happen at the preparation stage but later on—it is only fair that that should be considered in the original assessment.

Bruce Crawford: As I understand it, the process should allow us to prioritise the work of NEBU. If a bill secures the support of an organisation outwith the Parliament and the consultation is facilitated by that organisation, what role could any committee play—whether the

bureau or another body—in setting the priority for a particular bill? At some stage, the matter would be discussed in one of the committees, but it is up to the bureau to decide on the timetable for that process.

As the Executive sees it, there are two distinct roles here for the bureau. The bureau examines NEBU and its priorities, but it also sets the timetable for parliamentary activities. Surely those are two distinct issues as far as a bill that is being supported from outwith the Parliament is concerned. The second role of the bureau—that of deciding whether such a bill should be allocated parliamentary time—would be appropriate, but not the first, on the prioritisation of issues that affect NEBU and its work.

Patricia Ferguson: If you look back to the original paper that the business managers drew up in the first session, you will note that we regretted the need to prioritise in that way. We did not come up with the idea; it was put to us by the Parliament. The Parliament said to us that NEBU felt under pressure because it did not have the resources to cope in all situations. There were times when it was okay, but there were other times when the unit was under pressure.

As Karen Gillon pointed out, there is also pressure on parliamentary time and on committees to take on bills—the pressure is not solely on NEBU. From that point of view, it is important that all bills that are introduced are dealt with in the same way. There might be a job for NEBU down the line in helping to ensure that a bill goes through, regardless of where it was drafted originally.

Bruce Crawford: In what way do you envisage NEBU's involvement further down the line with a bill that was supported by an outside organisation?

Patricia Ferguson: My understanding from previous conversations is that some bills have come in that have not been drafted to a standard that allows them to be developed. NEBU has then had to help the member concerned to make sure that their bill can advance in an appropriate fashion.

Bruce Crawford: That supposes that all such bills are badly drafted, but there could be some that are adequately drafted. I understand the role of the bureau is to make decisions about parliamentary time for bills, but is there a role for a committee—whether the bureau or another body—in prioritising a bill that does not make demands that impact on NEBU to the same degree as a badly drafted bill would do, or that do not impact on NEBU at all? I find it difficult to understand the distinction.

Patricia Ferguson: The bureau was not asked to look at NEBU's resources alone. From memory,

we were asked to look at a mechanism that would help to prioritise to ensure that parliamentary resources—including, in the fullest explanation of that term, parliamentary and committee time—were also considered. That is what we reacted to.

Bruce Crawford: Okay. I want to clarify that point. The issue is not just about NEBU resources; it is about the overall management of non-Executive bills right across the process.

Patricia Ferguson: To date, there has never been a situation in which there has been a problem gaining parliamentary or committee time for a bill that has been introduced at a point in the session when it was possible for the bill to go through. An exceptional example is that of a bill that was introduced so late on in the previous session that it was absolutely impossible to get it through all the stages. In the same way, there is not always a problem with NEBU resources. The problems tend to arise mid-way through the session, if the previous session is anything to go by. We were asked to look at the situation across the four-year session, to work out a process that would apply throughout, that members would understand, that was clear and that worked to criteria. That is what we attempted to do.

Karen Gillon: I am a bit concerned about what we do about fairness in the Parliament if we have a system that could prioritise bills that have the support of an outside lobbying organisation ahead of bills that do not. I accept the criticism that the members' bills process should not be used simply to support Executive legislation that cannot be included in the Executive's timetable. Similarly, members' bills should not be used as lobby fodder for any lobbying organisation. We have to be clear about any system that the Procedures Committee puts in place. Would any procedures with which the bureau is involved ensure that there is equality among members' bills, rather than setting one type of member's bill above another?

Patricia Ferguson: That was the whole point of the paper and the criteria that we are trying to put in place. We want to ensure that all members' bills get an equal opportunity to emerge, that they are all weighed against the same criteria and that they are all considered in the light of that criteria. At the end of the day, a recommendation will go to Parliament from the bureau and the Parliament will make its decision.

The Convener: Mark Ballard will ask a question on the same point. Jamie McGrigor has been waiting patiently to ask a question, too.

Mark Ballard: Some of the first evidence that we heard was about the bottlenecks in the bill process. One of the bottlenecks faced by NEBU occurred when the bill had gone through the consultation process and was at the drafting

stage. Corporate body criteria for assessing access to NEBU time were relevant at that point. You mentioned potential NEBU support for bills that were not drafted by NEBU, minister. My recollection from when the NEBU people gave evidence is that they did not indicate that they saw that as a significant problem—they did not see it as a major bottleneck.

Another bottleneck relates to committee and parliamentary time. One of the suggestions that we heard was that there should be more flexibility for the bureau to set committee time, unless there is an expectation that there will automatically be a process that is driven by the bill. However, the criteria that you outlined were similar to the criteria that the corporate body currently uses. If the bureau is to deal with timetabling, surely what we need is more flexibility for the bureau rather than an overarching process. Surely we should be looking at the bottlenecks. I cannot see why you think that there is a need for an overarching process.

10:45

Patricia Ferguson: Please bear in mind the fact that the paper was not my idea; it was the Parliament's idea. The business managers reacted to a request from the Parliament to consider the resources, including parliamentary and committee time and NEBU resources. That is what we did and that is what the paper outlines. I am not sure how more flexibility in the bureau would help committees to manage their time better. At the end of the day, committees have only a certain amount of time. If they are given too much work, they have limited opportunity to do things differently to allow them to cope with the pressures that they are being put under. I am not sure how the proposal would work.

Our suggestion was that the bureau would consider the time that would be needed. For example, if, in a tranche of bills that were being suggested to the bureau, there were two proposed bills that would go to, say, the Education Committee, an assessment would have to be made, based on the criteria, of whether both of them could proceed and whether the Education Committee could deal with both of them. There are many different elements.

Mark Ballard: I can see why the bureau would be involved in that decision, but the criteria that you were talking about were much wider and were more similar to those that the corporate body would take account of, in deciding on access to NEBU for example.

In his evidence, Paul Grice said:

"Members' right to pursue their own agendas using their own resources must also be preserved."—[*Official Report, Procedures Committee*, 13 January 2004; c 203.]

It seems to me that your proposal would take away that right because the bureau would decide on all stages of the process.

Patricia Ferguson: That is not at all what I am suggesting. Members would still have the right to have bills drafted elsewhere; that is a right that they should have and if they wish to proceed in that way, that is fine. However, members should not have an automatic right to have bills considered when other members' bills must meet the criteria. All I am saying is that each proposed member's bill must be treated in the same way.

The Convener: Jamie McGrigor has been waiting patiently for some time.

Mr Jamie McGrigor (Highlands and Islands) (Con): I am sorry that I was not here at the start of the meeting, convener.

I take it that Patricia Ferguson is recommending a procedure whereby the bureau considers the proposed members' bills and recommends to the Parliament acceptance or rejection.

Patricia Ferguson: Yes.

Mr McGrigor: When the bureau produces the recommendations, as well as recommending which proposed bills should proceed, will debating time be allowed for the proposals that it has recommended for rejection, to allow the Parliament to overturn the bureau's recommendation if it wishes?

Patricia Ferguson: I am not sure whether I have picked you up correctly, but the bureau would produce a recommendation outlining which proposals should proceed and which should not proceed. Obviously, Parliament would debate whether the allocation was right for that year. Also, we are not saying that the proposed bills that were not recommended for acceptance would not stand a chance; they would be reconsidered if the members still wished to pursue them when the next sift was done.

Mr McGrigor: How often would the bureau consider the proposed bills?

Patricia Ferguson: The paper suggested that we should do that once a year, at the beginning of the parliamentary year.

Mr McGrigor: Given the difficulty that arises when members propose bills late in the final year of a session of Parliament, do you recommend that there should be a cut-off date?

Patricia Ferguson: The paper suggested that the date should be around September in the year prior to dissolution.

Mr McGrigor: So members would not be able to propose bills after that date.

Patricia Ferguson: There would be no new bills. Obviously, those that were in the pipeline would still be taken through the process.

The Convener: To follow up, do you envisage that the cut-off date would be for the lodging of bills, or would you still allow bill proposals after that date? The consultation process on some members' bills that have been lodged in this session of Parliament started in the previous session. Would it still be possible to lodge proposals and start consultation after that cut-off date?

Patricia Ferguson: The business managers' paper suggested a cut-off date after which no new proposals could be made. Frankly, I am not too worried about that one way or another, as long as members who submit proposals at that late stage understand that there is no likelihood of a bill progressing through to enactment before Parliament dissolves. One unfortunate situation in the previous session was that members expected to pursue bills, but that expectation could not be fulfilled.

Bruce Crawford: The minister's answers have been useful. If we accept the general principle that all proposed bills, wherever they come from, must meet the threshold and fulfil the criteria, if the bureau—or whichever body considers the matter—accepts that there is space for 10 bills, but 20 proposals meet the criteria, how will the bureau judge which 10 will receive support? I use those figures loosely; I realise that they are not valid in any way.

Patricia Ferguson: One element that would have to be considered is the size and complexity of the proposed bills. It was suggested that had one previous member's bill proposal proceeded, no other members' bills could have been produced. When proposed bills are particularly large or complex, a judgment will have to be made about them. In the normal run of things, 10 bills might be able to go through NEBU, but because some of the proposed bills happen to be small or less complex, we might manage to take, say, 15. All the issues would have to be weighed up. The content of members' bills varies hugely. I think that one bill in the first session of Parliament had one line, but others were much longer.

Bruce Crawford: I recognise the problems, which you are right to highlight, but that does not tell me how the bureau would score proposed bills and decide whether they should be recommended. We can all see that having 20 proposals might raise many problems for the bureau, but what would the decision-making framework look like?

Patricia Ferguson: I return to an answer that I gave to a previous question. The paper was meant to be the starting point for a discussion about how the process would work in practice. The paper was meant to give the parliamentary authorities the opportunity to consider the issue and draft a working document, which would then be discussed by the bureau, the Procedures Committee and, ultimately, the Parliament before it came into play.

We wanted to have something up and running for the beginning of this session of Parliament so that we started with the new process in place. However, the issues that you raise must be discussed widely to ensure that we get the process right. The matter is not easy; it must be given a lot of consideration.

Bruce Crawford: That is useful, minister.

Would it be useful for the Procedures Committee in its inquiry to take evidence about the criteria or decision-making framework that should exist for the bureau, or whichever body finally signs off the recommendations on which proposed bills should receive support and parliamentary time? Would it help the process if the Procedures Committee came up with suggestions?

Patricia Ferguson: It is not for me to tell the Procedures Committee what to do, but as I am being given the opportunity, I will make a suggestion. This will sound terribly presumptuous, but I would have thought that the best way forward would be to agree what we need to achieve and then to consider whether to proceed on the basis of the paper that has been circulated or on some other basis. Once the Procedures Committee has done that, the best way forward would be to allow the parliamentary authorities to make a proposal that can then be discussed. The proposal must be discussed by the bureau, the Procedures Committee, the corporate body and colleagues in NEBU. Ultimately, the proposal must go to the Parliament as a report, but a lot of discussion must take place first.

Mark Ballard: I was interested in your comments about the size of bills. One criticism of the current process is that it works on almost a first come, first served basis. You seem to be suggesting that the basis should be the smaller, the better.

Patricia Ferguson: No.

Mark Ballard: If I interpreted your comments correctly, you implied that it is better to have two small bills rather than one large one. If that is not the case, what relevance does size have? Surely criteria other than size matter, otherwise we would just go for the smallest bills.

Patricia Ferguson: I was not suggesting that at all. I was responding to a question from a

committee member about the number of bills that would go through the system in any given year. I was simply making the point that it is not possible to second guess the number.

We would have to weigh up and take account of the relative size and complexity of each bill, as those are what puts a relative demand on NEBU, the Parliament and its committee system. I do not think that we should get into the situation that Mark Ballard suggests in which all the smallest bills get taken and the bigger bills get left out in the cold. It would not be good for that to happen. Some of the best bills that we have dealt with have come from members—and, to be fair, from committees. I am thinking of the Protection from Abuse (Scotland) Bill, which was a committee bill in the first session of the Parliament. Some of the best bills have also been bigger and slightly more complex.

Let us say that we have a year in which every proposed member's bill is large, technical and complex. If that were to happen, we have to understand that there would be less likelihood of all members getting their bills through than there would be in a year in which members proposed smaller and more discrete bills. All the factors would have to be weighed up. I do not think that size should give one bill an unfair advantage over another bill. I do not think that the size and complexity of a bill are what matters in that situation.

Cathie Craigie: I will move on slightly. We have taken evidence from former MSPs and from members who have introduced bills. We discussed with them the point that has been raised about the number of bills that members are able to introduce in any one session. The number that has been suggested is two and we discussed how realistic a number that is given the resources and time that the member would have available to them. We also discussed whether we should reconsider the number of bills and perhaps restrict it to one member's bill per session. Do you have a view on the issue?

Patricia Ferguson: I think that that is a matter for the Parliament. That said, I do not think that such a limit would help to resolve the problem of a bottleneck occurring. If every member of the Parliament bar ministers was to propose one bill in the course of a parliamentary session, we would still be talking about an awful lot of bills, and I doubt very much whether the Parliament and its various elements would be able to cope even with that number.

The suggestion might help a little bit, but I am not too sure that it would help in the longer run. I suspect that what would happen is that a member with two bright ideas would pass one of them on to a friend who did not have one, and we would end up with the same number of bills coming through.

The Convener: I hope that you are not suggesting that there are members without bright ideas.

Patricia Ferguson: No.

The Convener: I will turn to a couple of issues that have been raised in the evidence that we have received to date. The first has been referred to already, which is the concern that the bureau might be seen as being too politicised or too much under the control of the Executive to be able to consider proposals for members' bills impartially. That concern led to the suggestion that another committee, either one that was specially set up and composed of back-bench members or an existing committee, should do that work. I am not suggesting that we want to do it, but the Procedures Committee was suggested as one of the committees that could undertake the exercise.

Such a committee could take evidence from the bureau on parliamentary time and from the corporate body on resources. It could also consider the results of the consultations on the individual bills. If the bureau was seen not to be an acceptable body to undertake that exercise, would that be a reasonable and possible way forward?

Patricia Ferguson: I will return to what I said before about the process being important. The process needs to be robust enough to withstand the scrutiny of the Parliament. If we do not have that, the process will not be successful. Of paramount importance to the discussion is the success of the process and the ability of members to accept the outcome of the process. I understand that members would be unhappy if their bill was not to go through, but that is life—all of us would be in the same situation if we were in that place at that time.

I am not too sure about the idea of setting up a new committee, which would have to achieve a high level of expertise very quickly. There is also the question of which members would be selected for the committee. It is already sometimes quite difficult to find enough members to make all of the committees work in the way that they are intended to work. It would be onerous to run additional committees at the same time as private bill committees. At the end of the day, if members are going to have to stand up in Parliament and justify the process, quite frankly, it is an ideal job for the bureau.

The Convener: Thank you. I assume that we are talking in the main about members' bills. Do you see bills from other non-Executive sources, for example committee bills, also being subject to the prioritisation process?

11:00

Patricia Ferguson: They would have to be considered because they put a burden on committees. Obviously, as a package, they do not put the same pressure on the Parliament's resources but, from time to time, they cause pressure for committees, perhaps in relation to staffing. To be honest, I think the issue needs a bit more discussion across the parties and around the Parliament.

The Convener: It has been suggested that, although there may have been some points in the first session of the Parliament when there was a fear of too much pressure on members' bills, in fact there was not a problem. Therefore, we might be setting up a system that is not required. Do you believe that the system is required to address potential problems in future? If not, do we need to hold such a process in reserve in case there is a problem, or should we not be bothering about the situation because, in fact, there is no problem?

Patricia Ferguson: To be honest, that is a question for the Parliament. The paper was drawn up originally by the business managers at the request of the parliamentary authorities, who had identified a problem. As I have said, as our paper sets out, business managers wish to emphasise the regret that there is a need to prioritise members' bills in this way. Business managers did not come up with the idea; the parliamentary authorities suggested that we could helpfully progress this piece of work. The suggestion arose because of a bottleneck. Whether a bottleneck will always occur in the middle of a parliamentary session or will occur from day one is something that the Parliament needs to consider.

The Convener: Bruce Crawford has one small follow-up question.

Bruce Crawford: The minister has said a number of times that the parliamentary authorities requested that this piece of work be undertaken. Can the minister be more specific? Which arm of the parliamentary authorities requested the work to be undertaken?

Patricia Ferguson: I can. I think that the directorate of clerking and reporting made the original request back in 2002.

Bruce Crawford: The directorate of clerking and reporting.

Patricia Ferguson: Yes. I think that a proposal came to the bureau asking us to consider a method of selection. As a result, the business managers went off for a couple of months and came back with the proposals that are set out in our paper.

The Convener: Thank you. I think that the details of the request will be in the original paper

that we received from the bureau. As there are no further questions, I thank the minister for her evidence this morning, which has been very helpful. No doubt we will be in touch once we have decided what to do, if anything.

Patricia Ferguson: Thank you.

The Convener: I draw members' attention to two of the papers that were circulated under agenda item 1. The first is the Scottish Conservative and Unionist Party submission, which was submitted by Bill Aitken. He apologises for being unable to attend in person again due to his injury problems. He has asked me to make clear his view that, although the final decision on prioritisation must be for the Parliament to make, the initial sift should be done by the bureau, which should then make recommendations to the Parliament. To that extent, he supports the position that the previous bureau agreed.

Members have also received a report on the Canadian system from the assistant clerk. The Canadian system appeared to be a prioritisation system but, having read the paper, I am not entirely sure that it is of much relevance. The Canadian position is slightly different, in that all members' business, including motions, is dealt with together, not just bills, which is slightly different from our situation. However, the paper is available for information.

Bruce Crawford: Paragraph 5 of the report is pertinent to some of the issues that we have discussed this morning. It refers to the Canadian sifting and selection process. I might not agree with the way in which that is done, but the paragraph is relevant to our discussion.

The Convener: It is for members to make their own judgment of how relevant the paper is when we come to consider the issues. My personal view is that the Canadian system tackles a slightly different issue from the one that we are dealing with.

Bruce Crawford: I just want to ensure that that is not the committee's view.

The Convener: I did not say that it was the committee's view.

Next, we have a paper from the clerk on how we might progress with this inquiry. We have taken substantial evidence from internal organisations in the Parliament, but we have not yet taken any evidence from external sources. It is for the committee to decide whether it has taken sufficient evidence to move on or whether it wishes to take further evidence. I open the matter up for committee members' comments.

Bruce Crawford: I have a question based on the last question that I asked the minister. Have we received any evidence so far on where the

process originated? Who started it and how did it come about? I cannot remember seeing that in any evidence. If it is there, that is good, but I would like to know that it exists.

Mark Ballard: It was in the paper that was sent by the clerks to the bureau in October 2002.

The Convener: I was not on the bureau at the time but, from the papers that we have received and the discussions around it, I believe that the original request came to the bureau from the corporate body, which received the request from the non-Executive bills unit. NEBU was concerned that it was, in effect, being asked to prioritise and make political decisions. That is my understanding of where the original request came from.

Bruce Crawford: You think that it was the corporate body, but the minister thinks that it was the clerking and reporting directorate.

The Convener: A request from the clerking and reporting directorate would have been made through the corporate body.

Cathie Craigie: Surely, we can find out. Do we have a copy of the original report?

Bruce Crawford: We need to be absolutely clear.

The Convener: The background paper on the report that came to us, which is the report that went to the bureau, states:

"The SPCB were invited to consider possible options for handling non-Executive Bills in the light of increased numbers coming forward. The SPCB consulted the Bureau".

Bruce Crawford: That was on the formulation of the criteria.

The Convener: The proposal came from the director of clerking and reporting to the bureau in the previous session.

Bruce Crawford: Can I have a quick look at a copy of that? I want to be clear in my mind about where the process started, so that we can make it clear in our evidence that we recognise the starting point for all this. I will sit and read it as other members talk away.

Mark Ballard: In evidence, several members and Paul Grice talked about fundamental rights. Given the fact that we are moving into quite complicated territory regarding the working of the Parliament, I would like to hear from somebody such as Barry Winetrobe, who gave us an interesting talk about the underlying workings of the Parliament at the committee's away day. Alternatively, we might hear from Professor Alice Brown, of the University of Edinburgh, who was involved in drawing up the original standing orders, which included provisions for handling non-Executive bills. It would be good if we went

back a stage to talk about some of the bigger questions that we seem to keep on coming up against in our committee papers. Indeed, that was the point that the Minister for Parliamentary Business made when she said that we had to start with where we want to go. Therefore, it would be worth while to take such evidence.

Cathie Craigie: I do not have any objection to that, but we really have to get our heads round this and make decisions, as it has been dragging on and on. We are almost a year into the new Parliament and we still do not have a better way of dealing with members' bills. If we are going to take that evidence, we will have to do it quickly.

Bruce Crawford: Mark Ballard's suggestion is reasonable.

The Convener: I have no problem with our holding an additional oral evidence session to which we would invite people from external agencies, as suggested. If any member has any other suggestions for witnesses, we will need to know quickly so that we can issue our invitations. However, I note the point that Cathie Craigie is making. We do not want to start going round in circles in this inquiry.

Bruce Crawford: Exactly. The clerk's paper asks us whether we have got all the evidence that we think we need on the process. It lays out well the different areas that we have examined and asks us some pertinent questions. Nevertheless, if we accept that every bill needs to meet criteria and reach a threshold, we must ensure that we have taken enough evidence on what the criteria and the threshold should be. We may have taken enough evidence—I think that we probably have. I am including outside bills and inside bills.

The bit on which I think we have not yet got a handle is the question that I asked the minister. If there are 20 bills going forward but only 10 can be supported, although they have all met the criteria, what decision-making framework will the bureau have and what will its scoring process be? We must ensure that the framework is open and transparent before any recommendation is discussed in Parliament. Whether the bureau or anyone else decides, there must be a process of scoring—a decision-making framework—that members understand and see; otherwise, there will always be accusations of political chicanery. The only way in which we can avoid that is by having a clear framework. I do not think that we have taken any evidence at all on that at this stage.

Cathie Craigie: We have to know where we are going. We have to know which group will make the decisions before we can get down to that sort of detail. Would it be the bureau? We look forward to having the discussion. If 20 bills met all the criteria

but 10 of them would go to the Education Committee for scrutiny, the fact that it would not be able to get through 10 bills would be a criterion. We would have to consider how realistic the timetabling was for committees.

Bruce Crawford: The bureau could do that job now.

Cathie Craigie: I do not think that we are at that stage.

The Convener: Technically, the bureau could do that job at present. It can set specific timetables for certain bills and not set them for others. However, one of the problems with the present standing orders is the fact that they do not include any procedure to prevent bills from proceeding to stage 1. That is where problems might arise at some point.

What is being proposed is that a prioritisation system should be built in. It would not prevent members from introducing bills if they wished to do so, but it would not require the parliamentary authorities to timetable them. That is the issue that needs to be resolved.

Bruce Crawford: I accept entirely what Cathie Craigie says. We need to agree what process we are going to have. That is a fundamental stepping stone to success. Whatever decision-making framework exists—whether it is a committee of back benchers, the bureau, or whatever other option we might decide on—that group of people will need to have a clear set of criteria beyond the criteria that we have already, which the bills will have met, on which to make a decision about prioritisation. The question for the committee is whether we should help in that process by taking evidence to ensure that the process can be seen to be open and transparent or whether we should leave it to another part of the organisation to come up with the criteria, which will not be agreed through the Procedures Committee.

The Convener: I thought that what the minister said on that was quite helpful. If we agree that there needs to be a procedure, we can establish what that procedure should be and then consult on and produce the guidance for that group—whether it is the bureau or whatever.

Bruce Crawford: So, there would be a secondary stage.

The Convener: Yes, we could have a secondary stage with detailed guidance on the criteria. That would be a sensible way forward, rather than trying to work out the detailed criteria and then deciding that we do not need a process.

Mark Ballard: This is in reply to what Cathie Craigie said. I am still thinking about the answer. I can see that the bureau would be able to make the kind of timetabling decisions about committee time

that might be needed. However, notwithstanding the minister's answer, I do not think that the bureau is the appropriate place to take detailed evidence. That does not seem to be the way in which the bureau operates. The criteria that we use will determine which is the appropriate body to judge those criteria. There is a link between the criteria that we use on the one hand, and the body that we use on the other hand. We cannot decide on the body and then on the criteria; to some extent, we have to decide on the criteria and then on the appropriate body.

The Convener: We could end up going round in ever-decreasing circles and never reaching conclusions. We have got to work our way forward and reach some conclusion. That conclusion may be that there is no need to have any process—in which case, why waste time in developing criteria? We must first make decisions on the general, broad principles of whether there should be a process and the way in which it should work. We will then need to look at the detail of the criteria to ensure their transparency. That is my thought process on it.

11:15

Mr McGrigor: We have already heard from NEBU; we took evidence from David Cullum. However, having talked to people about the issue, I think that one reason why members' bills might have taken a long time is that members have not introduced the bills or responded to letters quickly enough. If a member is taking too long, or is being inefficient, he or she is holding up everyone else in the Parliament. I would like to hear from the people at the coalface practical examples of why the process gets snarled up. I would also like to have recommendations on what to do with members if they do not push their bills quickly enough and miss deadlines.

The Convener: I am not aware that any bills have reached stage 1 and then been delayed because members were not progressing them. Once the bill has a timetable—

Mr McGrigor: I am not talking about specific bills, but I believe that things can get held up by the member or their staff rather than by the procedure.

The Convener: I am sure that that is the case, but any such delay would be likely to happen at the pre-consultation stage when the member is driving the process. Once the bill gets—

Mr McGrigor: That is the stage that I am talking about—it all impacts on NEBU's time.

The Convener: There will be an incentive for all members if the process contains a timetabling stage, when priorities are decided at the end of

June or in September and the committee makes its recommendations. There will be an onus on all members to ensure that they have completed the consultation in time to meet that deadline; if they have not, they will miss the boat for that year. The onus will be on the member.

Bruce Crawford: Convener, what you said about the criteria was helpful, because it allows us to acknowledge where we are going. We know that there is further work to be done once we have made the initial decisions. However, I want to clarify some of those initial decisions. The clerk's note poses several questions. Do we think that there should be a random process? Do we think that the decisions should be taken by the bureau or by a committee of back benchers? Do you want us to discuss that today and give you our views? I have some strong views on the issue and I am happy to talk about it now, if that will help the clerks to prepare a report. How do you want to deal with the issue?

The Convener: We need to clarify that we are asking the right questions. We will then bring the options paper to a future meeting.

Bruce Crawford: In that case, the only question that I have—other than the one that I raised with you earlier—is about the initial criteria laid down by the corporate body and the threshold. Are we confident that we have enough evidence on the matter to be able to say that we agree that the threshold is appropriate? Can we amend the threshold and criteria or do we need more evidence? I am not entirely confident that I am in a position to say whether the criteria laid down by the corporate body are robust or whether they require amendment. I am not sure that we have the evidence.

The Convener: What evidence are you seeking and from whom?

Bruce Crawford: Have we taken any evidence about whether the criteria are appropriate? For example, one of the criteria is that a member cannot progress a bill if the Executive is proposing to introduce a similar bill. Have we taken any evidence to check whether that criterion is sufficient?

The Convener: When we heard from NEBU, every member had the opportunity to challenge its evidence. We also took evidence from members and from representatives of the political parties, who also had the opportunity to comment on those specifics.

Bruce Crawford: Forgive me, convener, but many of the issues have become more relevant because of what the minister said about how the process will work.

Mark Ballard: We have a set of criteria that the corporate body uses, but NEBU does not take the decisions, so it does not use the criteria. The representatives of parties and bureau members do not use the criteria. Given that we have a set of criteria in place, surely we should take evidence on how they work from the people who are taking the decisions.

Cathie Craigie: We have already taken such evidence. We do not have a set of criteria for any new process. We have taken all the evidence, so surely we should be making recommendations to the bureau on the basis of that evidence. We would expect our evidence and recommendations to influence any criteria that come before the Parliament for adoption.

Bruce Crawford: I do not disagree with what you say, Cathie. We need a recommendation that says, "These criteria are good or bad or need amended." I accept that entirely. I have my own views on what the criteria should be, but that is a different matter from deciding whether we have secured sufficient evidence in what must be an evidence-based decision-making framework.

Cathie Craigie: As well as the evidence from people who have come from all the different parts of the Parliament, we should be bringing to the table our experiences as members of the committee and members of the Parliament in considering how the system should work. I do not see whom else we could bring in to get more evidence. The suggestions that Mark Ballard made earlier are fair enough. Once we hear evidence from Barry Winetrobe and Professor Brown, we will be able to proceed to make decisions and recommendations.

Karen Gillon: Through the process I have come to the conclusion that the trigger point of 11 signatories is not robust enough. Where in the process we have that debate remains to be seen. I do not think that 11 signatories, which is not even a fifth of the number of members of Parliament, is a robust enough criterion to enable us to say, "This bill has attracted support across the Parliament." We need to consider that. Members would not even need cross-party support to get 11 members to sign up to their proposed bill; all the signatories could come from one political party, which would not reflect general support throughout the Parliament.

The Convener: I suggest that we agree at this stage to have a further oral evidence session to which we will invite Barry Winetrobe and Alice Brown. If anyone has other suggestions of people who ought to be asked to give evidence, please let me or the clerk know within the next couple of days. Secondly, I suggest that, if members think we need to cover particular areas that we have not yet covered, they should make a specific request

to me or the clerk so that we can produce a note for our next meeting. Obviously we do not need to make a decision about the report until the subsequent meeting, when we will have taken further evidence.

Mark Ballard: To short-cut the process, I suggest that we take evidence from the corporate body on the robustness of the criteria that were used in the previous session.

The Convener: I understand the point that you are making, but my feeling is that we have already done that.

Karen Gillon: I sound a note of caution. Alice Brown's role as Scottish public services ombudsman may give rise to a conflict of interest. Do we have a fallback position? Do we have someone else in mind whom we can invite?

The Convener: We will consider whether other members of the consultative steering group might be appropriate.

Bruce Crawford: On Mark Ballard's point about the corporate body, I accept that, if we have taken evidence from a corporate body member about the threshold, what you say, convener, is fair enough. However, I do not recall hearing any specific evidence from a corporate body member on that issue. Given that the corporate body is the initiator of the threshold—it brought the criteria into being—surely it would be appropriate for us to understand why it did so and to ask whether it thinks that, in the light of experience, the criteria could be amended and the threshold raised to more than 11, as Karen Gillon suggested.

Karen Gillon: I want to suggest an alternative to try to find a way forward. I do not think that we need to hear from the SPCB. The clerks could examine how many members signed up to each of the bills that has been proposed and find out whether a general pattern is emerging whereby a bill that receives a large number of signatures manages to make its way on to the statute book whereas a bill that does not have so many gets stuck somewhere in the process. Perhaps we could get the data from the clerks instead of having to take evidence from the SPCB.

The Convener: I have to say in response to Bruce Crawford and Mark Ballard that the non-Executive bills unit has already presented, and given evidence on, a paper that covered the criteria—members have had the opportunity to question the unit's representatives on that matter. We have also taken evidence from the clerk of the Parliament, Paul Grice, who spoke on behalf of the parliamentary authorities. I am concerned that we are simply saying that we have to ask someone to come back and give evidence because the committee failed to ask the right questions. That is not necessarily the way in which

we should operate. In any case, I am still not clear about what evidence we would receive that we have not already received.

Mark Ballard: Neither Paul Grice nor NEBU had the task of assessing bills against the criteria.

The Convener: With respect, NEBU assessed bills against the criteria. Bills were referred to the SPCB only when the unit was unable to determine the priority.

Mark Ballard: In that case, I would be interested in finding out why bills were referred to the SPCB and how it acted in those situations. No one from the SPCB has given evidence on that matter.

The Convener: I do not think that we need to take oral evidence on that. Instead, it would be simpler to ask for written evidence on whether any bills in the previous session were referred to the SPCB to determine whether they met the criteria.

Mark Ballard: I would find that useful.

Karen Gillon: And we should ask whether we can see the full minutes.

The Convener: If members have any specific issues that they think require to be covered, they should let the clerk know before the next meeting.

Before we discuss private bill procedure, I will suspend the meeting for a couple of minutes.

11:27

Meeting suspended.

11:30

On resuming—

Private Bill Procedure

The Convener: The next item on the agenda is consideration of a paper on private bill procedure. The private bills unit has asked us to consider this item, as a couple of issues have arisen from private bills that are being considered. Ken Hughes, the head of the chamber office, Rodger Evans from the private bills unit and Fiona McClean from the directorate of legal services will give evidence on the paper. I invite Ken Hughes to say a few words of introduction before we move to questions.

Ken Hughes (Scottish Parliament Directorate of Clerking and Reporting): As the convener has said, there are two emerging issues that present problems under the guidance to which we currently operate. We are recommending that changes be made to provide solutions.

The first change is directed at handling proposed amendments to a bill that could attract new objectors. At the moment, it is perfectly possible and feasible for a private bill to be amended, which could affect the interests of a completely new set of objectors. There is nothing in the guidance that advises us on how to deal with such proposals. The procedural loop that we suggest would provide everyone whose interests might be adversely affected by a bill with the same opportunity to object. We want to ensure that there is a level playing field for objectors, irrespective of whether their objections relate to the bill as introduced or to amendments that are proposed subsequently at consideration stage. Putting in place the loop should ensure accessibility of information and transparency of process for all the parties involved. It should also ensure that the bill can progress without an added threat of legal challenge.

The second change relates to objections to the entire bill, rather than a particular aspect of it. Experience so far suggests that the majority of objections are to detail, rather than to whole bills, but we receive a smattering of objections to whole bills. We are proposing that objections be considered fully at preliminary stage, instead of continuing into consideration stage, as happens under the current guidance. That would call for a certain replication—if not a total replication—at preliminary stage of the process of detailed scrutiny that happens at consideration stage. We are recommending the change because we are concerned that the private bill committee could end up considering objections to the general

principles of a bill after the stage at which that should happen has passed and consideration stage has begun. Again, there is a gap in the guidance, which does not address that circumstance.

Members may be wondering why we are recommending these changes to the committee at this stage. The private bills with which we are now dealing are significantly different in nature, scale, size and complexity from those with which we dealt in the first session. Session 1 bills were modestly sized and relatively straightforward and they had a discrete purpose. I refer to the National Galleries of Scotland Bill and the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill. In session 2, those have been followed by major works bills, such as the Waverley Railway (Scotland) Bill, the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, the Edinburgh Tram (Line One) Bill and the Edinburgh Tram (Line Two) Bill. Those major works bills are now testing the guidance that we originally wrote and are identifying new procedural issues that we need to address. That is why the matter has reached this stage before we have been able to come to the committee.

The changes to guidance will not necessitate standing order changes, certainly in the short term. I make it clear that the changes that we are suggesting do not go against anything that is currently in standing orders, although, for the sake of clarity and consistency, there may at some stage be a need to consider changing standing orders to make them consistent with the guidance.

Some urgency is attached to the changes to the guidance. Possible amendments and objections of the type that we are talking about are already in the pipeline and some of the bills that will be affected are in progress, so we recommend that we have a quick look at solving the problems that we face.

The Convener: It might be easier if we examine the two issues discretely. We will begin with comments on the possible amendments and the procedural loop and then examine the whole-bill objections. It will be easier to treat the issues separately rather than cutting between the two. Do members wish to kick off on the first issue, which is the procedural loop?

Mark Ballard: I am new to this process. Are any timetables or time limits set out in the private bill procedure? My concern is that the additional loop may keep on looping round.

Ken Hughes: The loop creates a new objection period for people who are newly affected or who could be affected by any proposed amendment to a bill. Standing orders and the guidance state a period of up to 60 days. If all the objectors are

identified and come forward within the 60 days, either to say that they object or to confirm that they will not object, we are suggesting that we do not have to see through the whole 60-day period again before we can go to consideration stage. Moreover, at consideration stage, amendments would be coming only from the promoter or from the committee, so it does not appear that anything would be created to stall or stymie a bill unnecessarily.

Bruce Crawford: I have two questions on the loop. The first is on the principle of changing the process at this stage, given that bills have already begun their process. The promoters, the objectors and everyone involved understood what the process was at the beginning. We are now suggesting that the procedure might be changed part way through. What danger is there of a promoter or an objector seeking judicial review, because the process was not the same as it was when it started and therefore the game had changed? I am concerned that there might be avenues for people to exploit if they are unhappy with the outcome. I can see that happening particularly with the Waverley Railway (Scotland) Bill. If I were an objector, I might think about asking for judicial review if the process changed.

Secondly, if the committee intimates a possible amendment to the promoter and the promoter does not accept it, the committee would have to say, "Okay, we are going to suggest that the bill should not be passed at the final stage." That would be to get to the nuclear option very quickly. If the promoter refused to lodge an amendment, could not the committee suggest its own amendment to avoid an important bill being lost? If the committee lodged its own amendment at that stage, that could allow an important piece of legislation to get through without being thrown out at the final stage.

Ken Hughes: I will have to defer to Fiona McClean slightly, but I can kick off. When we saw the emerging problems, the possible impact of changing the rules as we went along on the bills that are currently in progress immediately became apparent. That is why we are stressing the urgency of the need to institute changes before we go too far.

We are still at an early stage with the Waverley Railway (Scotland) Bill and we are not instituting any change to the objection period process that we have just gone through. The issue arising with the Stirling to Alloa line is probably more pertinent but, again, we have been careful to try to get in before the start of the process. We do not want to enter into a process and then change it in mid-stage. However, the imperative for us was to make the change rather than to ignore the issue.

Fiona McClean (Scottish Parliament Directorate of Legal Services): Bruce Crawford mentioned judicial review. One of the reasons why we are suggesting the changes is that, if we did not include the loop process, those who might be affected would have no chance to object to the bill or any proposed amendments—they would have a chance to judicially review the bill either as it was going through the process or when it was passed. By including the loop, we are taking steps to prevent judicial review.

Bruce Crawford: The loop might prevent a potential objector from seeking judicial review. However, even with the loop, could an objector who had not won their case not come back at the end of the process and suggest that, because the process changed and the game was not the same at the end as it was when the process started, the organisation that promoted the bill, or the Parliament, had not acted in a reasonable way and that there was therefore potential for judicial review? That risk might be small, but I just want to clarify what might happen.

Fiona McClean: The risk is very small because the objector would have to show that they had been affected and that they had been a victim of the change. We are at the start of the process with the Waverley Railway (Scotland) Bill—the private bill committee met this morning. It has been agreed that, before the preliminary stage, the officials will meet all the objectors to discuss the procedure. That is what we have done for the other bills. We have not yet reached the stage of discussing the process with the objectors. If the guidance is changed, the new process will be explained to them.

Bruce Crawford: I cannot remember what stage the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill has reached. Has it gone past the stage where a loop could be introduced?

Fiona McClean: We are just about to start the consideration stage. One of the reasons for the urgency of the changes is that the promoter missed including in the bill the closing off of a right of way at an accommodation crossing and now has to amend the bill in order to shut down that right of way. That could affect people who, although they were aware of the bill because the railway line will cross their land, were not aware that the crossing would be closed. The promoter of the bill is leading with that amendment.

Bruce Crawford: That is useful, but it does not deal with my second point.

Ken Hughes: On the second point, the nuclear option would be for the bill to be thrown out or for the promoter to withdraw it. As you say, another

option would be for the committee to take the matter on, instead of the promoter.

Bruce Crawford: Will it be specified in the new guidance that the committee could take on the amendment if it wished?

Fiona McClean: It is important to bear in mind the fact that the bill is a private bill not a public one. The promoters have a commercial interest. The Parliament cannot force the promoters to build a railway on a certain route. The promoters are always going to be able to choose to walk away from the project.

Bruce Crawford: I understand that the promoters could walk away at any stage—that is their choice. However, if the committee felt strongly enough that the bill had to be amended, it could, rather than throwing out the bill, force the promoters into a situation in which they had to withdraw it. As long as that provision exists, I am happy.

11:45

Richard Baker: On the possible changes to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, are you aware that the promoter has argued that people have always been aware that changes were a possibility and that they have had plenty time to object? Communities were given a huge amount of notice of the scheme. Would the new procedure be used in every case in which there was an amendment to a scheme? New 60-day periods of consultation late on in a scheme could have a significant financial impact on the scheme and could make a big difference to its viability. Did you take that into consideration in proposing the changes?

Fiona McClean: You say that people have been aware of the railway—

Richard Baker: That is what the promoter said; I was not making that argument.

Fiona McClean: The issue is that people are not entitled to object unless they will be affected by the bill. Even if, in principle, a person objects to the bill, the objection is admissible only if they show that they will be affected. Only people who would be affected have the chance to lodge an objection. Even if people have known about the bill since it was proposed, they have the opportunity to object only when it will affect them.

Richard Baker: My second point was about the financial impact on promoters.

Fiona McClean: We are aware of the financial impact. However, if we did not put in a loop and give people the chance to object, the alternative would be the possibility of a challenge. If the bill were held up in the courts, there would be further

delay.

Richard Baker: So you do not think that people will be more reluctant to produce schemes via private members' bills because of the new loop process.

Ken Hughes: The issue does not pertain to members' bills; only to private bills.

Richard Baker: Sorry. I meant private bills.

Ken Hughes: I do not think that people will be more reluctant because the rationale behind private bills is to allow private interests to take additional powers. We are simply trying to make the system that we have more robust and to give more assurance to people who introduce private bills.

Cathie Craigie: Like Mark Ballard, I do not know much about the private bill system. Given that we have had only a couple of private bills, nobody has a great deal of experience of them. Forgive my ignorance, but will you explain what discussion goes on with individuals or companies who wish to produce a private bill? Is the process explained to them? Is it made clear that the proposal that they bring to the Parliament and put on the table should have had a lot of work done on it? For example, with the Stirling-Alloa-Kincardine railway line, was it made clear to the promoter that they had to say what the route was and consult on it and that there could be no changes to the route? Are such issues explained in detail?

Ken Hughes: Long before the introduction of a private bill, a lot of engagement takes place with the promoters to explain the process. To my knowledge, all the private bills that we have seen so far have been drafted by parliamentary agents who have huge experience in these matters. Promoters get advice from parliamentary authorities and they also seek independent legal advice. When promoters come to us, they are fully aware of the process and what they should look out for because they are backed up by experienced advisers. We ensure that we have meetings with the promoters to explain the processes and to answer any questions.

Cathie Craigie: So presumably the promoters would be fully aware of the right of an objector further down the road to seek a judicial review, and they would know the length of time and the costs that that would add to the project. Have you consulted the promoters of this session's four private bills on the proposed changes?

Ken Hughes: No, we have not, to tell the truth.

Fiona McClean: We have not consulted on the paper. We have discussed the process with the promoter of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, because they will be involved. It is fair to say that the promoter is

just as keen, if not more keen, than the objectors to ensure that the process is in place before the bill is passed, because that is in their interest. The last thing that the promoter wants is a challenge to the bill after it has been passed. However, we have not consulted the promoter of the Waverley Railway (Scotland) Bill.

Cathie Craigie: Why have you not consulted them? Is this a first step? Since we consult people, and they complain about the number of times we consult them, why have you not consulted? I realise that you do not have a crystal ball and you do not know who is going to come forward with a private bill, but there is a group of people who have already started the process.

Ken Hughes: To be honest, a significant time element was involved. We have come to the problems as we have progressed, predominantly with the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill. The problems were identified in such a short period of time that our first inclination was to come here to try to address them before they proceeded too far. As Fiona McClean said, we have talked to the promoter of the Stirling-Alloa-Kincardine and Linked Improvements Bill about the changes, so they know about them. However, given the timescale with which we have been working, it would not have been feasible to consult widely. At the back of our mind has always been the fact that the objective is to keep the process going in the interests of everybody, including the promoter.

Cathie Craigie: There might be an opportunity over the next wee while to consult.

The Convener: Bruce, is your point related to this issue?

Bruce Crawford: Yes. I would not raise it if it was not.

The Convener: I meant, is it related to the issue under discussion?

Bruce Crawford: Yes. It is about objectors. Cathie Craigie makes a fair point. There are issues about the bills that have already been passed. Are you concerned that someone will look at the process and come back and say, "That was not available to me"?

Fiona McClean: No. The two bills that were passed do not raise any issues, because there were no amendments that affected new objectors.

Mr McGrigor: I sat on the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill Committee. That bill was purely about navigation rights and fishing rights in the area of a proposed wind farm. That was our remit, but endless numbers of people lobbied me about the rights and wrongs of having the wind farm where it was. That had nothing whatever to do with the

committee that I was sitting on, but it was quite impossible to tell people that my remit was the committee's remit. Is there any way of making the public aware of what such committees actually do? That would avoid MSPs having to write endless numbers of letters in reply to people saying, "It is none of my business." It does not look as if it is none of your business when you are sitting on the committee.

About three quarters of the way through the process of the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill, the promoters suddenly decided to get rid of one of the sections that they had been fighting for, because there was doubt about whether it was within the competence of the Scottish Parliament or the Westminster Parliament. The bill has received royal assent, so they must have sorted that out, but at some point during consideration of the preamble to the bill, one would have thought that that point would have come up. How could you prevent that sort of mistake from happening again? We got ourselves into a peculiar situation whereby a lot of people ended up voting for something that they had been arguing against, or voting against something that they had been arguing for.

The Convener: I am not entirely sure how relevant that is to the item before us.

Mr McGrigor: It is a practical—

The Convener: It is not specific to the issue that we are considering, which is the lodging of amendments to a scheme at a later stage.

Ken Hughes: On informing objectors, the clerks hold meetings with potential objectors to let them know what the bill is about and what the process is. There were particular difficulties with the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill, because it was hard for people to grasp the concept that the bill was not about wind farms. In hindsight, I can see that perhaps, as officials, we could have done a wee bit more to educate. That situation does not pertain to all the transport works bills that we are talking about, because the subject matter of those bills is clear. However, the subject matter in the case of the Robin rigg bill was not. We inform people best through public information exercises that ensure that people know what is what and what the bill is talking about. I hope that members of current private bill committees do not have the same difficulties that Jamie McGrigor experienced with the Robin rigg bill.

The competence issue was raised by the promoters. First and foremost, a private bill, just like any other bill, gets a certificate of competence from the Presiding Officer on introduction. We stood by that at the time.

Karen Gillon: I understand where you are coming from; I just want to raise a practical issue. There might be situations in which an amendment brings somebody new into the process. I am thinking of the railway line at Larkhall with which I am involved, which was not caught up in the process that we are talking about. The council could have been brought in as a potential objector, but it was one of the co-sponsors of the relevant bill. Why would we then have needed a 60-day objection period, which would just hold up the process? Is there scope for having something that says that the committee has the flexibility to allow up to 60 days for objections, but if there is no need for that, it can have a 10 or 15-day objection period?

Ken Hughes: That is exactly what we are recommending. In cases in which we were able to identify all the potential objectors and get them to confirm whether they would be objecting, it would be left to the committee's discretion to decide whether it wanted to say, "We have identified everybody, so we don't really have to stay with the 60-day period; we can shorten it and move on."

Karen Gillon: That is not clear from the paper. I would like that to be expressed more clearly so that it stands out.

The Convener: I agree with Karen Gillon. The paper appears to suggest that an objection period of 60 days applies normally and that objections would be considered only after that period was up. You indicated in an answer to an earlier question that if all the potential objectors had either objected or said that they had no objection, the committee could start the process of dealing with objections sooner than the end of the 60 days. It needs to be clarified that 60 days is the maximum period and that committees can exercise discretion and get on with the job when they know that everything is sorted out.

Ken Hughes: Sure.

The Convener: Are there any other questions on paragraphs 5.43 and 5.44 of the revised guidance on private bills, which are mentioned on the second last page of the paper?

Karen Gillon: Could Ken Hughes build in something that says that the committee has the flexibility to judge whether to have an objection period of up to 60 days?

Ken Hughes: Yes.

Fiona McClean: We envisage that the period will normally be 60 days to ensure that new objectors have the same rights as the original objectors. The committee will have the discretion to shorten that period only if all potential new objectors can be identified and have confirmed to the committee whether they want to object.

Karen Gillon: I think that that should be made clearer in the paper.

The Convener: I agree.

If members have no other questions on that specific area, I will move on. Subject to the amendment that we have just suggested, are members content to approve that part of the guidance?

Members indicated agreement.

The Convener: The other section of the paper suggests that objections to the whole bill should be dealt with at the preliminary stage instead of at the consideration stage. Are members happy with that suggestion?

Members indicated agreement.

Karen Gillon: It is eminently sensible.

The Convener: I thank Ken Hughes, Fiona McClean and Rodger Evans for their evidence. The *Official Report* will show that we have agreed to the changes set out in the guidance, subject to the amendment that has been suggested.

Legislation Inquiry

12:01

The Convener: The next item on the agenda is consideration of a proposed remit for the inquiry that the committee has agreed to carry out into timescales for and stages in the scrutiny of bills.

It is important that we have a clear and focused inquiry that deals with timetabling issues, because a number of ancillary issues such as whether policy and financial memoranda are adequate could be flagged up as part of it. At the moment, we want to try and focus on timetabling issues. Those other questions will be examined at a future date when we consider the wider issue of the legislative process.

With those preliminary comments, I suggest that we go through the paper page by page. Anyone who has questions or suggestions should make them known.

Do members have any comments about the first and second page of the paper, which take us up to paragraph 10?

Members indicated disagreement.

The Convener: Do members have any comments about page 3, which concentrates on the timescales for stage 1, stage 2 and stage 3?

Bruce Crawford: On stage 2, the paper says nothing specific about the timescale for lodging amendments for consideration.

The Convener: The second-last paragraph states:

"Should the minimum notice period for Stage 2 amendments ... be extended?"

Bruce Crawford: So it does say something about it. I surrender.

The Convener: Do members have any comments about the scope of the inquiry, which is set out on page 4 of the paper?

Members indicated disagreement.

The Convener: On the section of the paper headed "Audit Committee inquiry", I should advise members that I am still trying to arrange a meeting with the convener of the Audit Committee to clarify the committee's exact intentions behind its inquiry and how it would or would not tie into our work. I hope that that will happen tomorrow.

Are members happy with the remit of the inquiry?

Members indicated agreement.

The Convener: Paragraphs 16 and 17 are about the witnesses and timescale for the inquiry. The list of witnesses is obviously open to comment and any other suggestions that members might have. For example, members might know of external organisations such as the Scottish Council for Voluntary Organisations, the Scottish Trades Union Congress or the Federation of Small Businesses that might be interested in giving evidence. I am happy to take suggestions about other bodies from which we might seek evidence.

Karen Gillon: I want to sound a note of caution. I think that the inquiry could run away from us, because everyone and their auntie will want to submit evidence about how they did not get what they wanted with the amendment that they lodged.

As a result, the committee has to be clear about what it is doing. We should have a list of people from whom we want to take evidence, and anyone else can submit written evidence. If we are not clear and hard about that, we will spend the next six months taking evidence from organisations that for whatever reason did not get their amendments through. It is important that we do not allow ourselves to become that type of body. We need to be clear about that.

There are pretty obvious organisations and we should get a list—if that is possible for the clerks—of those that we think should give oral evidence. We can thrash that about and anybody else can put in suggestions, but we have to be quite robust about that as a committee.

Cathie Craigie: I totally agree with what Karen Gillon has said. Since the beginning of this session of the Parliament, we have heard increasingly from back benchers of every party that committees always seem to be taking evidence from the usual suspects. We have to find a way of getting beyond that, and I think that we should bear that in mind when taking evidence. There are people out there who are making a real business of coming along to the committees, and we must remember that it is the people of Scotland whom we are here to represent and not the umbrella bodies and lobby groups. We should bear that in mind.

Mr McGrigor: I agree with much of what Karen Gillon says. However, if outside organisations are experiencing difficulties because they simply do not have enough time, that is a different matter. We should take evidence from those people.

The Convener: I do not think that Karen Gillon is suggesting that we should not allow any written evidence.

Mr McGrigor: The letter that we have from the Scottish Gamekeepers Association, for example, points out that it does not have the resources.

The Convener: I was going to suggest that we ought to take written evidence and, once we have received it, we can check whether there are any organisations that are making specific points in that evidence that we think might be useful for the committee, rather than making an open-ended commitment at this stage to take oral evidence from all sorts of bodies just because they happen to have written to us.

Karen Gillon: As a committee convener, I have found in the past that written evidence is just as valuable to a committee as oral evidence is. Being invited to give oral evidence does not mean that somebody's views are any more important or less important than the views of those who are invited to give written evidence. We have to get the message across that being asked to come to a committee does not make somebody any more important than somebody who is asked to write. If we begin to re-establish that, we might be able to get the balance back again.

The Convener: I quite agree. There is no restriction on anybody submitting written evidence, but we need to consider from which of the organisations that do so, if any, we wish to take additional evidence.

Bruce Crawford: I am happy with what I am hearing; a sensible suggestion has been made.

I would like to make a couple of points about witnesses and timescales. I am looking at the issue from my own experience of considering the Transport (Scotland) Bill, the Water Industry (Scotland) Bill and the Water Environment and Water Services (Scotland) Bill, which introduced the water framework directive from European Union law into Scots law.

As an Opposition spokesperson trying to be involved in the process of submitting amendments, I found it extremely onerous—as I am sure back-bench members did—to get support and to get the amendments worked up. Much of the time, we can do it with the help of the clerks but, at the end of the day, we have to make up a lot of the amendments ourselves. A specific issue affects back benchers and Opposition members who do not have the weight of the Executive behind them and who rely on the clerks. We need to take evidence from Opposition spokespersons and back-bench witnesses to explain why the issues that we are investigating are particularly important at stage 2, so that we can tease out some of the problems.

Karen Gillon made a point about organisations and said that not everyone can expect to be here. There are a few organisations—particularly voluntary organisations—that we would have liked here, but which do not have the resources to attend, and their written evidence will be

important. The nature of their work means that they might not meet many times a year; their controlling bodies might meet perhaps once a month. It gives me some concern that we are now only a month and seven days from the closing date for written evidence. I am not sure that all the organisations out there will be in a position to respond to us robustly in that timescale, given the nature of their businesses. Another couple of weeks to give them the time would be helpful in ensuring that we get the written evidence that we require.

The Convener: That is a valid point.

Karen Gillon: I was wondering whether, as this is a big issue, it might be one on which we want to take evidence in another part of Scotland. It might be worth going to the north of Scotland or to the Borders. Although we are not a committee that usually has such meetings, it might be useful to have an accessible meeting somewhere else, as the issue in question is fundamental to the Parliament's workings. We would need to put in a bid through the Conveners Group. Andrew Mylne might be able to work up a proposal on that for the next meeting.

Bruce Crawford: That is a great suggestion, because we are talking about the nuts and bolts—the fundamentals of how the Parliament works—and that level of activity would be appropriate.

The Convener: In that respect, it might be worth considering whether there has been a bill in the consideration of which the problems of geography have been an issue.

Bruce Crawford: The Land Reform (Scotland) Bill.

The Convener: That is the one that I was thinking of, too. Problems of geography might have made it more difficult for some people to give evidence or to participate in the process.

Bruce Crawford: Are we accepting my second point, about the need to extend the deadline?

The Convener: Yes, I am happy with that. In addition, we have a little bit longer on the NEBU stuff, which might be useful.

Mark Ballard: Following on from that, given the importance of the written evidence, I think that it is important that we do not just get written evidence from the usual suspects. I would be interested in ensuring that we have a wider strategy than one that just involves writing to the Scottish Council for Voluntary Organisations.

The Convener: I am always willing to hear members' suggestions; we can talk to those in the Parliament's participation services to find out whether they have any suggestions on how to ensure that our call for evidence goes beyond the

usual suspects. It should be borne in mind that the usual suspects are often involved because they have a particular interest in what the Parliament is doing, so they should not be excluded from the process.

Karen Gillon: I will make a suggestion, which you might laugh at. It might be worth your writing a letter to tell people what we are doing and sending it to all the local papers to find out whether they will carry it in their letters pages. I know that many people read the letters pages.

The Convener: I am more than happy for that to be done. Through the Parliament's authorities, we will make arrangements for that to happen. I draw members' attention to the call for evidence in the annex. Subject to the amendment on the timescale, are members happy with that?

Members *indicated agreement.*

The Convener: Thank you very much.

At a previous meeting, we agreed to take agenda item 4, on the suspension of standing orders, in private. Before we move into private session, I draw members' attention to the revised schedule of meetings. Although the meeting on 24 February is described as unchanged, I suggest that we do not need to meet on that date; we will meet on 2 March instead. We will move to having meetings in alternate weeks after that rather than meeting in the previously notified fortnightly cycle.

Karen Gillon: I understand why we are doing that, but it causes me some difficulties, because I have arranged my diary on the basis of our meeting in alternate weeks on the dates that we were given a while ago. The change causes some problems.

The Convener: Part of the problem was that I had made the mistake of arranging my diary on the basis that the recess would not count in the fortnightly cycle. We will meet on 2 March and every fortnight thereafter.

I also remind members that the debate on oral questions, First Minister's question time and emergency bills will be on Thursday morning; I hope that members will be there to participate. The Executive's written response to the oral questions report has been circulated at this meeting for members' information.

12:14

Meeting continued in private until 12:22.

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