PROCEDURES COMMITTEE

Tuesday 27 April 2004
(*Morning*)

Session 2

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PROCEDURES COMMITTEE
7th 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

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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:

Ross Finnie (Minister for Environment and Rural Development)
Ian Melville (Scottish Executive Environment and Rural Affairs Department)
Mr Alasdair Morrison (Western Isles) (Lab)
Bob Perrett (Scottish Executive Environment and Rural Affairs Department)
Stewart Stevenson (Banff and Buchan) (SNP)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Lewis McNaughton

LOCATION

The Hub

Scottish Parliament

Procedures Committee

Tuesday 27 April 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:19*]

Item in Private

The Convener (Iain Smith): Welcome to the seventh meeting in 2004 of the Procedures Committee. This morning we have another packed agenda, so we will make a start. We have received apologies from Karen Gillon, who is unwell.

Item 1 on the agenda is to consider whether to take in private item 4, which is a continuation of the discussion on the non-Executive bills report that we had in private at our previous meeting. Do members agree to continue that discussion in private?

Members *indicated agreement*.

Bills (Timescales and Stages)

10:20

The Convener: Item 2 on the agenda is our inquiry into timescales and stages of bills. This is the second oral evidence session in the inquiry. I am particularly pleased to welcome the Minister for Environment and Rural Development, Ross Finnie, who was the member in charge of the Land Reform (Scotland) Bill, the first of the two sample bills that we will consider, as well as members of the bill team: Ian Melville, Neil Ingram and Bob Perrett. After the minister has made some opening remarks in relation to our inquiry, I will open up the discussion to questions.

The Minister for Environment and Rural Development (Ross Finnie): I thank you for your kind words in welcoming me back, convener. Members will understand that the anticipation of appearing before committees such as this one makes me feel that I have missed a lot and that I know why I have come back.

I welcome the opportunity to participate in the inquiry into the timescales and stages of bills and to discuss the Land Reform (Scotland) Bill. As the convener said, I am accompanied by officials: Ian Melville was responsible for the access part of the bill; Neil Ingram was responsible for the provisions relating to the right to buy; and Bob Perrett was responsible for the provisions relating to the crofting community right to buy.

Briefly, I will describe the process that took place in the Executive before the bill was introduced to Parliament, as that is part of the bill process. Having read the evidence that has been given to the committee, I think that that fits into members' consideration of stage 1 of the process.

Access had been on the political agenda since October 1997, before the establishment of the Parliament. At that stage, the Westminster Government asked Scottish Natural Heritage to review the legal arrangements for access to land in Scotland. Between February 1998 and January 1999, all three parts of the bill were addressed by the land reform policy group. In July 1999, the Executive began its main pre-legislative consultation by issuing its white paper "Land Reform: Proposals for Legislation", which included detailed proposals on both access and the community right to buy. In addition, stakeholder and expert seminars on specific issues were held throughout rural Scotland.

On 24 November 1999, the Executive announced that the proposed land reform bill should include the crofting community right to buy. Following separate consultations, that was

included in the draft bill, which was published on 22 February 2001. The 18-week consultation, which was extended because of the foot-and-mouth outbreak, attracted more than 3,500 responses, which were considered before the bill was introduced to Parliament on 27 November 2001. We take the view that those pre-legislative steps are essential to shaping draft legislation and believe that the Land Reform (Scotland) Bill that was ultimately introduced was much better as a result. However, there would be a clear advantage if committees could engage with the process at that early stage, especially when issues of the complexity of those that the Land Reform (Scotland) Bill covered are involved.

I move to the parliamentary stages of the bill. As members are well aware, stage 1 involves consideration of the general principles of a bill, and committees also take oral and written evidence. My main impression of the Land Reform (Scotland) Bill's rather lengthy stage 1 process, particularly in relation to access rights, was that, although it was perhaps valuable, it provided another opportunity for different interest groups to reiterate issues that they had raised in the consultation and which they considered had been lost in the process of seeking compromises across the 3,500-plus participants in the consultation.

I appreciate that Parliament, in particular the Procedures Committee, will want to ensure that committees in general have the opportunity to engage not only with the Executive, but with witnesses and other members of the public, but it seems to me that we would do well to consider whether there might be a better way of addressing our respective interests—without compromising them—than having a lead committee doing a full consultation after the Executive has already done one.

As I said in my opening remarks about the bill's passage, earlier engagement between the Executive and the Justice 2 Committee might have assisted the committee's understanding of the more detailed legal arguments. For example, all of us who served in that process know that access legislation is extremely complex, but there was a clear view within the committee in favour of discounting evidence on legal issues from legally qualified sources and accepting the views of bodies that were part of the consultation. I do not seek to make a partisan point here; I have been asked to give factual observations and I seek to do so.

The bill's principles were strongly endorsed at stage 1, but the lead committee's and the Executive's radically different views on the legal aspects in my opinion created difficulties in proceeding with the bill. The Executive is not without blame for that situation. I am not trying to point the finger at committees. I am simply trying to suggest how procedures might be improved.

The Justice 2 Committee's stage 2 consideration of the bill began on Tuesday 25 June 2002 and the summer recess interrupted it. However, a difficulty arose prior to the first day of stage 2 because the committee had set a target of completing consideration of section 12 of the bill. The final groupings for the first day of stage 2 were received only at 8 pm on Monday 24 June. Staff worked until 3.15 am on the Tuesday morning to complete the notes for the committee meeting at 9.15 am. However, the committee completed only up to section 3 on the first day and section 12 was not completed until the fifth day of stage 2 on 24 September 2002. The committee's unrealistic expectations put unnecessary demands on itself, the bill team and ministers, who were trying to respond to the debate.

As members will know, the Executive voluntarily aims to lodge amendments no later than five sitting days before a committee meeting, although the standard deadline for members is two sitting days. Making the deadline for members' amendments for the first day of stage 2 three sitting days, in my opinion, would have eased the pressure on everyone. The lodging of numerous amendments right up to the deadline puts great strain on everybody—the Executive and Parliament officials—because that affects the groupings and the consideration of the amendments' detail. Therefore, I would support any move towards a deadline of three sitting days for the lodging of members' amendments.

Consideration of part 1 of the bill continued until 9 October 2002, with the Justice 2 Committee meeting on consecutive days in each of the final two weeks of consideration of part 1. Parts 2 and 3 were considered during three meetings in October and November 2002, with the two October meetings being on consecutive days. Each day of the consecutive meetings had separate deadlines for amendments. Again, to be constructive, I believe that it would have been more helpful to all who were involved—committee members, ministers, parliamentary officials and my officials—if the consecutive meetings had been treated as a single meeting, with only one deadline for amendments. I suggest that to the Procedures Committee as a matter for further consideration.

10:30

Looking at the tables that contain the evidence of the number of Executive amendments that were lodged can, at first glance, give a false impression. Some amendments were policy related, but the majority were technical, to ensure consistency, or consequential—for example, to address matters that were introduced elsewhere, such as

sustainable development and charitable status issues in parts 2 and 3. The volume and content of non-Executive stage 2 amendments clearly reflected the fundamental differences that existed between the committee and the Executive on access policy, even though, as I said earlier, Parliament had accepted the general principles of the bill at stage 1. One might level the same criticism, although to a much lesser degree, at the amendments that sought to introduce a compulsory right to buy at stage 3.

Time is required to address all amendments properly. Some amendments may appear to be acceptable at first glance, but time must be taken to consider the full impact of each amendment. In some cases, that can require scrutiny of other legislation, which is as time consuming for ministers as it is for members of the committee.

The bill's stage 3 debate was held over two days—22 and 23 January 2003. A large number of Executive amendments were lodged at stage 3 following undertakings that had been given by ministers at stage 2 to address specific issues that had been raised in committee. There was also a need to take account of amendments that had been agreed to at stage 2, with a view to ensuring that the legislation would work. My main concern at stage 3 was the continued attempt to change fundamentally the policy of the legislation, which I believed had been accepted by Parliament at stage 1.

The Land Reform (Scotland) Bill received longer than the minimum time between each stage, so we had no particular concerns in that regard. It is essential that people outside the Executive and Parliament continue to play an active part in the legislative process. Although there might be ways in which the Executive and the Parliament could have worked better during the passage of the bill—I have mentioned some of them in my remarks—we should not lose sight of the fact that, together, we were able to produce ground-breaking legislation on issues that were notorious for their complexity and controversy. That is reflected in the fact that we are examining the process today.

I will be delighted to answer the committee's questions. I hope that my remarks are a constructive contribution to the debate and the committee's considerations.

The Convener: Thank you very much for those helpful opening remarks. I remind members that we are discussing not the policy of the bill but the way in which it was handled. I appreciate that the minister commented on the policy in his opening remarks, but in our inquiry we are not reopening the policy issues surrounding the Land Reform (Scotland) Bill; we are looking at how the timescale and the lodging of amendments were handled. It might help members if we go through the passage of the bill stage by stage. Does anyone have any questions for the minister on the period up to the end of stage 1?

Mark Ballard (Lothians) (Green): The Land Reform (Scotland) Bill was different from other bills in that consultation was undertaken by Lord Sewel before the Scottish Parliament even existed, which was followed by consultation by the Scottish Parliament. You mentioned that you thought that committees should be more involved in pre-legislative scrutiny. Can you elaborate on how that might happen in practice and on the relationship between a stage 1 inquiry and Executive inquiries before stage 1?

Ross Finnie: I would like to think that we could work more closely together once the parliamentary timetable is announced and committees are fully aware of the Executive's intention to proceed with a bill. Our announcement of the consultation process is the point at which there ought to be closer consultation between the Executive and the committee, and the committee should respond by being interested. The tricky thing would be to decide how the Executive and the committee would then proceed. I understand clearly the need for the committee to retain its integrity in respect of its ability to come to a different conclusion. Nevertheless, a large number of the bodies and institutions into which we need desperately to inquire are the same as those to which you need to listen.

In my opinion, much of the evidence that we receive is almost identical to the evidence that the committees receive. There are two elements. First, there is the need to try to get as many people as possible to give up their valuable time for the process. Secondly, it would be helpful for committees, in arriving at their view of a bill, to have the opportunity at a much earlier stage to start to discern the Executive's thinking on a bill and, more particularly, for there to be wider public understanding of how a bill might have been formulated.

The Scottish Parliament has a unicameral system and we must make every effort to get every piece of legislation right first time round. The Executive has a clear need to move forward on its programme for government; however, the legislative process is the domain of the Parliament and it is for the Parliament to ensure that the quality of legislation meets the test. Although the Executive can assist in that job, we cannot pursue it exclusively.

Some of the difficulties that have been identified in relation to the Land Reform (Scotland) Bill—which I suspect have also arisen in respect of other bills—might have been assisted by an earlier involvement of the Parliament in the pre-stage 1

scrutiny period. That said, I am not suggesting that it would have solved those difficulties.

Mark Ballard: From your answer, it seems as if you are talking about two separate kinds of involvement, the first of which would see the Executive entering into early discussions with the relevant committees, and the second of which would ensure that the results of Executive consultations are fed into the committees. Would that be a correct summary of what you said?

Ross Finnie: No, I am suggesting that when we hear evidence or lead evidence, the Executive and the Parliament, with our respective interests, should listen to what people have to say. I am quite clear that the Parliament has a high-level policy objective that sets out how it seeks to transport bills into legislation. I am also in no doubt that, during the detailed drafting process, bills have been improved immeasurably by the process of evidence taking.

The distinction that I was trying to draw was an attempt not to put the Parliament apart from the Executive, but to respect the right of the lead committee to come to a different conclusion on a bill from that of the Executive.

We would have to discuss the issue further, as there must be ways in which the Executive and the Parliament could share some of the evidence that is adduced during pre-stage 1 scrutiny, to avoid repetition at a later stage and to help the lead committee to reach a better understanding of how a bill has come about, particularly one of the complexity of the Land Reform (Scotland) Bill. I appreciate that such a process might serve only to sharpen the lead committee's criticism of a bill, but at least it would help it to understand the issues involved.

Mr Jamie McGrigor (Highlands and Islands) (Con): Do you consider that committees have sufficient time to hear from all the witnesses from whom they wish to take evidence? I know that the Executive's standard consultation period is 12 weeks. Should the Parliament have a similar convention for the period within which a committee is to receive written evidence?

Ross Finnie: With respect, I do not think that that question is one for me to answer. It would be ridiculous for someone like me, who never sits on a committee, to say what the appropriate length of time within which a committee should take evidence should be. However, in so far as I understand the situation, I suggest that members have expressed concern on the matter not only during the specific process of giving evidence to this inquiry, but also in general conversation. I speak frequently with other members and I hear their concerns about the initial stages of the passage of a bill, in particular about understanding the issues and getting to grips with the bill.

As part of my evidence to the committee, I am simply saying that the Executive believes that some of the early stages of a bill could be improved. One of the stages about which we need to think further is the 12-week consultation period before stage 1. It would be helpful for there to be more active engagement between the Executive and the lead committee at that stage. It would be helpful for the committee, as indeed it would be helpful for us.

Bruce Crawford (Mid Scotland and Fife) (SNP): I apologise for not being able to attend the beginning of the committee meeting. First, I want to welcome back Ross Finnie. I have not had a chance to say that to him yet. It is obvious that he is on even more ebullient form now that he has returned to the fray.

Minister, it is useful to hear you talk about joint work between the committee and the Executive in the interests of involving people, creating a sense of ownership, saving some time and so on. Those are important issues. However, it is difficult for a committee to strike a balance between scrutinising what the Executive does and enabling a good legislative process.

That said, do you share the view that the only way in which we would be able to achieve some of those useful aims would be for the committee to be involved much earlier in the process, which is to say, when the consultation documents are being put together? That is the crucial period. The nature of the questions that are asked about what people want from the legislation can often drive what the outcomes are. If the committee were involved at that stage, we would be more likely to have a sense of ownership of the outcomes and to share the evidence-gathering process. Taking that extra step would not be easy, given the environment in which we operate, but it is the only way in which we will have real ownership of the evidence without having to go over parts of the trail again.

Ross Finnie: I am being quite genuine when I say that the Executive has to start talking to committees when it is about to embark on the legislative process, which comes after the Executive's general announcement about the legislation that it wants to enact. We must talk to the committees before we set out anything in a document.

I do not want to commit to a certain way in which that might work, because the issue remains that the questions that I might ask could be different from the ones that you might ask. Nevertheless, the Executive should at least be aware of where a committee might be coming from. At every stage,

the committee must retain the ultimate right to reject the bill at stage 1, but if everyone is clear about that, engaging with the committee will be less of a problem. Early engagement is needed to ensure that we get the widest possible consultation and to ensure that we do not repeat work that has already been done. We are all busy people and the matters that we are discussing are important if we are to ensure that we get legislation right the first time.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I, too, welcome you back, minister. They have done a great job on your replumbing and you certainly show vigour for your position.

Ross Finnie: I must point out that the operation was not on my brain.

Cathie Craigie: On the point about pre-legislative scrutiny, I think that committees should be working in that way and I even support the idea of them coming into the process a step before that. I am sure that there is a learning process during the consultations on various bills and I think that committees would benefit from entering into that learning process with interested parties.

Hindsight is a wonderful thing, but would the Executive now say that the Land Reform (Scotland) Bill, which was in three parts and had controversial elements, was such a huge piece of legislation that it might have been better to have split it into three separate bills? If so, would the Executive follow that suggestion for other large bills?

Ross Finnie: I understand where you are coming from. The decision that you are talking about is always a difficult call. Undoubtedly, the Land Reform (Scotland) Act 2003 is a particularly complex piece of legislation. We knew that before we went into it because the consultation had made that clear. Indeed, the raison d'être of the bill related to the complexity of the situation.

You will remember that the Land Reform (Scotland) Bill was part of a suite of land reforms that the Executive is introducing, so if you want to consider the matter retrospectively, you must consider the suite of bills from the Abolition of Feudal Tenure etc (Scotland) Bill to the recent Agricultural Holdings (Scotland) Bill and the proposed crofting reform bill, which is the one bill that is still outstanding. We tried to group the bills as logically as we could, just as we have to group amendments. We wanted to avoid introducing three or four extra bills, which would have dominated the bill process and would not have achieved the desired outcome—we would still be haggling over some of them.

The Land Reform (Scotland) Bill was a major bill, but the issue is more about the principle of how we address the consultation process, from the Executive's consultation and the introductory period to pre-legislative scrutiny at stage 1. The outcome of the Procedures Committee's inquiry is more likely to help that process than are arguments about whether a bill should be shorter, longer or less complex. I hope that I have indicated as openly and honestly as I can that some of the processes on all sides could have been improved to help the passage of the Land Reform (Scotland) Bill.

10:45

Cathie Craigie: I hope that we will have an opportunity to come back as we consider the different stages.

The Convener: I have a final question on stage 1. There were only four sitting days between the publication of the committee's stage 1 report on the Land Reform (Scotland) Bill and the stage 1 debate, although the bill's passage lasted for 198 sitting days and more than a year. Does the Executive regard it as satisfactory that stage 1 reports should be available for such a short period before the debate? Does the Executive have sufficient time to consider committee reports and to respond fully to the Parliament?

Ross Finnie: I make a general observation about timing. The difficulty that I have and, I think, the committee has is that we cannot treat every report and every bill in the same way, so it would be extremely difficult to impose a statutory mandatory period. Undoubtedly, it can be argued that insufficient time was given to allow adequate consideration of the Land Reform (Scotland) Bill before the stage 1 debate. However, I would not want to adduce a general principle from that, because if I were in the convener's shoes I would have real difficulty about imposing rigid rules, when we know that the nature and complexity of bills vary hugely. We need principles that bind us to acknowledge that an appropriate amount of time is needed to consider a bill adequately.

The Convener: To what extent was the time that was available for consideration of the stage 1 report on the Land Reform (Scotland) Bill driven by the Executive's overall timetable for the bill, from the bill's introduction to the date when the Executive hoped that the bill would be enacted, or by the timetable that the committee thought it needed for stage 1 consideration?

Ross Finnie: People who exercise those judgments are influenced by the extent to which the report contains fundamental reservations about the principles of a bill. If it is clear from reading the first eight or 10 pages of a 100-page report that a bill's principles are fundamentally approved, but there are matters of detail to which ministers must pay proper attention before the bill

proceeds, there is still time for further consideration without precluding the stage 1 debate. The danger arises when the stage 1 report expresses serious reservations and it is quite clear that the decision to approve the bill in principle is narrow. There is then a real issue about whether ministers should proceed with the bill. That did not happen in the case of the Land Reform (Scotland) Bill.

The Convener: We will move on to consider some issues around stage 2 and amendments.

To what extent was the Executive engaged with the lead committee in consideration of the forward timetable for the Land Reform (Scotland) Bill? In your opening remarks, you mentioned that there had been concern about the section that the lead committee set as its target for the first stage 2 meeting. To what extent were you engaged in discussing a sensible target for that meeting and the overall time that the committee would require to deal with amendments to such a complicated bill?

Ian Melville (Scottish Executive Environment and Rural Affairs Department): We were not involved in those matters to any great extent. We expressed reservations based on the facts that the stage 1 report and debate showed that there was going to be a large number of amendments at stage 2, and that the first few sections of the bill were going to come under careful scrutiny. We were always of the opinion that it was unlikely that we were going to cover more than the first few sections—on the main principles relating to access—on the first day of stage 2. However, there was no real dialogue between us and the committee clerks on timing and the time that should be made available.

There were obviously pressures on the lead committee for the overall legislative programme to progress to stage 2 fairly quickly. Stage 1 had already been extended to allow two additional evidence-taking sessions, which partly impacted on the timing of the report and the time between the appearance of the report and the stage 1 debate.

The Convener: Where did that time pressure come from? Did it come from the Executive, who wanted to get the bill through by a certain day, or did it come from parliamentary authorities, who wanted to ensure that the system did not get clogged up?

Ian Melville: I am probably not the right person to answer that question, but my impression is that it came from the parliamentary authorities that are responsible for overall timetabling of the legislative programme.

Richard Baker (North East Scotland) (Lab): One of the questions that we are asking is whether there should be instances when committees should be expected or encouraged to take evidence on proposed amendments before debating and disposing of them. What are your views on that? Could improved pre-legislative scrutiny reduce the need for that, or could such a system possibly reduce the number of amendments that might be lodged at stage 2?

Ross Finnie: I am sorry; I did not quite catch the first part of that question.

Richard Baker: Should, in some instances, committees be expected or encouraged to take evidence on proposed amendments before debating them? Would the need for that be reduced by improved pre-legislative scrutiny or would you expect the number of amendments to be reduced?

Ross Finnie: We have to step back a bit. All of us, as legislators, have an enormous burden of responsibility. It is not as simple as stating that we must get it right first time; the legislation that we produce has to form a cohesive body of law that stands up to scrutiny. That is a heavy responsibility and I take it very seriously. The Executive also takes it seriously, and we know that we are not alone in that; we require to work with Parliament to achieve that body of law because it is Parliament that passes or does not pass bills.

That is why I place great emphasis on the initial scrutiny period. It is not just about understanding the detail of what individual groups, members, representatives and others want; it is about understanding the bill's aims and objectives, its possible legislative impact and how it will relate to other legislation. That is a complex task.

I am conscious that getting to that stage is not without its difficulties, both for ministers and committee members, but that is the point at which a committee member, and certainly a minister, must be able to judge the merits of an amendment. If evidence has to be taken on an amendment, the committee might not be able to consider the bill as a whole. The process could become hugely complicated if a principle were established whereby a committee could at stage 2 seek to hold fire in order to take further evidence, unless a matter of extreme complexity was to come up, which might require separate legal guidance and so on.

It is up to us to sort out our boat but, for the Executive to work with committees and for the Parliament to be invited to pass the legislation, having been able to consider it adequately, the pre-legislative period is crucial.

The Convener: When the Executive is conducting its pre-legislative consultation, should it be normal practice to supply a draft bill?

Ross Finnie: I do not want to get into semantics. There is an issue here with certain recitals. The difficulty with draft bills is that people will believe that they are the finished article and that to deviate from them means that some major policy change has been made. When setting out preliminary consultation, the broad principles of the bill should not just be set out in a one-liner. We have to go further than that; we have to indicate the spheres on which the bill will impact and the areas in which we would expect public and other bodies to be affected. If we do not do that, we will not be allowing people adequate opportunity to be part of the process.

I would not necessarily want to produce draft bills, as they have a technical connotation, which members might want to ask legal advisers about. To refer to a point that Bruce Crawford made, it is a matter of what goes into the policy framework that is sent out for consultation and what the questions about it are. The basis of how consultation is carried out is important.

Mr McGrigor: Of the 203 amendments that were lodged for the first day of stage 2 of the Land Reform (Scotland) Bill, only 10 were lodged in the first eight weeks between stage 1 and stage 2; the rest were lodged five days in advance of the meeting at which they were being considered. That gave people very little time to understand and deal with those amendments. Would it be possible for amendments to be lodged earlier than that, rather than all in a lump at the end?

We have received a letter from the Scottish Gamekeepers Association. Its members pointed out that if they have only two working days to deal with an amendment and if notification of an amendment is posted to them on a Friday evening, it will be Monday evening before they look at it, as they go out to work early on a Monday morning—they would have in effect only one day to deal with it. Do you think that that is fair?

The Convener: It would be fair to point out that the majority of the 110 amendments to which Jamie McGrigor referred were non-Executive amendments.

11:00

Ross Finnie: There were several questions to answer. I was trying to do some mental arithmetic there—I have in front of me a little schedule with all the dates, times and places.

On the first question, we would be happy to consider that suggestion if required. We discussed the matter the other day. Members have in front of them tables with details of Executive and non-Executive amendments, so it might be helpful for your deliberations if we could arrive at a view about our amendments, noting those that are of a purely technical nature, those that relate to policy and those that respond to specific requests by a committee.

Somebody could take a bundle of amendments and say, "Gosh—this is pretty difficult stuff." We could discuss with your clerks some additions to the tables—that might be helpful, because in considering Jamie McGrigor's question, we also need to consider the nature of amendments. We discussed that point the other day and we thought that that information would be a constructive addition to the tables.

To take the last part of the question first, you need to ask outside bodies how they intend to deal with specific amendments. If they are to be actively engaged in line-by-line scrutiny of amendments, it does not matter what additional time is put in—busy people have many things to do. There are issues around how outside bodies liaise with members of committees and how they propose to deal with amendments, but you will have to discuss those matters with those bodies. It is not for me to tell an outside body how to organise itself.

For my part, I have made it clear that the extension of the deadline from two days to three days will, as a general rule, be helpful. We are interested in assisting the committee. Some amendments are probing amendments, which members lodge in good faith to find out precisely what the Executive's position is and whether the Executive will accept them after it has given wider consideration to the ramifications and the impact on existing legislation and the proposed legislation. To give that guidance, we require time.

Amendment lodging is a tricky process and bundling of amendments is a bit awkward, but the schedules that members have before them show where our amendments came from. As I said, it might help the committee's deliberations if we break down amendments into the broad categories that I suggested.

Bruce Crawford: Forgive me, minister. I did not hear your evidence at the beginning, so I might ask you a question with which you have already dealt.

Ross Finnie: That has never inhibited you in the past, Bruce.

Bruce Crawford: That is true. I am interested in your comments about taking evidence on specific amendments. I understand your point that unless amendments are particularly complex it is difficult to start taking evidence and, in effect, to open up the main policy issues that have already been addressed. The pace of stage 2 is affected by time, by the number of amendments and by their nature and complexity. Extension of the deadline

from two days to three days might help with the pace.

Like the minister, I recognise that there is a responsibility to work out how outside organisations will respond to the new legislative framework as well as how we will do so. On the pressures that are put on ministers, committee members and other MSPs, I wonder whether the pace of dealing with amendments at stage 2 creates problems further down the line, with the effect that amendments are lodged at stage 3 to deal with problems that have been created at stage 2. That might not have happened during the passage of the Land Reform (Scotland) Bill, but I would like to hear the views of officials and ministers about the pace of stage 2, about whether we crack through it too quickly, and about the need, which you mentioned earlier, to get the legislation right. Stage 2 is the crucial stage at which to get bills right and minds are often made up at that stage about specifics that will not be changed at stage 3.

Ross Finnie: I do not wish to sound dull and repetitive, but my strong view is that if everybody who is engaged in the process has a better understanding of not only the one-line short title but the principles that govern the make-up of the proposed legislation, the nature and extent of amendments will therefore be to improve the bill or to include matters that members think have been excluded.

I am bound to say that, in relation to all bills for which I have been responsible, a number of the more vexatious amendments that have been lodged have resulted from genuine misunderstandings about the principles behind what we sought to achieve. If we have greater clarity in that regard, amendments and what members try to achieve will be more easily dealt with. There have been some long debates about difficult and complex issues.

Bruce Crawford: During the stage 1 debates, it might well be that everyone is signed up to the Government's policy direction and the intention of the Government's programme. However, at stage 2 it is entirely feasible that people's views about the mechanics of achieving that intention will be different. I have seen that happen on a number of the committees on which I have served. Quite often, not only the Opposition, but all members of a committee share a view that is different from the Executive's. It is in that regard that my concerns about the pace of the process arise. If there were more time for discussion at an earlier stage, we might be able to coalesce around a position that was more acceptable not only in terms of its being more consensual, but in terms of its being better.

Ross Finnie: Again, I am not quite the right person to answer that question but my view—I am a minister, so I am affected by the matter quite directly—is that, if a committee does not depart from the principles of a bill, but forms the clear view that it does not agree with the route map to achieve the aims, that is the stage at which discussion between the committee, the parliamentary clerks and the Parliamentary Bureau must take place. It has to be stated at that point that amendments will be prosecuted because of genuinely held views. That discussion has to take place early in order that it can inform the timetabling process. That might be an acceptable principle to follow, rather than laying down rigid rules.

I accept the proposition that it is difficult to say what the right timetable is for any given bill. However, I think that Bruce Crawford has raised an important point about there being different ways to achieve the same ends.

Cathie Craigie: You talked earlier about the unrealistic timescales that committees have set themselves and the fact that those targets are often not met. Did you suggest that, when a timetable is not met, the meeting should be adjourned and reconvened with the same amendments and deadlines in place?

Ross Finnie: I was dealing specifically with the point that Ian Melville addressed. I have to be careful about what I say on the matter because, although we are talking about how to avoid mistakes, I do not intend to criticise anyone in particular. With regard to the Land Reform (Scotland) Bill, the decision—taken without any dialogue with any of the interested parties—to reach section 12 by a specific point was unrealistic and placed huge pressures on the committee and on everyone else who was participating in the process. I am saying simply that we ought to reflect on that.

The way in which amendments are lodged is also important and I have already made two constructive suggestions in that regard. I support the view—I think that it has been expressed in the committee before—that having a three-day period for the submission of amendments would at least get rid of some of the more anomalous issues surrounding the deadline. Furthermore, if it is decided that the committee needs two consecutive stage 2 meetings, it would be helpful if they were regarded as being one meeting with one deadline for the lodging of amendments. If there are separate deadlines, the desired extra time is not achieved and, having considered amendments previously, the process stops in the middle leaving amendments unconsidered. Those are the only constructive suggestions I can make based on the experience of the Land Reform (Scotland) Bill.

Mr McGrigor: There was considerable consultation on parts 1 and 2 of the Land Reform

(Scotland) Bill before part 3 was added, which came later and was not consulted on as much as the first two parts. Do you agree that that added to the difficulties around the Land Reform (Scotland) Bill, and that it was not an example of best practice?

Ross Finnie: That is not wholly accurate. Prior to the consultation, and when the bill was published, the Executive made it clear—indeed, I announced the dates—that the crofting community right to buy would be included in the bill. I ask Bob Perrett to say what was done on consultation, so that we have a factual position, before I refer to best practice.

Mr McGrigor: Would it help if I quoted the convener's remarks from the meeting of the Rural Development Committee on that day?

Ross Finnie: On which day?

Mr McGrigor: On 8 January 2002. The convener said at the start of the meeting:

"Part 3 was never part of the original proposals for land reform legislation and seemed to have been tacked on to the bill at rather a late stage. I put the question to anybody who cares to answer it: do you feel that sufficient consultation was carried out prior to the inclusion of that part of the bill?"—[*Official Report*, *Rural Development Committee*, 8 January 2002; c 2687.]

The Convener: Minister, I am happy for you to answer Jamie McGrigor's question, but we are not looking at the merits of a particular piece of legislation; we are looking at timescales.

Mr McGrigor: I am talking about the procedure that was used and not the merits of the legislation.

The Convener: I am not entirely sure how that fits into the inquiry.

Mr McGrigor: The part of the bill was introduced late, which is all about timing.

Ross Finnie: There was a late introduction, but do not infer from that that part 3 was a novel idea that was not part of the suite of land reform measures. The crofting community right to buy was always an integral part of the land reform policy. The point at issue is that having introduced as part of the Land Reform (Scotland) Bill the community right to buy, did it make sense also to include the crofting community right to buy? I accept that although it was announced early, the draft of the measure was not available until a later stage. If the issue is procedure in terms of timing, we can examine it, but I would not want the inference to be drawn that we suddenly dropped on the committee or on anybody else an idea on which we had not canvassed opinion.

Bob Perrett (Scottish Executive Environment and Rural Affairs Department): The crofting community right to buy was covered in all three consultations of the land reform policy group. It is correct that it was not in the white paper "Land Reform: Proposals for Legislation", but the draft bill included the crofting community right to buy and there was consultation on the draft bill. Part 3 of the bill did not have precisely the same consultation as other parts of the bill, but it was consulted on, and widely.

The Convener: I have a final question on stage 2 before we go on to stage 3. Given that the Land Reform (Scotland) Bill and the stage 2 process were lengthy and complex, would there have been merit in examining the bill at the end of stage 2 to see whether any revisions were required before it went on to stage 3? In other words, would there have been merit in having a tidying-up exercise at the end of stage 2?

11:15

Ross Finnie: That is a tricky question to answer. Ministers had undertaken to lodge further amendments, particularly in relation to certain sections, so it was difficult for us to decide whether the bill that emerged at the end of stage 2 was necessarily a bill of which we could approve, either in terms of the quality of the legislation or in terms of the Executive's broad objectives.

As it turned out, the gaps between the stages of the bill did not give the Executive any particular cause for concern—although I have no doubt that the committee will ask me about what happens when a large number of stage 3 amendments are lodged. However, it was right that the Executive, in response to specific points that the committee had raised, had the opportunity to lodge further amendments. It was not until we had done so, and judged the Parliament's response, that we were in a position to decide whether the bill met our standards—again, either in terms of the quality of the legislation or in terms of its cohesion with our policy objectives.

The Convener: Do any members have questions on the stage 3 process?

Bruce Crawford: I would like to pick up on the minister's last point on late amendments at stage 3. Obviously, some late amendments will be lodged at stage 3 because the Executive has undertaken to deal with particular technical problems. Some late amendments will be lodged because the committee has persuaded the Executive that a particular course of action should be taken. However—members will forgive me if I cannot remember specifically what happened with the Land Reform (Scotland) Bill and if I speak only in general terms—some late amendments have been lodged from out of the blue. I understand the minister's points about taking evidence on amendments at stage 2, but sometimes amendments fall out of the sky as far as the

committee is concerned. Amendments can suddenly appear on the agenda at stage 2 and evidence must be taken at that stage before stage 3 is passed.

Ross Finnie: Do you mean before stage 3 is reached? I am sorry—let me understand. You are asking about an amendment that is lodged for stage 3—

Bruce Crawford: Yes—I mean an amendment on which, at stage 2, no evidence has really been taken on its content or policy direction. That has happened—perhaps not on the Land Reform (Scotland) Bill, but certainly on other bills. I think that it happened a couple of times on the Nature Conservation (Scotland) Bill. In such circumstances, would it be appropriate for committees to take evidence before the stage 3 process is complete, so that they have a feel for the amendments?

Ross Finnie: I know that I have been away, convener, but I was not aware that we had had stage 3 of the Nature Conservation (Scotland) Bill.

Bruce Crawford: I am sorry—you are right.

Ross Finnie: As I say, it was arterial plumbing that was attended to—not my brain.

Bruce Crawford: I apologise. I meant the Water Environment and Water Services (Scotland) Bill. So many issues in that bill related to conservation that I mixed the two up. There—I got out of that neatly.

Ross Finnie: I hope very much that, as we make progress towards getting our procedures right, we would avoid the kind of situation that Bruce Crawford describes. I would not want to prescribe a particular rule but I accept that we should avoid a situation in which there is no opportunity for consultation on substantial amendments.

This committee is the focal point for reviewing procedures and I hope that we can jointly acknowledge that we want those procedures to require consultation and informed consideration. We have made huge progress over the past four and a half or five years but, as we all know, we can do things better—that is why we are sitting here. Bruce Crawford was right to raise the point. I would not elevate it to the level of saying that a principle is at stake, but our aim should be to get the procedures right and to make people aware of the need for informed debate. If the procedures preclude informed debate, they miss the standard.

Bruce Crawford: That is useful.

Cathie Craigie: At stage 3, the Parliament deals with amendments then moves on immediately to debate a motion to pass a bill. Should a period of time be left between dealing with amendments and the debate on passing the bill, or is the current procedure satisfactory?

Ross Finnie: The situation depends on the nature, number and complexity of stage 3 amendments. I would not wish to enter into prolonged processes but, as a matter of courtesy to Parliament, even an hour or two to reflect on some amendments might be helpful. I am reluctant to be drawn into having a prescribed period, because that might be unnecessary in the usual circumstances when, even if many amendments have been lodged, a minister has helpfully lodged them to meet exactly a committee's requirements and concerns at stage 2—that would mean that the need for extended consideration of stage 3 was limited, other than to provide more time to congratulate the minister on his constructive response.

I will not be facetious. I recognise the issue. People take the process seriously and want amendments to be lodged and debated. In the process, all that we know is that we have given due consideration to a particular section, so there is a case for having an interval in which to think about whether, for example, the amended parts 1 to 3 form a bill that we want to approve after full and careful consideration. However, we should be careful not to revisit the whole process completely. We should not have a stage 4—that would not help. Nonetheless, there is a case for allowing some time for Parliament to consider what has just taken place.

The Convener: Did you consider using the opportunity in standing orders to defer the stage 3 debate on the Land Reform (Scotland) Bill, or were you under pressure to complete the process in the two days that were allocated for debating amendments?

Ross Finnie: To be blunt, I was, with my deputy minister, much more engaged in dealing with the process. I probably got things wrong. I deferred to the parliamentary authorities on a timetable. My aim was to be clear that I understood every amendment that was being discussed and the impact of every amendment, whether or not it was agreed to, at stages 2 and 3. That allowed me to know immediately whether the bill's qualitative process passed the test and whether it met the Executive's requirements. I was much more concerned with being well briefed on every section of the bill as it went through stage 3 than I was with becoming engaged in considering the parliamentary process.

Bruce Crawford: I understand why you took that view. You said that some flexibility in such circumstances might be possible. Should the Parliamentary Bureau take on that job at the behest of the Minister for Parliamentary Business or of any other business managers if they say that

a bill is especially complex and that the amendments involve important matters? By the time that we reached the end of the process on the Protection of Wild Mammals (Scotland) Bill, I was not sure what the bill's effect would be. Some time for reflection would have been useful. Could the bureau play a role in enabling that space to develop, if required?

Ross Finnie: Yes. We have to move on the presumption that Parliament understands what the bill is intended for. Therefore, we are considering the rather narrow issue of whether, as a consequence of amendments to a bill at stage 3, there are fundamental changes—or the absence of a fundamental change—that render the bill into a state in which it is almost impossible to see whether it does what it was supposed to do. That is an issue for the parliamentary authorities and the committee to consider.

As I say, I am sympathetic to the view that, after members have spent time dealing with each section of the bill, there is a need for time for consideration. However, in many circumstances, even an hour's mature reflection would be adequate. Members should have at least that opportunity, even if that means simply diving out for a cup of coffee to refresh themselves after sitting through stage 3 for three hours dealing with various aspects. However, we would have to think seriously about any proposal to introduce a stage 4, which would be difficult. It might be argued that, as we were having another go at the bill, no principle allowed us to avoid considering further amendments. Such a proposal would be dangerous.

The Convener: I want to pursue the point a little further. When you considered all the amendments that had been lodged for stage 3 of the Land Reform (Scotland) Bill to work out what their impact might be on the overall shape of the bill, did you have in mind amendments that, had they either been agreed to or disagreed to, would have forced you to use the power to defer the passing of the bill?

Ross Finnie: If you recall, we extended the procedure by two days because we had concerns about the fundamental difference of view on the nature of the bill's provisions on access. My view was that some of the amendments that had been agreed to at stage 2 struck at the principles of the bill—I appreciate that the committee does not want to go into policy issues. However, the situation did not come to that, because, with the extra time that we secured, we discussed with the members who had lodged successful amendments at stage 2 constructive suggestions on which we had been working for some time. We lodged a raft of amendments at stage 3 but, instead of dumping them on members unbeknown, we explained the nature of the amendments with members who had been actively engaged at stage 2. I did not have major concerns about the principles. I had concerns about some amendments that I thought were, both qualitatively and in terms of the cohesion of the law, important to secure, but I felt reasonably confident that we would secure them.

Mr McGrigor: You said that the minimum time provided for consideration of amendments that are lodged for stage 2 should be three days rather than two. Obviously, the minimum time for consideration of amendments that are lodged for stage 3 is already three days. Do you recommend making the stage 3 period a little longer—perhaps an extra day?

Ross Finnie: No. In my experience, problems have arisen at stage 2 rather than at stage 3. My constructive suggestion is about stage 2. No case has been made—and there is no evidence—that the three-day rule that applies at stage 3 is inadequate. However, there is evidence to suggest that unnecessary pressures have been building up at stage 2, which is why I made the suggestion.

The Convener: As there are no further questions, I thank the minister for his useful contribution to our inquiry. I thank him and his team for coming along this morning. We will now have a short pause while we change witnesses.

11:30

Meeting suspended.

11:32

On resuming—

The Convener: Our next witnesses are Alasdair Morrison and Stewart Stevenson, who, as members of the Justice 2 Committee, were heavily involved in the consideration of the Land Reform (Scotland) Bill. I welcome them to the meeting and thank them for agreeing to give evidence. I draw members' attention to the paper that Stewart Stevenson has provided, which gives useful background information. I do not know whether either member would like to make some brief opening remarks on the timescales before we move to questions.

Stewart Stevenson (Banff and Buchan) (SNP): Yes. Thank you for giving me the opportunity to revisit an interesting part of my parliamentary career. That probably applies to all members who were involved in consideration of the Land Reform (Scotland) Bill's detail. It would be remiss of me not to thank the committee clerk for some assistance in the preparation of the note with which I have supplied the committee. We had an animated discussion about some statistics that I had chosen to include in my first draft, which

appeared to be at odds with the more careful research that had been done. I bowed to the inevitable and accepted that the clerk was more likely to be right than I was.

Some interesting points emerged during the bill's passage; I will confine myself to a couple of them. Three of the four political parties in the lead committee that was involved in considering the bill—the Justice 2 Committee—were broadly supportive of the bill's policy intention and, although the fourth political party was at odds with the Executive on a number of issues, it was constructive in its engagement. In many ways, the bill was particularly interesting, because it allowed the Executive to listen—with a more open mind than I have sometimes observed—to some of the things that were said by the non-Executive parties and to accept and respond to their input. As a result, we ended up with a bill that is pretty good—about as good as any that we get through. It did not have in it everything that I wanted it to have, but I am sure that everyone would say much the same thing.

I am looking forward to sitting on this side of the desk for the first time. Alasdair Morrison is going to be my adviser, as he has been here before, but I may not take his advice on every occasion.

Mr Alasdair Morrison (Western Isles) (Lab): Thank you for giving me the opportunity to come along, convener. It has been a useful exercise to reflect on what, for me, was an extremely important piece of legislation. The bill had a long gestation period—one could argue that it had been discussed, argued and fought for for more than 100 years.

I make a distinction about what land reform means to me—as far as I am concerned, land reform was dealt with in parts 2 and 3 of the bill. However, the nature of politics and advancing the legislative programme meant that the important part 1, which was to do with access rights, was also included in the bill.

I cannot recall any kind of timetabling crisis. We began consideration of the bill in January, stage 2 completed in November and stage 3 completed in the following February. I believe that there was one week of slippage—the mathematician Stewart Stevenson will keep me correct about that.

The bill became a comprehensive piece of legislation and, as Stewart Stevenson said, three of the four main parties were headed in the same direction—the notable exception was the gentleman who famously coined one of the most overused phrases in relation to the bill when he talked about a "Mugabe-style land raid". We can all guess who that fine gentleman is.

I have nothing sensational to add about the timetabling of the bill. It was given due pre-legislative scrutiny and we knew exactly the arguments and the positions that people proposed. I believe that this devolved Parliament delivered a good bill.

The Convener: I thank Stewart Stevenson and Alasdair Morrison for their opening remarks. I remind members that we are discussing not the policy of the bill, but the processes that it went through in Parliament. It would be helpful if we considered the processes stage by stage. First, we will ask questions about the process until the end of stage 1.

Mr McGrigor: My first question is for Stewart Stevenson and it is about all three parts of the bill. He states in his written submission:

"The Land Reform Bill had three parts covering two distinct topics."

He suggests that it would have been much easier had there been two bills. I repeat what I said to Ross Finnie, which was that part 3, which concerned the crofting community right to buy, was not included in the original white paper and so was not subjected to the same consultative processes. Would it have been a better idea to have had two bills? Were you happy with the consultative process for part 3 of the bill?

Stewart Stevenson: Whether there should have been two bills is a fine judgment. There was a distinct difference between the access and the right to buy parts of the bill. However, to put the other side of the argument, many of the people whose interests were affected by the community and crofting community rights to buy were similarly affected by the access part of the bill. Therefore, there is a case to be made on both sides. My case for saying that it would have been easier—procedurally and timetable-wise—for committees and Parliament to have had two bills was that those two topics were very different as far as parliamentarians are concerned. However, there is no absolute answer.

I will stray from the Land Reform (Scotland) Bill and talk about my experience of the Criminal Justice (Scotland) Bill, which dealt with 16 separate, big issues. As we considered the bill, two further issues were added—the nature of the bill meant that almost anything could be added through amendments.

The Land Reform (Scotland) Bill was not particularly ill served by having two separate issues consolidated into it. In order to make progress on a continuum—say on parts 2 and 3, which concerned the right to buy—it would have been better to have gone from stage 1 to the following stages with less of a delay, but that was not possible because of the considerable time that we took with the access part.

You asked whether I was content with the consultation. To be blunt, I was not engaged much in the consultation, partly because I was a late entrant to Parliament in the previous session. As a member of the Justice 2 Committee and the Rural Development Committee, I did not have concerns about the consultation. When those two committees engaged members of the public directly, by going out to them and in other ways, I did not get significant feedback suggesting that the consultation process was inadequate.

Mr Morrison: I support Stewart Stevenson's comments. Had you asked me the question a month before the process began, I would have said that in an ideal world there would be two discrete bills. However, although the bill dealt with two separate issues, they were thoroughly investigated and every person who had a stake in parts 1, 2 and 3 of the bill was engaged in the process. As Stewart Stevenson said, we engaged in face-to-face discussion with people. Rightly, the Justice 2 Committee was split into two groups, which visited different parts of the country and sat in rooms like this to discuss the potential impact of the bill.

Cathie Craigie: Stewart Stevenson can sit out this question, as he has already told the committee that he was not present for the very early stages of the process. When the Justice 2 Committee reached the formal part of stage 1—taking evidence on the bill—how prepared was it? Had work been done prior to the publication of the bill? Had the committee consulted communities that would be affected or was that work left until the bill had been published? I ask that question because we have received evidence from people suggesting that committees should be more involved from a very early stage in the process.

Mr Morrison: I cannot shed any light on the issue of what preparatory work was done on the access part of the bill. However, I know that immediately after the 1997 election, during Scottish Office days, a great deal of work was done on parts 2 and 3 of the bill, which related to the community right to buy and the crofting community right to buy. The general principles of those parts of the bill were established then. Before 1999, a considerable body of work was done with communities and stakeholders. When the Parliament was established in 1999, we took up the cudgels and ran with the issue, although there were differences. The most significant difference was that we welded the provisions on access to the land reform agenda. The scrutiny, participation and consultation process began on 1 May 1997. The Parliament fashioned the bill and added the access provisions to it. A great deal of preparatory work was done.

Cathie Craigie: I accept entirely what Alasdair Morrison has said. However, my question refers to the Justice 2 Committee and its members. How informed were members prior to the publication of the bill?

Mr Morrison: I can speak only for myself. I sought positively to be on the committee, because of my interest in land reform. I suspect that that may have been true of a few members, including the late Duncan Hamilton—late in parliamentary terms. Because of his background—which is reflected in the career that he is now pursuing—Duncan Hamilton sought positively to be on the committee. I cannot speak for Roseanna Cunningham, Stewart Stevenson or other members.

Stewart Stevenson: I will make one point that relates to consultations generally. I do not believe that it is possible ever to complete a consultation, because there will always be something more to discover.

I illustrate that with an example. The Justice 2 Committee sent a group to Alasdair Morrison's constituency. We could read as much as we wanted, but if we had not visited a salmon fishery we would not have understood some of the issues. More to the point, if we had not met the person in Stornoway who had been involved in drawing up the legal basis for the community purchase of Gigha, we would not have understood that the requirements as drafted in the bill for the registration of a community body as a company would have inhibited the ability of such a company to register for charitable status. The Isle of Gigha Heritage Trust was set up in a way that allowed it to be registered for charitable status and the community benefited by around £600,000 or £700,000, if I remember correctly.

That is an example of how, even with the best will in the world and the most comprehensive consultation, important matters can be discovered relatively late in the consultation process. I cannot say that no such matters remain to be discovered in relation to the Land Reform (Scotland) Act 2003, because something of which none of us is yet aware might arise during the implementation period. Consultations do not start at one point and finish at another; they are on-going processes and woe betide anybody who is involved in legislation whose mind is closed to further input.

11:45

Mark Ballard: Alasdair Morrison mentioned the consultation on land reform that I think Lord Sewel initiated after 1997. I thought that that consultation represented a clear progression. However, the minister suggested that there was a lot of repetition of the Executive's consultation in the

stage 1 consultation on the bill, which offered an opportunity for the same groups to make the same submissions. Is there any validity in that?

Mr Morrison: Yes and no. Obviously, as far as the land reform agenda is concerned, there are two opposing ideological positions, so it was to be expected that the same individuals and organisations would be involved post-1997 and post-1999. What was the second part of your question?

Mark Ballard: Lord Sewel's consultation clearly developed and built themes. However, the minister seemed to suggest that there was not much difference between the Executive consultation and the committee's consultation, perhaps in relation to the questions that were asked, and that it might have been better if elements of the two consultations—as opposed to the entire consultation process—had been combined.

Mr Morrison: It would not be feasible or healthy to combine Executive and committee consultations. Stewart Stevenson highlighted that point when he talked about the important provisions in the bill on charitable status, in relation to the community purchase of Gigha. The Executive missed that problem, but we stumbled upon it, to be frank. Even though my party is in government, I would be leery about a situation in which the Executive and a committee consulted together. Such a consultation might not necessarily be a bad thing and it would be for the members of the Procedures Committee to decide whether that should happen, but I would be instinctively leery about such a situation, because matters might be missed that would be important during the legislative process.

Stewart Stevenson: The stage 1 consultative process enables the committee members who can expect to be involved at stage 2 to reach an understanding of the subject beyond what can be achieved simply by reading the papers that come in during the first consultation. It also enables those members to engage with many of the important stakeholders. The legislation would be much poorer if that did not happen.

Mr Morrison: I follow up on a point that Mark Ballard raised. Informal meetings between committees, civil servants and legal advisers are invaluable. Such meetings are certainly taking place during this parliamentary session. The meetings do not paint the committee into a corner. Those people are experts and they are able to share their expertise informally with committee members; those meetings are a valuable part of any pre-legislative scrutiny process.

Cathie Craigie: I accept the point that you are making, but where do you see the divide between the committee and the Executive when they do the same thing at the same time? Sometimes the same response to the same consultation paper is returned to the committee as is returned to the Executive. Should committees go into more detail at stage 1 and ask interest groups to say what line in the bill they think is wrong? That would allow a longer process as we move towards stage 2 and prepare for amendments. That was probably always the way that stages 1 and 2 were intended to work, but the way in which committees operate seems to involve much wider consultation.

Mr Morrison: I appreciate what Cathie Craigie says, but I am not in favour of the suggestion. Having detailed submissions at an earlier stage would favour those who have the resources to produce such submissions. For example, the Scottish Landowners Federation will have a damn sight more resource in terms of the expertise that it can buy in than will a grazings committee in my village, which will have almost zero resource. An important point is that stage 1 is a leveller: the grazings committee comes to the table or submits a paper on the same basis as the British Medical Association, the Educational Institute of Scotland or whatever. As we get closer to the discussion on amendments, greater detail and a proposed form of words are rightly required. I would not favour organisations and individuals being expected to put in detailed submissions right at the start when the gun is fired.

The Convener: Notwithstanding the point that Stewart Stevenson made earlier—that we never really reach the end of a consultation and that there will always be people who feel that they have not been properly heard—was there sufficient time for the committee to deal with stage 1 of the Land Reform (Scotland) Bill?

Mr Morrison: Yes.

Stewart Stevenson: Yes.

The Convener: I was on one of the secondary committees that reported on the bill to the Justice 2 Committee: the Local Government Committee reported on the access provisions. Is there sufficient time for secondary committees to produce adequate reports and for the lead committee to consider those reports properly?

Stewart Stevenson: I was on both the lead committee—the Justice 2 Committee—and the Rural Development Committee, which was a secondary committee.

You make a good point that, to be blunt, the lead committee gives little consideration to secondary committees' input. In the case of the Land Reform (Scotland) Bill, that was probably remiss because there was a considerable overlap in the areas that were examined. It was not as if one could divide the bill up and say, "The Local Government Committee will look at that bit and we can rely on it

to do that," or, "The Rural Development Committee will look at that aspect and we in the Justice 2 Committee will look at something else." Although the remits of the secondary committees were different and therefore the focus with which they examined the legislation was different, they had to consider the whole bill.

In practice, that did not have a huge impact because of the shared membership across the Justice 2 Committee and the Rural Development Committee, but I was alert to the real potential in other circumstances for secondary committees' reports to be tacked on to the published stage 1 report without being given weighty consideration by the lead committee. I have seen that happen with other bills.

Mr Morrison: I will make a general point about time in relation to the way in which we do our business. I am in favour of extending our sitting hours beyond 5 pm, for example, on a Wednesday, because I am here from Tuesday to Friday. I do not know how Cathie Craigie would feel about that; after all, members who live in the central belt have demands on their time during the week.

The Convener: After the long period of evidence taking on the Land Reform (Scotland) Bill, the Justice 2 Committee produced a detailed report four sitting days before the stage 1 debate. Was that enough time for members and the Executive to consider its recommendations fully?

Stewart Stevenson: There was not the faintest chance that members would have been able to do that. The fact that we were considering a very substantial bill was evidenced by the number of amendments that were lodged at stage 2 and stage 3, and many of them were of substance rather than the technical amendments that the minister referred to in his evidence. I think that it was almost impossible for members other than those who were directly involved in considering the bill to engage fully with the points raised in the committee's stage 1 deliberations. Indeed, for a bill such as the Land Reform (Scotland) Bill, I doubt that members would be able to engage in that way even if they had twice the amount of time to consider the stage 1 report. It is probably not good enough for a particular timescale to be specified in our processes. We have to consider the character of a bill. It is possible for members to deal with and get up to speed on some bills in four days; for other bills, four weeks might not be enough.

Mr Morrison: The four-day gap was not very helpful for most members. Indeed, the stage 1 report might as well have been written in the language of the Dead sea scrolls, given its inaccessibility. I agree with Stewart Stevenson: members would have had to sit with the report for hour after hour over those four days in order to get up to speed.

The Convener: We move on to consider issues in relation to stage 2 and, in particular, the process of lodging and considering amendments.

Mr McGrigor: We have received written evidence from the Convention of Scottish Local Authorities and the Scottish Gamekeepers Association, in which real concern is expressed about the inadequacy of the amount of time allowed for preparing and considering amendments. For example, the SGA said that although it might have sight of an amendment on a Friday evening, the nature of SGA committee members' work means that they might not see it until the Monday evening. That leaves only a day to assess any implications that the amendment might have. Mr Finnie seemed to think that three days should be the minimum period between the lodging of an amendment and its consideration. Do you agree?

Mr Morrison: I most certainly do.

Stewart Stevenson: If the convener permits, I would like to reply at length to that question.

The Convener: Do not go on too long.

Stewart Stevenson: Indeed.

I think that the situation is worse than Jamie McGrigor highlighted. For example, only this morning, I read in the *Business Bulletin* the amendments to another bill that I will be dealing with tomorrow in committee. When I considered last week's amendments, it was clear that one of the amendments that I wanted to support required to be amended. The inevitable consequence was a manuscript amendment.

I happened to bring with me my personal preparation for last week's consideration of the Antisocial Behaviour etc (Scotland) Bill. When I cut, pasted and drew together the amendments that were lodged for the Wednesday meeting and the arguments and other views that related to them, the document ran to 28 pages. In his evidence, the minister said that many amendments are merely technical. However, I do not know whether that is the case until I have read them and assessed their impact on the bill.

Although that raises quite a substantial timetabling issue, I think that we need to address a further issue that relates to the process. If members who lodge amendments could provide a policy statement about them—as happens with bills—that could short-circuit the preparatory work that individual committee members have to carry out. Today, I came to work at 9 o'clock, which is comparatively late, and do not expect to complete my preparation for tomorrow's stage 2 consideration of another bill until 8 o'clock tonight.

Last week, I was in at 6.20 in the morning and I left at 8.45 pm to do that 28-page preparation. That is not special pleading on my part, because that is what I get paid to do. The point is that the timetable drives people to work in that way and that creates risks for legislation, whether Executive or non-Executive.

During our consideration of the Land Reform (Scotland) Bill, there was a considerable number of instances when the Executive, for reasons that I understand, lodged stage 2 amendments just before the deadline on the Monday. In one case, amendments were lodged just five minutes before the deadline, and some of those amendments were significant. That puts a difficult time constraint on all committee members, especially because members might travel on Monday night or Tuesday morning and have to attend a meeting on Wednesday. There are important issues associated with timetables and whether the timetabling might compromise the quality of the legislation.

12:00

Cathie Craigie: The information that we have is that during consideration of the Land Reform (Scotland) Bill, approximately 90 per cent of Executive amendments were lodged before the five-day deadline. In your experience of working on the Land Reform (Scotland) Bill and other legislation, is it unrealistic to ask the Executive and members who want to lodge amendments to meet a five-day deadline, which would give committee members the opportunity to see the published amendments, the groupings and the order in which the amendments are going to be dealt with at least a few days before they have to make decisions on those amendments?

Stewart Stevenson: It is substantially easier when members have the five days, but there are practical difficulties. The Executive might well lodge its amendments on schedule before the five-day deadline, but there is still the potential for further amendments to come in up to the deadline. We have to consider the process holistically. By and large, the Executive lodges amendments in time, but there were some spectacular and significant instances during consideration of the Land Reform (Scotland) Bill in which Executive amendments came in very late, partly as a result of committee input. In some instances, I was to blame for the late lodging of amendments because of my input, so it was fair do's.

Members need to have time to consider the totality of the amendments that are going to be in front of the committee. Furthermore, members cannot start to plan their time because they do not know how the amendments are going to be grouped in the debate. There is no point preparing for amendments that will not come up for some weeks to come; I might know where the amendment comes in the bill, but the topic might mean that they get debated earlier or later than that.

The present timetables put committees in a real time bind, even if the Executive meets the five-day deadline. The only way in which the process could be improved would be to extend the length of time between the closing date for lodging amendments and the debate. Even then, there would have to be the flexibility to lodge manuscript amendments. In my experience, conveners are quite reasonable on that subject, but they could choose to be otherwise. Members could require to fine tune other members' amendments. As I said, there was an example of that last week during consideration of the Antisocial Behaviour etc (Scotland) Bill, when the member who lodged the amendment in question agreed that the manuscript amendment was important.

Mr Morrison: I agree that it is important to be able to extend the time between lodging amendments and debating them, which is the line that Ross Finnie presented earlier when Jamie McGrigor questioned him.

Bruce Crawford: It is interesting that, so far, we are concentrating on procedural issues, such as extending the length of time between lodging amendments and debating them. I am not sure how we could improve the process of information gathering. Perhaps we could cut down on the communication channels that exist out there in some way, as that would allow MSPs and outside bodies to get the information more quickly. At present, however, I cannot think how we could do that. Perhaps the issue is not one for which you have prepared for today's meeting, but it would be useful if you could think about it and give us a view at a later stage.

Mr Morrison: My experience does not relate specifically to the Land Reform (Scotland) Bill—although we can use it as an example—as I sit on the European and External Relations Committee, too. The individuals out there who have an interest in legislation might be students or academics or in local government but, no matter the sphere or strata that they are working in, they are hugely informed. Again, that is obviously a credit to the accessible way in which we do our business in the Parliament. In my experience, the punters—if I may use that horrible word—know what is going on in the Parliament and they soon make it their business to try to influence it.

Bruce Crawford: Your experience on the European and External Relations Committee is useful. I was thinking more about the other processes that we could employ to ensure that MSPs get information more quickly. By their

nature, MSPs are not always in the Parliament and do not want to wait unnecessarily for information until they get to their e-mail. I am not sure what we can achieve in this respect, but is there anything that could help the information-gathering process?

Stewart Stevenson: I have a simple observation to make that draws on my background. My personal view is that e-mail is the most effective way of getting things moving. Sometimes I have found that some of the external bodies that have an interest in a bill have briefed me about an amendment before I have even known that it has been lodged. I do not mind that in the slightest, however, as it is helpful to have those briefings.

I return to the point that I made in appendix B of the wee note that I gave the committee, in which I give an example of my preparation for two Executive amendments. Members will see the comments that I made. Incidentally, Mrs Mulligan can also read them in advance, as it so happens that the Communities Committee has not reached those amendments yet.

I recorded the fact that the amendments look as if they are technical amendments and that I am perfectly happy with them. It would have been awfully nice, however, if Mrs Mulligan had told me that in the first place, by which I mean that it would have been beneficial to both the Executive and all the members involved if she had done so. Similarly, it would have been helpful to have had a note of the Executive's policy intentions for the amendments. Given that we will never have enough time to scrutinise bills, we have to be able to use time more cleverly. We need all the help that we can get, as that will allow us to focus on where the real meat is to be found.

The Convener: I have a couple of points to make. In his evidence, the minister highlighted one of the problems on the first day of stage 2 of the Land Reform (Scotland) Bill. He said that the target for amendments that day was for the committee to get no further than section 12 of the bill. However, realistically, the committee was never going to get much beyond sections 3 or 4. Would it be beneficial if committee members, the Executive and the clerks discussed which sections of the bill and groupings of amendments were likely to be reached on a given day? That would ensure that members, officials and others are not over-burdened by having to prepare for amendments that are not going to be reached on the day in question.

Mr Morrison: Again, it is a nonsense to set an unrealistic target; to do so benefits no one—neither the Executive nor committee members. It can cut the other way as well, however. Sometimes it is possible to undershoot a target, in which case a committee can be left with a gap in business of an hour or an hour and a half. I have seen that happen on occasion, although I cannot quote the exact times and dates. The minister and, theoretically, committee members have to be prepared and yet often all of them go into the meeting with the sure and certain knowledge that they will not reach the target that has been set for that day.

Stewart Stevenson: There is an issue about the information that is needed before a conclusion can be reached on the timetabling of a bill. For example, on Monday of last week, the guillotine for the lodging of amendments for the first day of stage 2 of the Antisocial Behaviour etc (Scotland) Bill came down at section 15. However, it would have been spurious for anyone to imagine that sections 1 to 15 would be covered on the first day of stage 2 consideration, because the ground that the committee will cover is determined by the groupings. The committee will debate issues that appear in sections of the bill that are well beyond the point at which the guillotine comes down. Until the committee sees the groupings, however, no one—clerks, convener or members—can come up with a view of what a realistic timetable for amendments would be.

The groupings come very late, by which time the committee has more or less committed itself to a timetable. That arises from necessity, because of sequencing and the very small gap at stage 2 that exists between the deadline for lodging amendments and meetings taking place. There is scope for more realistic timetabling. However, in another context, a well-known American professor, Fred P Brooks, poses the question, "How do projects get late?" The answer that he gives is, "One day at a time." The same is true in this instance.

Like Alasdair Morrison, my constituency is distant from Edinburgh. Like him, I think that if a committee has a fairly realistic amount of work on its agenda it should sit as late as is necessary to complete that. The principle is that we should allow no small slips. If we start to slip early in the process, the slips will accelerate all the way through. As a result, there is a risk that further amendments will be lodged that impact on issues that have already been debated. There are some chunky issues to address and it is for the Procedures Committee to advise us on how we might better timetable bills.

The Convener: The Justice 2 Committee met twice weekly on three occasions during its stage 2 consideration of the Land Reform (Scotland) Bill. Do you think that committees should meet more than once a week to consider amendments? What is your view on the minister's suggestion that if

they do so there should be one deadline for amendments for that week?

Mr Morrison: The other committee of which I am a member, the European and External Relations Committee, is meeting twice this week—this afternoon and tomorrow morning—although not to debate legislation. You raise an interesting issue. I tend to agree with Ross Finnie's view, which seems to make sense, although I did not hear him set out his position in detail. I am not clear about the point.

The Convener: At present, if a committee meets on Tuesday and Wednesday, there are two deadlines for the two meetings. Would it make more sense to treat the second meeting of the week as an extension of the first and to have one deadline?

Mr Morrison: I misunderstood you. Ross Finnie is absolutely right—there should be one deadline for the two meetings.

Stewart Stevenson: I, too, believe that committees should have one meeting per week, regardless of the number of days over which it is necessary for that meeting to take place.

The Convener: That is very well put. Do members have questions about stage 3?

Mark Ballard: Under rule 9.8.5 of standing orders, after amendments have been considered at stage 3 a motion without notice to defer the stage 3 debate on the bill may be taken. As far as I know, that provision has never been used. Do you have comments on the viability, feasibility and desirability of using that provision?

Mr Morrison: I am not familiar with the provision and have no desire to become familiar with it. Frankly, it would be a nonsense for us to defer the stage 3 debate on a bill, unless there were extraordinary circumstances that merited such a delay. We should note that the provision is there and forget instantly that it exists.

12:15

Stewart Stevenson: I take a slightly different view on this issue. There is a benefit in having the breathing space to consider what has happened in the stage 3 amendment process.

For my sins, I ended up as the SNP member who had to work out how we would navigate our way through stage 3 of the Land Reform (Scotland) Bill. The day after stage 3 was completed, I examined the bill to see how we had done—how many of our amendments had been agreed to and so on. As I say in my submission, it was only then that I discovered that the Presiding Officer had called the wrong person—who was a member of the wrong party, on the wrong side of the chamber—to move amendment 92C. Because the person who was called intended to support the amendment, they moved it after I advised them that that was okay. Because things can happen so fast, I had not twigged what had taken place. As it happens, the Parliament did not address the content of the amendment to any great extent. We moved rapidly to a vote and the person in whose name the amendment stood voted against it.

The point that I am making is that none of the parties to that procedural hiccup was aware of it until I had completed my analysis at the end of the following day and had checked with the back-bench member of the Executive who had lodged the amendment and with my party colleague, who had ended up moving it. The practical effect was of no great consequence but the point is that, if that can happen in small matters, it can happen in big ones.

I suggest only that the debate on the bill be held the next day—there is no reason for having a large gap. I suspect that the Executive's advisers would welcome the chance to go through and crosscheck the effects of all the various amendments that have been agreed to. Sometimes, if one is dealing with, say, 500 amendments, their interactions can turn out to be perverse.

The Convener: I am not sure that it is possible to have a back-bench member of the Executive.

Stewart Stevenson: You know what I mean—a non-ministerial member of an Executive party.

The Convener: I thank Stewart Stevenson and Alasdair Morrison for their evidence, which has been helpful; I am sure that it will form an important part of our deliberations.

Before we move on, we should deal with a couple of house-keeping matters. Members have before them a revised paper on the Commissioner for Children and Young People (Scotland) Bill, which is the other bill that we are using as an example in our inquiry. The paper includes the names of a number of key players and we need to decide from whom we might want to take oral evidence.

Cathie Craigie: MSPs seem to be giving us the same type of evidence. Is there anyone who might have something different to say? Is it absolutely necessary for us to take more evidence from members?

The Convener: It is not essential that we take further evidence from members, but members of the committee expressed an interest in dealing with a non-Executive bill to see whether we could learn any lessons from the way in which such bills are dealt with in comparison with the way in which Executive bills are dealt with. If the committee

does not want to have an oral evidence session with the relevant members, that is perfectly acceptable.

Bruce Crawford: One of our missing colleagues—Karen Gillon—would argue strongly that we should talk to members in this regard. We accepted her argument last time and I think that it is beholden on us to follow through at this point. I would not like us to decide not to follow her suggestion and then have to face a whirling dervish.

The Convener: Does the committee agree to take oral evidence from the members who are mentioned in the paper?

Members *indicated agreement.*

The Convener: The other question is whether we want to take evidence from any external bodies. If you think that we should, please let the deputy convener and myself know which bodies you think we should talk to. It would be useful to talk to Karen Gillon about which bodies to invite, as she was the member in charge of the bill.

The other matter that we must discuss is whether we want to take any additional oral evidence. We have circulated a paper on the written evidence that we have received to date and I ask members whether they want to take oral evidence from any of the people who have submitted written evidence. Given the number of bills that COSLA and the Scottish Council for Voluntary Organisations have been involved with, directly and indirectly, it would probably be useful to take evidence from them.

Bruce Crawford: Their submissions are quite full and contain a lot of information. Still, it would be useful to talk to them, provided that we focus on the specific points that they raise.

The Convener: Both submissions include elements that are not relevant to the inquiry. We should make that clear to them before they come to give evidence. For example, none of the matters that is dealt with after the phrase

"PON members also made comments on the following"

in the SCVO submission is related to our inquiry.

Do members agree that we should invite COSLA and SCVO to give oral evidence?

Members *indicated agreement.*

Annual Report

12:21

The Convener: Agenda item 3 concerns the committee's annual report. Members have before them a note from the clerk outlining the guidance that committees are given on producing an annual report. Does the committee agree to accept the draft as the committee's annual report?

Members *indicated agreement.*

The Convener: We now move into private session. I would ask members of the public to depart, but I see that they have already left.

12:22

Meeting continued in private until 13:00.

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