PROCEDURES COMMITTEE

Tuesday 30 March 2004
(*Morning*)

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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PROCEDURES COMMITTEE
6th 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:

Lorna Clark (Scottish Executive Health Department)
Patricia Ferguson (Minister for Parliamentary Business)
Michael Lugton (Scottish Executive Legal and Parliamentary Services)
Andrew McNaughton (Scottish Executive Legal and Parliamentary Services)
Professor Alan Page (University of Dundee)

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ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 4

Scottish Parliament

Procedures Committee

Tuesday 30 March 2004

(*Morning*)

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

Item in Private

The Convener (Iain Smith): Welcome to the sixth meeting of the Procedures Committee in 2004. The first item on the agenda is to consider whether to take item 3 in private. It is suggested that we take that item in private as we will be considering an approach to our draft report on the non-Executive bills unit. Do members agree to take that item in private?

Members *indicated agreement.*

Bills (Timescales and Stages)

10:19

The Convener: Item 2 is oral evidence for our new inquiry into the timescales and stages of bills. We will shortly be joined by the Minister for Parliamentary Business and members of the Executive's bill team, but our first witness is Professor Alan Page from the department of law at the University of Dundee.

Professor Alan Page (University of Dundee): I am professor of public law at the University of Dundee. I have a long-standing interest in law making and the legislative process and have, therefore, been following with interest what has been happening in the Scottish Parliament since 1999. More specifically, I have been interested in your predecessor committee's report on the founding principles of the Scottish Parliament and the inquiry on the prioritisation of bills that you have embarked on.

I am happy to be of assistance to the committee. I apologise for not submitting a paper before my appearance; I simply did not have time. I do not want to take up a great deal of your time by reading out a prepared statement, but I would like to make a couple of points by way of introduction.

My first point is of a contextual nature. If I have a criticism of what the Scottish Parliament has done, it is that it has too easily accepted the Westminster-based notion that legislation is essentially an Executive function as opposed to a parliamentary function. I say that against the background of the idea that we should be moving away from that position. As you will no doubt recall, the Scottish Constitutional Convention's hope was that the Scottish Parliament would usher in a way of politics that was

"radically different from the rituals of Westminster: more participative, more creative, less needlessly confrontational."

However, in legislative terms, we are a long way away from that.

My second point is of more immediate relevance to the inquiry that you are embarking on. I wish to urge upon you the importance of pre-legislative scrutiny. The Parliament should not leave its engagement with bills and the legislative process until the point at which those bills are formally introduced. Subject committees should be putting a lot more effort into scrutinising the pre-parliamentary stages of the legislative process with a view to making the most effective use of the limited time available.

The Convener: One of the issues that we are focusing on in this inquiry is the timetabling of the various stages of bills. Do you have any comments on the timetabling of amendments and whether there is sufficient time between stages?

Professor Page: I do not. Before I agreed to appear before you, I emphasised to the clerk that I had not conducted any detailed examination of issues such as whether the interval between stages was long enough.

Having read the papers for today's meeting, I raise the point that there were a lot of complaints in the first session about the legislative process being too rushed. The clerk's note seems to show that, on the surface, at least, the number of complaints has declined. There is nothing like as many complaints as there used to be. That is certainly the impression that is gained from reading committees' reports on bills. Presumably, this committee would want to explore the extent to which the criticisms that were made in the first session continue to hold good in the second session.

The underlying pressure—the demand for legislation—has not diminished. I would therefore assume that time will be as much of an issue now as it was in the first session. The First Minister's first legislative programme contained 14 Executive bills, which is roughly the same number as in each year of the first session. I do not see that issue going away. At one point, the Presiding Officer talked about a legislative backlog that had built up following years of neglect at Westminster. It was predicted that, once that had cleared, the pressure would ease. I would be sceptical about that. The number of proposals for legislation expands to fill the time available for enacting them. That is what is happening at the moment, as I would interpret it. That is all that I could say on the interval between stages; my main point is that I expect there to be continuing pressure.

Mr Jamie McGrigor (Highlands and Islands) (Con): You said that you did not have enough time to prepare a paper. Is that symbolic of the way in which we are rushing things?

Professor Page: No—that is a reflection of my own circumstances. My academic term is not yet finished and I have been trying to do 101 other things.

Mr McGrigor: So it is not that you did not get enough notice.

Professor Page: I would not wish to complain about the amount of notice that I received.

Mr McGrigor: You said that we seem to be accepting the notion that law making is an Executive function, rather than a parliamentary one. Bills go before the Parliament at stage 1, and the Parliament can throw them out at that stage. Most of the scrutiny is done at stage 2. Are you suggesting that scrutiny should be carried out before stage 1?

Professor Page: Not necessarily. The comparison that is drawn—whether implicitly or explicitly—is with Westminster. The two Parliaments are in identical positions in the sense that law making is a parliamentary function at both Westminster and Holyrood. In practice, legislation has been made—although not formally—by the Executive since the end of the 19th century. Habits of mind or ways of thinking that have built up over more than a century at Westminster have been carried over—perhaps unthinkingly or uncritically—into a new institutional setting.

Mr McGrigor: How could we break that mould?

Professor Page: That is a good question. The solution is not procedural; it is partly to do with attitudes of mind or culture, and partly about the Parliament being sufficiently robust in its response to the demands made on it, whether those demands come from the Executive, from members or from committees. If the genuine feeling is that there is not enough time for considering bills, then an argument has to be made. The problem does not necessarily lend itself to a procedural solution.

Bruce Crawford (Mid Scotland and Fife) (SNP): I would like to develop that point before moving on to another area of questioning. I am trying to understand what you are suggesting. Jamie McGrigor asked a good question about how we break the mould. Are you suggesting that as well as the Executive introducing a legislative programme, which the Parliament discusses and decides whether to support, there should be a continuing process whereby the Parliament in effect decides on its own alternative programme for government? That would create some quite incredible tensions. If that is what you are suggesting, I would like to understand that a bit better. Unless committees are prepared to introduce bills themselves, as some have done, the only other mechanism that I can envisage that would break the mould would be for there to be a potential parliamentary programme—in other words the Parliament's own legislative programme. There is also the possibility of members introducing members' bills separately.

Professor Page: I am not suggesting what you describe for a moment—I do not think that anybody is suggesting that. I am suggesting a less Executive-dominated process—which was certainly talked about before devolution—in which the Parliament would not necessarily dance to the Executive's tune or follow the Executive's timetable, but would be prepared to say to the Executive, "Hang on a minute. We need more time to consider that proposal, which might mean that

we cannot enact as much legislation as you want us to."

10:30

Bruce Crawford: Given the way in which the Parliament currently operates, such interaction would be through the Parliamentary Bureau, but I will not comment at this stage on how the bureau deals with such issues.

You talked about pre-legislative scrutiny and there is a paragraph in the clerk's paper that suggests that such scrutiny might offer a more positive approach. It would certainly enable members to be much more up to speed on a matter before a bill was introduced and it would enable people in the wider community to understand a bit more about potential areas of legislation. However, what would we do if the Executive's proposals were substantially different from the conclusions of our pre-legislative scrutiny? I worry about doing abortive work.

Professor Page: You might congratulate yourselves.

Bruce Crawford: I know what you mean, but can you expand on that?

Professor Page: That passage in the clerk's paper might have been influenced by something that I wrote, which has not yet been published but which he has read. If the studies teach us anything, it is that what happens before a bill is introduced in the Parliament is as important as, if not more important than, what happens afterwards. That is as true of the Scottish Parliament as it is of other Parliaments and I suspect that it is particularly true in relation to Executive bills. I say that because the Scottish Parliament has two opportunities to amend proposed legislation, whereas the Parliament at Westminster has six such opportunities. The result is that the Scottish Executive is under much more pressure than the UK Government to get a bill right before it is introduced. At Westminster, there is a practice that is derogatorily referred to as "legislating as you go": the Government knows what it wants to do, works out about three quarters or five eighths of that, introduces a bill and then uses the parliamentary stages of the process to get the bill right until it ends up with a bill that is closer to what it wanted.

The Scottish Executive does not have that luxury in the Scottish Parliament and I understand that there is a much greater emphasis here on getting a bill right before it is introduced than there is at Westminster. A consequence of that is that the Executive's interest in the legislative process is correspondingly diminished and it regards the process as a series of hurdles that must be overcome at, I presume, minimum cost or damage to itself. The Executive does not have to try to get a bill right during the legislative process, because the bill has been introduced in as near to its final form as the Executive could get it. The Scottish Parliament becomes involved only after a bill has been introduced, at stage 1, so it seems to me that the Parliament is forgoing the opportunity to become involved earlier, influence what is happening—perhaps congratulate itself on the way in which proposals are amended—and ventilate the whole process of Executive consultation.

That approach was envisaged by the consultative steering group in its report: the Executive would consult on bills, but the consultation would be subject to committee oversight. The First Minister would announce a programme of bills on A, B and C and the Executive would inform committees about its thinking and who it was consulting, so that committees would follow the process much more closely, with a view to ventilating those pre-legislative stages. The result would be that a committee would not come cold to a bill. I believe that the Parliament has slipped rather mechanically into a legislative process in which committees do the stage 1 inquiry for a bill but close their minds to what has happened previously on it. My argument is that the Parliament should be much more engaged at an earlier stage. It is interesting that Westminster is going in that direction by trying to make pre-legislative scrutiny the norm. That role has implications for support for committees and so on. I am sorry that that was a rather long answer.

Bruce Crawford: Some Scottish Parliament committees have undertaken pre-legislative inquiries. For example, the Transport and the Environment Committee undertook a pre-legislative inquiry into the water industry before the Water Industry (Scotland) Bill was introduced.

Can I ask a question about stage 2, convener, or would you prefer to stick with questions on stage 1?

The Convener: I would prefer to stick with stage 1 because other members probably have questions on it. I will come back to you. Do other members have questions on the issue?

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I am interested in what Professor Page said about pre-legislative scrutiny and I look forward to the publication of his paper on that subject. As Bruce Crawford said, Scottish parliamentary committees have undertaken pre-legislative inquiries. For example, the Social Justice Committee undertook a large piece of work prior to the introduction of the Housing (Scotland) Bill. That work informed the members about what they

were doing and allowed them to focus on the bill's content.

The clerk's briefing paper prompts us to ask what stage 1 is for. Is it for a committee to consult on what the Executive proposes, or is it for a committee to get into the nuts and bolts of the bill that is before it? What is your view on that?

Professor Page: My understanding is that the purpose of a stage 1 inquiry is to ensure that Parliament does not come cold to the stage 1 debate on a bill. The criticism that was always made of Westminster is that, when a minister spoke during a debate at second reading, MPs would have little insight into what was being talked about, apart from what they were able to dig up from their own endeavours. Therefore, I regard a stage 1 inquiry as performing an informative function. The more information, the better, because it allows a committee to follow proposals from their inception, identify the issues, show how the proposals are evolving and give its opinion.

Cathie Craigie: I am sure that if you have not read committee stage 1 reports, you will have at least looked at them. They can be lengthy documents because committees do not always contain themselves to what is in a bill. Should we be considering bills line by line at that early stage and suggesting detailed amendments? Equally, when we take evidence from people, we often comment on the issue rather than focus specifically on the Executive's proposals. Should we be more focused?

Professor Page: Yes. I would stress the phrase "more focused". It is impossible to produce a template that would cover every bill, but I would say that you should be trying to identify the outstanding matters and the live issues for debate—if there are any. However, there could be consensus and, therefore, no argument, in which case, I see no harm in saying that.

Cathie Craigie: You said that the Parliament had readily accepted the notion that law making is an Executive function—we could have some interesting debates on that—but surely the Parliament cannot be seen just to be jumping to the Executive's tune. Given that the Executive has been elected on manifesto commitments to introduce certain legislation, it is surely the role of the Executive and the Executive parties within the Parliament to do that. It will take time for the Parliament to get outside the box and do things differently, because we have different mechanisms for legislating. The committees can introduce bills and private bills can be taken through Parliament—we have seen that happen—although the Executive has to have the main role in legislating. Do you not accept that, over time, people will learn more about how to introduce private bills and that that will enrich the Parliament? Individuals with enough support could come along with alternatives to the Executive's programme.

Professor Page: You are saying that there will be greater opportunities for non-Executive bills.

Cathie Craigie: The opportunities are there but, unlike people in legal circles and local authorities, the general public do not necessarily know that. We have had only three private bills. I presume that the volume of private bills will build up as people become more aware of the opportunities.

Professor Page: You would wish to encourage people to take advantage of those opportunities.

Cathie Craigie: I do not know that I would wish to encourage them to do that, as some of the private bills have not been particularly important to my constituents, but the opportunities exist.

Professor Page: I do not disagree with any of that—the opportunities are there. The question is how they can be developed most effectively. Would that be a case of an idea being picked up and promoted by an MSP, for example? I am not sure whether I have answered your question.

Cathie Craigie: You said that the Parliament jumps to the Executive's tune. I do not agree with you on that, although I agree that, given that the Executive is the body that is democratically elected to make laws in Scotland, one would expect the major part of the legislation that goes through the Parliament to come from the Executive.

Professor Page: I think that that is right. The issue is the attitude with which that legislative agenda is promoted and pursued. Anthony King drew the contrast between two models of a constitution, one of which he called a power-hoarding constitution. The guiding normative principle of a power-hoarding constitution is that the winner takes all. Someone who forms a political party and wins a general election can execute their agenda. That is the Westminster constitution, which represents our received constitutional tradition. Anthony King contrasts that with a power-sharing constitution, which is characteristic of most continental political systems. The guiding philosophy in that type of constitution is quite different—it is about consensus building, a deliberative approach and so on. A power-sharing constitution is fundamentally different from a power-hoarding constitution.

Although power sharing is one of the Scottish Parliament's founding principles, the Parliament's notion of power sharing is very attenuated or limited; it says simply that the Executive should not have a monopoly and that there should be consultation. Well, we can all agree with that—in that sense, even the Westminster Parliament is a

power-sharing Parliament. However, if we want to build up the contrast with Westminster and to emphasise in what sense the Scottish Parliament wants to be different, the answer lies along the lines of a more expanded notion of power sharing than the one that has been employed to date. That would relate to the way in which an Executive pursued its agenda.

Cathie Craigie: That is a coffee-break discussion.

10:45

Karen Gillon (Clydesdale) (Lab): The evidence would certainly suggest that none of the political parties in Scotland is ready for power sharing, because everything that we do is viewed in terms of victory or defeat, so even when there is consensus, that is seen as defeat for the Executive. Talking in such terms is all very nice, but until everybody else buys into the idea, why should I—as a member of one of the Executive parties—buy into it if, whenever we reach a consensus that is based on the view that something is the right thing to do, it is seen as a defeat for the Executive parties? If we are going to grow up, everybody, including the press and the public, needs to grow up and we must stop seeing things as victories and defeats. To be honest, I do not think that any of us is at that stage yet.

Professor Page: I would not wish to dissent from what has been said, which is absolutely right. That is our inherited tradition and we find it difficult to imagine any other way or to act in a different way. It was said to me in another context that if such a consensual approach to law making were pursued, the Parliament would be deprived of its theatre. Parliaments survive on the stuff of, for example, the Labour Government's bill on tuition fees and whether it will receive a second reading. The bill hangs on a knife edge, which brings it alive.

Karen Gillon: I would like to explore the issue of pre-legislative scrutiny. Are you suggesting that such scrutiny should become part of the Parliament's formal process? That is my first question—my second question will depend on your answer to it.

Professor Page: I do not think so. I would be wary of multiplying the number of formal stages and of doing things for the sake of doing them. In practical terms and by analogy with Westminster, I would suggest making one of the core tasks of subject committees that they inform themselves. The CSG talked about a process of Executive consultation that is overseen by committees. The Executive would say, "These are the people whom we are consulting and this is the stage that we are at," and the committee would be involved. That is all that I am suggesting. I do not know enough about the organisation of the Parliament, but I suspect that the process needs—again by analogy with Westminster—appropriate support. There is now a scrutiny unit at Westminster that is intended to support committees—as scrutiny does not have to be done by a select committee—in their pre-legislative functions because one immediately runs into the problem of people having 101 other things to do and asking how they will fit in such things.

Karen Gillon: So in essence such scrutiny would become part of the formal process. The Executive would go to a committee and say, "This is how we are going to legislate."

Professor Page: Yes.

Karen Gillon: That is fine.

An issue that I want to raise ties in with an issue that you have already raised, which is that there would be an increase in the amount of time that a committee spends on Executive business rather than on its own business. I have been on committees that have dealt with either little legislation or lots of legislation. The scope for a committee that must deal with a lot of legislation to do things that it wants to do is limited. If something else is loaded in at the front of the process, will that further diminish the committee's time?

In the first session, I was on a committee that dealt with a fairly light amount of legislation. That committee was able to initiate its own legislation and bring about changes through the Commissioner for Children and Young People (Scotland) Bill, a formal consultation and fairly substantial pre-legislative scrutiny. I have seen the two types of committee in operation and am cautious about frontloading a committee with more work that would prevent it from doing its own stuff and make it simply an Executive vehicle.

Professor Page: That is a fair point. However, that does not mean that the idea is necessarily a bad idea. What you say raises questions about how the Parliament organises itself for its various functions. Is the structure—which is basically a structure of subject committees—the best structure? As you say, the work load of subject committees varies enormously.

One of the things that surprises me about the Parliament is the lack of cross-cutting capacity. Legislation is a good example of that, as is scrutiny of human rights and public finance and administration. There is little consideration of those areas because matters are considered through a series of subject committees. To say that we cannot do something because we are doing too much already is not the answer. Let us think again about how we organise ourselves for

the purposes of doing the various things that we want to do.

Karen Gillon: Should we tear up the CSG's principles and its views on how the committees should be set up?

Professor Page: The CSG blueprint leaves a lot to be desired.

The Convener: I do not want to open up that debate today.

Bruce Crawford: Karen Gillon was right to pick up on pre-legislative scrutiny. She asked Professor Page whether it creates extra work, but I did not understand from his answer whether he thinks that it does. Whether a committee undertakes scrutiny at stage 1 or undertakes pre-legislative scrutiny, is it not the case that the process has to happen at some stage?

Karen Gillon: Unless we get rid of stage 1.

Bruce Crawford: If there is pre-legislative scrutiny, there should be less need for committees to undertake stage 1 inquiries; such scrutiny would become a replacement rather than an additional piece of work. If we put in the effort to get things right at the beginning, we should in theory end up with a better process—that involves frontloading the work rather than such work arising halfway through the process. Is that what Professor Page means?

Professor Page: Absolutely. That is the point that I meant to make in response to Karen Gillon's question. We are talking not about an absolute increase in work but about a redistribution, and the corollary is that stage 1 scrutiny should be a lot lighter. If one is already informed, one does not need to go through the process that happens at the moment, so there will be a saving of time.

Karen Gillon: Is it not a potential saving? No matter how good pre-legislative scrutiny is, on complex and controversial legislation we will still need a comprehensive stage 1 process so that the committee can assure itself that the general principles of the bill are right for the Parliament. That might not apply to bills that are simple. For example, I have just been through the first two stages of the Nature Conservation (Scotland) Bill, and stage 1 of that bill became what you envisage. We went into detail on where the amendments should be rather than consider the bill's general principles, because that was agreed in the pre-legislative scrutiny. The bill took a long time to come along and everybody bought into it, so stage 1 became a different process.

The Education (Additional Support for Learning) (Scotland) Bill came about as the result of a committee inquiry into special educational needs. The inquiry was huge and a consensus emerged, but despite that the bill has been controversial. There will always be an issue if there are two different sides that cannot be reconciled, and people will have to make political decisions about the general principles of a bill at stage 1. The effect of pre-legislative scrutiny on stage 1 depends on the bill.

Professor Page: The conclusion of a committee at stage 1 might be that there is nothing more to be said. The committee might say, "Over to you."

The Convener: How do you respond to the view that some committees have taken on pre-legislative scrutiny, which is that if committees are involved in such scrutiny and consultation they might become too tied into the bill to be able to scrutinise it independently at stages 1 and 2?

Professor Page: I have heard that argument. I am not sure that independence is a quality that we look for in committees—we are not talking about the courts; we are talking about committees of politicians. I do not see why such an approach should compromise the committee's position on two counts. First, a committee does not need to express a view in pre-legislative terms; the committee can simply say that it is ventilating the issues as they have emerged. That seems to be quite a common model of pre-legislative scrutiny. Secondly, there is nothing to stop the committee expressing its views subject to what emerges subsequently by way of response to consultations and so on. I do not see a committee being necessarily tied to a specific position.

Karen Gillon: Is a potential resolution that we need to improve the process of pre-legislative scrutiny? The Nature Conservation (Scotland) Bill was a good example of that scrutiny working well. The committee was not involved in that process, but it was a good example of pre-legislative scrutiny. When the bill came to the committee, it was clear where the barriers were and where changes needed to be made. Perhaps we should improve the pre-legislative scrutiny as an alternative to involving the committee at that stage.

Professor Page: In general it seems that pre-legislative scrutiny has been forgotten, although you have reminded me of an example where it was not. All that I am arguing for is a more thoughtful, less mechanical approach that would allow the matter to be dealt with in various ways. On balance, pre-legislative scrutiny might yield us more, by way of return, and not disaffect other people. There is often criticism of consultation overload on the part of affected interests who say, "Why are you asking us about this when we have already been through the consultative process?"

The Convener: The committee will probably explore that issue quite deeply. Bruce Crawford wanted to ask some questions about stage 2.

Bruce Crawford: It depends how we are going to do the next bit of this and what the timescales are before I start getting into it. Do you want me to go ahead? I am happy to ask my questions.

The Convener: I think that you should just ask the questions.

Bruce Crawford: Fair enough.

As Professor Page rightly said, the previous Procedures Committee had an overview of the whole issue of the founding principles. The report that it produced contained the statement:

"'At Stage 2, our experience has been that the timetabling decision—whether it is made by the Bureau or the Executive—does not allow enough time for civil society to be as involved as it would like in a committee inquiry.'"

It built on that by stating:

"Committee Conveners and the Bureau must also ensure that sufficient time is available for Stage 2 of Bills to proceed at a sensible pace, and for interested parties to contribute to the process."

In your examination of what goes on in this place and from your perspective, do you have any comment to make on those issues, which were raised by the previous Procedures Committee?

Professor Page: I am not sure that there is anything that I wish to add to what I have said. It is obviously important that enough time is made available to enable bills to be the subject of proper scrutiny. That is what you are looking for. I am not certain whether it is still felt that there is not enough time for that. I presume that you will want to form a view on whether that is still an issue.

The Convener: Thank you. Does anyone else have questions to ask?

Mr McGrigor: This may have been touched on already. The reluctance of committees to engage in pre-legislative scrutiny may arise from a feeling that, if they engage in too much pre-legislative scrutiny, they may lose the detached perspective that they are encouraged to have in dealing with a bill. What is your comment on that?

Professor Page: Committees obviously need to keep an open mind. As I said, I do not think that there is an obligation on a committee to express a view; it can simply state the issues as they have emerged. It is for the Parliament as a whole, as the process unfolds, to come to a final view on how the bill should proceed. I would reject the argument that pre-legislative scrutiny would fatally compromise a committee or those who engaged in it.

11:00

Mr McGrigor: We get a policy memorandum. Do you think that that is not enough?

Professor Page: Not if, as I said, the issue is effectively done and dusted by then, from the Executive's point of view. By then, it is too late in the day for the Parliament to start asking what a bill is all about.

The Convener: As there are no other questions, I thank Professor Page for coming along today and giving us the benefit of his wisdom. I look forward to reading the article to which he referred earlier.

11:00

Meeting suspended.

11:02

On resuming—

The Convener: I welcome the Minister for Parliamentary Business, Patricia Ferguson, and her team: Michael Lugton, the head of the constitution and parliamentary secretariat; Andrew McNaughton, from the parliamentary liaison unit; and Lorna Clark, who has been a team leader on a couple of bills, the most recent of which was the National Health Service Reform (Scotland) Bill.

The purpose of this session is primarily to receive some factual background information to inform the committee about the issues that may arise from how the Executive deals with legislation as it goes through the process. The minister will be invited back at a later stage to talk more about the policy issues relating to the inquiry. At this stage, we will concentrate on the technical and factual issues. It might be helpful for members if someone from the Executive team could briefly run through the various processes from the introduction of a bill and the related timetabling issues up to stage 3. We can then use that as a basis for questioning.

The Minister for Parliamentary Business (Patricia Ferguson): I welcome the opportunity to attend the meeting and to contribute to the work of the committee on behalf of the Executive. My opening remarks will be fairly brief, not just because the convener has introduced the officials who are with me, which I was going to do. We thought that it would be useful to have Michael Lugton and Andrew McNaughton along today because of their involvement in the legislative process. Lorna Clark is here because of the experience that she has gained as a team leader on two health bills. I know about the health side of things, and I suspect that she will be involved with more such bills in the near future.

A number of the issues that are currently under investigation by the committee were raised in the previous Procedures Committee's inquiry into the founding principles of the Parliament. The

Executive took the opportunity to comment on that committee's report in 2003 and I am sure that members have read and noted those comments. It is fair to say that, from our point of view, managing the legislative programme is an important part of parliamentary business and it is important to ensure that the process works smoothly and effectively as far as is reasonably possible. Hitches will occur from time to time and pressures arise in our getting through the work, but procedures are in place to ensure that the main processes operate efficiently. It is also fair to say that in the light of experience in the first session, the Executive took a lot of care over and put a lot of time into refining and reviewing its own processes so that at the beginning of the second session we would have a slicker arrangement in place to allow the pre-legislative stages to be handled more efficiently. Obviously, I am happy to answer any questions that members have on that.

As far as the overall timetable to which the Executive works is concerned, the first thing that we do is work back from the point at which we want to see a bill implemented. There are many reasons why we would want to have a bill implemented at a particular stage. For example, it was important for us to have in place one of the health service contracts bills to give effect to a national agreement. In effect, we worked back to see when we could introduce the bill. With that bill we were restricted, because the election took place, the Executive was formed, the partnership agreement was finalised and then the bill had to make its progress through the Parliament. However, we were aware that the bill was coming so there had been advance planning. Michael Lugton might like to say a few words about the more detailed internal process that happens in the Executive.

Michael Lugton (Scottish Executive Legal and Parliamentary Services): As the minister has outlined, we work backwards from the point at which we would like a bill to complete its parliamentary passage. The start of the process is the series of legislative commitments with which ministers come to the Administration. In the second session, the partnership agreement was helpful in setting out a number of precise legislative commitments, which enabled us as an Administration to plan ahead. The internal process is in essence controlled by ministers who collectively keep the plans for legislation under careful review. At various stages in the process before the First Minister's annual statement, central ministers come together to review where we have got to in the preparations for individual bills and decide how the programme might be adjusted. That is intended to ensure that when we get to the First Minister's statement we have a clear idea of which bills we will be able to introduce and, broadly, when.

Below ministerial oversight of the process a lot of activity goes on in my secretariat, where we keep in touch with the bill teams and ask them to produce detailed timetables of their preparations for legislation. At a senior level, together with our legal colleagues in the office of the solicitor to the Scottish Executive and the office of the Scottish parliamentary counsel, we keep an eye on the legislative programme as a whole. As the minister said, all that has been sharpened up considerably since the election, because we thought that we could usefully learn a number of lessons from the first session. It is fair to say that we now ask bill teams for a good deal more information on where they are at more regular intervals than we did before so that if we spot pressure points we can deal with them quickly. I have close links with the office of the solicitor to the Scottish Executive and with the first Scottish parliamentary counsel and together we do all that we can to ensure that when we identify difficulties, we move resources around to deal with them.

When we come to the First Minister's statement, we are reasonably confident that the programme as a whole will be manageable in the time available, in the sense that we will have the bills ready for introduction at broadly the time that we have planned for. After that, it is a matter for the Parliament to programme individual bills. In planning our introduction dates, however, what we have in mind is a general view of the amount of time that we think the Parliament will need to consider each bill in as much detail as necessary. That takes us back to a general assessment of how much time each bill takes. In that connection, what we do, at ministerial level, is take a view on precisely how much time each bill will need, bearing in mind past experience of consideration of bills at each of the three stages.

The Convener: One of the criticisms in the previous Procedures Committee's report on the founding principles was that the Executive was still operating on the basis of an annual timetable for legislation rather than a rolling programme over four years, and that that led to undue pressures on committees in the early part of the year and on parliamentary time towards the summer recess. Has the Executive examined that, and is it considering ways of ensuring a more even balance of legislation throughout the four-year period?

Patricia Ferguson: I do not necessarily accept that criticism. The Executive does not confine itself to the annual cycle, as it were. It is aware of the restrictions, such as recess dates and when the office of the clerk is open, that the annual cycle puts on committees and the Executive, and that

influences how the timetable is drawn up. The Executive is mindful of the fact that we have a four-year session, and it works on the basis of that. It could not be accused of rushing unduly to get a piece of legislation through prior to, say, a summer recess. There are many occasions when the Executive has introduced legislation towards the end of the parliamentary year, if we take the summer as the point at which the parliamentary year ends. Sometimes, legislation carries on from stage 1 to stage 2 across that summer break.

The Convener: Does anyone else have any questions on the overall picture before we consider stage 1, stage 2 and stage 3 as distinct stages?

Bruce Crawford: It would be useful to hear from the minister about the four-year planning that goes on. I am a member of the bureau, so forgive me if this is an incredibly daft question—it may be about something that happens already. Does the Government publish its plans for the progress of legislation in those four years? I am not aware of a publication that says, "Here are our proposals for the four years." We know what the programme is, but not how it will be scheduled. Is there any prospect of the scheduling of legislation being made available? The bureau could perhaps consider that at the beginning of a parliamentary session so that it is able to recognise at a much earlier stage where the pressures will be. I wonder whether that is a helpful suggestion, as it would throw a bit more light on the whole process and introduce more transparency to it.

Patricia Ferguson: I understand Bruce Crawford's point. However, it is fair to say that the partnership agreement contains the outline of what is planned for the four years. That is followed up by the First Minister's annual statement to Parliament, in which he outlines what will be coming in over the next year. Those are two ways in which people with an interest in what the forward plan might be can find out more. Issues will arise that require to be dealt with in legislation that perhaps cannot be anticipated four years from the end of a parliamentary session. The Executive would always be quite cautious about how much information it puts into the public domain. If the Executive says today that it is going to do something in 2006 and for some reason that slips and something else has to take its place, it would probably be criticised for not having stuck rigidly to what it said it would do when, in fact, it is attempting to respond to the needs and, perhaps, the aspirations of the country that it is trying to serve.

11:15

Bruce Crawford: Perhaps that brings us back to Karen Gillon's point that none of the politicians is grown up enough yet to understand the need for a different type of politics in Scotland.

Would there be any harm in having an initial schedule of when bills might be expected? If the bureau understood that a schedule might have to change for good reason, it would help the process. I understand the political dangers, but are they a strong enough reason for such a schedule not to be introduced?

Patricia Ferguson: Enough information is available to enable anyone with an interest in the matter to see which bills are coming up in the near or predictable future. I accept Bruce Crawford's point, however, that if we were all grown up enough, we might take a different approach.

A year past in January, a furore was caused when a draft document with my initials on it that had not even seen the light of day, but which would have been issued by me ultimately, tried to set out some ideas for what might be included in the legislative programme for the second session of Parliament. We have to plan for pressures even if an election campaign intervenes, in order that when a new Parliament is eventually elected, proposed legislation can be given to committees to allow work to begin. The furore that that document caused was immense. Therefore, I am not filled with confidence that politicians and the wider civic Scotland—perhaps that is unfair, but certainly our friends in the media—would respond favourably if we were to go down the road that Bruce Crawford outlines.

Bruce Crawford: Was the furore not caused more because the document was confidential at that point and any confidential document that the media or politicians get hold of becomes a story in its own right? If the atmosphere had been different, or if the Executive had announced what it intended to do and issued a legislative schedule, perhaps the furore would not have been on the same scale.

Patricia Ferguson: I seem to remember that the furore arose mainly around the fact that the Executive was being presumptuous because it was planning six months ahead.

Bruce Crawford: That is a different issue. I suggest that we introduce a schedule at the start of the four-year parliamentary session, so that we have a road map and people can recognise the journey that we will make to produce the legislation. The schedule might change and we might have to take a slightly different route to get there, but there might be merit in the idea.

Patricia Ferguson: The partnership agreement is that road map.

Bruce Crawford: The partnership agreement details what you are going to do; it is not the road

map for how you are going to get there.

Patricia Ferguson: One can read the partnership agreement and learn from it that there will be legislation on X issues. The partnership agreement is fairly explicit in a number of areas, so the process should not be too difficult for people to engage in.

The Convener: Do members have questions on the pre-introduction stage?

Richard Baker (North East Scotland) (Lab): What factors does the Executive consider when it assesses how long Parliament needs to consider a bill?

Michael Lugton: A mixture of factors is taken into account, the first of which is the extent to which there has been pre-legislative consultation and whether that consultation was based on a white paper or a draft bill. If a draft bill has been published and the stakeholders have had an opportunity to consider it in some detail, one might think intuitively that one needs less time for parliamentary consideration of the bill.

Other factors include the controversy that the bill is expected to generate, and the size of the bill. Having put together all those factors and, as the minister said, worked back from the point at which we would like consideration of the bill to be completed, we can make a judgment on when we think the bill ought to be ready for introduction. We make such judgments all the time. The process is not an exact science, but we always try to ensure that we have our ducks in a row so that there is adequate time for parliamentary consideration. Ministers control the process carefully in the Executive and they, rather than officials, are best placed to judge how much time the bill needs for parliamentary consideration.

Richard Baker: To what extent has the Executive's pre-legislative scrutiny evolved? One of the things that we discussed with Professor Page was how such scrutiny could help to speed up the committees' stage 1 consideration. Do you agree that scrutiny has evolved significantly since the first parliamentary session?

Patricia Ferguson: It has evolved considerably. We are always open to learning the lessons of what has happened in the past, and one thing that might be helpful to committees would be for them to consider the consultation that takes place before a bill is introduced. On some bills, there might be more than one consultation—there is often a draft bill, too—so often, by the time that a bill gets to a committee, a lot of work has been done. It might be helpful for committees to draw on that to influence their work more they than sometimes do.

The Convener: Ministers have sometimes conducted informal briefings with committees before the introduction of a bill. Might that practice, which gives the Executive an opportunity to inform committees of the various stages of work and consultation that have been done, be extended?

Patricia Ferguson: Ministers are always happy to engage with committees in that way. I do not think that there would be a problem with that.

Mr McGrigor: For the Land Reform (Scotland) Bill, there was an access forum. Who decides who will be on such a forum and for how long the forum will consult?

Patricia Ferguson: I cannot give you exact details for the access forum, because I do not have them. Generally speaking, there would be a discussion in the relevant department and names would rise to the surface—usually, the names of people who are known to be interested in a specific issue. An assessment would also have to be made of the likely timeframe that would be required to give the matter due consideration. I imagine that that was how the access forum was established; I would not have thought that it would have been any different from any similar forums.

Mr McGrigor: Do you find that most responses arrive in the last few days of a consultation exercise? How often do you extend consultations? Can you extend the exercise if it is obvious that a lot more people want to comment? Do you have basic rules about that, or are you flexible?

Patricia Ferguson: I imagine that we would be flexible if we saw evidence to justify that flexibility and if it was not going to throw everything else off course, but I will need to check with the officials whether we always do that. Responses to consultations vary considerably; some organisations are highly organised and get their responses in relatively early, and others, perhaps because of the cycles of their meetings, respond a bit closer to the end. It is a mixed bag.

Mark Ballard (Lothians) (Green): I am at a slight disadvantage, never having been on a committee that has conducted a stage 1 inquiry, but I am interested in the matter, partly because of the proposals on non-Executive bills that we will discuss later. As I understand it, at stage 1, the lead committee considers the policy memorandum, part of which deals with the consultation and its effectiveness. Is that an effective process?

Patricia Ferguson: My personal view is that committees could make more use of that element of the consideration. The information about consultations is made widely available—it is on the Executive website and is given to the Scottish Parliament information centre—and committees could make more use of it.

Lorna Clark is involved in a number of bill consultations, and she might be able to give the committee an idea of the scale and volume of work that can be involved. The National Health Service Reform (Scotland) Bill, in which she is involved, might fall into that category.

Lorna Clark (Scottish Executive Health Department): One current consultation, which may lead to legislation in due course, is on the reform of dental services. We extended the deadline for that consultation when it became apparent, early on, that people wanted more time to consider the proposals.

The consultation on dental services is an example of one in which we have done far more than issue a consultation paper and wait to see what we get back. A series of road shows has been held throughout the country, some of which have been attended by the Deputy Minister for Health and Community Care. We ask people what they think and get details from them about how they would like to see proposals developed and how the proposals might be turned into legislation in due course. If and when the proposals become a bill, a raft of information will be available to the Health Committee. Using that information, the Health Committee could see what the Executive has done, the responses that it has received, how we have moved from our initial policy proposals to detailed legislative proposals and how those proposals have been influenced by the consultation paper.

Patricia Ferguson: That is an example of the kind of work that would be helpful to a committee. In the future, committees may want to consider the consultation process in more detail and find out from the Executive what has happened so far. As I said, the information is available to committees in any case; it is also available to the public and it is in the Scottish Parliament information centre. It is not too difficult to get access to the information.

Another point that I wondered about—this is a personal view—is whether the committees might look at who has been consulted and how much consultation has happened with particular bodies. A committee could then decide that it wanted to consult other groups or individuals or other parts of society in order to get the widest possible view and to ensure that it does not just replicate what has already been done. Some committees do that kind of work, but perhaps committees could be encouraged to do it more often.

The Convener: Does that imply, almost inevitably, that a longer period would have to be made available for stage 1? The Executive's standard 12-week consultation period is one that committees can rarely follow at stage 1, because the timescale would not allow for a 12-week consultation period followed by a period for oral evidence. If you are talking about consulting parties that have not yet been involved in the process, would there not inevitably be a requirement for stage 1 to be longer?

Patricia Ferguson: Not necessarily. The relevant committee often knows that the bill is coming down the line and will be introduced, so there is no reason why it could not start to engage at an earlier stage with some of the organisations or individuals who might have an interest. I do not want to say to committees that they should not consult people who have already been consulted, but often they might usefully look to other people to supplement the Executive's consultation. In many cases, that might reduce the number of people or organisations from which the committees have to take evidence. The process could be managed, given a bit of thought and interest from committee members.

Richard Baker: If a committee feels that it is running out of time, the convener can appeal to the bureau for an extension. There have been 16 reports in which committees have been critical of the length of the time that they have had, but only a handful of committees have appealed to the bureau and, in all those cases, the extensions have been granted. Is that right? Will that continue to happen in the future, or if there were more appeals would some of them have to be turned down?

Patricia Ferguson: No. Although consideration has been given to what the clerk to the committee, officials working on the committee and often also the convener think might be the likely required timeframe, the bureau takes the view that it would always be open to requests from members to allow additional time. I do not see that changing in the future. I cannot recall an occasion when such a request has been turned down. It is recognised that conveners know their committees, know how they work and know the best way forward for them. I do not see why that should be any different in the future.

The same applies at stage 3; there is an example of that this week, when a bill will be considered at stage 3 on Thursday. As a result of the soundings that we have taken from the other business managers on the Parliamentary Bureau, we have allocated a whole day instead of a half-day for that business in recognition of the fact that a lot of members want to say a lot of things. The bureau is always open to such a request and will respond very positively to it, unless there are very good reasons for not doing so.

11:30

The Convener: At the moment, a bill is introduced; the bureau allocates the bill to the lead

committee at its first meeting after its introduction; and the bureau, at its next meeting, sets a timetable. Should the bureau allow a bit more time between referring the bill to the lead committee and timetabling its passage to give the committee in question a bit more time to consider the extent of its examination of the bill?

Patricia Ferguson: If that were the end of the matter, I would say yes. However, agreeing the timetable at the beginning of the process is the right way forward, because it allows everyone to know what they are planning for and the dates that they are heading towards. That said, committee conveners have occasionally come back to the bureau and said, "Sorry, we can't finish our consideration of the bill in this amount of time. We need an extra week or two." I cannot think of an occasion when such an extension has not been granted. As a result, that route is also open to conveners.

The Convener: If members have no further questions about stage 1, we will ask about the period between stage 1 and stage 2 and the period for lodging amendments at stage 2.

Mr McGrigor: Members have often said to me that there is simply not enough time to understand what the effects of a particular amendment will be, to consult someone practical who knows something about that matter and to come back with an argument for or against the amendment. How do you respond to that concern?

Patricia Ferguson: I have some sympathy with that argument. In fact, Executive officials have the same problem, as they are largely working to the same deadlines with non-Executive amendments. The Executive voluntarily lodges amendments five days in advance, which is more than the statutory minimum, because it acknowledges that there is a difficulty in that respect.

Mr McGrigor: But sometimes there is much less time than that to consider amendments. You said that amendments were lodged five days in advance.

Patricia Ferguson: Executive amendments are lodged five days in advance.

Mr McGrigor: But sometimes members have only 24 hours to scrutinise amendments that have been lodged from other quarters. It takes much longer than that to work out the effect of a particular amendment, especially if the person to whom you want to speak works during the day and cannot be contacted. How on earth are people supposed to consider legislation without being fully briefed?

Patricia Ferguson: I do not necessarily disagree with that. However, members and the Executive experience the same difficulty.

Karen Gillon: I want to explore this matter. I could partly accept a proposal to pull back the deadline for lodging amendments by one, two or three days; however, that might mean that committees could consider amendments only every second week. I am interested to hear your thoughts on how that might affect the legislative timetable for the rest of the parliamentary session.

Patricia Ferguson: Your point is valid. It would help if non-Executive amendments had to be lodged three sitting days before a meeting at which they were being considered. Any more than three days would be of less help, because it would mean preparing for the next meeting almost before the previous meeting had been held.

Karen Gillon: That would mean that amendments might have to be lodged on Thursday for a Tuesday committee meeting and on Friday for a Wednesday committee meeting.

Patricia Ferguson: Yes.

Bruce Crawford: Some of your answers have been useful. Although I acknowledge Jamie McGrigor's point about MSPs, I am more concerned that those outwith the Parliament do not have enough time to consider and reach an understanding of amendments, affect the debate and ensure that the process is transparent.

Two issues are involved. First, there is the question whether the time between stage 1 and stage 2 is sufficient to allow members to consider the amendments that need to be lodged. Secondly, there is the discussion about how much time should be allocated between the amendments being lodged and their being discussed at stage 2. The minister and Karen Gillon referred to the opportunity to make that period a bit longer, and I think that we need to take more evidence on that. However we arrive at the answer, and whether it turns out to be three days, five days or whatever, we need to find out from other MSPs how that might work.

What is your view on extending the period between the end of stage 1 and the start of stage 2, so as to allow those who are involved with the wider aspirations of civic Scotland to get involved in consideration of what amendments might be necessary and which amendments they wish to support?

Patricia Ferguson: It is a tricky dilemma. In the end, however, it falls to politicians to make judgments on such matters, and it is up to them to be as informed as they possibly can be. Some members will be more concerned than others about a particular bill or element of a bill, and will keep themselves well informed on it.

There have been relatively few occasions when the minimum period between stage 1 and stage 2

has actually been the period taken. More often than not, the period has been considerably longer than the period that is laid down in standing orders. That has happened for a combination of reasons, not least of which is an understanding that there is complexity and difficulty in this area, and that there tends to be a need to allow more time. However, that does not get members out of the problem of lodging amendments, so the discussion dovetails with what Karen Gillon was talking about.

Bruce Crawford: The previous Procedures Committee stated:

"we recommend an increase in the minimum period that must elapse between the day on which Stage 1 is completed and Stage 2 starts."

Do you support that view, or do you have a different perspective?

Patricia Ferguson: There is already flexibility, and the papers that the clerk has set out before the committee indicate that flexibility is often applied. The figures that I have with me, which relate more to the introduction of bills, show that, in the previous session, there were only about eight times that a seven-sitting-day gap, which is the minimum for that stage of the process, applied. On 41 occasions, the interval was between eight and 60 sitting days. In this session so far, only four of our bills have got to stage 2 or stage 3. Of those, the time taken was about 52 days and 12 days respectively. The flexibility already exists; we need to be aware of it and use it better.

The Convener: Some bills are extremely large and complex, and there have been times when a huge number of Executive amendments have been lodged. Is there sometimes a problem with the time pressure on Executive officials to produce amendments when such a large bill is concerned?

Patricia Ferguson: The Executive is working hard to ensure that very large numbers of amendments do not come through, although I know that such situations have arisen in the past. We intend to do everything that we can to reduce the number; we will not always manage that, but that is our aim. We acknowledge the difficulty. It is a problem for bill teams and officials, but we are working to eradicate it.

The Convener: It has been suggested that, unlike the present arrangements, which contain various deadlines for different parts of a bill, there should be a single deadline before stage 2 is commenced, before which all amendments should be lodged, apart from any consequential amendments that result from amendments' being agreed to earlier. That would give people a clear idea of the amendments that are to be considered throughout the bill. Would there be any merit in that?

Patricia Ferguson: I would be anxious in that we might be inundated with a large number of manuscript amendments at a later stage, which would not be particularly helpful. It is probably better to stick with the system that we have rather than go down that road.

Mr McGrigor: During the previous Procedures Committee inquiry on the founding principles of the Parliament, Ian McKay of the Educational Institute of Scotland commented:

"At stage 2, our experience has been that the timetabling decision—whether it is made by the bureau or the Executive—does not allow enough time for civic society to be as involved as it would be in a committee inquiry."—[*Official Report*, *Procedures Committee*, 26 February 2002; c 1387.]

Have you taken any notice of that comment?

Patricia Ferguson: That is one reason why the Executive lodges amendments five days in advance rather than the minimum number of days. It is for committees and individual members to consider whether they might lodge amendments earlier. To change the deadline as Karen Gillon suggested might be one solution.

Karen Gillon: That may well be the statement that was made, but I find it remarkable that the EIS should state that it could not make its comments known. When I was convener of the Education, Culture and Sport Committee, the EIS was the one organisation that always let us know how it felt about amendments prior to their consideration at stage 2. Although the EIS may have had difficulty in doing so, that did not preclude it from making its voice heard.

The Convener: We now move on to the period between stages 2 and 3. The point has been made that there may not be sufficient time between stages 2 and 3 for the committees that have a right to re-examine bills at the end of stage 2, such as the Subordinate Legislation Committee and the Finance Committee, to do so. Is there any merit in that point? What would be an appropriate length of time between stages 2 and 3?

Patricia Ferguson: A practical measure that would not require changes would be for secondary committees to send reporters to sit in on lead committee meetings. Committees that have tried that have found it to be helpful. We may have to consider committees' timetabling to find out whether their work programmes give proposed legislation its place and the priority that it needs. Again, it rarely happens that the minimum number of sitting days applies—the period is often extended considerably.

Karen Gillon: I have a comment rather than a question. Committees must get better at consulting and involving one another. I have read the comments about the Protection of Children

(Scotland) Bill. Although one would not know it from the paper, the Education, Culture and Sport Committee was the lead committee on that bill; it undertook fairly substantial consultation in public meetings and otherwise. However, the Justice 1 Committee felt that it did not have time to consider the bill properly. The issue is as much about committees discussing matters with one another as it is about the Executive. Perhaps we should explore with conveners how we can have such dialogue. When a committee has a light agenda, it is easy to fit in scrutiny of a bill, but if a committee has a heavy agenda and somebody with different priorities tries to impose work on top of that, it is difficult to get the balance right. We need to explore that issue a bit further.

The Convener: That is a fair point. Karen Gillon's comments have reminded me of another aspect, which is that there is not always breathing space at the end of stage 2 to find out whether the overall shape of the bill is what people thought it would be originally. Amendments may do strange things and members might not be able to consider the overall shape of a bill after amendments have been considered. Is there merit in the idea of committees considering bills between stages 2 and 3, with ministers present, to find out whether problems have emerged that must be dealt with at stage 3?

11:45

Patricia Ferguson: I think that some committees do that kind of work. That is to be welcomed, because it is in nobody's interests to proceed with legislation with which people are uncomfortable or unhappy. If matters can be sorted out in committee, they should be. Obviously committees will want to consider other demands and work pressures. However, I say again that the minimum period for lodging amendments is observed only in very few cases; in most cases the period is exceeded by a substantial number of days; that period is a good time in which to do such work.

The Convener: We move on to stage 3—

Bruce Crawford: I want to deal with the period between stages 2 and 3. It is incumbent on us to do justice to the previous Procedures Committee, which recommended increasing the minimum period between the day on which stage 2 is completed and the day on which stage 3 starts, not for some of the reasons that we have heard, but to provide members and civic society with more time to consider outstanding issues and to work up any amendments. What does the minister think of that recommendation?

Patricia Ferguson: I do not envisage that we would necessarily impose a minimum period, as that might not be helpful. It is important that we maintain the flexibility that will be needed on occasions. In the first session of Parliament, the minimum period between stages 2 and 3 was nine sitting days, but such a gap was observed only on 14 occasions. On 36 occasions the intervals between stages 2 and 3 ranged from 10 days to 46 days. There are a number of different approaches and flexibility is more important than a minimum period, which might make life more difficult for committees.

Bruce Crawford: The previous Procedures Committee suggested a period of 18 sitting days between stages 2 and 3 in cases in which a bill had been amended. What do you think of that?

Patricia Ferguson: For some bills, 18 days will not be needed, whereas perhaps for others more than 18 days will be needed, which is why the imposition of a minimum period would be unhelpful. Flexibility is needed, as it is in relation to almost everything that we do in Parliament. We must be open to that.

The Convener: We move on to consider the stage 3 process. There are obviously issues around the timetable for lodging amendments, which I believe are exacerbated at stage 3 because we do not know which amendments have been selected until the marshalled list is published, which happens very near to the wire in relation to the timing of the debate. Do you want to comment on that?

Patricia Ferguson: The marshalled list gives Executive officials a problem too, because it is often produced very late in the evening and officials must work hours that, to be frank, I would not want them to work if that were within my gift, so that they can brief ministers and ensure that everything is prepared. Lorna Clark might want to comment on that from her experience of being involved in a bill team.

Lorna Clark: When we were preparing for stage 3 of the Primary Medical Services (Scotland) Bill, the latest night that we worked was the one before the stage 3 debate, because we did not know until then which amendments had been selected. That was an intensive period of work and it would have been helpful to have had slightly more notice of the amendments that we would have to consider.

Karen Gillon: What difference would a day make? That is a serious question. Would an extra day help?

Lorna Clark: It would certainly help by giving us more time to consider the detail of, and take legal advice on, the amendments and to prepare notes and brief ministers. We would be able to take a more considered view of the amendments, their effect on the rest of the bill and their implications for policy. Ministers would also have more time to

consider them. An extra day would make a considerable difference.

Karen Gillon: If that is true for the Executive, with all its machinery, it must be much more true for a back bencher who has only one researcher.

Patricia Ferguson: Absolutely.

The Convener: If members have no other questions about the timetable for lodging amendments at stage 3, not just in relation to the marshalled list issue, I will move on to the timetabling of stage 3 debates.

There are concerns that in some debates the timetable ended up curtailing discussion on important issues at an early stage, while members ran out of things to debate later on. Is there merit in considering giving the Presiding Officers flexibility to amend the timetable if they see pressure at a particular point where insufficient time has been allocated?

Patricia Ferguson: It might be helpful if I explain how the time is usually allocated. Normally there is a great deal of discussion between Executive officials and committee officials about how much time they think will be required and where the pressure points will be. Often, the business managers will tell me that their members are concerned about a particular group of amendments or part of the bill. We respond by trying to ensure that the time that is set aside for debate on a group or section is sufficient to allow for a good discussion to take place.

We allocate time on the basis of what members tell us and we often find that we have too much time. It might be helpful if the Presiding Officers felt that they had more leeway to curtail debate. As I understand it, they do not normally set a time limit for individual speeches during stage 3, which is unique in our process. If they had that facility, a little more management by them would help the process significantly, because they know what is coming down the line and where the pinch points will be, so they could allocate time as they do in a parliamentary debate in which there is pressure on time. That might not get us over all the problems, but it would certainly contribute to it.

The Convener: If we allowed more time between publication of the marshalled list and the start of stage 3, would it be possible to get an indication of the groupings along with the marshalled list, which would give members more time to advise the Presiding Officer and their party business managers of the debates in which they wished to participate at stage 3? There would then be more information on which to base timetabling.

Patricia Ferguson: Absolutely. Business managers work on the basis of what happened at the committee stages and the information that their members have given them, so an extra day or two at that point would be helpful in allowing us to control and manage the debate.

The Convener: Although it is not required by the standing orders, the tradition has been that the final debate on passing the bill comes immediately after conclusion of the debate on the amendments. Does that give members and, indeed, the Executive sufficient time to be comfortable that nothing that has happened with the stage 3 amendments has resulted in inconsistency in the bill or anything else that might require to be sorted out before Parliament passes the bill?

Patricia Ferguson: Such inconsistencies can be spotted when officials read through the marshalled list and the groupings. That is the point at which they have to try to spot inconsistencies, so that they know before the debate where difficulties might arise. The extra day that we discussed would be helpful in that part of the process. The standing orders allow for flexibility in the timing of debates to pass bills, but it has not been used to date. I do not think that it has been considered a necessary part of procedure; however, if the occasion arises for us to use it in future we may well do so. We must assess every situation on its merits in that regard.

Mr McGrigor: Do you think that the Presiding Officer should have more flexibility in allocating time at stage 3 for discussion of particular elements?

Patricia Ferguson: The way that the system is organised now is the right way to allocate time, but the Presiding Officers' being able to curtail individual speeches might be helpful. At the moment that does not generally happen. I am an unbiased observer of legislation, because I am never responsible for getting a bill through Parliament, and I have witnessed occasions when speeches are unnecessarily long. The Presiding Officers could exercise more management discretion in that regard.

Mr McGrigor: Is there any way in which the Presiding Officer would be able to tell that the stage 3 debate would end early and decide that more time could be allocated to a debate on a particular group or section on which members want to make important points?

Patricia Ferguson: We try to give the Presiding Officer that kind of information before a debate starts. The party business managers indicate whether their members have a particular interest in an area and the clerks indicate which have been the areas of greatest interest or controversy at the committee stages. All that information is fed into the process, which influences the way the marshalled list is produced. Within all that, the

Presiding Officer could use a little more flexibility in order to curtail overly long speeches. I do not think that changing the system in any other way would necessarily be that helpful.

We have as a Parliament got better at predicting how long is needed for stage 3. There were occasions during the first session when we got that badly wrong because of inexperience more than anything else. The process has been refined gradually to the point at which there is an open exchange of information between business managers about where their members have interests or concerns. We try to feed all that into the process. The solution is about our having the information and using it.

Mr McGrigor: When you were a Presiding Officer, David Steel wrote to the previous Procedures Committee and said that the Presiding Officers did not believe that parliamentarians were using the concept of the four-year cycle enough. Do you think that the situation has improved now that there is a realisation that business does not take place on a one-yearly cycle, but on a four-yearly cycle?

Patricia Ferguson: That is not a criticism that I agree with; I did not think that the assertion was correct at the time.

Mr McGrigor: The previous Procedures Committee's report says "the Presiding Officers believe."

Patricia Ferguson: I do not know to which Presiding Officers that refers.

Mr McGrigor: It says "Presiding Officers". That must have meant you at that time.

Patricia Ferguson: Not necessarily. I was not on the previous Procedures Committee for a good year and a bit before that report was published so I do not know that I was necessarily a Presiding Officer then. It is certainly not my view that parliamentarians see business in isolation year by year. Parliamentarians and the Executive see the session as a four-year period and know that they have to work throughout it.

The Convener: As there are no other questions, I thank the minister and her team for their attendance. This has been a useful evidence session. We might invite you back later in the inquiry.

Patricia Ferguson: It is always a pleasure, convener.

The Convener: That ends the public part of the meeting. I suggest that we have a five-minute comfort break while we clear the busy public gallery.

11:58

Meeting suspended until 11:59 and thereafter continued in private until 13:28.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178