PROCEDURES COMMITTEE

Tuesday 11 May 2004
(*Morning*)

Session 2

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PROCEDURES COMMITTEE
8th Meeting 2004, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
*Mark Ballard (Lothians) (Green)
*Bruce Crawford (Mid Scotland and Fife) (SNP)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Linda Fabiani (Central Scotland) (SNP)
Robin Harper (Lothians) (Green)
Irene Oldfather (Cunninghame South) (Lab)
Mr Keith Raffan (Mid Scotland and Fife) (LD)
Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Dr Maurice Hankey (Scottish Rural Property and Business Association)
Margo MacDonald (Lothians) (Ind)
John Mackay (Scottish Natural Heritage)
Pauline McNeill (Glasgow Kelvin) (Lab)
Dave Morris (Ramblers Association Scotland)
Alasdair Rankin (Scottish Parliament Directorate of Clerking and Reporting)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 4

Scottish Parliament

Procedures Committee

Tuesday 11 May 2004

(*Morning*)

[THE CONVENER *opened the meeting at 09:31*]

Item in Private

The Convener (Iain Smith): It has gone time for the start of the meeting and I am pleased to say that we have a quorum. Before we start the formal business, I announce that Cathie Craigie is delayed on a train and will probably be about half an hour late. Pauline McNeill, who is to give evidence this morning, is on the same train and will also be slightly late. That should not affect our business too much—Alasdair Rankin, the clerk to the Subordinate Legislation Committee, has to leave fairly sharp to attend this morning's meeting of that committee, so we were going to take evidence from Margo MacDonald and Alasdair Rankin first in any case. I have received no other apologies.

Item 1 on the agenda is to consider whether to take item 5 in private. Item 5 is our continuing discussion on non-Executive bills. Are members content to take item 5 in private?

Members *indicated agreement*.

Bills (Timescales and Stages)

09:32

The Convener: Agenda item 2 is an evidence session on our inquiry into the timescales and stages of bills. I welcome Margo MacDonald MSP, who is here in her capacity as former convener of the Subordinate Legislation Committee—she was the convener when the Land Reform (Scotland) Bill was considered—and Alasdair Rankin, who is the clerk to that committee. I ask them to make any initial comments on their experience of subordinate legislation and the timetable for bills, after which we will ask questions.

Margo MacDonald (Lothians) (Ind): I am here simply because the experience of the Subordinate Legislation Committee in the first session of Parliament was, of necessity, a bit sharper than the experience of the current committee because we had to deal with the banking up of proposed legislation towards the end of the first session. We wrote two or three "Disgusted from the Mound" letters to the Executive to explain that we did not think that the situation was fair on anyone. As the convener of the Subordinate Legislation Committee, I was particularly concerned that the people in the subordinate legislation team were working well above and beyond the call of duty—until the small hours of the morning—to try to get the work done. Had it not been for the quality of the people in the team, the situation could have affected the quality of the subordinate legislation.

As some members know, I believe subordinate legislation to be the powerhouse function of the Parliament because the fashion is to have as little as possible in bills. Whether I agree with that is irrelevant, but that is how things are shaping up, which means that the scrutiny of subordinate legislation is all the more important. Here endeth the lesson on why subordinate legislation is important.

Members will notice from Sylvia Jackson's letter to the committee that I am a bit more demanding than she is in discussing improvements in how subordinate legislation is handled. I put the third recommendation that I have made—I do not know whether members have a copy of it—right at the top. I believe that standing orders should incorporate a requirement for a memorandum from the Executive, because we often found that we did not receive such a memorandum. That made it more difficult and time consuming properly to scrutinise subordinate legislation, as we were not aware of the Executive's thinking. That made it difficult to put an instrument in context and to relate it to other aspects of subordinate legislation. The Executive should be required to provide a memorandum.

A couple of times, we could consider late stage 2 amendments only overnight. That was very unsatisfactory. Standing orders also allow manuscript amendments to be lodged on the day of the stage 3 debate, which permits no scrutiny. A mechanism must be found to allow that scrutiny. I appreciate that using such amendments is not the best way to make legislation, but sometimes, in the most important legislation, an obvious change must be made by manuscript amendment. When that is the case, standing orders should have the proviso that business can be suspended for half an hour or three quarters of an hour—whatever it takes—for the Subordinate Legislation Committee to consider manuscript amendments quickly. That is another suggestion that the committee might want to take on.

Further thought should be given to a formal means of scrutinising subordinate legislation provisions at stage 3. That would cover the doubts that I have expressed about the tightness and quality of scrutiny, especially at the end of a session when we are trying to put through many bills. That was unsatisfactory in the first session and we want to avoid that happening again in the second session.

The Convener: I thank Margo MacDonald for those comments, which I am sure have provoked questions from members.

Bruce Crawford (Mid Scotland and Fife) (SNP): I am especially interested in Margo MacDonald's idea of requiring a memorandum to support the Subordinate Legislation Committee in its work. Minor and major pieces of secondary legislation are issued. Some of the major instruments are probably as comprehensive and detailed as some bills that we have passed.

How comprehensive should the proposed memorandum be? Should it cover matters such as the policy intent and the financial implications? Would you like other issues to be added into the memorandum?

Margo MacDonald: I would like both those issues to be covered. Alasdair Rankin will be able to tell you more. When I was the Subordinate Legislation Committee's convener, some of the memorandums that the committee received were excellent. That depended not on timing, or a bill's importance, but on which department produced the memorandum. In the first session, there was a time when much training of draftsmen was taking place. Towards the end of that time, a definite improvement was shown in many respects. However, that was patchy. That is why I suggest a more formal arrangement.

Alasdair Rankin (Scottish Parliament Directorate of Clerking and Reporting): I will clarify that a little. The memoranda that the Subordinate Legislation Committee receives on bills relate to subordinate legislation-making powers in bills. They are distinct from the Executive notes that the committee receives, which accompany statutory instruments.

In the memoranda on subordinate legislation-making powers in bills, the Executive aims to set out the scope of the powers, the parliamentary procedure to which it ought to be subject and to provide some general background about why the Executive proposes to take those powers and how they fit into the bill as a whole. The memorandum is an Executive exercise in explaining to the committee why the bill has all the subordinate legislation-making powers that it does and what those are.

Margo MacDonald: Arguably, we receive a financial note anyway so we might not need to include that as a requirement in standing orders. However, we need an explanation of why the power is sought and some indication or hint as to when it might be used. That is when subordinate legislation can cross the line between being subordinate legislation and being just a fly way of ensuring that ministers get their own way.

Richard Baker (North East Scotland) (Lab): Sylvia Jackson said in her letter to the committee that Executive memoranda are important. She also raised the point about when such documents might be produced. Is it important that they are produced when the bill is introduced or can they be produced later in the process?

Margo MacDonald: If possible, they should be produced when the bill is introduced to allow as much time and flexibility as possible. Without giving that guidance to the Executive, we sometimes found that the memoranda were produced very late.

Alasdair Rankin: There are two points at which the committee would expect a memorandum on a bill from the Executive. The first is when the bill is introduced, but in practice it follows some time after the bill has been introduced. Once the bill has completed stage 2, the Executive produces a revised memorandum for the committee. As Sylvia Jackson's letter suggests, it is more critical for the committee that the memorandum arrives promptly at that point because there is usually much less time between the completion of stage 2 and stage 3 for the committee to consider any subordinate legislation provisions in the bill.

The Convener: If it became a standing orders requirement that such memoranda were provided by the Executive, would that have implications for the timetable at stage 1 when the Subordinate Legislation Committee considered its business and made its report to the lead committee? Or would the existing time scales be adequate?

Alasdair Rankin: Much more time is usually available when the Subordinate Legislation Committee considers a bill at stage 1, if only because bills often present many policy considerations for the lead committee. The stage 1 timetable reflects that. Even though the Subordinate Legislation Committee looks at many bills, there is usually enough time to look at a bill satisfactorily within the overall stage 1 timetable for the lead committee.

Margo MacDonald: There is a huge amount of reading, but there is more time to do that at stage 1.

Karen Gillon (Clydesdale) (Lab): It should be good practice that memoranda are produced early. Margo MacDonald suggests that we amend standing orders to say that a memorandum is one of the documents that must be introduced at stage 1 with everything else, and that we should impose a timescale at the end of stage 2, so that we get a document in time to allow us to conduct the necessary scrutiny before stage 3.

Margo MacDonald: That is exactly it.

Karen Gillon: Margo MacDonald and I were involved with issues about the difficulty of timetabling on previous bills. How could we improve the timetabling problems? Do we need to extend the timetable or are there other ways to solve the problem?

Margo MacDonald: Remember that political considerations come into the timetabling and prioritising of bills. That is not up to us. It is perhaps just a case of the Subordinate Legislation Committee—in particular—saying as early as possible, "Look, we are going to run into difficulties because we have to consider two or three major bills—we have missed the best bit, but it's all right."

Karen Gillon: I suppose the issue is whether, at the moment between stages 2 and 3, there is adequate time for the Subordinate Legislation Committee to do its job.

Margo MacDonald: Sometimes. That is a how-long-is-a-piece-of-string question.

Alasdair Rankin: It would help committees a great deal if the revised memorandum that is produced after stage 2 were to arrive promptly once the revised bill is available. There can be a delay of a week or more—in some extreme cases much longer than that—between the bill as amended at stage 2 being printed and the memorandum emerging from the Executive.

09:45

Margo MacDonald: The reason why there is not a complaint every time is that the situation varies.

Karen Gillon: This might be a silly question, but do most of the changes at stage 2 that increase the amount of subordinate legislation in the bill come from the Executive?

Margo MacDonald: Yes.

Karen Gillon: Therefore, the Executive should know what the policy intention is when it lodges the amendment at stage 2. That means that producing the memorandum timeously should not be a major piece of work.

Margo MacDonald: That is correct.

The Convener: In some cases, amendments to the bill will not have significant subordinate legislation implications and, in other cases, there will be significant new or changed subordinate legislation processes. Should there be a two-track approach, with one track involving the Subordinate Legislation Committee saying that the bill has not changed significantly at stage 2 and the other involving the committee saying that the bill must be examined again because there have been significant changes? In effect, should the Subordinate Legislation Committee be able to call in a bill after stage 2 for further examination if it has changed significantly?

Margo MacDonald: That is a belt, braces and clothes pegs approach. If there are no changes, the bill will simply not be referred to the committee. What must be established is the principle that the committee should be given time for consideration and should be given full information.

The Convener: Perhaps I was not clear enough. Do you think that the standing orders should say that more time should be given between stages 2 and 3 to allow the Subordinate Legislation Committee to re-examine the bill, which it does presently when there have been major changes? Alternatively, do you think that the standing orders should have only one timescale between stages 2 and 3 irrespective of whether the subordinate legislation situation has changed?

Margo MacDonald: If the subordinate legislation situation does not change, the bill will not come back to the committee. If changes are inserted and need to be addressed and scrutinised, time must be allowed for that to happen.

The Convener: I apologise, Margo. I might not be making myself sufficiently clear. At present, the standing orders set out a minimum time between stages 2 and 3. Do you think that that minimum time should apply to all bills or, in circumstances in which the Subordinate Legislation Committee has to re-examine the bill because of significant changes, should additional time be available?

Margo MacDonald: I would rather that Alasdair Rankin answered your question. I do not think that I completely understand what you are saying.

The Convener: I apologise.

Margo MacDonald: No, I am sure that it is my fault.

Alasdair Rankin: I am sure that the Subordinate Legislation Committee would be willing to consider your suggestion, convener.

I suspect that the Executive might suggest that because there is sometimes nothing for the committee to consider between stages 2 and 3, we do not need to make special provision for those times when there is something to consider, and that we should just stay with the general provision. If the Executive provides the memorandum in time, the general provision should often prove sufficient.

Karen Gillon: You are suggesting that, if the memorandum is presented in the correct timescale, there is adequate time for you to consider the subordinate legislation between stages 2 and 3. It would be helpful if you could go through your records and find examples of good practice and bad practice. That would give us a better idea of what you are talking about.

Margo MacDonald: The thing is, if you write something into the standing orders, it usually has to be applied in all situations. That is why I would only want certain things to go straight into the standing orders.

The Subordinate Legislation Committee established a good understanding with the Executive. Although it ran into problems because heaven knows how many bills banked up—and I know that the Justice 2 Committee ran into many problems with huge stage 2 amendments to the Land Reform (Scotland) Bill—such a situation can be flagged up in plenty of time if the committee receives the memorandum in time.

Bruce Crawford: Forgive me for being confused, but Alasdair Rankin's comments appear to contradict Sylvia Jackson's note about the process between stages 2 and 3. She says:

> "However, the amount of time between completion of Stage 2 and the Stage 3 debate can vary considerably and sometimes leave the Committee little time in which to consider and report to the Parliament ... on several occasions, the time between completion of Stage 2 and Stage 3 allowed the Committee to consider a Bill at only one meeting and with the Stage 3 debate scheduled for either the following day or the day after that."

That suggests that there have been some problems with time constraints between stages 2 and 3. I want to understand that a little more.

Alasdair Rankin: The problem arises when the Subordinate Legislation Committee receives the memorandum late. Sometimes, the committee loses maybe one or two opportunities to look at the bill while waiting for the memorandum to arrive. That foreshortens the time for consideration. Prompt arrival of the memorandum would remove many problems, even at busy times.

The Convener: That is very helpful.

I would have thought it difficult for the committee to be able to consider stage 3 amendments at any point. Would changing the timetable for lodging stage 3 amendments at the very least allow the convener and the clerk to consider their subordinate legislation implications?

Margo MacDonald: That is a weak spot. We need a mechanism that allows us to scrutinise manuscript amendments at stage 3, which at the moment go through on the nod. I am speaking off the top of my head, but I think that during the passage of the Land Reform (Scotland) Bill, a couple of major amendments on access were lodged the night before the stage 3 consideration. Those amendments were central to the bill and should have been stringently examined by the Subordinate Legislation Committee. However, there was no opportunity for it to do a proper job. All I am saying is that there must be some mechanism to tighten up the potential loophole. Obviously, I am not referring to this warm, cuddly and wonderful Executive; however, at some point, we might get a nasty Executive that would seek to exploit that sort of loophole.

The Convener: Did that situation arise because amendments were lodged at the very last minute or because a manuscript amendment was lodged after the normal deadline?

Margo MacDonald: No, it was not a manuscript amendment. We got to know about these amendments the night before, or something.

Alasdair Rankin: At stage 2, a vote in the lead committee removed two of the bill's major subordinate legislation-making powers. After that, when I was in touch with the Executive about a memorandum, its officials said that as they were not proposing to change the subordinate legislation provisions they would not produce a memorandum. Perhaps we should have been more diligent in scouring the *Business Bulletins*, but we found out quite late in the day that the Executive had lodged stage 3 amendments that sought to reinsert the two major provisions that had been deleted at stage 2. At stage 1, the Subordinate Legislation Committee had expressed strong reservations about the provisions in question and said that it wanted more opportunity to discuss them.

Margo MacDonald: It was a "face of the bill" thing. Because the provisions in question were so

fundamental, we had to ask whether they should have been dealt with in subordinate legislation.

The Convener: If members have no other questions, I thank Margo MacDonald and Alasdair Rankin for attending the meeting and giving useful evidence to the committee. We will take it into account when we consider our report.

Despite the vagaries of ScotRail, Pauline McNeill has managed to get to the meeting. I invite her to take the stand—although perhaps "stand" is not the appropriate word. As she does so, we will have a brief suspension.

09:55

Meeting suspended.

09:56

On resuming—

The Convener: I welcome Pauline McNeill, who is here to give us evidence for our inquiry into the timescales and stages of bills. She was convener of the Justice 2 Committee when it considered the Land Reform (Scotland) Bill; I am pleased that she has come along to the committee to tell us about her experience of that. I offer her the opportunity to make introductory comments on the timetabling of that bill, as she saw it as convener.

Pauline McNeill (Glasgow Kelvin) (Lab): It is strange to be on this side of the committee table for a change. I apologise for my lateness. It was not my fault, but ScotRail's.

I am here to talk about the Land Reform (Scotland) Bill, so I will answer the committee's questions about that. I have dealt with 10 bills since the Parliament started, so I have quite a bit of experience of timescales. I have some comments for the committee about how I think things could go more smoothly, with regard not just to timescales but to the services that should be available to members.

In my experience, the process of marking up a bill at each stage is time-consuming work. As well as understanding amendments to the bill, I wonder if there could be some kind of service that would help members with marking up bills, especially if timescales remain as they are.

There are explanatory notes for bills as introduced at stage 1, but the same notes appear once bills have been amended at stage 2. That seems to me to be nonsensical because the notes then relate to a bill that has been changed. On one recent occasion, the explanatory notes were not accurate, which was when the Justice 1 Committee was considering the Criminal Procedure (Amendment) (Scotland) Bill. It is important for explanatory notes to be accurate because they exist to help members to understand what can sometimes be very technical proposed legislation. A number of things could be done to assist members in that arduous process. Most bills are technical in nature and require much time. Anything that could assist members in doing their work in scrutinising bills is important.

My approach at stage 2 has always been to take things as slowly as I can get away with in order to allow dialogue and debate. Stage 2 is meant to be the process of line-by-line scrutiny, but I sometimes depart from my brief in order to achieve that—it is just my way of doing things. I have had concerns about the tightness of timescales, so I welcome the Procedures Committee's investigation.

The Convener: Thank you. I thought that it would be helpful if we examined the Justice 2 Committee's experience of the various stages of the Land Reform (Scotland) Bill in order, so that we do not jump backwards and forwards too much. We will consider stage 1 first. The previous Justice 2 Committee was the lead committee on the Land Reform (Scotland) Bill, to which a number of secondary committees had to report. Was the timescale sufficient to allow the secondary committees to report to the Justice 2 Committee and to allow the Justice 2 Committee to take full account of their views in drawing up its report?

10:00

Pauline McNeill: The Land Reform (Scotland) Bill was a large bill. As you probably know, it was the second largest bill that Parliament passed in its first session, with three parts and 97 sections. Four committees fed into the lead committee, which was the previous Justice 2 Committee. We certainly managed. I would not say that the timescale had a detrimental effect; we simply had to work extremely hard. The note that has been prepared for the committee explains the work that was done to meet the deadlines.

However, a committee cannot operate at that pace all the time. After we dealt with the Land Reform (Scotland) Bill we worked on the Criminal Justice (Scotland) Bill at pretty much the same pace. It can be done, but given that committees have other work to do, to work constantly at such a pace means that we will miss things. You would have to ask the other committees whether they had enough time. We got four reports and made sure that we read them all and took them all into account, which made management of the process extremely hard for the clerks and members. The timescale was just that wee bit too tight.

Karen Gillon: I want to follow that up, but not necessarily in relation to the Land Reform

(Scotland) Bill. The justice committees are often secondary committees to other committees. My experience as a convener was that if the committee had to deal with only one bill we focused on it and could work to a pretty tight timescale because it was the only thing we were dealing with. The pressure came when we received secondary reports from committees that had huge timescale pressures, because they had many other priorities.

In your experience, is consultation among committees adequate or does something need to be done to ensure that consultation is adequate when a lead committee is asking for reports, particularly from the justice committees, which have a huge legislative burden? Sometimes consultation does not seem to be adequate—I know that I have been as guilty in that as anybody else.

Pauline McNeill: That is one of the downsides of trying to work to an onerous timescale, as we did with the Land Reform (Scotland) Bill. We were dealing with other legislation, consultations, statutory instruments and a petition on reducing the timescale of civil cases for asbestos victims. The way we dealt with that was that the deputy convener and convener—Bill Aitken and I—had at least one additional meeting a week to push forward work that the committee could not deal with, although it was already meeting twice weekly.

Committees' other scrutiny work can suffer. Members will know that as well as scrutiny of legislation, inquiry into the Executive's programme is important in a committee's work. When we were dealing with the Land Reform (Scotland) Bill, we were also running an inquiry into the Procurator Fiscal Service, which took a year and a half to complete, because we had also to deal with legislation. I do not think that the inquiry suffered, but we had a lot of balls in the air and had to try to reach the end of everything. Adjustment of timescales would allow more time for, as Karen Gillon mentioned, consulting other committees.

Sometimes committees are up against an agreed timescale. At the moment, the Justice 1 Committee is dealing with the Emergency Workers (Scotland) Bill, for which we have agreed a timetable with the Executive, but we have also to consider the Civil Partnership Bill, the deadlines for which are set by Westminster, so we do not have any choice—we have to meet them. Flexibility, in as much as we have any, applies only to our own work.

Richard Baker: We heard from other witnesses that improved pre-legislative scrutiny might help the process because it might mean that committees would not have to revisit evidence. Would that have helped in the situation you were in when you had to call a lot of witnesses in order to compile a great deal of stage 1 reports?

Pauline McNeill: The Land Reform (Scotland) Bill was predominant in the press. There was a consultation that we were not involved in and the bill that emerged was substantially different from the draft. Even if we had been involved with the consultation, we would still have had to go through the same scrutiny. The answer to your question would depend on the extent to which a bill had changed. The call for written evidence on the Land Reform (Scotland) Bill lasted only three and a half weeks because there had been some pre-legislative scrutiny and the witnesses that we called got a chance to say what they would have said anyway during the consultation. Perhaps the Land Reform (Scotland) Bill is not the greatest example, because it changed so much.

It is possible that pre-legislative scrutiny would help, but there would have to be a clear dividing line between the role of the committee in collating evidence and its work on pre-legislative scrutiny, in order to ensure that the committee did not ignore any changes to a bill.

Bruce Crawford: Your submission talks about there not being enough time to consider a bill if changes are made after pre-legislative scrutiny. You say:

> "it is vital for there to be flexibility in the system to allow Committees to request an extension to the deadline for completion of stage 1".

Is it not possible at the moment for the committee to ask the Parliamentary Bureau for an extension to that time without there being a rule in standing orders? Should the bureau be allowed to make that decision or should there be a more formal process?

Pauline McNeill: It is possible to ask the Parliamentary Bureau for more time, as we have done. Part way through consideration of the Land Reform (Scotland) Bill, we thought that we might need more time. We asked the bureau for an extra week and our request was granted. That is not uncommon. The Executive presented the Justice 1 Committee with a timetable for the Emergency Workers (Scotland) Bill and the committee considered what work it had to do. We asked for an extra week for consideration of that bill and that request was granted. It is possible to get extra time without there being provision in standing orders.

However, standing orders should be amended on the timescales between each stage. I know that the committee has been discussing that. The system is flexible, but there is a problem if other committees are feeding in and if there are other immovable deadlines.

The Convener: In the case of the Land Reform (Scotland) Bill, there was only a four-day gap between publication of the stage 1 report and the debate on the general principles. Is that adequate or should standing orders allow for a minimum period between publication of the report and the debate in the chamber?

Pauline McNeill: That suggestion should be considered. Four days might be fine for members who draw up a report because they know, or should know, what is in it. However, for other interested members who are awaiting publication of the report, four days is not a long time, particularly if they want to take part in the debate.

The Convener: Obviously, with the Land Reform (Scotland) Bill, there was a lengthy gap between completion of stage 1 and the start of stage 2, but that is not always the case. A few moments ago you said that we should consider the time between stages. Should standing orders include provision for more time between stages 1 and 2, or is the present practice reasonably flexible?

Pauline McNeill: My major concern is about stage 2. My experience has been that conveners are also required to sign off groupings of amendments; standing orders state that. If the convener has a committee meeting on Tuesday afternoon and the deadline is the following Friday, the convener will, if he or she follows the *Business Bulletin* each day and cuts and pastes all the amendments, have a complete list at the end of the day on the Friday. The convener is expected to sign off groupings on the Monday before a meeting on the Tuesday.

I have raised concerns about groupings because I thought that they could have been produced in other ways, but I have been told that to change that would impact on other matters. I have felt that my power as convener to decide on groupings is not a power at all because, when I have decided that groupings need to be changed, it has threatened to upset so many other things that I could not make the decision. Back benchers are often out and about in their constituencies on Mondays. My experience was that the clerk would have to find me first and then get me on the phone. I would then have to get to a computer to sign off the groupings in time for them to be published for other committee members that evening.

As you will note from the clerk's paper on the Land Reform (Scotland) Bill, it was not uncommon for me to contact the clerks at 9.30 pm on the night before a meeting to find that they were still preparing the convener's brief. I think that I did not receive my brief for the first day of stage 2 of the Land Reform (Scotland) Bill until 11 pm the night before the meeting. It is not uncommon for us to work well into the early hours of the morning to get our committee work done, but the system seems to be very onerous, in particular for the clerks. As stage 2 progresses, the brief does not need to be amended so much, so what I have said applies really to the first day of stage 2.

There is no doubt that members have an extremely short time in which to understand the process. There is no single source that a member can access that shows all the amendments that have been lodged by 4 pm on a Friday. There should be a service that provides a list of all the amendments that have been lodged; members should not have to cut and paste from every issue of the *Business Bulletin.*

The deadline for lodging amendments should be moved back. We can debate by how many days it would be possible to move it back, but it must be moved back.

The Convener: The daily lists that are published for each bill are directly accessible on the website. Members should be able at least to see what is on the daily list, although the marshalled list is not available—

Pauline McNeill: Currently, if we miss a day, we have to go back, which is time consuming.

The Convener: I appreciate that.

Pauline McNeill: I am suggesting that someone could collect all the amendments together.

The Convener: Perhaps we need to consider how the information is made available on the website. The lists of amendments are there, so it would theoretically be possible to produce a single list from all the daily lists, which would be available at the touch of a button. That might be relatively straightforward.

Pauline McNeill: Yes.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Pauline McNeill has made valid and interesting points.

As far as I know, the Scottish Executive operates a practice of lodging amendments five days before the meeting at which they will be considered, if that is possible. Is there anything that would prevent us from introducing that timescale for other members or organisations, or do you stick with the suggestion that you make in your submission that amendments should be lodged one week before the meeting at which they will be considered?

Pauline McNeill: In general, the Executive sticks to its practice, so that other members can ascertain the Executive's intentions and lodge their own amendments. That is a good thing.

I will be happy if the deadline is moved back. The amount by which it would be moved back is negotiable and the committee must consider what would be practicable. I think that 48 hours is the absolute minimum time that would allow members to consider amendments in the marshalled list and the groupings.

Cathie Craigie: Would you set a timetable in which the deadline for lodging Executive amendments—

Pauline McNeill: The whole thing would have to be moved back—

Cathie Craigie: Should we say, for example, that the Executive must lodge its amendments seven days before the meeting and that members must lodge their amendments five days before the meeting?

Pauline McNeill: If a committee meets on a Tuesday afternoon, the deadline for lodging amendments should be the Thursday before the meeting, to give members 48 hours in which to consider the amendments. If the marshalled list and the groupings are to be available, the deadline might have to be the Wednesday before the meeting.

The Convener: Are you suggesting that if a committee meets on a Tuesday, the marshalled list and groupings should be available on the Friday before that?

Pauline McNeill: Yes. That would allow members to consider the amendments on the Friday and the Monday before the meeting. However, that is the minimum amount of time that should be allowed and I would welcome more time than that. I realise that there would be practical arrangements in relation to whether committees could consider stage 2 amendments every week.

The whole process might just get moved back. In other words, the deadline for Executive amendments would be moved back further to allow members five days in which to examine the amendments that the Executive lodged.

Mark Ballard (Lothians) (Green): If amendments were considered only on consecutive weeks, what impact would that have on a committee such as the Justice 1 Committee? That might be the ideal situation, but what impact would it have?

10:15

Pauline McNeill: Do you mean if the deadline were moved back 48 hours?

Mark Ballard: I thought that your suggestion was that committees should consider amendments not every week but every other week.

Pauline McNeill: My point was that if the deadline were moved back too far, committees would not be able to consider amendments every week. That would make things difficult because it would drag out the timetable for stage 2 in a way that would probably be impracticable. At the moment, we consider amendments pretty much every week. For the Land Reform (Scotland) Bill, we met twice a week on consecutive days.

I have not sat down and worked out the exact impact of the proposal, but I realise that there would be an impact. That is why I am being cautious about saying how far the deadline should be moved back. However, I am clear that the current timetable is too tight and that it should be changed. It is for the Procedures Committee to work out all the different practical considerations about how far back the deadline should be moved.

Cathie Craigie: Others have given evidence on what should happen when a committee meets to consider amendments to a bill on two separate days in the same week. The experience of your committee is a perfect example of that. People have suggested that such meetings should be adjourned and reconvened so that, instead of having two different sets of amendments and marshalled list, members could follow the same amendments on the same marshalled list. What is your opinion of that?

Pauline McNeill: I do not understand what you mean.

Cathie Craigie: At the moment, if a committee has two separate meetings, it will have two separate deadlines for submission of amendments and it will have two separate marshalled lists. It has been suggested that, instead, a committee should have one meeting, which could be adjourned, then reconvened on the following day or the day after.

Pauline McNeill: It should be possible to anticipate that. As convener, you have to tell other members what point you expect the committee will reach; you can then go no further than that point. You can anticipate how far you will reach, so all the deadlines for the two days on which the committee met would remain the same.

The Convener: If a committee is considering amendments on three occasions and twice in the one week, does not the fact that there are separate lodging deadlines for different days add to the confusion of the process? Does that not make it more difficult for members and other interested parties from outside to follow what is happening?

Pauline McNeill: If you are suggesting that there should be just one lodging deadline for each week, I would not have a problem with that.

Mr Jamie McGrigor (Highlands and Islands) (Con): When you were convener of the previous Justice 2 Committee, the point was put to me that too much time was allowed during evidence taking for politicians to make statements rather than ask questions of witnesses. Will you comment on that?

Pauline McNeill: No. What has that got to do with bill timescales?

The Convener: That is not a matter for this inquiry, Jamie.

Mr McGrigor: But it takes up time.

The Convener: The way in which committees conduct their business is not the subject of our inquiry. Such matters must be determined by the members of the committees when they are considering evidence.

Karen Gillon: I have a question and a comment for Pauline McNeill. The Land Reform (Scotland) Bill was fairly controversial in parts and the debates involved two clearly opposing sides. Would consensus have been reached by altering the timescale within which amendments had to be lodged, or were the issues such that members simply had to decide on the amendments based on the evidence that they had heard? Would members have made the same decisions regardless of the timescale for lodging amendments? In essence, were the decisions political rather than based on timescales?

Pauline McNeill: There is no doubt that that bill was controversial. As I said, members worked hard to ensure that everybody got their say and that everything was said. The committee went faithfully through two lever-arch folders of written evidence.

If you read the *Official Report,* you will see that at stage 2 I took the process extremely slowly, and departed from the usual procedure as to who came in which order. I always ensured that the person who moved the amendment got the last say on it. As a committee we felt that we got a lot of concessions on various angles from the Executive, because issues were debated in more detail.

Often, amendments are moved and the Executive responds, but we talk at cross-purposes. Allowing members more time to debate amendments meant that the aims of amendments were clearer. For example, there was a lot of discussion about access to closed fields and whether people could walk around the margins or along tram lines. To deal with that, we got the minister to talk about what was possible and to answer questions such as, "Within the amendment, can you do this? Can you do that?" Having that in the *Official Report* helped members to understand what was possible and, as a result, some amendments were not moved.

That was how I dealt with stage 2, because I realised that people had opposing views. Other conveners might have chosen to do it differently.

Mark Ballard: I do not know whether this is an appropriate point at which to raise taking evidence at stage 2 on amendments that make significant changes to bills. Do you have the power as a convener to do that already? What changes would be required to allow you to take additional evidence on amendments?

Pauline McNeill: At stage 2?

Mark Ballard: Yes.

Pauline McNeill: There is nothing to prevent a committee from taking evidence at stage 2. Donald Gorrie lodged an amendment on sectarianism to the Criminal Justice (Scotland) Bill. The Justice 2 Committee had not considered that issue at stage 1, but we felt that it was so important that we took evidence on it at stage 2. We stopped the process, took the evidence and allowed some time before going back to stage 2. There is nothing to stop a committee doing that—it is just that generally they do not.

The thing that must be remembered about the Criminal Justice (Scotland) Bill is that it was pretty much a miscellaneous provisions bill, and its scope was so wide that just about anything could be added to it, whereas most bills have a scope that means the Presiding Officer will be quite strict about what can be added to them at stage 2.

Mark Ballard: Are you just looking for the bureau to give more time to committees when they need to consider evidence? What procedural changes would you like to see?

Pauline McNeill: There should be a minimum time for submission of written evidence. For stage 1, the standard period is about eight weeks, or six weeks for a shorter bill, which is about right, but the period should never be shorter than that. There should be—there generally has been—some flexibility on the part of the bureau in setting timescales for bills. Following examination by the committee of what it thinks it can do, there should be negotiations between the committee and the bureau. That flexibility should remain throughout the process. Our experience is that the bureau has been pretty flexible when we have asked for an extension and justified our case.

The changes that have to be made are to the deadlines that apply between meetings at stage 2, and there has to be a minimum period between stages 2 and 3. With the Criminal Procedure (Amendment) (Scotland) Bill we had four weeks between stage 2 and stage 3, including a two-week recess. The bill was fresh in our minds,

which was one advantage, but it seemed to come along awfully quickly. Cathie Craigie made the point earlier that perhaps we need to get into a culture of lodging amendments much earlier in the process, instead of waiting until the deadline. That would help quite a bit.

The Convener: The Land Reform (Scotland) Bill was particularly complex. Did the committee feel that it had sufficient time to reflect on what had happened at stage 2 before going into stage 3, or did it feel that it should have had more time to think again and have a look at the bill as a whole? A committee comes to the end of the stage 2 process, and suddenly the bill disappears. Should the committee have the chance to see whether there are any minor issues from stage 2 that it might want to reflect on before stage 3?

Pauline McNeill: Do you mean that, if there are issues that arise at stage 2, there should be some point between stage 2 and stage 3 at which the committee could reflect on what has just happened?

The Convener: Yes.

Pauline McNeill: That would be useful. However, a note of the changes would have to be prepared to allow the committee to see the effect of amendments. That would certainly assist in reflecting on the bill.

Karen Gillon: Is it your experience that the explanatory notes that are provided at the back of the chamber for members can bear little resemblance to the bill that they are debating at stage 3?

Pauline McNeill: The explanatory notes and policy memorandum for a bill at stage 1 do not change after the bill has been amended. They are exactly the same. If a whole section is removed from the bill, or the meaning of a section is changed, there are no notes to advise members what has been done; the only notes that are available are the notes that the committee had at stage 2. I presume that there is a resource issue, but it seems to me that, if things were being done properly, a note would be prepared after stage 2 to explain the effect of, for example, a new section. I know that, in the bill as amended at stage 2, the changes can be identified because they are marked by lines, but I think that there should be a note to say that that is the effect of a certain amendment.

Karen Gillon: Ministers sometimes say during stage 2 debates that they will come back to the committee prior to stage 3. How is that done? Is there good practice in that regard, or is the process haphazard? In the Environment and Rural Development Committee, we have followed a useful process in which the Deputy Minister for Environment and Rural Development goes through the bill, point by point, explaining what change has been made, what he has done and his reasons for making that decision. That has been useful in tracking what the issue is, what the minister is doing and why, and his reasons for not doing what he has been asked to do. Do you have such a process for the Justice 1 Committee, or do you think that it would be useful to adopt such a procedure?

Pauline McNeill: We always have a good dialogue with ministers about their intentions. There are probably five or six official letters attached to any report, which explain exactly what ministers' thinking is on a given amendment. Committee members will have that information, but anybody else who wants to see what has happened will not have it unless they have copies of the ministerial letters. However, that covers only what the Executive does; it does not cover changes that are made by anyone else.

In the past, we have had explanatory notes with the Executive's amendments, which have explained what the amendments do. We asked for such notes for the Criminal Procedure (Amendment) (Scotland) Bill and it took some time, but we got them. It should be a matter of policy that anyone who submits an amendment should say what the intention behind the amendment is, because that is not always obvious if the amendment is deleting or inserting something. I wonder whether it would be better practice for the requirement for a wee written note to apply to everyone, so that members would have to say what the effect of their amendments would be. That would be useful not so much for committee members, who are embroiled in the bill, but for other members who want to see what has happened and to lodge some amendments.

The Convener: If the Executive—or the member in charge of the bill, in the case of non-Executive legislation—were required to provide revised explanatory notes for stage 3, which would seem to be good practice, how would it deal with an amendment that it had not wanted to be agreed to but which had been agreed to at stage 2? For example, a non-Executive amendment with which the Executive did not agree might be agreed to. How could the Executive produce an explanatory note to explain the cause and effect of such an amendment without misrepresenting the amendment in its own interests? Obviously, I am not suggesting that the Executive would do that.

Pauline McNeill: The person who had lodged the amendment could provide a note of what the amendment was intended to achieve.

10:30

The Convener: But how could the Executive, or the member in charge of the bill, put into an

explanatory note for which they were responsible the effect of an amendment for which they had not been responsible?

Pauline McNeill: I see—I thought that the Scottish Parliament information centre drew up the explanatory notes.

The Convener: No—the member in charge of the bill is responsible for the accompanying documents.

Karen Gillon: Surely the onus is on the Executive to provide an honest assessment of the bill. Therefore, the Executive has an obligation to report on what has been done at stage 2, regardless of whether it agrees with it. The Executive will have to lodge stage 3 amendments to change the stage 2 amendments with which it did not agree, but the explanatory notes should explain the bill as it stands, and not as the Executive would like to see it. Otherwise, what is the point of having explanatory notes? The Executive should be obliged to act on the will of the Parliament—at that point, the will of the committee—and to provide an explanatory note based on the committee's decision, rather than on what the Executive wishes that the committee had done.

Cathie Craigie: What you are suggesting would mean that any amendment—regardless of whether it was lodged by a back-bench member or by the Executive—would require to be accompanied by a note that explained its effect. You suggest that, at stage 2, the explanatory notes that accompany the bill should be updated, and that the people who take responsibility for updating those notes should be from the Scottish Executive, if it is an Executive bill, or the member in charge, if it is a member's bill.

Pauline McNeill: Yes, that is right.

The Convener: We may have drifted slightly from the scope of our inquiry, but that was an interesting discussion in any event.

The Land Reform (Scotland) Bill was one of the few bills that the Parliament considered over two days at stage 3. Did the fact that the bill was considered over two days give rise to any problems that would not apply to a bill that was considered at stage 3 in one day?

Pauline McNeill: The time was needed. Given the three areas that the bill covered, it was almost like considering three separate bills that had been rolled into one. The note that has been prepared for the committee implies that, even though so much time had been allowed, speeches were cut to quite short lengths. Most members' experience of the stage 3 process has involved running out of time. I was a wee bit concerned about members having only 90 seconds, for example, to speak to their amendments. How could they possibly explain to Parliament, in 90 seconds, the amendment that they were moving? Perhaps we just need to get better at anticipating the length of time that we will need for each group of amendments.

The Parliament could not have completed its stage 3 consideration in a shorter time; the work could only have been done over two days. I do not think that there was any particular problem with consideration taking place over two days, although there were problems with the shortage of time for members to say what they wanted to say.

Karen Gillon: Were you consulted about the proposed timetable for stage 3 and about what you thought the pressure points would be, as far as your role as committee convener was concerned?

Pauline McNeill: No. Conveners are not consulted about that.

Karen Gillon: Do you think that that would be a useful addition to the process?

Pauline McNeill: As convener, I am not consulted. It might be that the committee clerks are consulted, but I do not know.

Bruce Crawford: I am flabbergasted by that. I did not know that.

Karen Gillon: I did.

The Convener: My understanding is that most of the consultation takes place with the business managers—and presumably with the clerks. It would seem sensible for the relevant committee convener to be involved in that process, as they have a better understanding of the bill than others.

Would it be helpful if more flexibility than there is at present was given to the Presiding Officer to adjust the timetable in the course of stage 3, particularly if consideration lasts for a long time? At present, once the timetable is set by Parliament, there is no flexibility at all and some debates run short while others go to the wire.

Pauline McNeill: There should be more flexibility. Members who have an interest in the bill sometimes do not get an opportunity to say anything until stage 3, but when we are running out of time, priority to speak is given, rightly, to members who have been involved during the earlier stages. Members who did not have a chance to say anything until stage 3 sometimes do not get to say even a few words. If the Presiding Officer had flexibility, he could incorporate such members in the usual way—members would express their interest in a section of the debate so that the Presiding Officer would have an understanding of the time that would be needed.

Karen Gillon: How can we do that without extending the debates? In my experience, when time has been tight on certain issues, it has been tight throughout stage 3 and we have run out of time. For good practical reasons, we have a convention whereby we cannot extend the parliamentary day without previous agreement. From your experience, is there a need for more time for stage 3 scrutiny of bills such as the Land Reform (Scotland) Bill so that members have adequate time to put forward their views, have a discussion and make a decision? If there is not enough time, the members of the lead committee simply regurgitate what they said at stage 2, which means that we run out of time before other members get involved in the debate.

Pauline McNeill: I suppose that there is a trade-off. If more members were to speak during stage 3, that would add time to the process; we are concerned about that possibility because it would mean that debates would go past the 5 o'clock deadline, for which we would have to make provision. As you say, perhaps members of the lead committee do not need to speak on every group of amendments, although it would be difficult to ask them not to speak. If the process were to change for the better, the culture might begin to change and members might, if possible, begin to take more part in the earlier stages of bills.

Karen Gillon: Would it be feasible to discuss a bill, if necessary, on a Wednesday and Thursday and on the following Wednesday, but to have a lodging deadline that related to the first Wednesday? Members would have to lodge amendments by that day, but amendments could be considered until 5 o'clock on the second Wednesday. In essence, we would just continue until we adjourned.

Pauline McNeill: In principle, I do not see how having days in between the parts of a debate would be detrimental to it. However, the Executive might be concerned about that suggestion because it would eat into parliamentary time. In some cases, the idea might be appropriate.

The Convener: Would it be helpful if the deadline for lodging amendments at stage 3 was extended so that the marshalled lists and the groupings could be published earlier? That would allow members more time to consider in which parts of the debate they wished to participate before the timetable was drawn up. At the moment, most members do not see the marshalled list, the groupings or the timings until the morning of the debate.

Pauline McNeill: The same rules should apply at stage 3 as apply at stage 2, to give members a fair opportunity to see the marshalled list and the groupings.

Bruce Crawford: I am sorry to rewind a bit, but I have been thinking about the issue of consultation on timings before stage 3. My impression is that in the first session, the Parliament often got the timings for stage 3 debates badly wrong. The situation has improved, although there are many bills still to be considered so we will find out how much better it is. I found the consultation process to be useful because it provided the opportunity to effect change and it helped my understanding of how much time should be laid aside. I understand why committee conveners are not asked about the timings—technically they are not part of the process at stage 3—but I cannot understand why there is not an informal process that would give the conveners input at that stage. Such a process would allow the timings to be tweaked and improved.

The process of consulting business managers is informal and loose. Would it help to have a duty of consultation rather than a loose informal process? The last thing that I want to do is to slow up the process, but I want to ensure that members have a say in the arrangements for stage 3 and that they understand the decision-making framework. Perhaps we can make the system a bit more fluid.

Pauline McNeill: As a convener, I would certainly be content to have an input on the timing of stage 3. At the moment, conveners are not asked to make any input. I am certain that, if I were to have some input, I could identify groupings in which there was likely to be greater interest. Like most members, I could have told you that, when we were considering the Criminal Procedure (Amendment) (Scotland) Bill, it was pretty obvious that there was going to be more interest in trial in the absence of the accused. I think that that was allowed for, but there might have been one or two more technical areas on which there was more debate than expected; I might have been able to anticipate that. Our having an input would add to the process.

Bruce Crawford: I can think of an example of that from last week, when we were considering the Nature Conservation (Scotland) Bill at stage 3—the debate on talons and beaks versus soft, fluffy pigeons. If politicians had been more involved in the decision-making framework, they might have allowed a bit more time for that debate. It was obvious that many members who wanted to speak were not able to do so. That is a comment rather than a question.

Mark Ballard: I want to follow up on that. One of the factors involved is the timescale for those consultations. If committee conveners were to be involved as well, that timetable would have to be pushed out, to allow the system to function. That is another statement.

The Convener: Are there any more questions for Pauline McNeill?

Cathie Craigie: Another witness to the committee has suggested that, to give members a greater opportunity to participate in stage 3 debates, we could consider extending the parliamentary day on a Wednesday by an hour or two, when that was deemed necessary. Do you have any views on that in the light of Karen Gillon's point about the Parliament's family-friendly aspect? Should we extend proceedings although that would mean giving up some of that family friendliness?

Pauline McNeill: I think that such extensions should be avoided, where possible. If we are able to run our Parliament such that decision time remains at 5 o'clock, we should do so. However, there have been occasions on which that has not—and could not have—happened. We have probably got the balance right.

I appreciate that the committee has a hard job in dealing with everyone's desire to have a bit more time without upsetting the balance and affecting the interests of those members who might be rushing to meetings after the meeting of Parliament. It has been suggested that the parliamentary debate on the motion to pass the bill does not have to take place on the same day as the stage 3 consideration of amendments. I do not think that that would make any difference to the dynamics of the debate. I would prefer that option to extending the meeting regularly—although I realise that that has to be done sometimes.

The Convener: Do you think that holding the debate on the motion to pass the bill and the consideration of amendments at stage 3 on separate days would have any positive advantages? Should there be a gap between the two processes—for example, to consider whether any of the amendments that have been agreed to at stage 3 have unforeseen consequences?

Pauline McNeill: I cannot think of any advantages because, if we discovered during the stage 3 debate that there was some terrible flaw in the bill, it would not necessarily be possible to put that right.

The Convener: Under standing orders, the member in charge of a bill can request that part of the bill be referred back to the lead committee. The question is whether there would be sufficient time in the process of considering the stage 3 amendments to spot whether any issue had arisen from them that might require the member in charge of the bill to exercise the power in standing orders to refer part of the bill back to the lead committee.

Pauline McNeill: In that case, I suppose that there would be merit in your suggestion.

Karen Gillon: That proposal is probably more pertinent to a non-Executive bill than it is to an Executive bill. I am convinced that with an Executive bill, the Executive would know the purpose, intention and ramifications of any amendment and would know that, if a non-Executive amendment were agreed to, it would be necessary to refer back a particular section of the bill. It would do that automatically.

There may be an issue with a member's bill or committee bill, for which the member in charge does not have the legal advice and support that the Executive has, but they should have that before stage 3. Surely to goodness, if the member in charge of a bill is arguing for and against amendments at stage 3, they should know what the policy intention and consequences of a particular amendment are and they should be able to spot whether, if it is agreed to, they could not personally support the bill and would need to refer the section back to the lead committee.

10:45

Mr McGrigor: We have had a submission from another witness, saying that their experience of the Land Reform (Scotland) Bill was that there was some very negative questioning from some members and that some witnesses seemed to be given carte blanche to say whatever MSPs wanted to hear. Do you have any comment on that?

Pauline McNeill: It does not strike me that that issue is relevant to the timescale.

Mr McGrigor: It is—the witness says that that was not the best use of time and that the approach took up time that could have been better used for direct questioning.

Pauline McNeill: Throughout the process of the Land Reform (Scotland) Bill, in which you took part, I as convener was aware of the tensions. However, as far as I am concerned, I ensured that I conducted the meetings properly and that everybody got their say. If anybody made a statement, I ensured that you in particular got your chance to reply to it.

The timescale for the Land Reform (Scotland) Bill was tight and I would like some changes to be made to the procedure. To meet its obligations, the Justice 2 Committee met twice a week, and I and the deputy convener met at least once a week in addition to that to get us through the rest of the business. In my opinion, nothing suffered as a result of that. I simply make the point that we cannot ask the members of a small committee of seven to operate at that pace all the time to fulfil our obligations.

Mr McGrigor: Ought there to be any guidelines about how MSPs question witnesses?

The Convener: We are moving well out of the scope of the inquiry.

Mr McGrigor: I am sorry, but the matter was raised in one of the papers.

The Convener: I appreciate that, but that does not mean that it is within the scope of the inquiry, which is about timescale and timetables.

As there are no further questions, I thank Pauline McNeill for giving evidence. It has been very helpful indeed.

We will have a short break while we change witnesses.

10:47

Meeting suspended.

10:49

On resuming—

The Convener: The next panel of witnesses comprises Dave Morris, director of the Ramblers Association Scotland; Dr Maurice Hankey, the director general of the Scottish Rural Property and Business Association, which was formerly the Scottish Landowners Federation; and John Mackay, who was formerly the national strategy manager for Scottish Natural Heritage. All the panel members were involved in the passage of the Land Reform (Scotland) Bill.

I remind the witnesses that the inquiry is about the processes relating to the timescales and timetables of bills and the ability of external organisations to make an input; it is not about looking back at decisions that were taken in relation to the bill or policy matters—neither of those issues are a matter for this committee. If panel members wish to say anything in addition to the submissions that we have received, I am happy for them to make a brief opening statement. I will then open up the meeting to questions from members.

Dave Morris (Ramblers Association Scotland): Thank you, convener. I have just one point to make. The Ramblers Association Scotland was very well geared up to respond to the Land Reform (Scotland) Bill. We had some experience of the National Parks (Scotland) Bill and considered that we had been pretty ineffective in influencing its progress. By the time that we came to the land reform legislation, we ensured that we were geared up for the process. For more than two years, we employed a staff member whose job was more or less entirely focused on the bill. That meant that we were able to operate efficiently in making responses to amendments and getting briefings to members of the Parliament. I make that point as I think that those circumstances did not apply in quite a few other organisations that wanted to respond to the process.

John Mackay (Scottish Natural Heritage): I should explain that I recently retired from Scottish Natural Heritage. However, because I was seen to have the best bit of the corporate memory of the process, I was asked to come to the committee on behalf of the organisation.

SNH is not in the thick of the political process. Public agencies operate alongside it; we work with the Executive and through official channels. Therefore, I can reflect just our experience of the process, which I will do as best I can.

Overall, SNH is quite satisfied with the process. That said, the passage of the Land Reform (Scotland) Bill was somewhat erratic. It ran over a long time; some of us began our dealings with the subject of the bill back in the late 1990s when we started to debate the need for change to the access legislation. In some respects, the fact that parts 1, 2 and 3 were taken in the one bill might be seen to be a bit of a problem. Certainly, it was an irritation in the sense that the momentum was lost at various times, although it meant that there was quite a lot of space between consideration of the parts.

Dr Maurice Hankey (Scottish Rural Property and Business Association): I simply remind the committee that, although Dave Morris dealt only with the access aspect of the bill, our organisation dealt with all three aspects, which put a heavy burden on us.

The Convener: Thank you. We have found it helpful in our consideration of the evidence to consider the process stage by stage. That allows us to try to focus on the issues that arose at the pre-legislative stage and stage 1 and between stages 2 and 3. I propose to do that again today.

Richard Baker: Previously, I have asked questions about whether the process at stage 1 could be speeded up a bit if the lead committee became involved in the pre-legislative scrutiny stage, which the Executive is trying to improve in any case. In your experience of giving evidence at the pre-legislative stage and at stage 1, did you find that you were having to make the same points time and again or was the evidence that you were giving at stage 1 different from that which you gave at the pre-legislative scrutiny stage?

Dave Morris: No, there was not much duplication. From our point of view, the pre-legislative process was incredibly important. When the draft bill was published in February 2001, we were very unhappy. We felt that the Executive had sabotaged many of the agreements that had been reached between the landowning and outdoor recreation interests through the access forum.

Initially, there had been a strong consensus, but that broke down when we saw the draft bill.

At that time, the level of public concern and response was particularly important. The foot-and-mouth crisis occurred in the same week as the draft bill was launched and there was a delay built in because of that. The consultation period was extended, which we believe was useful, as it allowed the public to become more engaged. There was also a dramatic shift in thinking. As a result of the experience of farmers not removing "Keep Out" signs as the year proceeded, ministers and many MSPs became convinced that there was something wrong with the draft bill. The long period between the start of the draft phase and the introduction of the bill to Parliament was important in that respect.

At the committee's last meeting, Ross Finnie said that he would have wished for some engagement with the Justice 2 Committee in the pre-legislative process. However, I am not sure that that would have been valuable, especially given the remarks that he made about the legal background to the whole land reform process. We think that the Justice 2 Committee did an extremely good job in trying to resolve the problem of the different perspectives on the law as it stood. The committee recalled witnesses for a special session on the fact that there were differing official viewpoints on the law going back to the 1960s. That was an important part of the process. I certainly would not have liked the Executive to have leaned on the committee to accept its particular line, as Ross Finnie implied might have happened.

Richard Baker: To be fair, the minister was making more general points about the scrutiny of legislation. You are saying that the bill changed quite a lot between pre-legislative scrutiny and stage 1. There seems to have been an effective consultation. Although I take your point that nobody wants a committee to be leaned on, you will find that the committees are very good at not being leaned on. If the committee had been involved earlier in the process, there might not have been the need for the same evidence to be given again at stage 1.

John Mackay: Of the two evidence sessions that SNH attended at stage 1, the second was the more useful and effective. The committee had identified an issue on which it wanted to probe the witnesses for their perceptions—in that case, on the law of access. SNH found itself on the other side of the debate. Nevertheless, the proper role of the Finance Committee inquiry is to have witnesses illuminate issues rather than restate evidence that they have already presented in one way or another in writing.

Dr Hankey: In my submission, I make the remark, which John Mackay has repeated, that the process leading up to the publication of the draft bill was stop-go. At one stage, the access forum was under huge pressure to get something done by a certain date because of the timetable that the Executive had set. Everything was going hell for leather and the deadline was met, but then nothing seemed to happen for an awfully long time afterwards. Questions were asked about whether the process needed to be timetabled as rigidly as it had been at that stage.

It was unfortunate that the launch of the draft bill coincided with the outbreak of foot-and-mouth disease—it was very unfortunate that the outbreak occurred at all. A lot of people still do not understand why farmers reacted as they did, but one's first reaction is to close ranks and protect one's own interests. A lot of farmers did not open up their land quickly enough afterwards and many of them still do not understand the distinction between biosecurity and what the public can do on their land. The perception of risk from dogs coming on to farms and walkers moving between farms while farmers have to do things for biosecurity is still a big area of contention.

11:00

Mr McGrigor: My question relates to timing. Mr Morris, in your submission you say that the outdoor access code "will define 'responsible' access". Would things have been speeded up if responsible access had been defined before part 1 of the bill was introduced?

Dave Morris: No. Before the beginning of the legislative process, I was involved in discussions about revising the countryside code, which SNH was considering. It would have been difficult to do it at that stage, because we needed to be informed by the legislative process. The bill, which is now an act, needed to be in place so that we could see all the statutory details. From that, people can build up the content of the outdoor access code, as is now happening. The code is currently with ministers, but from discussions that we have had with SNH and officials we think that the content is pretty satisfactory—it is 90 or 95 per cent right. The outstanding problem is the difficulties that we are having with Network Rail and the issue of how people cross railway lines. However, that is not central to the legislative process.

Dr Hankey: I take a different line on that issue. The legislation should have started from the premise of an understanding of what constitutes reasonableness. It was a fault in the process that the draft of the outdoor access code by SNH that we were awaiting appeared only two days before we were asked to give evidence to the Justice 2 Committee.

Bruce Crawford: SNH has provided an interesting piece of evidence on stage 1. In paragraph 4 of your submission you say:

"It would probably have been better, on balance, that Part 1 had been a separate Bill to allow its separate parts to move at their own pace."

That is within the scope of today's discussion. How might such an approach have helped consideration of the Land Reform (Scotland) Bill? Might it not have elongated the process in other ways?

John Mackay: It might have. We cannot be certain that we have made the right call, because matters are handled in only one way and we are not sure what the alternative might be. It was irritating that we lost momentum in some respects, but the process provided a lot of space for debate about the issues, which is important, and it worked out okay in the end. I think that it might also have worked if we had taken the other approach that I have suggested. I cannot predict what the delays might have been, but I expect that to a large extent they would have arisen from pressure on officials and the committees.

Dr Hankey: There was pressure on draftsmen. The ability of the drafting team to advance all three parts of the bill in tandem was a constraint on progress.

Bruce Crawford: Can we go further and say that it caused wicked issues that might otherwise have been avoided to enter the system?

Dr Hankey: I want to answer yes, but I cannot give an example.

Bruce Crawford: If you had said yes, that would have been my next question. I ask you to think about the question. It might help us to reach conclusions if later you could provide us with examples of wicked issues that arose because there was not enough time.

The Convener: I will ask about the stage 1 process generally, rather than just for the Land Reform (Scotland) Bill. It is for committees to determine from whom to take oral evidence but, when a committee issues a call for evidence, is sufficient time available for organisations that may have an interest in the legislation to submit written evidence? If not, should standing orders or guidance stipulate a minimum time for consultation?

Dave Morris: We were not concerned about that part of the process. We were quite satisfied with it.

John Mackay: The organisations at the centre of the debate were well aware of the process and the timings, so they had no problem. However, organisations on the fringe may not quite have caught up on what was happening. If there were problems at that stage, that might have been simply because of the sheer volume of evidence that the committee received as a result of its call for evidence.

The Convener: Indeed. There was a lot of pre-legislative consultation on the bill, so anyone who might have had an interest in it may already have been aware of it. However, if there had not been that level of pre-legislative consultation, a longer period might have been needed for people to submit evidence.

Dr Hankey: That is true. The extent to which a bill might have changed by the time it suddenly appears should be considered. We heard from the previous witness that the bill changed quite significantly at the draft stage. Moreover, some elements in the bill changed quite significantly at the final stage, which meant that people had to stop and think and not simply assume that they knew what was in the bill. It had to be revisited.

The Convener: Obviously, there was quite a lengthy gap between the conclusion of stage 1 and the start of stage 2 with the Land Reform (Scotland) Bill. Before we move on, is there, in your experience—perhaps with other pieces of legislation—sufficient time in general between the conclusion of stage 1 and the start of stage 2?

Dr Hankey: That depends on whether one sees Christmas as getting in the way. There was a major break with that bill, but Christmas was a big part of that interval.

Karen Gillon: Dave Morris's submission mentions site visits, but I am slightly confused about the point that he is trying to make. I thought that site visits should be for members and not for lobbying by witnesses. I believe that his suggestion could devalue site visits, which could become political scoring grounds. If someone is trying to get a perspective, there can be more than one site visit, but I would be reluctant to have witnesses going on site visits.

Mr McGrigor: Are we talking about stage 2?

Karen Gillon: No, I am talking about stage 1.

Dave Morris: Evidence was given to the Rural Development Committee at an afternoon session after the committee had been on a site visit in the morning. I was conscious that questions were likely to be raised in the afternoon session that related to what people had seen in the morning and therefore had a bit of a tussle with the clerk about the matter. In the end, it was agreed that the witnesses should be allowed to be present in the morning to see what was to be seen. That was extremely useful, particularly as we were shown how a farmer was managing access in a farmyard in which there was a diversionary path.

On the second part of the site visit, which was to a different farm, I was keen to point out one or two things on the ground that were being missed, without engaging in the merits, whys and wherefores of things. However, I could not do so because, although we had been told that we could come on the site visit, we had been told that we could not say anything. At the convener's discretion, I would like to be able to comment during a site visit, if need be. Obviously, the convener should tell someone to be quiet if they start to stray from a purely factual line.

Karen Gillon: How can a balance be achieved between site visits and evidence sessions? The difference between a site visit and an evidence session is that the evidence from an evidence session will be in the public domain and the public will be able to see what has been said, whereas they will not be able to see what has been said on a site visit. If people are having a dialogue, it is important to have that in public session rather than in an informal setting.

Dave Morris: From our perspective, the difficulty was that, although the Rural Development Committee had decided to go on a site visit, it was not going to look at locations where outdoor recreation organisations had access problems—it was primarily going to look at the problems that two farmers faced, which we thought was biased to a degree. It was inevitable that, although what the farmers said would not be in the public domain, it would significantly influence committee members who were on the visit. The site visit took place over three or so hours, so I do not think that the process would have been greatly disrupted if I, or the other two or three witnesses who were there, had been able to comment here or there. There would have been no question of our dominating or interfering with the process; we would just have been able to make one or two points of useful clarification.

The Convener: That issue is not really one for this inquiry—we have aired it, but it is up to committees how they consider their evidence. Our inquiry is about timetabling, so I would like to move us on to discuss the stage 2 process.

Bruce Crawford: I was at that Aberfoyle meeting, convener, and I would have liked to make some comments on it. However, I understand your ruling and will move on.

This is interesting, because it is not always that the Scottish Rural Property and Business Association and the Ramblers Association Scotland agree. However, you definitely agree on this issue. The Scottish Rural Property and Business Association says that it shares the concerns of others on the submitting of evidence in time for stage 2 discussions in committee. The Ramblers Association Scotland says that it has found it difficult to cope with the stage 2 timetable. Even Scottish Natural Heritage comes to the party on the issue, saying that

"the timing of amendment lodging and publication is too short".

All the evidence that we have heard suggests that all the timings are too tight and too short. By how much should they be lengthened to allow proper consideration to take place?

Dr Hankey: I support Pauline McNeill's view that Thursday afternoon should be the target date. What I found most difficult during consideration of the Agricultural Holdings (Scotland) Bill and other bills is that, unless one has been cutting and pasting during the week and trying to keep up, Monday morning at 10 o'clock is really the first opportunity to see what is on the agenda for the following afternoon. That makes a mockery of good legislative process. I appreciate that bringing things too far forward can mean getting into another week's processes. However, the Thursday afternoon deadline would be useful. If the marshalled list came out on Friday morning, people would at least have the weekend to digest what the amendments mean. I support the idea that amendments should have at least a paragraph of explanation of what they seek to do. Sometimes we sit and stare and wonder where amendments are leading.

The Executive's role in the process is interesting. I get the impression that many MSPs either crack on with their own amendment and deal with whatever the Executive comes up with later or wait to see what the Executive is doing. The Executive should come forward at least 24 or 48 hours ahead of the Thursday night, to set out the playing field so that MSPs can react in time for the next week's business.

Dave Morris: Five days is the time that I have in my head. If a committee meets on a Wednesday, all amendments for the meeting should be lodged by the previous Thursday evening. We need a bit of a gap—say 24 hours—after the committee meeting, because some amendments may take account of discussion at the meeting. If all amendments are in front of us by the Thursday evening, we would then have Friday, Saturday, Sunday and Monday. We would plan to get all our briefings in to MSPs and their researchers by first thing on Tuesday morning, before the debate on the Wednesday.

Dr Hankey: That works for a Wednesday committee meeting; it does not work for a Tuesday committee meeting. That is the pinch.

Dave Morris: If a committee meets on a Tuesday, Wednesday night would be the deadline.

The Convener: The convention is that the Executive attempts to lodge its amendments for stage 2 five days in advance, but the actual deadline is two days in advance. Allowing for the fact that—as has been mentioned—some members will want to see whether the Executive has lodged an amendment before they lodge their own amendments, is it reasonable for the deadline for amendments to be three days in advance rather than the present two? That will tighten up the timetable while allowing the Executive to operate without having to lodge amendments for the following week before the previous week's meeting has been held.

11:15

John Mackay: That does not seem unreasonable. As a minor point, I endorse what Pauline McNeill said about support in having a running list of amendments.

Dr Hankey: That is another way to help.

John Mackay: Around the nation, lots of people are doing the same thing, especially before stage 2 and stage 3, and they run the risk of missing something or making small errors.

Dave Morris: I support the point about the need for notes to go with the amendments. I can think of an Executive amendment that was lodged at stage 3 to remove the word "unsown" from a reference to unsown field margins. In part, that was because photographs had been shown to the minister to explain the difficulties with access along field margins. However, the rest of the world did not realise the significance of the amendment because there was no explanation of it.

The other point that I would like the committee to bear in mind is that there is extreme pressure on officials. I became conscious that, if we wanted to discuss amendments with officials, the best time to phone was at 3 o'clock on Sunday afternoon. They would be hard at work at that time; it was reported that on one day they did not go home until 3 o'clock in the morning. We should bear that in mind when we ask for additional notes on amendments. The system is stretched to breaking point at the moment and that is why our submission says that we are relaxed about extending the timetable. It is better to spend longer on a bill and to get it right than to squeeze the timetable.

Dr Hankey: I agree with the Ramblers Association on that.

Karen Gillon: Additional notes are more of an issue for outside agencies. I have seen the notes that accompany the brief when ministers speak to amendments and I am sure that there would be no problem with getting a five-line explanation of what the amendment is about. That might be an issue for outside bodies such as yours, but you are good at explaining the policy intent behind amendments. You might want to consider what the measure would mean for you.

John Mackay: It would also be helpful in later interpretation. At stage 3 of the Land Reform (Scotland) Bill, the Executive lodged an amendment to widen access rights for educational purposes. That proposal was subject to a major change by other amendments to make the wording more open, but those amendments were not spoken to for even the 90 seconds allowed. We therefore have only the words that are in front of us. We do not have any clues in the *Official Report* to indicate why the amendment was lodged or the reason for the policy shift.

The Convener: Is the gap between stage 2 and stage 3 sufficient for you to consider what has happened at stage 2 and what amendments you want to lodge at stage 3, or do you see a need for changes?

Dave Morris: The gap was fine on that occasion.

Dr Hankey: There was no problem.

The Convener: The timetable for amendments at stage 3 is similar to that at stage 2. Do you think that changes are required to extend the lodging deadlines for amendments?

Dave Morris: Yes. The same points apply. In support of Maurice Hankey, I add that we would like to see the groupings, because watching the proceedings from the gallery without them can be incredibly confusing.

The Convener: They are published, but not in advance. For example, they are not included in the *Business Bulletin.*

Dr Hankey: Another issue is the order in which the Presiding Officer deals with the amendments. When you sit in the gallery, you try to follow a process that is meant to be transparent, but it does not work.

The Convener: It can be confusing for us, too.

Cathie Craigie: God knows how the people up in the gallery manage. Every day, there are people there in droves watching what is going on. As a member, I would find it useful if we published a user-friendly document that listed the groupings and the relevant amendments below each group. That might encourage people to become involved. Such a document might be more voluminous than the existing groupings paper, but it would bring together the two documents that we have at the moment. Was that your point?

Dave Morris: Yes.

John Mackay: Yes.

Dr Hankey: Yes.

The Convener: I wondered about that as well. In addition to the marshalled list—which is required for the purposes of voting—we could have a grouped list that would show all the amendments in each group. That would be useful when we were dealing with complicated bills, as it would save trying to find an amendment 20 pages on from the others. We should perhaps consider that suggestion.

Karen Gillon: The marshalled list shows all the amendments.

The Convener: The marshalled list contains the amendments in the order in which they would appear in the bill, but the amendments are not necessarily grouped in that way. It can be difficult to find a particular amendment in the marshalled list because the amendments are not listed in numerical order or in the order in which they appear in the groupings.

Dr Hankey: If you are sitting in the gallery you cannot follow the debate when the group involves 12 amendments, as sometimes happens. I will not even pretend that we were able to follow it.

The Convener: Members may not have taken that important point on board. The information that we receive is not necessarily helpful for those who are sitting in the gallery. We need to consider that.

Cathie Craigie: Members do not find it easy to follow things either.

The Convener: I am not saying that they do, but we need to ensure that clear information is published in advance of a debate.

Dr Hankey: People would have more confidence in the process if it were transparent and if they were able to follow it, regardless of whether or not it was difficult to do so.

The Convener: Do members have any other questions about stage 3?

Mr McGrigor: The concluding paragraph of Dr Hankey's submission states:

"In the melee of amendment at Stage 3, it is difficult to imagine how the integrity of legislation is protected."

The submission goes on to suggest that there should be a "road test". Will you expand on that?

Dr Hankey: That follows on from what we have been discussing. Perhaps I am too naive, but I do not understand how the integrity of the package as a whole comes through stage 3. The process can be difficult to understand at stage 2, but it is even more difficult in a stage 3 debate that involves groupings. I take my hat off to the MSPs if they understand what the bill will look like by the time that they have finished amending it.

For example—my colleagues on this side of the table may correct me on this—I understand that a stage 3 amendment on access to forestry land that was meant to protect young trees by preventing the public from walking among them had the effect of deeming all forestry to be a growing crop. As a result, all forestry land is technically outwith the scope of the new right of access—I am now seeing frowns around the table. We do not seek to challenge that—I am not picking up the issue in that sense—but that is a wonderful example of how the legislation that comes out of the other end of the stage 3 process can be a bit of a nonsense. There are similar issues in the Agricultural Holdings (Scotland) Act 2003.

When stage 3 amendments do not produce what everyone thought that they would, that can cause problems later on and I suggest that we should have a mechanism to prevent that. I am not trying to reinvent an argument for a second chamber or anything like that, but there should be a means of giving the bill an MOT after the amendment stage and before it is passed by the Parliament. That need not require another group of MSPs per se. Perhaps some members of the lead committee that dealt with the bill could combine with a number of individuals from outside. Such a group, which would include experts who were appointed by the relevant committee or by the Parliament—I am not suggesting that the bill go out to full consultation again—could sit down together to see whether the legislation works by walking some examples through it. I gather that that is being done for the proposed third-party right of appeal.

You can look at the legislation, go back to an historic case and ask, "How would this work if we went through the process?" I think that it would be quite a salutary process. It might delay for a few weeks the formal passing of a bill, but I do not think that it would put a huge burden on the Parliament, and it would give a lot of people comfort in the integrity of the legislation. Returning to what Dave Morris said earlier, we would rather see legislation take its time and be right than be rushed through and have to be revisited.

Bruce Crawford: I think that I understand what you are trying to achieve and I endorse your statement that it has to be right, but I just wonder whether we are at the right end of the process for what you are trying to achieve. By the time we get to the end of stage 3, we are at the end. Would it not be better if that sort of detailed work—and I realise that it can be changed by amendments at stage 3—and that walking through of issues were done much earlier in the process to iron out such difficulties, rather than finding ourselves hard up against a wall at stage 3? I am not sure about your forestry example or whether your interpretation is

accurate, but that is really irrelevant. What you are saying is that a wicked issue that no one could have anticipated can be brought into the system late on. Is there no way in which that walking through can be done earlier in the process?

Dr Hankey: It is something that should be done earlier in the process to some extent anyway, but that is part of the process by which organisations such as ours interact with MSPs and introduce amendments, saying, "This is a nonsense," or whatever. What I am really asking is that, before the Parliament signs off a bill and it gets royal assent, you should know whether it flies or not and whether there are any fatal errors in it. When you are discussing amendments until 4 o'clock and passing the bill at 5 o'clock, the two parts of the process are too closely coupled for anyone to know that.

Dave Morris: I have some sympathy with what Maurice Hankey is saying, but you could say that about any legislation at the final point. He cited the example of the amendment on forestry, and we are conscious that people did not realise that it might have the effect that it did. However, I do not think that that matters. It is not a fatal error; we have all gone on to discuss the outdoor access code on the assumption that the right of access applies to all forest land. We do not see a problem there. Ultimately, in some court case, there might be a problem a few years down the line, but you have to be aware of the fact that, when the consultation started on the outdoor access code, there was a lot of pressure from land management interests to rewrite the legislation. There is a danger of exposing that sort of process if you start to have a technical reappraisal after stage 3.

Karen Gillon: If we attach a policy intention to an amendment, it might help to iron out some of those potential issues, because there would be an explanatory note beside the amendment. You raised the key issue of how we make the legislation work. My experience of controversial bills is that the issue is not about how we make a bill work, but about how we stop it working.

Let us take a different example: the Protection of Wild Mammals (Scotland) Bill. If we had had that kind of group after that bill, we would never have reached a consensus. It is likely that such a process would rerun what had happened at the pre-legislative stage, stage 1, stage 2 and stage 3. You get to a point at which politicians will have to make political decisions—that is what politicians are elected to do. We will live or die on the political decisions that we make. For me, there is an issue about the final debate at stage 3 and where we have it, but I do not believe that that is the point at which we should try to reinstitute what should have been happening at stage 1, bringing in people who have vested interests, regardless of whether members agree with those vested interests or not. Politicians have to make that final decision independently of the vested interests that are involved.

Dr Hankey: I make it clear that I am not in any way trying to reopen policy. I am talking about a process that would allow unintended drafting anomalies to be addressed before a bill becomes an act.

Karen Gillon: How would you sort that out? We do not have a stage 4, so there is no process to sort out drafting anomalies after amendments have been approved at stage 3. The Executive or the member in charge of the bill would have to refer parts of the bill back to the lead committee. I am not aware that amendments may be changed after they have been agreed to by the Parliament, even if they have unintended consequences.

11:30

Dr Hankey: I admit that I do not know about that either. I am here to talk about the timing and time phases of bills. Stage 3 is extremely rapid. The record of stage 3 proceedings of the Land Reform (Scotland) Bill shows that a given number of amendments were passed in fewer seconds. I suggest that the procedures need to be examined in such a way as to allow something to happen between stage 3 amendments and the vote to pass the bill, which would pick up the sort of things that I am talking about. That does not mean revisiting policy and it does not mean saying, "Well, we didn't quite mean that," and so on. There are examples from different pieces of legislation where what has come out of the process is a nonsense and needs sorting out sooner rather than later.

John Mackay: For those of us who worry about the words, there are some bits of the 2003 act that prompt us to ask what the words actually mean. I am not certain that a detailed process of scrutiny would quite help that, however, and I am not certain that we can always be wise enough and quick enough to spot defects at the time. My colleagues are currently looking at bits of the National Parks (Scotland) Act 2000 and asking what they actually mean. That was passed several years ago, but we are now increasingly thinking about its implications. I understand that the Executive might be thinking how to address the forestry issue through its order-making powers. There is a mechanism to allow for some degree of correction in the bill.

Karen Gillon: Perhaps the points that you make could be better addressed by elongating the stage 3 process, so that there is a fuller discussion of the stage 3 amendments over a longer period and so that members do not have only 90 seconds to

speak to their amendments and are not prevented from speaking to amendments. Some of the issues that you have highlighted—although not all of them—could be resolved if we elongated stage 3 and if members had a better opportunity to consider what was being proposed and to debate it.

When there is a dialogue in committee between the mover of an amendment, the Executive and the other committee members, it does not always follow the strict pattern, and the dialogue can sometimes develop along the lines of "What do you mean?", "How does that work?" and so on. The minister and the member will come back in response to each other, and a compromise is sometimes found, which makes sense. Members do not have that luxury at stage 3. Perhaps we should therefore seek more space during stage 3, rather than trying to invent a stage 4.

Bruce Crawford: We are in danger of getting too complicated here. I do not think that any Parliament anywhere in the world has passed a perfect piece of legislation, and they never will. That is not feasible. The legislative programme will catch the little anomalies and sort them out. I understand what Dr Hankey is getting at, but we should address those issues earlier in the process. Sorry—that was a statement rather than a question.

The Convener: The standing orders allow for the member in charge of a bill—normally a minister—to move a motion without notice, after the last amendment has been dealt with and before the motion to pass the bill is moved, to ask for a suspension of the remainder of the stage 3 process to allow them to lodge amendments at a later date to clarify uncertainties. The standing orders actually use the words "clarifying uncertainties". Given that that process exists, would it be beneficial for us to consider the standing orders with a view to separating the stage 3 debate to pass the bill from the stage 3 amendment stage, even if it were for only half an hour? The member in charge of the bill would have some breathing space, during which they could look at the bill as amended to find out whether they had to make such a request for a suspension in which to lodge further technical amendments.

Dr Hankey: I think that that would be helpful. May I ask a question of the committee, or would that be out of order?

The Convener: You can make a comment and we will decide whether we want to answer it.

Dr Hankey: Here is my statement, then. I find it difficult to believe that, as MSPs go into stage 3, they know where things are going to go and what the legislation is going to look like at the end. Do you have confidence in that process?

The Convener: We expect the member in charge, normally a minister, to have sufficient briefing to allow him to understand the consequences of any amendments that might be passed at stage 3, and so to be confident that when they move the motion to pass the bill, there will be no unintended effects. I accept that not every single member will be able to give that guarantee, but the member in charge should be able to do that.

Extending the period for amendments to three days rather than two might mean that more confidence could be placed in that process. It might also ensure that the implications of any amendment that might or might not be passed are properly examined.

Cathie Craigie: Whether or not we know how the legislation will turn out depends upon the interest of the member. I had a huge constituency interest in the Land Reform (Scotland) Bill, and I had loads of correspondence from my constituents, so I took a real interest in what was happening, although I was not on the committee. Because of the time constraints, I did not get an opportunity to speak in the debate but I was still interested to find out whether the points that my constituents had raised were being supported or otherwise. At the end of the day, most members are knowledgeable, although some might go away with a worry. You can rest assured that we take an interest in the briefs that we receive from different organisations. We find them useful because they help us to understand the legislation that is going through and, perhaps, to see another side of the argument.

However, as we have previously discussed, members feel that the process could be improved in terms of the information and how it is presented. When we are considering legislation at some time in the future, as well as the Parliament being friendly and open, we might get to a stage where someone could lift a piece of legislation, read it and understand it without referring to explanatory notes, although there is some resistance to that from the legal framework.

The Convener: I am not sure that there is a question in there.

Cathie Craigie: No, I was answering Dr Hankey's point.

The Convener: I accept that. Does anyone have any further comments to make on those points?

Karen Gillon: Your point is fair and we would be kidding ourselves if we said that it was not. I would like to get to the stage where every amendment is moved, spoken to and responded to by those on

the opposite side of the argument. At least then I would have an idea of what the amendment intended and what the opposing views were. We have to get to that stage so that I do not have to vote blind, or on five words that are not clear in their intention.

Dave Morris: There was a point made about an opportunity for the member in charge of the bill to come back at the end with something like mopping-up amendments or corrections. If there were a gap overnight, that would be really helpful because we could all sit back and understand where we had reached.

The Convener: Consideration could be carried over to the next sitting day.

As there are no other questions, I thank our witnesses for their evidence. It has provoked some interesting discussion in the committee even before we consider our report. I am sure that some of the views that you have expressed will find a way into our final deliberations.

John Mackay: Putting my citizen's hat on for a moment, I must say that I was quite impressed with the process. Stage 2 of the Land Reform (Scotland) Bill was particularly well ordered and managed and it deserved all the time that it got.

The Convener: The convener of the committee responsible left before she heard that comment but I am sure that she will see it in the *Official Report*.

Karen Gillon: I will pass your comments on.

The Convener: I suggest that we have a brief comfort break at this point.

11:39

Meeting suspended.

11:44

On resuming—

Question Time Review

The Convener: Agenda item 3 is consideration of a brief report on the process for the review of oral questions that we agreed we would conduct before the summer recess. The report is before us primarily for information and so that committee members can let us know whether they require any specific information for the review. We also need to consider whether we wish to conduct any further questionnaires before the end of the review—not only a questionnaire for members but a questionnaire for visitors to the public gallery.

Bruce Crawford: Questionnaires are probably the most important part of the review at this stage. My impression from speaking to colleagues is—

The Convener: I am sorry to interrupt, Bruce. Have all members received the paper? It was a late paper.

Bruce Crawford: The agenda says that paper PR/S2/04/8/9 is attached for item 3. I have that paper.

The Convener: The paper was a late one, so not all members have it. Karen Gillon can look at my copy just now. Carry on, Bruce.

Karen Gillon: Carry on.

Bruce Crawford: Thank you very much—that is very kind of you, Karen.

Karen Gillon: I will read the paper while you are speaking.

Bruce Crawford: In that case, I will take longer to speak; I know that you are a slow reader.

Questionnaires are probably the most important part of the review at this stage. I have talked to my colleagues over the past couple of weeks about the current format of question time and it ain't working very well. Attendance is beginning to fall even more than it did under the previous format and members are not finding question time rewarding.

A bit of me says that we should give the new format a bit more time and that we are putting ourselves under a false constraint by concluding the review by the summer just because we are going into a new building, but the other side of me says that we must get the matter sorted as soon as we can because question time is not going as it should. I am not sure which makes us look best. I am a bit concerned that, if we start to change the set-up again quickly, we will be seen to be changing the format without giving it a chance. On

the other hand, if we do not kill off the problem quickly, members will become more and more disillusioned. I think that they are quickly becoming disillusioned with the existing system, but the only way of finding that out is to ask them, which is probably the most important part of the process.

We have tried a number of ways to get question time right, but it ain't right yet. What the paper suggests we try to achieve is reasonable and the quicker that we get questionnaires out to MSPs the better. There is a growing consensus that decoupling question time from First Minister's question time is not working. I do not like that consensus, because it runs counter to what I expected. I had hoped that question time would not have needed the support of First Minister's question time to be able to fly but, under the current format, it is not flying on its own. I think that that will be reflected in the questionnaires, although I might be entirely wrong.

Karen Gillon: The key question concerns the purpose of the previous format of question time. Was it to scrutinise the Executive or to provide a build-up to the theatre of First Minister's question time at 3.10 pm? However, I do not know how we can find that out or get to the bottom of the matter in a questionnaire.

What has fundamentally changed? Members are allowed to ask the Executive questions over a longer period and in more detail, so that should have improved scrutiny. Members are also allowed to ask the First Minister questions over a longer period and in more detail, but people do not like that because it is not as exciting. I do not know how we get to the bottom of that and I do not know what the issue is. Why does the timing of First Minister's question time affect question time so dramatically and how do we find that out from members? Perhaps the issue is simply about theatre and not scrutiny. However, that is not what we are about.

The Convener: You are making valid comments, Karen, but I am reluctant to get into a debate about the review. I want to consider how we conduct the review and the clear view is that we should have a questionnaire. The questionnaire is fairly simple—a draft will be circulated. I am not sure that it necessarily goes into all the points that have been raised, but I invite members to have a look at it.

Karen Gillon: The draft questionnaire is simplistic and does not get behind what the real questions are. We are the Procedures Committee. What is it about the procedure of question time that is not working? How do we get behind questions and answers such as, "Do you like it being at 12 o'clock?" "No, I don't," and, "Why not?" "Because it is not as exciting." How do we find out what members think question time should be about and how it should fit into our procedures?

Cathie Craigie: Karen Gillon is right. We were having fun with one of our MSPs last week. She had been complaining for weeks that she had never had a question sufficiently high up the list to be called. She complained and moaned about that a fortnight ago. Last week—by coincidence—she was almost top of the bill for each of the three categories.

Karen Gillon: I know who Cathie Craigie is talking about.

Cathie Craigie: Members have sometimes been submitting three questions every week but are not getting called. There is no way that the selection of questions can be rigged to ensure that everybody gets a fair shout. There has to be a way of resolving the matter. When we debated the format of question time before, we decided that everybody could submit one question for each of the categories and that we would consider the matter on a trial basis. I think that we should review that procedure.

I agree with Bruce Crawford's comment about the linking of question time with First Minister's question time. Question time has to stand on its own two feet. It cannot be propped up by First Minister's question time; it cannot be the warm-up act for First Minister's questions. We have to find a way of making it interesting to members so that they are encouraged to come to the chamber for it.

We had hoped that members could get in with their supplementary questions in themed question time and that issues could be allowed to run. So far, the Presiding Officer has tried to let in with supplementaries those members who have lodged similar questions that are not going to get called. The Presiding Officer is trying to make the system work. We wanted to have a review completed so that there was a procedure in which we could have confidence when we move to the new Parliament building. I do not think that we have got there, however. The questionnaire allows for yes, no and "phone a friend" answers, in effect, and is perhaps a bit simplistic.

The committee is charged with monitoring the procedures of the Parliament. We have questioned members a lot about the matter, but we do not have a definite steer on where members want to go. There are so many different views.

The Convener: Yes, that is part of the problem.

Cathie Craigie: There must come a time when, having spoken to members and having been influenced by what they say, we come back to the committee and make our own judgment.

Richard Baker: I wonder why the questionnaire is to be answered confidentially. I am sure that we

are not going to get electoral fraud. If people have strong opinions on the matter, I do not see why they should not put their names to their questionnaire. That is a minor point, however.

I wonder about the feasibility of agreeing a questionnaire at this meeting. How flexible is the timetable? Will it be possible for us to e-mail our comments, too?

The Convener: That would be feasible. We would not be considering the matter until the meeting in June, so there is time for the questionnaire to be revised, issued and returned. In fact, the less time members are given to respond, the quicker they will do so.

Mark Ballard: We must recognise that the current format is not working. The dilemma is whether we keep it going to allow proper review or whether we change it. I think that we have to change it, because it is starting to get embarrassing. I agree with Cathie Craigie, however, about the questionnaire as drafted. We will get it back and the answer to question 1, on whether question time should continue in its current format, will be, "No, it shouldn't." How does that take us any further? I am worried about the questionnaire approach, because I think that we will find out what we already know, which is that the current format is not working.

The Convener: I understand what you are saying, but I am not entirely clear what you mean by "not working", because saying that members do not like the current format is not necessarily the same as saying that the format is not working. If members say that the format is not working, we need to be clear why it is not working. The themed questions seem to work reasonably well. The Presiding Officer occasionally takes quite a number of supplementaries to allow more in-depth examination—that is the sort of thing that we are aiming for. Procedurally, the format is working perfectly well. We will be unable to find a procedural solution if all we know is that members do not like the current format. We need to find out why they do not like it. We need to develop the questionnaire so that we get members to tell us what is wrong with the format. Otherwise, we will never find a solution that will work.

Bruce Crawford: I would rather hear something about how they think they can improve the format—that is what we really need to know.

Cathie Craigie: Bruce Crawford and I had a brief conversation about this last week. Between 2 pm and 2.30 pm last Thursday, the chamber was sparsely attended. I do not know whether cross-party groups or lobbying meetings had run on. We need to ask members why they are not turning up for question time. Have they forgotten to change their diary? Are the themes under discussion not of interest to them? We have to get to the bottom of that. It is important to find out whether members think that question time and First Minister's question time should be able to stand on their own, which was the point that we made previously.

Karen Gillon: The reality is that attendance was always going to drop off. We all came to question time at the beginning because we thought that we had to. We were all whipped and we all appeared. Towards the end of the period when the old system—question time followed by FMQT—was operating, the numbers attending question time were dropping off. Members had already started to opt out—it is not a new thing. The new format has given them the excuse that they needed for opting out. They now say, "It's because you've changed the time, and you've done this and you've done that." The problem is all down to FMQT, which is not the theatre that people think it should be. However, are questions there to be theatre or are they there for the effective scrutiny of the Executive? That is the key question for me.

The Convener: We are drifting into a discussion about the detail, rather than the process of how we conduct the review. However, you raise the question whether it is necessary that the chamber is full for question time.

Mark Ballard: We must investigate the format of the departmental question times, which seems to be one of the issues causing the problem. As Green party business manager, I find it difficult to get some of my members along. They ask why they should come along when the issues under discussion are not their area of responsibility. On the other hand, the questions are not specific enough that a minister is necessarily being put on the spot. Moreover, there can be several ministers. Therefore, we get neither the ministerial scrutiny that is one of the benefits of specification nor the generality that ensures that most members want to come along. There is a problem with the current set-up of ministerial and departmental questions.

12:00

Karen Gillon: What do people think question time is—a mini-FMQT at which Opposition spokespeople have spats with ministers and everybody else is left out? That might be what they want, but it will not happen. From my perspective as a back bencher, I certainly do not want that to happen. Such spats can be had if they are wanted, but that is not what question time is about—it is about holding the Executive to account and scrutinising what it is doing. Members might say that an issue is not in their remit, but they represent huge areas. I challenge any member to tell me that there are no relevant issues in their regional list area for question time. An issue might

not be relevant to a party's spokesperson, but it will certainly be relevant to the constituency that the member represents. If that is the game that members are playing, I will certainly start to expose it.

The Convener: We are getting too much into the debate about what answers the review should come up with; we should be focusing on how we conduct the review. The first key issue is that we originally set a target of completing the review before the summer recess so that the changes could be in place after the summer recess. Is that still the committee's intention? Do we still want to conduct the review in such a timescale, which is fairly limited? We must have a debate in the chamber, so we probably have until only 15 June or thereabouts to complete a review. Do we want to continue with that timescale, or do we want to extend it?

Mark Ballard: The starting point is whether we want to have a new system in place when we move into the new Parliament building. I think that we must have a new system in place, because the current system is not working. Therefore, we must have a timescale that means that we will not continue with the current system when we start to meet in Holyrood in September.

The Convener: I am still not clear why the system is not working, but we will not get into that debate.

Karen Gillon: But that is the key point. What does Mark Ballard mean by saying that the current system is not working?

Mark Ballard: I mean that it does not appear to give the in-depth ministerial scrutiny that we wanted it to have and that not many members seem to attend. The system does not seem to be achieving any of the objectives that we had for it. The advantages that we discussed—that it would, for example, open up a minister to specific scrutiny of their brief—do not seem to be happening, because there will often be six very different questions relating to a broad portfolio. That does not provide for tight scrutiny. Moreover, not enough members attend, so there does not seem to be any atmosphere.

Karen Gillon: It would be interesting to have a discussion once we have the data. The point that Mark Ballard is making relates to whether a huge number of members who want to be called to scrutinise ministers on issues are not being called. Data are being compiled and it will be interesting for us to find out from them whether there is evidence to back up Mark Ballard's claim.

Bruce Crawford: I am loth to consider the matter again before we move to Holyrood, but I recognise the imperatives of having to do so. We have set ourselves a timescale and have said what we will do. People expect what we have said will happen to happen. A wee bit more time might have been useful, but we are constrained to a degree by our earlier decisions.

I will try to stick to the convener's question, which was about whether we need to conduct the review in the timescale that we set ourselves. I think that we do. The scrutiny might be working, but people are still disengaging from it. I have my own views about why they are doing so, which members do not want to hear today, so I will keep them to myself.

The Convener: If we recommend that significant changes should be made, there is an issue about chamber time. There is a limited amount of chamber time this side of the summer recess.

Bruce Crawford: I saw that someone has advance notice, which I do not have, that a committee debate will be held in the chamber on Thursday 24 June.

The Convener: The Conveners Group receives advance notice of the likely dates for committee debates.

Bruce Crawford: It is good that it does, because the business managers do not. It would be good if we could have that slot.

The Convener: This committee would not have the full slot, because the Finance Committee will need part of it for the budget debate—

Bruce Crawford: I understand that, but—

The Convener: At most, we would have an hour on that date. Given that we have to make other changes to standing orders, is it realistic to carry out the review before then? We could do so, but do members think that we might need longer to debate the issue, which will be controversial and involve more than just ticking a box and moving on? It might be more realistic to have the debate after the recess. I throw in that question because our decision will affect our timetable.

Karen Gillon: I was not here when the original decision was made, so I come from a slightly different standpoint. Changes to the system take time to bed in and I do not think that we have allowed enough time for that. We have not given ourselves enough time to do what we thought we could do. The pressure was about First Minister's question time, but we are also talking about making changes to the whole system and I do not think that we can make a judgment on question time until folk have had a chance to run with the new system for a bit longer. I do not know whether we have the flexibility to start an inquiry later and run it after the summer recess. I will take guidance from the convener on that.

Bruce Crawford: This might not be a response to the points that have been raised, but it helps me to understand Karen Gillon's position on the matter. A lot of the matter is about theatre and the atmosphere that is created and that is why people are starting to disengage. To put it bluntly, I think that members do not turn up for question time because they do not get their mugs on the television any more—that is the real driver behind whether they turn up. At some stage, we might have to reflect on whether that is an issue.

The new building down the road at Holyrood might have a different ambience, but we do not know what that will be. I am slightly worried about changing the system before we get into the new chamber. We might make changes now, but then move to Holyrood and say, "This place is entirely different. We must change the system again."

The Convener: I think that there would be merit in running the trial system for a bit longer. It has been operating for only a few weeks and, if we discount the current three-week period in which meetings of the Parliament are disrupted, there would be only one more week before we would have to gather in the data if we wanted to have the debate in June. I would rather run the system until the summer recess and then review it after that.

Cathie Craigie: How will we do that?

Bruce Crawford: We would have a few weeks before the October recess.

The Convener: In relation to Bruce Crawford's point, I am moving towards the view that we should have question time and First Minister's question time on different days. That would clearly separate the two and we would not have a situation in which people go for lunch after FMQT and do not bother to come back for question time.

Bruce Crawford: There is no doubt that the one-and-a-half-hour slot at lunch time on Thursdays causes problems.

Cathie Craigie: Question time should not include two slots for departmental questions; there should be only one such slot, even though that would mean that questions on a department would not come round as often as they currently do.

The Convener: The fundamental question for the committee is whether we conduct the review before the summer recess or whether it would be beneficial for the purposes of the review to take a bit longer, to enable us to consider the questionnaire, for example, in more detail.

Karen Gillon: May I move a formal proposal?

The Convener: Mark Ballard wants to comment first.

Mark Ballard: I have a lot of sympathy with the suggestion that part of the problem is that question time and First Minister's question time take place on the same day. Could we ask the Parliamentary Bureau whether, when we move to the new building, we could run an experiment in which question time took place on a Wednesday afternoon, rather than on a Thursday afternoon? That would give us something with which to compare the current system. I do not think that my suggestion would require a change to the standing orders.

The Convener: None of the suggestions would require such a change, because we have made the standing orders flexible.

Mark Ballard: Having question time on Wednesday afternoons would allow us to try something different and see whether it worked better.

Karen Gillon: I move that we extend the current trial until the summer recess and that we ask the Parliamentary Bureau to trial question time on Wednesdays and First Minister's question time on Thursdays from the summer recess until the October recess. We can then review the two arrangements in light of the evidence with a view to producing a report by the December recess.

The Convener: Are members broadly in agreement with that proposal?

Members *indicated agreement*.

The Convener: The data that we were collecting will still be available for our meeting on 8 June, so we can consider them then and confirm that we want to stick with that decision when we have all the evidence. Are members happy with that proposal?

Members *indicated agreement*.

Minor Procedural Issues

12:10

The Convener: Agenda item 4 should not take much time.

Karen Gillon: Oh, you do not know us.

The Convener: Item 4 concerns a couple of minor procedural changes to standing orders. The first is the location where the Parliament normally meets. After the summer recess, we hope that that will not be the Mound. The second is to change standing orders to reflect our actual practice for budget debates, which differs from what standing orders say. Are members content that we consider a report on those issues at our next meeting?

Bruce Crawford: What sort of majority is required in a meeting of the full Parliament before such changes to standing orders can be made?

The Convener: A simple majority is required.

Bruce Crawford: That is no fun.

Karen Gillon: I do not want us getting into a vote on whether we should move to Holyrood.

Mark Ballard: It would certainly liven up the atmosphere.

The Convener: It would be interesting if we then ended up having our meetings on the Mound itself.

Mark Ballard: On the big grassy bit.

The Convener: Anyway, are members agreed that we should consider a report at our next meeting on the required changes to standing orders?

Members *indicated agreement*.

The Convener: We agreed earlier that agenda item 5 will be taken in private, so I bring the public part of today's meeting to a close and ask any remaining members of the public and the official report staff to withdraw.

12:12

Meeting continued in private until 13:19.

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