

PROCEDURES COMMITTEE

Tuesday 16 March 2004
(*Morning*)

Session 2

£5.00

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PROCEDURES COMMITTEE

5th 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:

Elizabeth Watson (Scottish Parliament Directorate of Clerking and Reporting)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 16 March 2004

(Morning)

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

Guidance for Conveners

The Convener (Iain Smith): As we are quorate, we will make a start. The agenda is not long, but the meeting could be lengthy. I have received apologies from Cathie Craigie—Irene Oldfather is here as her substitute. As I have not heard from other members, I assume that they will turn up in due course.

Agenda item 1 is on draft guidance for conveners, which the Conveners Group has already considered twice. The normal protocol is for the Procedures Committee to give such guidance documents a once-over to ensure that they are acceptable. I ask Elizabeth Watson, the clerk to the Conveners Group, to give a brief introduction, after which members can ask questions.

Elizabeth Watson (Scottish Parliament Directorate of Clerking and Reporting): The note by the clerk sets out the background. The genesis of the document was the Conveners Group away day, which took place at the start of this session of Parliament. The conveners agreed that it would be useful to have their own source of reference on certain matters. The guidance is very much a source of reference for conveners rather than for the public. More information will be provided about the role of convener when we redo the guidance on the operation of committees, which is more general. The present guidance is aimed specifically at conveners. To use the current jargon, the document is organic and may be added to and developed if conveners identify other issues on which it would be helpful for further guidance to be provided.

The Convener: I am glad that it is not genetically modified.

As there are no questions, are members happy to approve the guidance?

Members indicated agreement.

The Convener: I thank Elizabeth Watson for coming.

Non-Executive Bills

10:19

The Convener: I suspect that agenda item 2 will take a little longer than agenda item 1. Colleagues have a number of papers before them. The first is a summary of the evidence on non-Executive bills and is for information. Obviously, some of that evidence will be used in any report that we wish to produce. The main paper for consideration is the one that lays out the committee's options, but I draw members' attention to the paper on consultation methods, the letter from the Scottish Council for Voluntary Organisations, the copies of papers from Joyce McMillan and Barry Winetrobe and a note from the clerk that has just been circulated on party balance in House of Commons committees.

Unless members have any specific comments on the summary of evidence, I propose to concentrate on the options paper, which, I hope, will allow us to find a way forward for the inquiry. We must consider whether we should produce a draft report at this stage or whether we need to address other issues. One point that is highlighted in paragraph 3 of the paper is that the committee may wish to come to a view on whether to consult further on any options that we propose with those who have been involved in the inquiry, including the Scottish Parliamentary Corporate Body, political parties, members and the wider public.

I propose to discuss each of the questions in the paper to find out whether there is a consensus. We will then consider which of the various options at the end of the report the committee might wish to have as the preferred bidder—to use the parlance of public-private partnerships—rather than as a definite conclusion. Do members have any comments on the introductory paragraphs?

Richard Baker (North East Scotland) (Lab): Will we come back to the issue of further consultation?

The Convener: It would make sense to discuss that after we decide what we wish to do.

Does anyone wish to get the ball rolling on question 1, which is about whether prioritisation is needed?

Mr Jamie McGrigor (Highlands and Islands) (Con): I am inclined to agree with the suggestion of a reserve mechanism. A system of prioritisation has not been needed so far—we are talking about a potential problem. That is why I like the idea of a reserve mechanism. Until now, we have not had a problem, although there may be one. There has not been a clear-cut proposal with which I would

agree, but we need something that could be implemented if a bottleneck appears.

Mark Ballard (Lothians) (Green): My perspective is slightly different. To some extent, we have had a system of prioritisation run by the corporate body and the non-Executive bills unit. However, NEBU has had to make a referral to the corporate body under the existing criteria on only three occasions. Given that, in the past, such referrals have been few, I agree that the system could be a reserve mechanism. However, it is worth considering the existing system of prioritisation to clarify how effective it has been. Part of the inquiry has been to examine what happens already.

Richard Baker: I agree with much of what Mark Ballard says. I am not sure that the prioritisation system should be only a reserve mechanism. As he said, prioritisation already takes place, so the debate is about what procedure we should have for prioritisation in the future. Question 1 is answered by the fact that prioritisation already happens. Later in the paper we will discuss how we should go about prioritising in future.

Irene Oldfather (Cunninghame South) (Lab): I recall that at a meeting I attended previously, we had quite a discussion about bottlenecks in the system. It is clear that decisions are being taken at points within the system, so I suppose that our report should analyse whether we are taking those decisions in the right way.

The Convener: I understand Jamie McGrigor's point about having a reserve mechanism, but I incline to the view that we need a mechanism that is clear and transparent. The mechanism could consider the situation simply once or twice a year. If it was decided that there was no problem, things could be allowed to carry on. If it was decided that there was a problem, decisions about prioritisation would have to be made. Setting up such a mechanism would not automatically mean that we would have to prioritise if there was no problem.

Mark Ballard: That is one model. Another model is the way in which we have worked until now. Rather than prioritising bills according to a set timeframe, such as annually or biannually, we have made prioritisation decisions only when a bottleneck has occurred. When that has happened, NEBU has gone to the corporate body to seek guidance on the criteria.

The Convener: That suggestion would deal with NEBU's drafting resources, but NEBU does not consider what parliamentary time is available, which is an issue that is determined by the Parliamentary Bureau. The question is where we should have the forward look to ensure that there will be no problem with parliamentary time either in the chamber or, more to the point, in the

committees. That is what concerns me. We need to be clearer about how such issues are resolved.

Mark Ballard: The penultimate paragraph of the text in the options paper dealing with question 1 states:

"committees themselves could be given more power (or better use their existing power) to adapt their Stage 1 scrutiny of Members' Bills to their existing work programmes, rather than vice versa".

That seems a logical proposal. The Parliamentary Bureau does not decide committees' work timetables but it gives them certain work, such as consideration of bills at stage 1 and stage 2. We could give the committees more power to take the lead in determining their work programmes so that they do not have to be purely reactive in dealing with whatever members' bills are shoved on them by the bureau. That seems a worthwhile proposal.

The Convener: Mark Ballard makes a fair point, which I want to explore further. The problem with the present system for non-Executive bills is that, in effect, it requires committees to be reactive. The Parliamentary Bureau gives them a bill and, usually, a timescale within which they have to deal with it. If a committee ends up being referred three or four bills, it has no time to determine its own work programme. We need a process that provides committees with a forward look at what Executive business and non-Executive bills they are likely to be given so that they can work those in with what they want to do. The bit that is missing at the moment is how all those things work together.

Mark Ballard: My point is whether that decision making should be made by subject committees, by the Parliamentary Bureau or by another parliamentary committee.

The Convener: That is the issue that we must determine.

Karen Gillon (Clydesdale) (Lab): The slight problem with Mark Ballard's suggestion is that it would allow a parliamentary committee to determine whether a member's bill proceeded. Some committees, such as the justice committees, have very full and difficult timetables. If we were to give such committees the power to determine whether a member's bill should be considered, that would set a dangerous precedent. The bill might not be considered for various reasons. For example, the bill might not suit the make-up of the committee at the time or it might be on a subject that the committee did not want to discuss. If a member's bill meets the criteria that the Parliament has set, why should it not be able to proceed through a committee? We need to be careful about allowing committees to decide where and when they consider members' bills. Strict criteria would be required for that.

Bruce Crawford (Mid Scotland and Fife) (SNP): I apologise for being a bit late. I feel a bit vulnerable at the moment, because I do not know what has been said already and I do not know where we are at. Convener, can you give me an update on what has been said?

The Convener: We are considering the options paper, not the evidence paper. At the moment, we are considering question 1, which is the basic question whether prioritisation is needed. I am trying to get a general feel for members' views.

10:30

Bruce Crawford: When we started this process, I was not entirely convinced that a prioritisation process was needed. Some of the evidence that we have received on whether there is a climate for prioritisation has been contradictory. Karen Gillon rightly suggested that whatever prioritisation process we are to have—whatever it might be beyond an agreed set of criteria—will create a level of tension. Some members will find the process difficult to accept if their bills are not allowed to proceed.

Inevitably, any form of prioritisation will result in someone not being happy. The question is whether we accept that enough business is coming through NEBU for such a mechanism to be necessary. I understand that we started the inquiry on the basis that a prioritisation process might be needed to help NEBU. Given that we are talking about supporting NEBU, we cannot put its officials into the position of having to make decisions on politicians' bills at peak times when its work load is overwhelming. Only politicians can do that, within the confines of the criteria.

The position that I have reached, albeit somewhat reluctantly, is that, if we are to have a prioritisation process, it should kick in only as a reserve mechanism as and when it is required. The downside of that is that individuals who get in early through the door and who have their bill going before the peak arrives might have an advantage over those who come in later. A balance has to be struck between that negative position and the benefits of putting in place a mechanism that will be bureaucratic whether we like it or not and that might not be needed at certain times of the parliamentary session.

I have chewed over the issue of the difficult balance that we will have to strike. The way that I have fallen is to have a reserve mechanism that would have to be kept for the times when it is required. As I said, this is a difficult issue and we have to balance all the factors.

The Convener: That is a point that Jamie McGrigor raised earlier and I would like you to develop it a bit further. Who would make the

judgment as to when the reserve mechanism would kick in?

Bruce Crawford: The only people who can make the judgment are the officials, as they are the people who are at the receiving end—they know the amount of work that they are having to deal with. That said, I do not believe that the officials can make a judgment about what should flow from the decision-making process. I assume that that judgment process would have to be triggered by a request from the Scottish Parliamentary Corporate Body following a request to that larger body from the officials.

Another slight problem is the relationship with the Parliamentary Bureau in terms of how it allocates time for the parliamentary week. That is a different issue from the one that we are discussing at the moment, however. Those are my views and I would like to hear them tested, if other members are prepared to do that.

The Convener: Karen Gillon wants to come in, but I would like to follow up on one point before she does. Should we set up the mechanism in such a way as to enable whichever body we finally decide should come into play to review regularly the situation to determine whether it needs to use the reserve powers? That would remove the need for officials to make that determination.

Bruce Crawford: Whatever we do, the information will have to come from officials. I do not think that it makes much difference whether we use the mechanism that either of us suggested. The difference is that your suggestion would give control to the committee or whichever body was to look after the process. That is probably the right place for the ownership of the mechanism. I agree that that is probably the better option.

Karen Gillon: I take a different view. If we are to have a prioritisation exercise, the same system would have to apply to every member's bill. If that is not to happen, we should not have a prioritisation exercise at all. We should look at our current mechanisms, which include the threshold for the number of supporters that a bill needs and the criteria that NEBU already uses. We could apply them in a more rigorous way and perhaps add to them.

Bruce Crawford: Are you saying that there should be no prioritisation?

Karen Gillon: I am saying that I would rather that we had no prioritisation than that some bills had to go through a prioritisation process while other bills, whose promoters secured resources from an outside organisation, were prioritised in the parliamentary timetable regardless of their merits.

Bruce Crawford: As Karen Gillon suggests, the reality is that, if the process is merely reactive, it will immediately kick in because everyone will try to get in under the wire by submitting their proposals early.

Irene Oldfather: At the moment, apart from there being basic criteria, the system seems to be one of first come, first served. There might be a temptation for everybody to rush forward knowing that, if they meet the basic criteria, it is just a question of how quickly they get their bill on to the table. I do not know whether that is the fairest way of proceeding.

Mark Ballard: I want to take up Karen Gillon's point. If I understand the process correctly, previously a member had to get outside support in drafting a member's bill—NEBU was introduced to assist in the drafting process. At the moment, some bills are dealt with through NEBU and are subject to NEBU and SPCB criteria and others are not. The starting point was that all bills had outside support and we would be taking a big step from that if we moved from the current situation, in which NEBU provides support for some bills, to a situation in which no bills get outside support.

Karen Gillon: I am not suggesting that. I am saying that every bill should be treated equally. If a member is able to secure the support of an outside organisation for whatever reason—for example, the bill might tie in with that organisation's agenda—they should not get priority within the parliamentary timetable. However, under the proposals, the only bills that would be scrutinised and prioritised would be bills that required NEBU's support, which I do not think is fair.

Mark Ballard: If I follow your logic, that means that any bill that was prioritised would be eligible for NEBU support, so there would be no point in the member getting outside support. If the bill had met the criteria, it would get NEBU support, so why would the member bother getting outside support? Either their bill had met the criteria, in which case they could get NEBU support, or it had not met the criteria, in which case they would get no support. There would be no room for non-NEBU support for members' bills.

Karen Gillon: Members will still choose to use outside organisations for other reasons—for example, the organisation may understand a particular issue better or be more aware of the intricacies. It would be unfair of us to say that we had a prioritisation exercise, but it was only for people who required NEBU support.

Bruce Crawford: You are talking about two different things. Are you referring to a prioritisation process applying only to bills that need NEBU support?

Karen Gillon: I thought that you were saying that.

Bruce Crawford: I am saying that, but you are widening the question if you are asking whether bills that are getting support from outwith NEBU should be getting parliamentary time. That is a different issue, because it is not just about NEBU resources; it is about the resources to get through the committee stage and the plenary process, which is down to the bureau.

Karen Gillon: I do not think that it is down to the bureau; it is down to us as a committee to determine whether in the course of the inquiry we have found that the parliamentary system is robust enough to cope with the current member's bill system and whether it allows committees to take forward their own agenda as well as considering members' bills and committee bills. I have learned from the inquiry that, if there is to be a prioritisation exercise, it should be about more than just NEBU; it should be about the parliamentary timetable.

Bruce Crawford: That will lead us into another argument later.

Karen Gillon: That is fine.

Bruce Crawford: We need to decide now.

Karen Gillon: You asked for views. If the prioritisation exercise is not about the parliamentary timetable, I would rather that we did not have one. I would rather that we made the current criteria more robust than that we got into a situation in which some bills had to go through a process to get support whereas others did not.

Bruce Crawford: I realise that the question about what the prioritisation process is for comes later in our questions, but it is material to the discussion that we are having. Karen Gillon makes a good point, although I agree with what she is saying for a different reason from the one that she gave. She said that the prioritisation process should be about not only NEBU but the allocation of parliamentary time. If the new body to prioritise proposals, whatever it may be, is not part of the bureau—and I do not think that it should be part of the bureau—the process would bring it into conflict with the bureau, which is responsible for timetabling business in the Parliament.

If the argument is that the bureau is rightly the gatekeeper of what happens in the Parliament and of the Parliament's time, the prioritising process needs to be strengthened by way of NEBU's criteria rather than by the creation of a new body. If we think that we can find a solution by doing that successfully, rather than by having a conflict between the bureau and another body, that would be a better fix, so I have some sympathy with what Karen Gillon is saying.

The Convener: Although the extent of the prioritisation might be a matter of dispute—and we shall come to that in later discussions—there is a general view that there should be a process in place, either permanently or in reserve. We need to decide whether that process is just a matter of approving or strengthening the current criteria for NEBU. However, I think that we are agreed about the need for a clear set of criteria for prioritising non-Executive bills in the Parliament. We just need to decide how that is done.

Bruce Crawford: From what I have heard, convener, I do not think that you can make that statement yet.

The Convener: I was saying that no one has yet argued that there should be no change to the present situation.

Bruce Crawford: No, but prioritisation—

The Convener: Everyone on the committee has said that there needs to be something in place.

Bruce Crawford: Yes, but I am treating prioritisation and criteria as different things.

Mark Ballard: The threshold—

Bruce Crawford: The threshold may need to be adjusted, but that is a different thing from putting in place a prioritisation process.

The Convener: I am trying to move us on to some of the other questions, so that we can perhaps reach some conclusions on the extent of the prioritisation process, if we can use that at the moment as a broad term to cover all the issues. I am not saying that there will necessarily be a clear prioritisation mechanism; it might just involve a tightening up of procedures. At the moment, however, I think that we are agreed that something needs to be done. We now need to consider what that is.

Let us move on to question 2, which concerns an issue that Bruce Crawford has already addressed to some extent—whether prioritisation should be only about NEBU resources or whether it should apply to all non-Executive bills. There are clearly two issues. There is the issue of drafting time and the availability of resources for the non-Executive bills unit and there is the issue relating to committee and parliamentary time. The question is about whether prioritisation should apply to one or both of those issues.

Karen Gillon: I have made my views clear. I think that it should apply to everybody and to the whole gamut and that, if it does not, there should be no prioritisation. If we are to have a prioritisation exercise, we can set up a process to determine which members' bills receive support from NEBU. For me, the more important question is which members' bills have the support in terms

of parliamentary time. Having listened to the evidence and having had experience of the process, I think that the issue is much bigger than just NEBU, albeit that NEBU is an important part of it. Members' bills put pressure on the committees, on Parliament and on the members who have to consider the bills. If we think that a prioritisation exercise is necessary, it must involve every member's bill that is on the table, because the issue is about more than just NEBU's resources.

Bruce Crawford: There is something that I have difficulty with. If the bureau does not decide such matters—and I shall argue strongly that it should not—is there the potential for conflict between what the committee handling the bill sees as a priority for parliamentary time to secure a successful conclusion to the member's bill, such as a vote at stage 1 that determines whether the bill fails or goes ahead, and what the bureau might think?

Karen Gillon: If you assume that the body is not the bureau, yes there is.

Irene Oldfather: It seems that what we are looking for is a system that is fair, open and transparent and that is not subjective, to take account of Karen Gillon's concerns. Could those difficulties be resolved if we raised the threshold? If we did that, there would not be a problem with the bureau and a committee or other body coming into conflict. It would also avoid the problems that can be caused by subjective opinions on the committee, which, with the best will in the world, can be an issue. If we raised the threshold, the decision would be made at an official level, so it would become non-partisan. Might that be an appropriate way in which to proceed?

10:45

Mark Ballard: I am worried that if we follow Karen Gillon's logic, we will create a body that is so powerful that it will become a major force in the Parliament—it could outrank the Parliamentary Bureau. The proposal seems to be out of kilter with the scale of the problem. I say again that we should examine what happens at the moment to see whether it needs to be tightened up. I agree that there is an opportunity to consider the threshold, but we ought to reflect on the effectiveness of the current process. In particular, we should consider whether it is appropriate for NEBU to refer decisions to the corporate body.

Bruce Crawford: Before we go any further, we need to make a fundamental decision. Do we have enough evidence to suggest that the extent of the problem is such that another body is needed to consider priorities, or will an increased threshold deal with the problem, as Irene Oldfather

suggests? If the latter, much of the discussion that will follow and the questions that will be asked will be superfluous.

The Convener: Having considered what happened in the previous session and what might happen in the current session, I believe that there is a potential problem with the process. I would rather put in place a robust set of procedures to address that potential problem. If the problem does not arise, people's concerns about the procedures will be irrelevant. If the problem arises, I would rather that Parliament had thought about it in advance and put something in place to deal with it than that we had to take panic measures.

I agree with Karen Gillon that the process should apply to all non-Executive bills. We should not distinguish between those that have external support and those that do not. There should be a robust set of criteria. We should consider in more detail the criteria that are used by NEBU to see whether they are satisfactory or whether they need to be strengthened. We should consider how NEBU makes judgments on the adequacy of consultation, the need for legislation and whether there is potential for Executive or Westminster legislation in the same area. The way in which those judgments are made is an important factor. The criteria should apply to all bills before they are introduced.

Bruce Crawford: That is useful to me, convener. I was hoping that the Procedures Committee could find a unanimous position. The matter will be important in the future and we should strive to ensure that we reach such a position, even though it will take us longer to do so. However, I can see some fault lines developing already that will be difficult to overcome.

I do not believe that bills that have support from outside should be restricted. There are two issues in relation to that. If bills from outside get support and do not require NEBU input to the same extent as other bills, there are two big benefits. The first benefit is the impact on the public purse, because we can save some money in terms of the work load on NEBU. The second, more important, benefit relates to the fact that members may propose bills to change the law in Scotland in a way that has never been achievable at Westminster. To say suddenly that we will employ a prioritisation process that will affect members' opportunities to use outside resources from the wider Scotland is a big step for us to take.

The Convener: I do not think that anyone is implying that that should happen.

Bruce Crawford: You implied that bills will be subject to prioritisation in terms of parliamentary time rather than in terms of NEBU time. It will be

difficult to get a consensus around that. In terms of parliamentary time, the proposed body, rather than the bureau, will decide the allocation of resources that a bill will get in committee or in a plenary session. That is a difficulty for me.

The Convener: What I was saying was that bills, whether drafted internally or externally, should meet the same basic criteria before they can be introduced.

Bruce Crawford: That is the first threshold.

The Convener: That is a threshold issue.

Bruce Crawford: Fine. I understand.

The Convener: If that threshold is set high enough, it will stop some bills from going that far, because people will not want to make the effort.

Bruce Crawford: You were not saying that in such circumstances all bills, including those from outside, should necessarily be subjected to a NEBU-type prioritisation process.

The Convener: I am suggesting that all bills should meet the same criteria that NEBU would use to determine whether a bill should receive resources. That is not saying that people cannot use external resources.

Bruce Crawford: That has clarified the matter nicely.

The Convener: Some people may wish to have a draft bill as part of a consultation, for example, but that might have to be drafted externally, because NEBU does not have the resources to produce draft bills.

Irene Oldfather: That is entirely fair and transparent. If we set up a system, it must be fair and transparent, because bills have a knock-on effect on committees and the Parliament. The proposal is perfectly reasonable.

Bruce Crawford: I accept that, but the issue is our different use of language. That is why I was trying to ensure that we used the same language.

That brings us back to where we started, which is whether the prioritisation mechanism—not the threshold—should take into account NEBU's resources or whether it should be widened to take into account committee and parliamentary time. There is a potential fault line. The bureau's job is to set parliamentary time and to determine which bill goes to which committee. NEBU's job, the support that it gets and anything that revolves around that are different issues. We should be concentrating on that.

Karen Gillon: I fundamentally disagree with Bruce Crawford. We are in danger of saying that if you or somebody else has an idea for a bill, and they are prepared to give you the support to draft

that bill to get it through the Parliament, regardless of whether or not—

Bruce Crawford: That is a different issue.

Karen Gillon: But it is not a different issue. Why should a bill by a member on an issue that deserves to be legislated on but which is not sexy and does not attract the support of some outside lobbying organisation not be able to get through the parliamentary process in the same way as a bill that does attract the support of a lobbying organisation? We are in danger of creating a two-tier system for members' bills, which would not be fair. Bills that are supported by lobbying organisations will have a head start on bills that are not. That is not the kind of system that I want to see in the Parliament.

Bruce Crawford: You use the term "lobbying" pejoratively. There are many organisations out there that would wish to be involved in drafting legislation—and not the lobbying-type legislation that you suggest. There is also an argument that if people are able to secure resources from outside, that will give NEBU more space to support other bills, which will allow other bills to come through that would not have made it otherwise.

Karen Gillon: But one of the issues that has arisen is that some of the bills that come in are so badly drafted that it takes resources within the Parliament to sort them out.

Bruce Crawford: The issue is whether members should support a bill at stage 1 if it is badly drafted. Frankly, if it is a bad bill, it should not be supported. MSPs considered elements of Mike Watson's Protection of Wild Mammals (Scotland) Bill to be badly drafted. That took a lot of sorting out, but one way in which it could have been dealt with would have been to knock it out at the very beginning. As politicians, we are here to take those hard decisions.

I do not want to prevent people from submitting ideas and making suggestions that would produce benefits by changing the law of Scotland. No one can tell whether in the future a bill will come along that has been well drafted externally and has overwhelming support. I am sure that as Scotland learns from past experience, people will have a greater understanding of the skills that are required to draft bills. At some stage we will receive a bill that has been drafted outside the Parliament and which is of significant import to Scotland. I do not want to stop such a bill coming forward.

I know that you do not want that either and that you are suggesting that the process should be subject to prioritisation. However, I am suggesting a process that would free up resources to allow other members' bills to get through because there would not be the same demand for NEBU's

resources. That is where we started off discussing the whole process.

Karen Gillon: If every bill is not subject to exactly the same criteria and prioritisation—

Bruce Crawford: Criteria, yes.

Karen Gillon: We should go back to the criteria and consider whether they are robust enough and whether we should raise the thresholds. If you are saying that you are not prepared to include every bill in a prioritisation process, and the committee cannot reach a unanimous conclusion on that point, we would be as well going back to the drawing board and considering the criteria under which a bill can be submitted in the first place.

Bruce Crawford: All bills should be subject to the criteria—we are all agreed about that—and those criteria can be discussed and adjusted as required. However, we have a difficulty on the issue of prioritisation and the body that will carry out that prioritisation.

The Convener: Will you clarify something for me Bruce? You seem to be suggesting that the Parliamentary Bureau can effectively prioritise bills as part of its work on the parliamentary timetable.

Bruce Crawford: That is its job.

The Convener: You believe that that is satisfactory.

Bruce Crawford: That is the bureau's job and its *raison d'être*. It does not matter whether that is satisfactory, because it is the reality. I do not like everything that goes on in the bureau.

The Convener: No. I have been there and I know what you mean.

What would happen if one of the simple political bills came to the bureau and it decided not to give the bill any committee time?

Bruce Crawford: The bureau does not have that power.

The Convener: It does.

Bruce Crawford: If a bill goes to committee and reaches that stage—

The Convener: No. I mean that a bill has been introduced and a committee can decide not to do anything about it. It can just sit on its hands until the bureau tells the committee that stage 1 must be completed by a certain date. At present, that is in effect the prioritisation process.

Bruce Crawford: That is correct in terms of parliamentary time.

The Convener: At that point, the committee has to do something with the bill. I am not putting forward a position; I am simply trying to explore the idea. Let us take the hypothetical example of a

school meals bill. It might have some support, but it also has a political element. The Executive parties on the bureau decide that they do not want the bill to go any further, so they refuse to set a stage 1 timetable for it. The Executive then uses its majority on the committee to ensure that the bill does not appear in the work programme. In effect, the present position is that the bureau could see to it that a particular bill does not proceed and that decision is not transparent.

Bruce Crawford: First, it is the bureau's job to timetable the business of the Parliament and it has a responsibility to timetable members' bills. That is how the Parliament was set up.

The Convener: There is nothing in standing orders that requires the bureau to fix a date for a bill once it has been introduced.

Bruce Crawford: That is the same for Executive bills. There is nothing in standing orders that says that the bureau must fix dates for those either. At the end of the day, the power is in the hands of the members of the Executive parties. If it came to that, a vote in the chamber would be pressed by the other business managers. That would be the democratic process.

If there is another, separate body that considers NEBU resources and parliamentary time, and it suggests that time should be made available for a particular bill, and the bureau says no, what does that body do?

The Convener: I am not necessarily taking the line that there should be a body that is separate from the bureau—

Bruce Crawford: There is no democratic process that such a body could follow. If the Opposition business managers are unhappy, they have a democratic process to follow.

The Convener: With respect, a committee reports to the Parliament and the Parliament approves that report—

Bruce Crawford: That happens only if the bureau allows it to happen. What happens if the bureau does not allow it? We could put those questions for ever.

The Convener: One of the suggestions is that the bureau should be responsible for prioritising non-Executive bills. You are suggesting that there should not be a prioritisation system but that the bureau has responsibility for timetabling.

Bruce Crawford: The bureau should be deciding the parliamentary time and committee process and what goes to which committee. It should not be deciding what resources are applied from NEBU. There is a distinction.

11:00

The Convener: I see the distinction that you are making.

Bruce Crawford: I strongly believe that this issue is important for the future of the Parliament and democracy.

The Convener: I want to explore this issue a little more before I bring in Jamie McGrigor. If, for example, three non-Executive bills have to go before the Education Committee at the same time that it is considering a piece of Executive legislation and some subordinate legislation and having an inquiry into something or other, would it be up to the bureau to determine which of the non-Executive bills the committee should deal with first and which should be left until later?

Bruce Crawford: That is the bureau's job. It was designed to refer different pieces of legislation to different committees and to reach an accommodation with them. A separate parliamentary body that would deal with the process would have no such power.

The Convener: That is very helpful.

Mr McGrigor: On question 2, to which we are supposed to be finding an answer, does the potential problem that has been identified relate to NEBU, to time constraints or to both? If the answer is both, it does not matter whether we bring in extra help; we will always have only a certain amount of time in which to consider a certain number of bills. I believe that someone has suggested that there should be a cut-off point towards the end of the parliamentary session.

The Convener: We will discuss that a bit later.

Mr McGrigor: Surely the answer to the question is that the situation affects both NEBU and the amount of available time.

Bruce Crawford: Of course both are affected. However, we have a body that deals with parliamentary time, which is already a problem.

Mr McGrigor: That is not a problem; it is a fact.

Bruce Crawford: Yes, it is a fact. However, the question now is how we deal with the NEBU prioritisation issue that has been raised. Do we simply go with Irene Oldfather's suggestion of raising the threshold?

Mark Ballard: I have not been on the bureau very long, but it seems to take decisions about exactly the scenario that the convener outlined in which we have to consider whether a committee is being overloaded with Executive bills, subordinate legislation and secondary inquiries. I have not even mentioned non-Executive bills. As a result, the bureau already has to juggle the time commitments that it is giving to committees.

I agree with Bruce Crawford that the bureau should continue to carry out that task because it has the overview of the matter. That is its purpose and it fulfils it well. Giving it another purpose will cause problems, because the purpose in question is of a different sort. We have a mechanism for prioritising time that already works quite well.

Karen Gillon: It does not work well if there are hundreds of members' bills to deal with. I have been in that situation. When I was a committee convener, the bureau gave me a member's bill to deal with in a timescale that was not achievable. The bill was introduced too late for us to deliver it, but we still had to go through the stage 1 process, which took up time—

Bruce Crawford: But it was a committee bill.

Karen Gillon: No, it was not. It was a member's bill that did not finish its course because it was introduced too late. The committee could have been doing something else in the time that it was spending on a bill that was never going to reach stage 3. The bureau gave that bill to the committee.

Mark Ballard: On the bureau, we get lots of requests from committees for extensions to deal with—

Karen Gillon: That is a different point.

Mr McGrigor: I take Karen Gillon's point that the bill to which she is referring ran out of time. However, no one can tell whether that will happen before a bill is introduced. It might have an easy passage, or it might have a difficult one if people do not agree with it.

Karen Gillon: You would have known that that would happen with that bill, because it could never have fulfilled the criteria in the standing orders that were in place at the time. The Gaelic Language (Scotland) Bill could not meet the timetable set out in standing orders; it was not possible.

The Convener: A number of bills fell into that category at the end of the previous session of Parliament.

Bruce Crawford: The bureau might not have done a good job, but that is where the job should have been done.

Karen Gillon: Mark Ballard is saying that there are no problems, but I am saying that there have been problems in the past.

The Convener: We might be coming to the conclusion that the bureau should be more rigorous in how it considers the timetabling of non-Executive bills. Perhaps it should be more rigorous in saying whether a committee will have time to deal with a bill. In the previous session of Parliament, a number of bills that had no chance of reaching stage 3 came to committees for consideration at stage 1.

Bruce Crawford: It is up to members to press that point internally within the bureau and ensure that the bureau is more rigorous.

Mark Ballard: That is also something that we could recommend.

Richard Baker: Parliamentary time is the most precious parliamentary resource for bills—members' bills in particular—so to have a prioritisation process that does not include that resource seems to be ridiculous. It is not fair to allow some bills to outflank that process by getting additional support from outside. That should be part of the debate.

Mr McGrigor: Karen Gillon talked about the Gaelic Language (Scotland) Bill. Are you saying that from the moment that it started on its stage 1 course there was not time to finish it?

Karen Gillon: It would have required a suspension of standing orders by the Parliament to allow it to get through stage 3.

Mr McGrigor: However, that is not from the time the bill was introduced. You are saying that there was not enough time from the beginning of stage 1.

Karen Gillon: The bill was introduced in October. Let us be honest—it could not make the timetable. We all know the various reasons why that was the case. It could not meet the timetable, but it was still given to the committee because it would ultimately have been the right of Parliament to decide that there should be a suspension of standing orders to allow the bill to go through stage 3. That is right; it should have been a matter for Parliament.

I raised the issue because Mark Ballard said that there had been no problems in the past, but there have been problems in the past. It probably comes back to whether there should be a cut-off point after which bills cannot be introduced. It could be stated that if a member does not get their bill in by September of the year preceding an election, that is it. That would be the cut-off point and the bill would have gone. I understand that the business manager at that time said that.

Mr McGrigor: I presume that if progress had been quicker in the consultation period prior to stage 1, there would have been time for the bill to go through.

Karen Gillon: The issue is about when the bill is introduced in Parliament; I do not know what the timetable is before that.

Mr McGrigor: The bill seemed to be hanging around for an awful long time.

Karen Gillon: The point is that the bill was given to the committee by the bureau on a timetable that was not achievable, although it could have been

achievable if the Parliament had decided to suspend standing orders. Ultimately, it is necessary to give a bill that chance, but that brings us back to whether there should be a cut-off point in the session after which it is not possible to bring bills in.

The Convener: We will come on to that point in one of the later questions but, as I say, the situation that has been highlighted occurred in respect of a number of bills in the previous session of Parliament. The Prostitution Tolerance Zones (Scotland) Bill, which has been reintroduced in this session, went through stage 1 and was rejected by the Parliament, but had it been approved by the Parliament, there would not have been time for it to complete stage 2, which calls into question whether that was a good use of parliamentary resources.

I am not sure whether we can reach a definite conclusion on question 2 at the moment. There are clearly some different views, but we can come back to the matter when we look through some of the other questions.

Question 3 asks:

“should all non-Executive bills be prioritised?”

That refers not only to the issue that we have discussed to some extent—bills that have or do not have NEBU support—but to committee bills, which are also non-Executive business. Should they be part of the same prioritisation process? I know that we have had the same discussion about other matters. Should committee bills be included or should they be given a different set of criteria?

Karen Gillon: I suppose that I should declare an interest as the convener of a committee that brought forward a committee bill in the previous session. It is very difficult—I would say impossible—for the Parliament to stand in the way of a committee. I would have pulled out every dirty trick in the book if it had tried to do so. Bruce Crawford asked how another committee would make its views known if it could not get to the parliamentary timetable. That would be done in the same way as the other members of the bureau made their views known about this exercise—they go to the media and the media tell people what has happened and what has been decided. That is what would happen with committee bills. It is not the way to do business, but that is the reality. To be honest, committee bills will always be on an unstoppable rollercoaster once they have been produced. We are not being realistic if we think that anything else will happen.

The Convener: A more procedural argument would be that approval must have been received for a proposal before it can become a committee bill. There is an argument to say that the Parliament has already approved it and that, therefore, it should automatically receive priority.

Bruce Crawford: So, we can get unanimous agreement that committee bills should not be part of our consideration but should be treated as they are at the moment.

The Convener: Okay. That is fine.

Bruce Crawford: That is a different issue from the first issue under question 3. Are we not going back there?

The Convener: We have had a lengthy discussion on that, and I am not sure that there is anything to add.

Karen Gillon: The one question that came up in some of the evidence that we received was whether we should have a list of approved draftspeople who have to meet strict criteria, as in other places. That would avoid some of the problems that came previously—which could occur again—when somebody who did not have the expertise said, “I will help you to draft the bill.” It is a precise science and there should perhaps be a list of approved draftspeople that is clear, transparent and open to anybody to apply to. That would help to alleviate some of the potential problems that could occur.

Bruce Crawford: How would the panel judge who would be on that list?

Karen Gillon: It happens at Westminster, but I do not know how. We could perhaps get more information on that.

Andrew Mylne (Clerk): When the non-Executive bills unit was being set up, a system was devised for having a panel of draftsmen to whom NEBU would contract specific pieces of work. The exercise involved some sort of open competition and a test for people who were interested. To do that more generally, you would have to explore issues to do with who would set the criteria and do the testing; however, that could be explored. The general point is correct that drafting is a fairly sophisticated skill. Many good lawyers may not necessarily be capable of drafting.

Bruce Crawford: We should perhaps explore that a bit further. I need to know a bit more about it. It might end up being quite a bureaucratic and costly exercise.

There is a fundamental principle at issue. When a bill comes before us, no matter how well intended it is, if it is badly drafted, we have to throw it out. It does not take up any more resources after that—that is the end of it.

The Convener: That does not always happen.

Bruce Crawford: We vote it down. That is politics. We may be in danger of inventing a system to examine who should go on a list because they can draft a bill when all that we

should be doing is getting it to stage 1 and saying, "Toss it out. It's a load of nonsense." That would save a hell of a lot of time.

The Convener: That is nice in theory, but—

Karen Gillon: There was no way that the Parliament was going to chuck out the bill that you mentioned because it was badly drafted. That is the political reality.

The Convener: I would not necessarily say that members' bills must be drafted by someone from an approved pool of draftspeople. Nevertheless, there may be an argument that members' bills should be checked by someone from an approved pool of draftspeople before they are lodged.

Bruce Crawford: That would become another criteria-setting exercise.

The Convener: It would not be greatly different from what you are suggesting. If a member drafts a bill, getting it checked out by someone with experience might be helpful.

The criteria for prioritisation are one of the key areas that we have identified. As we know, there is a set of NEBU criteria. We should perhaps have a proper look at those criteria and determine whether they are adequate or whether we need to add to them or take away from them as the basis for judging whether a bill has done enough to justify using drafting resources on it or lodging it.

Mark Ballard: Drawing on the previous discussions, I got the impression that there are two ways of doing that. The first is the threshold approach, which provides a hurdle that a potential bill has to cross. That is one use for a set of criteria. The second is a ranking exercise to see how well individual bills measure up against a set of criteria, after which we would take the top four, 10 or 20 of those bills. What we have at the moment is a hurdle that bills have to cross. If a bill meets the criteria that NEBU and the Scottish Parliamentary Corporate Body use at the moment, it can go on to the next stage; if it does not meet those criteria, it cannot go on, irrespective of the numbers. That is an important philosophical division that we ought to bear in mind. The word "prioritisation" is being bandied around. To me, prioritisation is about ranking and not about thresholds. If we want a fair system that allows all members to submit bills, all bills will have to meet the same criteria and we will have to consider thresholds and hurdles rather than a ranking system.

11:15

Bruce Crawford: I also have some difficulty with the concept of ranking. My difficulty is that there could be a bill at number 6 that all the politicians want but is never reached. Politics is

about the politicians being able to decide what they want. With ranking, Mike Watson's bill might never have been passed. It is true that it started off in a bit of a mess, and it might not have ended up as tidy as some would have wished, but it was a bill that the Parliament wanted. However, because of its nature and the way it was drafted, it might never have got to the stocks if there had been a ranking process. Ranking bothers me. I think that we are talking about the criteria and not the prioritisation process. We are talking about the hurdle that the SPCB currently sets. Once someone is over that hurdle, they will get the same resources as everyone else and their bill should have the same chance as everyone else's of becoming law. I find ranking difficult because bill number 10 would have less chance than bill number 1, but bill number 10 might be the one that the politicians want.

Irene Oldfather: Is there any need to rank? If a bill reaches the threshold and gets through, does ranking lead to any advantage in terms of parliamentary time and resources? I do not know the answer to that, but it is worth thinking about.

The Convener: The process is different from the one at Westminster, where ranking gives people guaranteed time for the second reading in the Parliament, which is necessary before a bill can proceed. In our process, committees consider bills at stage 1 before they come before the Parliament. In a sense, the ranking is done by a different method.

Bruce Crawford: It is a sifting process and it works. That is why we do not need ranking, as all the bills are considered and sifted before they come before the Parliament. That is a more robust process than ranking.

The Convener: A key area to consider is how we define issues such as whether there is a proven need for legislation or whether a bill's aims can be achieved in other ways. We should ensure that bills are not being presented simply for political purposes or for show; we should ensure that there really is a need for a new piece of legislation. An issue that clearly causes concern is whether legislation is likely to be coming from Westminster or the Executive in any case.

We need to consider how to define things, and we have to avoid the system becoming a beauty parade. It should not be about the most popular measures being prioritised. I know that my bill would never have got anywhere in a popularity contest, because it was a very minor technical amendment. However, I feel that that is one thing that members' bills are there for—to provide minor technical changes to the law that might never have been given priority in the Executive's programme. That is one aspect of members' bills, although there are obviously different aspects. The criteria have to allow different types of bill to proceed.

Bruce Crawford: Is there a general agreement that we have to examine the criteria and perhaps increase the threshold? Is that what we are saying? At this stage, we are not discussing what the criteria should be.

The Convener: I think that that is probably right. Apart from hearing NEBU's presentation, we have not really examined the criteria in detail. We will have to do that.

Karen Gillon: Regardless of what we decide, we will have to raise the threshold.

The Convener: Can we just be clear: are we all talking about the criteria or are we also talking about the number of signatures required?

Karen Gillon: The threshold is the number of signatures required.

Bruce Crawford: We are talking about both.

Karen Gillon: Yes, both.

Bruce Crawford: We are talking about the number of signatures and about the boxes that have to be ticked to ensure that a bill can go on to the next stage. We need to examine the criteria carefully. Without commenting or reflecting on what Iain Smith has said, I would have agreed with some of them, but not others. We need to discuss that.

Mark Ballard: I think that we ought to be tightening up and clarifying the thresholds, rather than having any expectation that the thresholds will be raised. When I say "thresholds", I refer to the whole thing, from the criteria to the numbers.

Karen Gillon: If we do not raise the hurdle, this is a pointless exercise. If we are saying that the current system raises a potential problem, we must change the current system. This is a hard thing to say, but we have to make it more difficult for people to introduce proposals that, in reality, will never see the light of day. Alternatively, we would have to have a prioritisation exercise. Committee members seem to be saying that they do not want a prioritisation or ranking exercise that gives priority to, for example, bills 1 to 6. Therefore, in the cold light of day, we have to make it harder for bills to get over the hurdle. If we do not do that, this is a pointless and worthless exercise, as I said.

Mark Ballard: The criteria cannot just be about numbers. We could say, for example, that any bill that got more than 67 supporters would get over the threshold.

The Convener: I do not think that anyone is suggesting that that should be the threshold. The highest number that I have seen, somewhere in the evidence, is 30.

Bruce Crawford: We need to have a debate about that. We are generally agreed that the

threshold needs to be examined. It needs to be tightened up, and some areas need to be elevated, although the level of elevation is up for debate.

The Convener: We need clear criteria, and we need to have a discussion about the existing criteria to ascertain whether they need to be tightened up.

Question 5 is about who decides, but that will depend on the conclusions that we reach as to whether the issue is one of the threshold or whether it is also one of prioritisation. If we are essentially talking about thresholds and criteria, and if there is concern among officials as to whether a particular bill reaches the threshold, are members happy for the Scottish Parliamentary Corporate Body to make the decisions, or should that be done by some other body?

Karen Gillon: I am not happy, because the evidence that has come out of other inquiries is that not all the information that is passed to the corporate body is necessarily the right information. Because the corporate body does not meet in public, it is difficult for us to know why it has made certain decisions. We might wish to explore the matter further with the Presiding Officer or with other members of the corporate body before we come to a firm conclusion on the matter.

Bruce Crawford: I do not think that the SPCB was the right body to set the criteria in the first place. That decision should probably have come to this committee in the very beginning, so that we could come to a view as to what the criteria should be. After all, this is the committee that looks after procedures. I understand why the question started to be discussed at the SPCB, in the sense that it was purely a resource issue and the SPCB is responsible for resources.

If we could come to an agreement on what the criteria—or the threshold—should be, and on whether they should be tightened or elevated to some level, whoever does the job will have a more robust and rigorous process to examine, to say nothing of the amount of work that will be required. I would have thought that the NEBU officials would themselves apply the criteria, until such time as they could no longer deal with the number of bills coming in. Then we would get into the next part of the process—prioritisation.

The Convener: The reason why the Scottish Parliamentary Corporate Body got involved was to do with the issue of the Parliament's resources.

Bruce Crawford: I understand that—that is why the matter was considered there first.

The Convener: The matter was not raised from a procedural or political point of view; it was raised from a resource point of view. Perhaps it should

have been put to the previous Procedures Committee, but those decisions were taken before my time. Are there any other thoughts on question 5?

Mr McGrigor: I rather agreed with Patricia Ferguson's comments:

"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."—[*Official Report, Procedures Committee*, 10 February 2004; c 306.]

That is a good point. I have talked to NEBU about one or two ideas, and I know that the average person would not have the level of expertise that is required to know whether it is possible to put an idea into the form of draft legislation. Any committee that discussed a form of prioritisation would need to know what was and what was not possible.

The Convener: That raises the question: if not the bureau, then who? We do not need an immediate answer to that, but I invite members to share their thoughts on the matter.

Bruce Crawford: I have expressed my view of the matter a number of times. If the business managers were to make those decisions, that would fundamentally undermine the democratic principles of the Parliament. The bureau is not the right place for such decisions, because of its political nature.

Jamie McGrigor talked about another committee. The bureau was never designed to consider the level of detail that would be required in deciding whether a proposal meets a set of criteria or should get support in the way that is envisaged in the discussions that we have had. The bureau meets behind closed doors, just as the Scottish Parliamentary Corporate Body does, so members would never know the outcome of its discussions unless that was leaked through the press. That cannot be satisfactory. Way back in October 2002, the paper from the directorate of clerking and reporting recognised the difficulties of giving the bureau that role when it said:

"Currently the Bureau carries with it weighted voting which might not be appropriate for a Non-Executive Bills committee."

It was recognised from the start that it would be difficult for the bureau to be involved in that work. If the bureau is given that role, we will create a process that will build mistrust, not just between parties but between back benchers and their party managers, and the party managers would have far too much control in that situation. That would be totally untenable and would cut across everything that we are trying to achieve.

It is more difficult to say what we should put in place instead of that, but given that members' bills emanate from back benchers or from Opposition

spokespersons—evidently, they cannot emanate from ministers—back benchers should have the biggest say in deciding which bills are successful in securing resources. The bureau does not have enough time to do that job—it was not designed to do it—but a committee of back benchers could take the time to examine proposals in detail, if such a prioritisation process has to take place. That would involve a level of democracy that would be demonstrably fair, both for back benchers and for everyone else.

I recognise that the Parliament's standing orders require committees to reflect party weighting in their composition. That would also have to be the case in a committee of back benchers—I might not like that, but that is the reality. The question is: how would that committee be formed? I have some suggestions about how that could be done, but we need to sort out the principles before we get down to the detail.

Richard Baker: Bruce Crawford and I come to the matter from different positions. I do not share his concerns about referring part of the process to the Parliamentary Bureau. I think that the parliamentary time that is given to bills should be part of the prioritisation process. As he said, the bureau determines the time that is allocated to bills, so it is logical for it to recommend their prioritisation to Parliament. At the end of the day, the recommendation that is made by the bureau will come before the whole Parliament. That will alleviate some of the problems that Bruce Crawford identifies—the matter will be open to much greater scrutiny, because everyone is accountable for their vote. I share Jamie McGrigor's scepticism about setting up a new committee to deal with the issue.

11:30

Mark Ballard: Bruce Crawford's central point was that, if we want a prioritisation process, it has to be detailed, fair and transparent. I do not believe that the Parliamentary Bureau can be transparent; it is not designed to be transparent. I do not believe that it is fair to ask the whole Parliament—all 129 of us—to undertake the amount of investigation that would be required. The issue will come down to a vote in the Parliament on a recommendation from the bureau. That recommendation will start a war, because matters will become intensely political. The bureau's decisions will be opposed from every direction and that will undermine what the bureau is there for.

I concur with Karen Gillon. I was not there for the first four years of the bureau, but I have been on the bureau for the past nine months and during that time there has been a relatively consensual approach. The business motion has not been

opposed every time; if that had happened, a huge amount of time that we should have spent debating issues would have been taken up. There have been special, rare occasions that have led to the business motion being opposed. If the bureau carried out the proposed prioritisation, the situation would be almost impossible. It would not be in the interests of the bureau or the Parliament as a whole to ask those two bodies to make the decision. The Parliament gets its chance at stage 1.

Karen Gillon: There is an assumption that the bureau's decision will not be the right one and that the bureau will not prioritise—

Bruce Crawford: I never said that.

Karen Gillon: Mark Ballard is saying that there will be a fight from the start. There is an assumption that the proposals of the people who shout the loudest and kick up the biggest row would not be prioritised, but I do not think that that is necessarily the case. As a Labour member, I want to scrutinise in detail proposals that Opposition parties put forward. That is how the problems are aired. I think that the biggest problem with the present political system is that minor Opposition parties' proposals are not the subject of scrutiny in the same way that those of major Opposition parties are, so I welcome the opportunity to discuss in detail any bill proposal from any Opposition party—I do not have a problem with that. However, the assumption is that that will not happen.

People have said, "The Executive will do this and the Executive will do that," but the bureau might not prioritise my bill. Does that mean that I should say that I have not been treated fairly? I would not necessarily say that—I would accept the Parliament's democratic decision, but other people would not do that because of their political agendas. If we set the criteria and make them robust—in other words, if we decide how the Executive or the bureau should prioritise things—how will that lead to the conflict that is being described?

Bruce Crawford: The fundamental difference is that the bureau would have to make a decision after all the bills have got over the hurdle of meeting the criteria. On what grounds will the bureau make those decisions about prioritisation?

Karen Gillon: We could set the prioritisation criteria.

Bruce Crawford: So we would have a hurdle—a set of criteria—that people had to get over. Are you saying that, if 20 bill proposals got over the hurdle and there were 10 too many, we should have another set of criteria on top of the first set, to decide which of the proposals should go forward?

Mark Ballard: A beauty contest.

Bruce Crawford: We would have a beauty contest—that is exactly what would happen.

Karen Gillon: Why?

The Convener: It would not necessarily be a beauty contest.

Bruce Crawford: We have one set of criteria and we are talking about forming another set of criteria on the basis of which the bureau could make decisions. There would be two sets of criteria.

Karen Gillon: Why would that result in a beauty contest?

Bruce Crawford: Are you saying that, once bill proposals have reached the stage of having got through the first hurdle, there will be another rung of criteria for how the bureau should prioritise them?

Karen Gillon: I was sure that that is what the bureau paper suggested.

Bruce Crawford: No—the bureau paper suggested the use of the corporate body, once the process had been fleshed out a bit more. The bureau's paper was about getting over the first hurdle.

Karen Gillon: We could do that. We could raise the threshold for the number of people who have to sign the proposal and we could flesh out the criteria.

Bruce Crawford: If 20 bill proposals get through yet there is time for only 10 bills to be considered, how will the bureau decide which 10 should get time?

Karen Gillon: We will have to prioritise them.

Bruce Crawford: In what way?

Karen Gillon: On the basis of which bills the bureau thinks should proceed. The Parliament will have to decide whether to endorse the bureau's decision.

Bruce Crawford: That means that the decision will be entirely political.

Karen Gillon: We are politicians. We make political decisions every day.

Bruce Crawford: When there is a waiting situation at the bureau and there is no process such as one involving a committee of back benchers, it is inevitable that the Executive will have the whip hand. As Mark Ballard said, it is inevitable that there would be a fight on the floor of the chamber about which bills should get support. That would be entirely the wrong process for the Parliament to employ.

Karen Gillon: I ask you to tell me honestly; if the Procedures Committee—

Bruce Crawford: I do not think that this committee should be involved.

Karen Gillon: Say it was the Procedures Committee—

Bruce Crawford: I am not answering that question.

Karen Gillon: Say it was this committee, which is a committee of back benchers who were endorsed and elected by the Parliament—

Bruce Crawford: We were not elected by the Parliament.

Karen Gillon: We were elected by a motion that was agreed to by the Parliament.

Say the Procedures Committee was to go through the process and prioritise the bills, what is to stop the same fight happening on the floor of the chamber because somebody, somewhere does not get what they want?

Bruce Crawford: I do not think that the Procedures Committee should be involved.

Karen Gillon: So who should be?

Bruce Crawford: I have told you—a committee of back benchers.

Karen Gillon: But we are a committee of back benchers.

Bruce Crawford: It should be a committee of back benchers, elected directly by the Parliament, not one that is put in place by the business managers. As all of us know, the business managers discuss behind the scenes who goes on which committee.

Karen Gillon: Tell me what happened when we elected the Scottish Parliamentary Corporate Body. The SPCB is elected by all members of the Parliament in a secret ballot and yet all of its members are members of the four main political parties. The reality is, no matter how the voting system is constructed, it will always be that way.

Bruce Crawford: That is why I said that I wanted to talk about that issue separately. We could have a process in which the constituency that the committee of back benchers represents—because of the way in which it would be elected—would have more authority, democratically speaking.

Karen Gillon: So you are suggesting a voting system in which I should lose out. I assume that you are suggesting that you take the Executive ministers out of the vote.

Bruce Crawford: You are making a lot of assumptions.

Karen Gillon: Well, no, let me explore—

Bruce Crawford: That is why I said—

The Convener: Order.

Bruce Crawford: That is why I said quite clearly that we have to decide what the process is before we can proceed. We have to get the principles sorted out.

The Convener: Can we have—

Karen Gillon: You referred to the constituency of members who are able to take forward members' bills. That is what you said. The only members who would not be eligible to take forward members' bills would be the party leaders—

Bruce Crawford: I did not say that.

Karen Gillon: You did. You said, "the constituency"—

Bruce Crawford: I did not. I referred to the constituency from which members would be elected. I did not say who those members were. Do not put words in my mouth.

Karen Gillon: So who is the constituency?

Bruce Crawford: MSPs.

Karen Gillon: Every MSP?

Bruce Crawford: Obviously, every MSP would get a vote. We can discuss exactly how that would be done. I suggest that it should be done through a proportional representation system. That would allow the members who would sit on the back-bench committee to have some authority to proceed in their own right and not be subject to the parliamentary authorities.

Mark Ballard: One of the key issues is the fact that meetings of the bureau are neither open nor transparent. In many ways, given that its meetings are not open to the public, it is right that that is the case. If the bureau were to take the decisions that we are talking about, its meetings would be longer. Rather than take about 20 minutes, they would take as long as Procedures Committee meetings take; the bureau would be able to investigate witnesses and so on.

However, the decisions that emerged from those meetings would have been made in a process that was not transparent, which would mean that the transparent stage would be the parliamentary stage. I am concerned that, at that stage, members would say, "The decision-making stage was not transparent. I challenge the decision." That would be much less likely to happen if the stage at which proposals were discussed in a committee was transparent.

That said, I think that we have wandered into a discussion of ranking. I thought that we decided that that was something that we would try to avoid

because of the difficulty of ranking in a fair way. If we were to rank bills, we would have to judge not whether a bill passes a threshold on its own merits but the value of one bill against another. I think that ranking is inherently problematic. We will be much more successful if we stick to the hurdles that bills should be judged on their merits to cross.

The Convener: With respect, as Bruce Crawford suggested, we might at some point have a situation in which there were proposals for 20 bills and yet the Parliament had parliamentary time and clerking resources to cope with only 10 bills. If that were to happen, someone would have to make a decision as to which 10 would proceed and which 10 would not. That is not to say that, if no other bills were proposed and if the unsuccessful 10 bills met the criteria, they could not proceed at a later stage.

How would the bills be ranked? I do not think that we are talking about a beauty-contest ranking system. Various issues are involved, including how long the lead parliamentary committee would need for its stage 1 and stage 2 consideration, how long stage 3 would be and how complex and controversial the bill was judged to be. A number of different issues will affect the parliamentary time required by a bill. A ranking system should be based on how many bills the Parliament can cope with at any one time.

Those are the type of criteria that I expect would be used by any committee that determined which bills would proceed beyond the first threshold. The issue that such a committee would have to consider is whether the Parliament could cope with the consideration of each bill, not whether one bill was worthier than another.

Mark Ballard: Arguments about which bill is more controversial will inevitably involve guessing about what will happen in future, which is something that we cannot tell. Also, we do not want to see competition between bills. If the problem is that too many bills cross the threshold, I would reluctantly agree with Karen Gillon that the threshold should be raised. That would be a fairer way of dealing with the situation than ranking different bills, which would inevitably involve subjective decisions on the merits of the bills that were being compared. If the threshold is too low, I would reluctantly agree with Karen Gillon that the proper way to manage the work flow is to raise the threshold. We should not rank bills after they have crossed the threshold, as that will not be seen to be fair and transparent.

Mr McGrigor: Bruce Crawford made the point that, if such decisions were made by the Parliamentary Bureau, they would be bound to be seen as political. However, I cannot see what difference it would make having the decisions made by a committee of back benchers. The back-

bench committee's decisions would be equally political. The only difference that I can see is, as Mark Ballard mentioned, that the bureau operates behind closed doors whereas, in theory, the other committee would not.

Bruce Crawford: The back-bench committee would not be made up of party managers.

Mark Ballard: The problem is not simply that the bureau is made up of party managers. I am a member of the bureau not as an individual but as a representative of my party. That is quite different to my membership of this committee, on which I sit as an individual and can legitimately go against my party's line. On the bureau, I represent only my party, so it would not be right for me to go against my party's line. I am not open to conviction in the bureau in the same way as I would be in another committee. The same person might sit on both the bureau and the back-bench committee, but there would be a key difference in what they were invited to do.

The Convener: I want to try to move things on slightly. We are considering three different processes. The first is the straightforward threshold that a proposal for a bill must reach before it can proceed to the next stage. The threshold is clearly an objective measure and perhaps we can discuss the various options, such as whether the threshold should be raised.

The second process concerns the criteria that should be used. Some criteria are objective, such as whether certain things have been done and whether certain boxes have been ticked. However, other matters are subjective. For example, whether things have been done adequately, whether legislation is required and whether other legislation is coming forward are subjective issues. If there is a dispute about those subjective issues, politicians need to be involved in deciding whether the bill proposal has met the criteria. We have not yet clarified which politicians should make those decisions.

The third issue is prioritisation. If more bills cross the threshold and fulfil the criteria than Parliament can cope with, we will still need to decide how Parliament should determine which bills will receive parliamentary time.

Mark Ballard: We have never been in that third situation, although we have had three occasions on which we have had problems with the second situation.

The Convener: With respect, we have been in that situation. Parliament has sent bills to committees for stage 1 consideration that could not get through Parliament because of insufficient time. Parliamentary time and resources were wasted because there was no system in place. We could perhaps say that a system was in place,

because the bureau should have done that prioritisation exercise, but that is contrary to the arguments that both Mark Ballard and Bruce Crawford have made about prioritisation.

Bruce Crawford: The bureau should have made those decisions. It might not have done a very good job, but that is a different issue entirely.

Karen Gillon: The reality is that nearly as many members' bills have been proposed during the past year as were proposed during the first four years. That is why there will be a problem. Members have suddenly got to grips with how important the member's bill process can be and have decided to exploit it. We need to recognise that fact. The pressure will come not because anything else has changed but because members have decided to use the process more often than they did in the past. That is why we will face a problem, not necessarily this year but certainly in years 2 and 3.

Bruce Crawford: We should try to get some agreement on what the process should be. Perhaps we could agree to do what the convener suggested and try to find more successful ways of using the criteria and the threshold in a way that deals with the problem that exists. We are never going to come to an agreement in this meeting about exactly which body of politicians should do the job, but we have to decide whether we are prepared to press on or not.

11:45

The Convener: Let us consider the other questions in the paper. We might not come to a preferred bid, let alone a definite conclusion, in this meeting, but we should move on.

Question 6 asks whether the initial threshold should be raised. I think that we agree that we should consider that. Are we in a position to indicate what that threshold should be or do we want to have a further discussion paper on the subject?

Karen Gillon: I think that the threshold should be 25 members and that they should be from more than two parties that are represented on the Parliamentary Bureau.

Bruce Crawford: That is even higher than what is being suggested in the paper.

Karen Gillon: Yes.

Mark Ballard: Of the eight proposals introduced as bills and enacted in the first session of the Parliament, only three would have met that threshold.

Karen Gillon: That is assuming that people would not have worked a bit harder to get the required number of people to sign their bill proposal.

The Convener: That is a valid point. When I lodged my bill, I made sure that I got cross-party support from all the Mid Scotland and Fife members and enough additional Liberal Democrats to ensure that I met the threshold. If I had required more members, I would have got them. You cannot draw conclusions from the number of signatures that were gathered for members' bills during the first session because once people had 12 signatures, they did not need to get any more.

If we were to build into the criteria the need for evidence of wide support in the Parliament—

Mark Ballard: Under the current criteria, there is a threshold issue and a support issue. The paper says:

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

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

That includes the depth of support. The reality is that, rather than examining the depth in the way that the suggested matrix does—with 11 supporters from three parties, 18 from two and 25 from one—Karen Gillon's proposal brings the issue down to raw numbers.

The Convener: Any threshold in the standing orders has to be in raw numbers. Whether we then put into that criteria a threshold that is not in the standing orders—

Mark Ballard: The thresholds in the matrix are: 11 supporters from three parties; 18 from two parties; or 25 from one party. That is much fairer on the smaller parties in the Parliament.

Karen Gillon: If a bill is going to get support and get through the parliamentary timetable, it will have to attract support across the parties. If it is not able to do that before it is lodged, how will it ever achieve that?

Mark Ballard: It will do so because, I hope, people will become convinced of its merits as it moves through the process. That is the reason why we have consultations and stage 1 inquiries. That is an important point. You are assuming that there is going to be no process of conviction between the initial draft bill, the bill's introduction to Parliament and stage 1. However, the purpose of the bill process is to convince people.

Karen Gillon: I would hope that there would be a process of conviction before people signed a member's proposal.

Bruce Crawford: A good example of the process that Mark Ballard is describing is the Leasehold Casualties (Scotland) Bill, which

became law despite being supported by only one Labour member, three Liberal Democrats, one Scottish Socialist Party member and 11 Scottish National Party members. It did not have a great deal of support when it started off, but must have attracted a heck of a lot of support by the time it got to stage 1.

Karen Gillon: The reality is that the bill's proposers got the number of signatures that were needed and no more. If more signatures had been needed, more would have been found.

Bruce Crawford: More could be found only if there were no political move against the bill by a political party. A number of bills were introduced but not enacted, and where such bills were missing big chunks of support to enable them to become law, that is quite noticeable.

Karen Gillon: But you are assuming that members are not here with a mandate from an election. We should not forget that members were elected with mandates and that members stood on manifestos that were not always party manifestos—there were also individual policies. If we say that the threshold will not be raised to anything that is meaningful—if it is raised to 15 supporters, for example—there would still have to be a prioritisation and ranking exercise, because there would be too many proposals.

Bruce Crawford: I am reflecting on what you said. If what you said was an opening bid, that is fair enough, but if your suggestion of 25 supporters and three parties was real, those figures are far too high. That is the point that I am trying to make. I accept that there must be some movement, but to go to that level would be to go further than is required. I would begin to feel that people were trying to exercise some control.

Karen Gillon: Why? Twenty-five members is not even a quarter of the total number.

Bruce Crawford: It is, if you are saying that there must also be support from three political parties.

Karen Gillon: More than two political parties.

Bruce Crawford: More than two is at least three.

Karen Gillon: No bill has progressed with support from fewer than two parties.

Bruce Crawford: But that is not the question.

Richard Baker: Many more political parties are now represented in the Parliament—there are seven—and there are many more opportunities for other parties to talk. Therefore, I do not see a problem with the threshold level that has been suggested.

Bruce Crawford: We should consider not only the situation in the current session, but what new

sessions might bring. Circumstances might not always be thus. We could decide on a process and end up going back to having a three-party Parliament, although that is unlikely.

Karen Gillon: Impossible.

Bruce Crawford: It is not impossible. No one foresaw the level of support for the parties that are currently represented in the Parliament, although perhaps we should have done. We should not build a system that is appropriate only for the current session—we should try to build a system that will stand the test of a number of parliamentary sessions. I am not sure that what you suggest would achieve that.

The Convener: Are there any other proposals? We might want a further paper on threshold options for consideration.

Mark Ballard: Options are given on page 9 of the paper. The suggestions that are shown there combine numbers of supporters with numbers of parties—from 11 to 25 supporters and three to one parties, respectively.

Karen Gillon: That is the current system, which does not work. That is why we are in this position.

Bruce Crawford: That is not the current system.

Karen Gillon: Eleven supporters are required under the current system.

Bruce Crawford: But that is not what Mark Ballard is saying. He is saying that 11 supporters would be one of the criteria, provided that three or more political parties supported the bill.

Karen Gillon: So the number of supporters that would be required would not be increased at all.

Bruce Crawford: No, but a system would be introduced in which more parties would have to be represented, so the threshold would be raised, but not the number of supporters. You can shake your head if you like, but the threshold would be raised.

Karen Gillon: You said that there would have to be unanimity. We will not achieve unanimity if all that people want is a process in which back benchers from Executive parties have no real role. That seems to be where we are going.

Bruce Crawford: No—I am saying that what you said was wrong. More than 11 supporters would be needed, and support from three political parties would be needed. It might not be thought that that is enough, but it would increase the previous threshold.

Karen Gillon: When has a bill or a proposal that has not attracted support from three political parties—

Bruce Crawford: That is not the question.

Karen Gillon: It is. If we are saying that the current system does not work—

Bruce Crawford: I am simply stating a fact.

Karen Gillon: Hang on. Mark Ballard is making a proposal that does not fundamentally change much. Which bills did not attract signatures of support from members of three political parties?

Bruce Crawford: I am not commenting on who is right or wrong. I am saying that when we make statements, we must ensure that they are right and what you said was wrong.

Mark Ballard: From a quick look, it seems that at least four bills in the first session would not have matched those criteria.

Karen Gillon: Which ones?

The Convener: They did not become acts, but they were bills. I presume that they were bills that went to stage 1.

Mark Ballard: Yes—the proposals were on residential fire sprinklers, home education and bus re-regulation.

Karen Gillon: They did not go to stage 1.

The Convener: We are all agreed that the threshold needs to be raised.

Mark Ballard: The Gaelic Language (Scotland) Bill—

Karen Gillon: I rest my case.

Mark Ballard: The Gaelic Language (Scotland) Bill would have been stopped by the threshold that is proposed in the paper.

Karen Gillon: It should have been—the threshold should have been introduced much earlier.

The Convener: Order. We should not get into a discussion about the merits of individual bills. We are considering whether the threshold should be raised. There is general agreement that it should be, but we need to thrash out possible options for how to do that. Perhaps we should come back to the matter at a later date.

Karen Gillon: Perhaps the party managers who are here—

Mr McGrigor: Are we going to discuss consultation?

The Convener: We have agreed that we will consider the criteria, one of which is that either consultation must be undertaken or the member must show that consultation is not required because it has been done previously. The fundamental point is that proposed bills should conform to certain rules on consultation.

Mr McGrigor: The importance of consultation is that it shows whether the bill will be short or long.

The Convener: I agree. Consultation is fundamental to the criteria that will be considered.

Mr McGrigor: I remember Keith Harding saying that he thought that his Dog Fouling (Scotland) Bill would take a short time and have about two sections, but it ended up with 18 sections.

The Convener: I thought that my member's bill would have only one line, but it turned out to be a page and a half long.

Mr McGrigor: The point has bearing on the amount of parliamentary time that is required.

The Convener: Absolutely. We need to ensure that one of the criteria is that the consultation should cover those issues.

We turn to question 7. Do members agree that members should retain the right to introduce two bills per session?

Members indicated agreement.

The Convener: That is unanimous. At least we have agreement on something.

Question 8 asks whether an end-of-session cut-off point is needed. I believe that the cut-off should be for the introduction of bills and not necessarily for proposals. There is no reason why a member cannot make a proposal, conduct a consultation and have the proposal ready to start if they are re-elected for the next session of Parliament. Proposals do not involve parliamentary time.

Karen Gillon: Yes they do. Members get support from NEBU in drafting consultation papers.

The Convener: They use up resources.

I do not see why members cannot submit bill proposals in the final year of a session, although I can see why they should not be able to introduce bills.

Mr McGrigor: How would members get publicity for proposals?

The Convener: A number of the bills that are being considered in the current session were proposed in the previous session and most of the consultation on them was conducted in the previous session. For example, the Breastfeeding etc (Scotland) Bill started in the previous session.

Bruce Crawford: Members can submit proposals, but that does not mean that any work will be done on them. There is no reason to have a constraint on proposals.

Karen Gillon: We must be clear about what we are saying. Once a proposal has gone through a consultation process and is seen to be popular, pressure is put on the Parliament—people ask why the Parliament has not done anything about

the proposal. We are in danger of creating a rod for our own backs. If we set a cut-off point but still allow members to introduce proposals that might be popular and receive huge support in the consultation process, pressure might be put on the Parliament from all the bodies that support the proposal to ask why parliamentary time is not being found for a proposal that the people of Scotland clearly want.

Bruce Crawford: That is what the system is all about.

Karen Gillon: I am just saying that we should be very careful. I have seen the pressure.

Bruce Crawford: Ninety per cent of the responses to the consultation on my proposal for a litter bill in the previous session of Parliament were favourable. Eventually, the Executive implemented much of what I was trying to achieve. However, that proposal could not proceed because the Executive was carrying out a consultation process.

Karen Gillon: I am not saying that we should not be allowed to make proposals, but members must be clear that if a proposal is made after the cut-off point, they will not get a bill into the parliamentary timetable. That must also be made clear to the outside world, because we might come under intense pressure to find parliamentary time for a popular proposal that is made in the final year of a session.

The Convener: If a proposal is made after the cut-off point for introducing bills, we will get nowhere near the stage of a bill being lodged in that session of Parliament—

12:00

Bruce Crawford: Plenty of folk lodge bill proposals at the very beginning and never do any work on them, because they never intend to. How does one judge whether someone is serious at the beginning of the process?

The Convener: At the same time, in terms of the overall parliamentary timetable, some members' bills are on the shelf. If such bills were to proceed earlier in the new session, that would help to relieve some of the pressure. For example, the Prostitution Tolerance Zones (Scotland) Bill is the only member's bill that has been introduced in this session.

Bruce Crawford: That is a good point.

Karen Gillon: As long as we do not raise false expectations.

The Convener: I agree.

The clerk has asked me to go back to a couple of paragraphs under question 7. Should we retain the right for members to introduce two bills per

session? Should we introduce any other thresholds or criteria? If members can introduce two bills per session, should they be allowed to lodge an unlimited number of proposals?

Karen Gillon: Perhaps we should impose a limit. I am just throwing this on the wall. We could limit the number of proposals to five, which would focus proposals and minds, and have an effect on the number of proposals that members will never work on and which will never see the light of day.

The Convener: The CSG report referred to two bill proposals, not two bills.

Bruce Crawford: We have not taken evidence on proposals at any stage. We have talked only about bills.

The Convener: This is part of limiting the pressure on the system. I am asking the question to find the answer.

Bruce Crawford: Members do not lodge proposals to put pressure on the system; they do it for publicity purposes. It is a mechanism.

Karen Gillon: In that case, if we limit the number of proposals, that will help to focus minds and stop NEBU time being used to support consultation on bills that will never be introduced.

Bruce Crawford: But NEBU told us that that is not the nub point. The nub point comes after the consultation is finished.

Karen Gillon: I am not saying that it is the nub point. I am just saying that it may be another tool in our toolbox that will help us to focus members' minds so that they are doing things not just for publicity, but because they want to introduce a bill.

Mark Ballard: Do we have any data on how many bills members proposed in the previous session? I cannot spot the data in the paper.

The Convener: I am sure that there was information about the number of proposals and the number that did not proceed.

Mark Ballard: But I cannot spot anything that lists—

Karen Gillon: It is not laid out member by member.

Mark Ballard: Yes.

The Convener: That should not be too difficult to find, because there was a limited number. We can produce a list of the bill proposals and who made them. The information should be readily available.

Mark Ballard: I know that Robin Harper had a problem with the first proposal that he introduced for a bill on organic food and farming targets. He had to introduce a second proposal, because his

initial one had problems. Giving members the flexibility to withdraw and then reapply will mean that we will get better legislation, instead of forcing members to go ahead with proposals that are problematic, because the slots have run out.

The Convener: We can look into that in detail at some point.

The paper asks whether members should be limited to the number of member's bill proposals that they can sign in a session. I do not know whether there is support for that, but I wanted to make those points.

In principle, we agree that there should be a cut-off point for the introduction of bills in the final year before an election.

Members indicated agreement.

The Convener: I imagine that the end of September would be about right. Do members agree that that would be a reasonable cut-off point for the introduction of a bill?

Members indicated agreement.

The Convener: We move to the four options on the way forward. Do members want to make a decision on those four options today? Do we agree to re-examine the criteria issues before doing so?

Members indicated agreement.

The Convener: If there are options that we are definitely ruling out, it may be worth our doing that now.

Bruce Crawford: As soon as I suggest something, someone else will disagree with me. There is no point in our having that discussion.

The Convener: If there is unanimity about ruling out an option, that will be fine, but I do not think that there is.

Bruce Crawford: I was agreeing only to leave the discussion until later.

The Convener: I was saying that if there were unanimity about ruling out an option, we could have done that, but I do not think that there is.

Bruce Crawford: It all depends on what other decisions are taken.

The Convener: At a future meeting, we will report on issues to do with the criteria and discuss those in more detail. We will also consider options for thresholds.

Bills (Timescales and Stages)

12:06

The Convener: Item 3 on the agenda concerns our inquiry into timescales and stages of bills. Members should have received a note from the clerk—after temporarily mislaying my copy, I have now found it. The note lists suggested witnesses and some possible case studies. It was thought that, rather than jumping between different bills that had different problems, we might find it useful to consider how a couple of bills progressed through the system. It is suggested that we consider one bill from the end of the previous session and one bill from the current session.

I invite members to comment on the agreed categories of witnesses and to indicate any omissions that they wish to highlight or additions that they would like to make. Members should bear in mind the fact that written evidence is still being received. At our next meeting, after the Easter recess, when all that evidence is in, we will consider whether we want to take oral evidence as a result of the written evidence that has been submitted. Are there any omissions in the paper or do members not want to take evidence from any of the people or organisations that it mentions?

Bruce Crawford: I would like to build on one of the categories. The paper refers to

"outside individuals and organisations with experience of engaging with the Bills process".

Richard Baker, Mark Ballard and I attended the civic Scotland event in the chamber. One point that was made strongly in that forum was that the process for scrutinising a bill is not as transparent as it could be—to put it mildly. It might be interesting to get the views of some of the individuals who made that point on how transparency can be improved, especially at stage 2 and in how decisions are finally reached. It would be useful for us take evidence from a representative of civic Scotland who could reflect on the issue, which was raised in general terms by a number of those who participated in the event, especially people who were involved with the Land Reform (Scotland) Bill. I refer to issues such as access to committees.

The Convener: It would be helpful if members could identify an organisation from which they would like to hear. We could write to the Scottish Civic Forum to request details of the notes that it took of the meeting, as we have no such detailed notes.

Bruce Crawford: It need only be someone who represents civic Scotland.

Richard Baker: Presumably some people in that position were witnesses at stage 1.

The Convener: We are not suggesting that we consider the Land Reform (Scotland) Bill, as that might be too large and complicated.

Mr McGrigor: The Land Reform (Scotland) Bill would be a good bill to consider, as it had everything.

Bruce Crawford: I agree.

The Convener: We can consider the Land Reform (Scotland) Bill as a case study from the previous session.

Bruce Crawford: The National Parks (Scotland) Bill was also different in that, although there was some heat around the issue of whether northern Perthshire should be included in the Cairngorms national park, the way in which the bill was considered was quite successful.

The Convener: We wanted to suggest a bill from the current session as well, just so that we have something slightly more up to date.

Karen Gillon: Why are there no members' bills or committee bills? I am not convinced by the argument that it is always Executive bills that bring pressures. Pressures come from other bills, too, and it would be interesting to examine some of the issues surrounding those bills. We are kidding ourselves if we think that the issue is just about Executive bills. Every bill that comes to the Parliament should follow the same procedures and we need to ask how those procedures have operated.

The Convener: The problem with members' bills is finding a typical one to study. By definition, such bills are not typical. With Executive bills, because there are more of them, it is easier to identify bills of a specific type. The issue is about testing the procedures rather than about where the bill has come from.

Karen Gillon: Should we be testing the procedures against different types of bills, rather than just against Executive bills? Executive bills come with a different set of support from that attaching to members' bills or committee bills. I have been through the committee bill process and I would be happy for that to be scrutinised by the committee—we could consider how the bill was dealt with by the secondary committee and what pressure the bill put on the lead committee, the secondary committee and the other committees that were involved.

The Convener: I know what you are saying, but I think that we agreed a remit that indicated that we would be concentrating on Executive bills. We shall check that remit.

Karen Gillon: If members have time to reflect on things and ask whether there is something that we could do better, does the committee's

investigation need to be set in stone by the remit that has been agreed? I thought that the whole point of the exercise was for us to look at the procedures, which are not exclusive to Executive bills and which affect all members.

The Convener: Nobody is preventing anyone—including members of this or any other committee—from presenting any evidence or from raising concerns that have arisen from any bill, which the committee can then look at. However, if we just pluck something out of the air and add it to the inquiry, our inquiry could become so open ended that we will not reach any conclusions. We are considering issues relating to the timetabling of bills. If members are aware of specific issues that relate to the timetabling of members' bills and that are not the same as issues relating to Executive bills, they should give a note to the clerk to indicate what those concerns are. We can then find out how best to take evidence on those issues.

Karen Gillon: The issues relate to the fact that different people have different levels of support. When the Executive introduces an Executive bill and lodges amendments so many days before a deadline, it has a vast array of civil servants supporting it. A member or a committee will not necessarily have that support. If we are going to make changes, we need to consider how they will impact on other types of bills that come through the Parliament and that do not necessarily have the support that is available to the Executive.

The Convener: With respect, we have looked at this item on a couple of occasions before and you have not raised that issue—you are now asking me to make a decision on something that you have not raised before. I am quite happy for you to make suggestions on the issues that you think need to be considered in relation to the timetabling of non-Executive bills, which we can examine at our next meeting. We do not have a definitive list of witnesses yet and we are still waiting for written evidence. If members have additional suggestions for things that we ought to be looking at and if they are clear about the issues that we should include, I am happy for those issues to be looked at and for us to decide how best we can address them.

Karen Gillon: Let me be very clear about what I am asking for. If, at the end of the investigation, we are to make changes to the timetable for legislation, we must take into account how such changes will impact on bills that do not come from the Executive. That is a serious and potentially problematic issue. If we do not, as part of our inquiry, take evidence on how such changes will affect other types of bills, we could adversely affect procedures for those bills that do not come from the Executive.

The Convener: I accept what you are saying, but we are not starting from an assumption that we

will make changes. We are looking at the timetabling to see whether it is adequate at present. It may be the case that, for some aspects of the members' bills process, the timetable is inadequate. I have not received any evidence to back that up but, if there is such evidence, we will have to consider it. We are not necessarily going to end up making changes at the end of the process; we will make changes only if we find that there is a problem that requires changes to be made.

12:15

Karen Gillon: Is every bill subject to the same timetabling restrictions once it has started going through the process of stage 1, stage 2 and stage 3?

The Convener: Yes.

Karen Gillon: Therefore any changes that we make will affect all bills, not just Executive bills.

The Convener: Yes.

Karen Gillon: I assume that the purpose of the inquiry is to make changes and not to retain the status quo. It would be naive of us to suggest that, once we open up the subject for consideration, we will end up concluding that we should keep the system that we have now. We already have a letter from a committee saying that it cannot cope under the current system. I assume that we will make changes, so it would be remiss of us not to consider how that would affect all bills and not just Executive bills.

The Convener: I am not disputing that. I am simply saying that we will make changes if during the inquiry we identify changes that need to be made. Moreover, if we make changes, we will consider how those changes would impact on all bills. Because of the situation with members' bills, we might need to make changes that we would not have had to make if we were dealing only with Executive bills. We need evidence about the issues. Are you suggesting that, instead of considering two Executive bills, we take a non-Executive bill as the second example?

Karen Gillon: Yes.

The Convener: Does anyone have a suggestion as to what non-Executive bill we should consider? At present we do not have any to choose from. Karen Gillon is suggesting that, instead of taking as examples two Executive bills, we consider an Executive bill and a non-Executive bill. I do not think that we are in a position to make a judgment on that at this stage. Members might be able to think of particular bills that would provide useful illustrations. The important point is that we do not want to consider particular bills just because they experienced a problem. The exceptions at either

end—the particularly easy or particularly difficult bills—will not necessarily give us the best indication of what the process should be.

Karen Gillon: What about the Dog Fouling (Scotland) Bill? We have just picked the Land Reform (Scotland) Bill and the National Parks (Scotland) Bill, which are not on the list. We have just done exactly what you said we should not be doing.

The Convener: With respect, I was saying that we had no indication of any non-Executive bills that we might want to consider. You have given us one suggestion.

Richard Baker: What about the Commissioner for Children and Young People (Scotland) Bill?

The Convener: Are members happy with that suggestion?

Members indicated agreement.

The Convener: We will go with the Land Reform (Scotland) Bill and the Commissioner for Children and Young People (Scotland) Bill, if members are happy that those will give us a range of issues to consider. That does not prevent members from coming forward with concerns that they have had about other bills. We are just trying to focus the inquiry on a couple of bills to get the issues sorted out. If anyone has other suggestions for the inquiry, they should let me or the clerks know as soon as possible.

At our next meeting, we will take evidence from Professor Alan Page of the University of Dundee, which will give us an external academic perspective on issues raised in the inquiry. We will also invite Executive officials to give us an overview of the process from the Executive's perspective. I do not mean the political aspects; I am talking about how the system works from the Executive's point of view.

Karen Gillon: I have a question on that. My experience is that it is pretty pointless hearing from Executive officials at a committee meeting without a minister being present, because when the officials are asked a difficult or political question they refer us back to the minister. Perhaps it would make more sense to hear from the Minister for Parliamentary Business as well as from the officials.

The Convener: I was thinking of information gathering rather than asking political questions. I am sure that we would want to hear from the minister later, but we are talking at this stage about drafting issues and the time required for lodging amendments, which are technical rather than political issues.

Richard Baker: We might ask the officials a question that they deem political.

The Convener: They would be free to say that the question was political and that the minister could answer it.

Karen Gillon: What is the difficulty with having the minister and the officials together?

The Convener: I would have thought that we would want to hear from the minister later in the inquiry when we have got further with our proposals. We could question her about specific proposals rather than getting technical information.

Karen Gillon: We could hear from her twice, because I imagine that she is involved in the process.

The Convener: We can ask the minister to come twice. I am sure that she would be happy to do that.

Karen Gillon: We can require her to come twice.

The Convener: On that note, I thank members and bring the meeting to a close.

Meeting closed at 12:20.

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