

PROCEDURES COMMITTEE

Tuesday 8 June 2004
(*Morning*)

Session 2

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PROCEDURES COMMITTEE

10th Meeting 2004, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)

*Mark Ballard (Lothians) (Green)

Bruce Crawford (Mid Scotland and Fife) (SNP)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Linda Fabiani (Central Scotland) (SNP)

Robin Harper (Lothians) (Green)

Irene Oldfather (Cunninghame South) (Lab)

Mr Keith Raffan (Mid Scotland and Fife) (LD)

Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Patricia Ferguson (Minister for Parliamentary Business)

Michael Lugton (Scottish Executive Legal and Parliamentary Services)

Andrew McNaughton (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Lewis McNaughton

LOCATION

The Chamber

Scottish Parliament

Procedures Committee

Tuesday 8 June 2004

(Morning)

[THE CONVENER *opened the meeting at 09:33*]

Bills (Timescales and Stages)

The Convener (Iain Smith): Good morning, colleagues, and welcome to the 10th meeting in 2004 of the Procedures Committee. I hope that members have their distance glasses on so that they can see everyone else this morning. I apologise for the meeting being in the chamber—it is not my favourite place for committee meetings, but I am sure that we will manage.

The first item on what is a busy agenda is the inquiry on timescales and stages of bills. We will again take evidence from Patricia Ferguson, the Minister for Parliamentary Business. She is accompanied by officials from the Scottish Executive: Michael Lugton, the head of the constitution and parliamentary secretariat, and Andrew McNaughton, the head of the parliamentary liaison unit. As usual, I will give Patricia Ferguson a few moments to say any words of wisdom, after which members will ask questions.

The Minister for Parliamentary Business (Patricia Ferguson): When you were making your opening remarks, convener, it occurred to me that today's meeting gives me the opportunity to sit in a part of the chamber where I do not usually sit—thank you for giving me that experience.

I am grateful to the committee for the further opportunity to give evidence, with Michael Lugton and Andrew McNaughton, as part of the inquiry. Since we appeared before the committee at the end of March, you have taken evidence from a wide range of people, including my colleagues Ross Finnie and Cathy Jamieson. I have followed the committee's discussions with interest and I have watched the committee seeking better ways of managing the bill process. The Executive has submitted a memorandum that outlines our views, on which we are happy to answer any questions.

The Convener: I assume that all members have a copy of the memorandum, which was a late paper. As we have done with previous witnesses, we will consider the bill process stage by stage. When asking questions, members may wish to

draw on the note from the clerk about the issues that have been raised in the inquiry to date.

Mark Ballard (Lothians) (Green): The Executive memorandum welcomes the idea of early briefings at the pre-legislative stage from the Executive for committee members. What does the minister think of the idea of widening that out and allowing committees to take limited soundings from relevant organisations at the pre-legislative stage? I realise that we do not wish to create a stage 0.

Patricia Ferguson: In a sense, an earlier hurdle must be got over. It is important that committees become informed as quickly as possible on the issues in proposed bills. When I gave evidence previously, I mentioned the importance of pre-legislative scrutiny and argued that committees can and should engage earlier with the Executive, particularly when a consultation is out. At that point, it is important that committees get involved and engage. We are happy to provide informal factual briefings for committee members. Some ministers and officials already do that at the request of committees, which works well. After that stage, it is obviously up to committees to decide what evidence to take and how they want to handle stage 1. The purpose of the pre-legislative stage is for committees to look ahead to see what is coming, to plan for that and to become as well informed as possible.

Mark Ballard: Will you tease out a bit more how you see the relationship between pre-legislative briefings and committees' stage 1 investigations?

Patricia Ferguson: The pre-legislative part must be about information, whereas stage 1 is more about scrutiny. At stage 1, committees take evidence and go through the process that the Parliament has laid down. Although the two are distinct, they are obviously complementary and should be considered in that way. Both parts are important, but stage 1 is the more formal element, which is contained in standing orders—it is the vital bit.

Richard Baker (North East Scotland) (Lab): Some witnesses have expressed the concern that, if committees got involved earlier, that would tie them in too much with the Executive's consultation, which might threaten the independence of their later investigations. Is that a problem or do you see the pre-legislative work as different and not just another consultation that runs in parallel with the Executive's? Obviously, the committees would determine the structure of the work.

Patricia Ferguson: It would be for committees to determine their work load, as they always do. I am not concerned about committees being too close to the Executive on policy matters—that has

not been my experience to date. The relationship between the committees and the Executive is good, but it could be even more productive if early engagement took place and if everyone understood from the outset the intentions and how progress is to be made. Pre-legislative work is excellent; it does not compromise committees' independence in any way and it contributes straightforwardly to better scrutiny of Executive proposals, because committees are more informed about, and au fait with, those proposals. Such work can only improve scrutiny and therefore make the committees' work more valid and searching.

Richard Baker: Do you feel that, if a committee got involved in the issues at an earlier stage and in whatever way it saw fit, that could smooth the stage 1 process and make stage 1 scrutiny more effective?

Patricia Ferguson: Yes, with the obvious small caveat that, at the earlier stage, a lead committee will not necessarily have been identified, although it is usually fairly clear cut which committee will be the lead committee, so earlier involvement should not be too difficult in that respect. There might be a problem with justice legislation, because there are two justice committees and we might not know which would be the lead committee. However, those two committees would know from their work programmes which would be the likely candidate to get the next bill, so even in those circumstances earlier involvement should be relatively straightforward.

The Convener: One of the concerns that committees have expressed to us on pre-legislative scrutiny is that, although pre-legislative involvement might help a committee to influence a bill's shape, if a committee was too involved at that stage its independence might be compromised in the stage 1 scrutiny. What is the Executive's view of the balance between a committee influencing a bill's shape at the pre-legislative stage and retaining its independence for effective scrutiny?

Patricia Ferguson: That is a judgment call for the committees, which would have to have regard to whether they felt that they were being sucked into some kind of arrangement. However, I am not aware of any committee in this parliamentary session or in the previous one that would have or would have had difficulty in maintaining its independence while becoming involved in a bill at a much earlier stage. Such involvement can only help to influence a committee's approach to a bill and add to its ability to scrutinise it.

The Convener: We move on to questions on stage 1.

Karen Gillon (Clydesdale) (Lab): The outstanding question concerns the timing of the

publication of the stage 1 report and the stage 1 debate. Occasionally, there is little time to examine the report ahead of the debate. I would be interested to know what the implications would be if we were to say in standing orders that the report had to be published at least a week before the debate.

Patricia Ferguson: I suspect that, for the Executive, that might be helpful on occasions, because the earlier that we see the report, the easier it is for us to deal with what it contains. It might be problematic if there was a reason why a bill had to be passed by a particular day and the timetable had been adjusted to take account of that, but there might be benefits in the suggestion. Michael Lugton might like to add something from the Executive officials' point of view.

Michael Lugton (Scottish Executive Legal and Parliamentary Services): From our point of view, a gap between the publication of the stage 1 report and the stage 1 debate would be helpful, because it would give us more time to prepare and to brief the minister. On the other hand, as the minister said, the loss of flexibility might, in some circumstances, cause difficulty if there was general agreement that a bill needed to be passed fairly quickly. If you were to change the standing orders, you would have to take into account the possibility of suspending the rule in particular circumstances.

Mark Ballard: Several organisations, such as the Scottish Council for Voluntary Organisations, the Scottish Churches Parliamentary Office and the Convention of Scottish Local Authorities, felt that there was not enough time at stage 1 for committees to get responses from anyone other than the most well-equipped and well-resourced bodies. They felt that there should be more time for committees to conduct a thorough investigation and to get more written evidence at stage 1. Have you any views on that?

09:45

Patricia Ferguson: I am conscious that some of the bodies from which you took evidence suggested that there should be a 12-week consultation at stage 1, but others have said that that is not required. The response that you get to that question will reflect the type of organisation to which you are talking at the time—smaller organisations or organisations that meet less regularly would have a greater problem than others. That takes us back to the argument about pre-legislative scrutiny: such scrutiny would mean that the timescales would be extended, that people would be advised of a bill sooner—they would know that it was coming up—and that information could be gathered. Perhaps we can solve the problem that you highlight if there is a

willingness to engage in pre-legislative scrutiny, because, when committees have engaged in bills at an earlier stage, they and those from whom they took evidence have found that to be worth while.

The Convener: The Subordinate Legislation Committee has suggested that it might be beneficial for the memorandum on delegated powers to become one of the required accompanying documents for bills, rather than being, as at present, part of the protocol. What is the Executive's view on that?

Patricia Ferguson: I was disappointed by the letter on that issue that your committee received recently, because it seemed to me that the Subordinate Legislation Committee had changed its position and was now proposing something a bit more prescriptive. We have no problems with the suggestion that the memorandum that we send should, where appropriate, be a formal requirement. However, it could prove to be burdensome if the memorandum was to become an accompanying document, because it would take on a different significance—the memorandum would require to be submitted to the Presiding Officer as part of the pre-introductory process and then to be submitted formally on the introduction of the bill. I must admit that I have some concerns about the proposal.

The Convener: Could you expand on those concerns a little more? Given that the Executive produces the memorandum anyway, what are the concerns? Are they simply about the timescale that is involved?

Patricia Ferguson: Our concerns are very much to do with the timescale. The parliamentary authorities' agreement to the list of provisions in a bill that confer the power to make subordinate legislation is sometimes not available until shortly before introduction. That list forms the basis on which the Parliamentary Bureau refers a bill to the Subordinate Legislation Committee and it would be odd if the memorandum had to be lodged as an accompanying document on introduction before the Parliamentary Bureau had referred the bill to the Subordinate Legislation Committee.

A number of difficulties with the proposal can be foreseen. We thought that we had, by and large, addressed the problems that the Subordinate Legislation Committee had previously identified and its earlier response seemed to indicate that that was the case, so we were slightly surprised when it came back with a different approach.

The Convener: Should the process in circumstances in which the Executive has published a draft bill be different from those in which it has not? For example, should a committee take more time to consult if a draft bill

has not been published, or should it be the norm that a draft bill is published?

Patricia Ferguson: We try to publish a draft bill—and often do—whenever possible, but we would want to retain some flexibility on that to allow us to take account of differing circumstances.

The Convener: We move on to questions on stage 2.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Most members agree that the pace at which they have to work during stage 2 is great—they thrive on it and enjoy it very much—but others find it burdensome. Does stage 2 put unreasonable pressure on ministers, the committees and the organisations that wish to be involved in the process?

Patricia Ferguson: I am not sure that I would call it "unreasonable pressure", but I suppose that it depends on whom we are talking to. As you say, some members seem to thrive on the stage 2 process and seem to find it a good discipline to observe. As I mentioned in my earlier evidence, if a committee convener feels that the timetable is too tight, it is open for him or her to go back to the Parliamentary Bureau to ask for an extension of time. I am not aware of any occasion on which such a request has been refused. I think that the bureau will always be sympathetic towards the case that a convener puts explaining the problem, why extra time is needed and how much extra time might be needed. I think that we would always be open to such consideration, because we appreciate the pressures that are on committees.

Cathie Craigie: The Executive has adopted the practice of lodging amendments five days prior to committee meetings. Some people have suggested to us that we should look for committee amendments or members' amendments to be lodged earlier than they currently are, as organisations that involve themselves with the process can face many problems. Can you see any difficulties with the timetable for lodging amendments being changed in that way?

Patricia Ferguson: Do you mean for people other than members of the Executive?

Cathie Craigie: Yes.

Patricia Ferguson: Ministers and Executive officials would obviously be given more time to consider proposals, so, off the top of my head, I do not think that the suggestion would be problematic. Andrew McNaughton might want to add something about that.

Andrew McNaughton (Scottish Executive Legal and Parliamentary Services): Our view is that it would be very helpful if the current deadline

of two days was extended to three days. That would allow us more time to consider all the amendments and it would allow the clerks to get together the marshalled lists and groupings.

Patricia Ferguson: I think that I suggested that when I was previously at the committee.

Andrew McNaughton: Yes.

The Convener: Part of the problem is that the current lodging deadline does not really allow everyone to be fully aware before the weekend prior to a meeting of what amendments might be coming up, as the final marshalled list is often not published until the Monday, or even the Tuesday. Would it be helpful if, under standing orders, the lodging deadline was such that the marshalled list would be published in the *Business Bulletin* on the Friday, so that people would be aware before the weekend of everything that was coming up for debate in the following week?

Patricia Ferguson: We should recognise that parliamentary committees meet on different days, so there would have to be appropriate adjustments to take account of that. That is the only caveat that I would add, but the matter is really one for this committee.

The Convener: I am assuming that a committee would meet on a Tuesday or a Wednesday. On that basis, I was trying to suggest that perhaps having everything published on the Friday would be reasonable.

Patricia Ferguson: Obviously, if a committee meets on a Tuesday, the following Friday is slightly further off than if it meets on a Wednesday. As I say, that is the only caveat that I would suggest.

Mark Ballard: I would like to elaborate slightly on the point that the convener has made. If a marshalled list was to be published on a Friday morning for a Tuesday committee meeting, that would mean a four-day minimum deadline for amendments. What do you think about a four-day minimum deadline, or even a five-day minimum deadline—which some organisations from which we took evidence suggested—rather than a three-day minimum deadline, which the Executive's memorandum suggests?

Patricia Ferguson: Obviously, that would not be as much of a problem for the Executive as it would be for committee members, who would have only until the close of business on the Thursday to lodge their amendments to be published on the Friday. I would have thought that that would be more of a problem for committee members—and other members—who wish to lodge amendments than it would necessarily be for the Executive.

The Convener: One suggestion that was made to the committee by at least one body that gave evidence to us was that amendments should be accompanied by some form of policy note or note on the purpose of the amendment. Does the Executive think that that would be helpful? I refer not only to Executive amendments, but to other amendments.

Patricia Ferguson: Possibly. However, the problem would be that, by and large, the people who would write the amendments would be the people who would have to write the explanations and that process would be fairly time consuming. Bringing together the rationale and all the arguments would be a fairly onerous job in itself, particularly if lodging deadlines were tightened up. There might be problems if the deadline for submitting an explanation was the same as the lodging deadline. The proposal might therefore be problematic. The Executive takes the need to explain what it is trying to do through amendments fairly seriously, but I would be concerned about making the proposal a formal part of the process. We do and we will provide as much information as we can, but always doing that by the lodging date might be a problem.

Cathie Craigie: You will be aware that committees sometimes require to meet more than once a week, which means that separate lodging dates, separate groupings lists and separate marshalled lists are required. What would the Executive think about there being only one deadline for lodging amendments, one marshalled list and one grouping list when there is more than one committee meeting a week? I know that that approach would be helpful to committee members.

Patricia Ferguson: That would make sense. The process would be clear—people would understand when things are expected to happen and there would be no dubiety. Such an approach would be useful.

The Convener: I return to the question that I asked about policy notes or purpose-and-effect notes. The Executive produces purpose-and-effect notes for its amendments, but they are not always distributed to all members—I presume that they are primarily for the minister's benefit. Would it be helpful to have them more widely distributed or publicly available so that people could see what the purpose of amendments is and what their effects would be?

Patricia Ferguson: Such notes are produced for the minister's information at briefing and I suppose that deciding whether to disseminate them is up to the individual minister. However, that is a different matter from what I understood you to be asking about in your previous question. I understood that you were asking for a more formalised document that would be much more

time consuming to produce than cause-and-effect notes.

Mark Ballard: In our evidence, the idea was suggested that there should be an opportunity after stage 2 for the committee to review the bill that it has amended in order to give members a chance to consider the amended bill in its totality. Would that be useful in enabling a better stage 3 and more understanding of what had happened, particularly if stage 2 had been rushed?

Patricia Ferguson: If committee members are involved with a bill from the pre-legislative stage on through to stage 2, they will have a fairly clear idea between stages 2 and 3 of what will happen if particular amendments are passed and the effect of those amendments. At stage 3, members make their call about what they think about the bill. Therefore, I am not sure that feeding what you suggest into the committee's cycle would help.

Mark Ballard: Is a longer gap between stage 2 and stage 3 required in order to enable a committee properly to consider matters?

Patricia Ferguson: Not necessarily. When committees agree to amendments, they are pretty clear about what those amendments will do to the bill—in fact, that is usually why they want to make amendments. I do not think that there would be a great call for what you propose.

Mark Ballard: What about the Finance Committee having a chance to consider the financial implications of a bill that has been amended at stage 2?

Patricia Ferguson: I hope that the Finance Committee would keep an eye on bills that were going through and would consider what was being done. Amendments that are passed at any stage could have an impact on the financial implications of a bill, so I am not sure that such a proposal would necessarily be helpful at that stage.

The Convener: I would like to follow up that point. You will be aware that the Auditor General for Scotland expressed concerns about the potentially substantial financial implications of an amendment that was passed at stage 2 of the Standards in Scotland's Schools etc Bill. Given such concerns, is there a case for the publication of a revised financial memorandum, for example, to take account of any amendments at stage 2, so that the Parliament will be fully aware of the bill's financial implications before stage 3? I presume that that would require the Finance Committee having an opportunity to consider that revised financial memorandum.

10:00

Patricia Ferguson: Presumably, you intend that the document would be produced by the person

who drafted the amendment, regardless of whether that amendment was lodged by a minister or by another member. That might create difficulties and might not be possible. Michael Lugton may want to add something. He has more experience of financial memorandums than I have.

Michael Lugton: I am not sure that I can add anything useful to what the minister has said. If an amendment has financial implications, one would expect those implications to be debated in full during consideration of the amendment. To require that an additional account should be made of the financial implications of the amendment would cause me difficulties in procedural terms.

Patricia Ferguson: Andrew McNaughton has helpfully pointed out to me that the Audit Committee is considering the issue. It may be possible to examine the matter in more detail at a later stage.

The Convener: When the Parliament agrees to the financial resolution on a bill, it does so on the basis of the financial memorandum that accompanies the bill as introduced. The resolution does not deal with what happens at stages 2 and 3 of the process, so the Parliament has agreed to a resolution that may not take into account fully the financial implications of the bill. That may be one reason for considering a revised financial memorandum—or even a revised financial resolution—at stage 3.

Patricia Ferguson: It would be extremely unusual for the Executive to lodge an amendment during consideration of a bill that would add greatly to the bill's financial implications. I suspect that that happens when another member is seeking to amend a bill. In such situations, the minister would take every opportunity to point out the financial implications of the amendment to the committee that is considering the bill. I suppose that the issue could arise at either stage 2 or stage 3.

Richard Baker: We have talked about revising the financial memorandum. However, the explanatory notes that accompany a bill on its introduction may relate to a bill that is quite different by the time it is amended at stage 2. What is the potential for revising the explanatory notes at that stage, to take account of the amendments that have been agreed to, if they change substantially the policy direction of the bill?

Patricia Ferguson: At stage 2, the minister would explain the purpose of Executive amendments. It is to be presumed that members would also argue their case when debating amendments at that stage. As you said, the bill as introduced is often very different from the bill that is passed. However, the person who writes the financial memorandum or the explanatory notes

can work only on the basis of what is introduced. What happens later must be addressed by ministers or other members in charge of bills when they speak to committees or Parliament.

Richard Baker: Would it be administratively difficult to revise explanatory notes? Members of a committee that has considered a bill will be aware of what amendments have been agreed to and of their impact but, at stage 3, members in the chamber who have not been involved so closely in that process may still be using the explanatory notes. For that reason, revised explanatory notes would be helpful.

Patricia Ferguson: It would be pretty difficult to produce revised explanatory notes at stage 3. Part of what the minister must do is explain the purpose of an amendment that they have lodged or, if the amendment has been lodged by another member, why it should not be agreed to. That is the point at which the purposes and effects of amendments are explained and the issues that are raised in explanatory notes covered. We must rely on ministers for the provision of such information.

Cathie Craigie: I accept that it would be difficult for the Executive to explain the purposes and effects of amendments that were lodged by non-Executive members and that it may not support. However, I agree with Richard Baker that it would be helpful for members and the general public if the explanatory notes were updated. As you said earlier, when ministers move amendments they have notes that advise them of those amendments' purposes and effects. Given the technology that we have for cutting and pasting, it might be easy for the explanatory notes to be updated for stage 3.

Patricia Ferguson: I do not think that it would be easy. The notes on the purposes and effects of amendments are discursive—they read like a question-and-answer document. Revised explanatory notes would have to be much more formalised; they would have to explain issues in much more detail and would have to address the jargon of the bill to indicate what was being done.

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

Karen Gillon: My point relates to the previous question. At stage 3, many members are fairly new to the bill, because they have been concentrating on other matters. For that reason, they rely a great deal on the information that appears in the explanatory notes. If the bill has changed fundamentally and a member is relying on the explanatory notes, consideration of amendments at stage 3 is much more difficult. Back benchers believe that at stage 3 information needs to be provided in a much clearer way, so that they can consider amendments effectively.

There is a need for the Executive to produce something—either revised explanatory notes or another document—that would allow members to assess more adequately the impacts, causes and effects of amendments at stage 3, when the timescale is very tight.

Patricia Ferguson: It would be difficult for us to produce revised explanatory notes, but I am happy to consider the issue further. I could send the committee a note indicating whether that would be possible and whether there is another mechanism that would be easier to use.

Karen Gillon: I suppose that it is increasingly difficult for you to timetable stage 3 debates, because you do not know who wants to speak, when they want to speak and what they want to speak about. I know that best guesses are made about such issues. It has been suggested that it would be useful for conveners of lead committees on bills to be consulted on timetabling, because they are aware of the debates that have taken place at stage 2 and may be able to identify pressure points for future debates. Might you consider that suggestion in your on-going discussions? I am proposing not formal consultation of conveners, but approaching them informally.

Patricia Ferguson: We often carry out such consultation. We have regular dialogue with the clerks to committees to find out what they think about timetabling. We often ask conveners about that, too. As I am sure Mark Ballard will confirm, at meetings of the Parliamentary Bureau I make a point of asking business managers whether members from their groups have indicated that there are particular pinch points or hot issues about which we need to be aware, so that we can ensure that the timetable for a stage 3 debate is right, or as close as possible to being so. We try to take into account all the information that is available to us, not just information from one source. Often, when I have received information from the clerks and from other business managers, I speak to the convener of the lead committee to see whether their opinion is the same and use them as the final arbiter before I make a formal proposal. That is the approach that we take with every bill. I am happy to agree that such consultation is important.

The Convener: One problem that members often have when deciding whether they wish to speak on an amendment or group of amendments is that they do not, until the morning of the debate or immediately before it starts—especially if the debate is on a Thursday morning—know what the groupings are. You have suggested that the deadline for lodging amendments should be changed to allow earlier publication of the marshalled list. Would earlier publication of the list

of groupings also be helpful? That would ensure that there was more time between publication of the list of groupings and determination by the bureau of the timetabling motion, and it would provide an indication of who was likely to speak on each group and how long consideration of each group was likely to take.

Patricia Ferguson: Earlier indication of the groupings would certainly be helpful. When you mentioned the marshalled lists, it occurred to me that it might be quite difficult to provide explanatory notes until we had seen the marshalled list, because we would not know the consequences of amendments. When I write to the committee, I will expand on that point if I think that it is relevant—off the top of my head, I think that it might well be.

Mark Ballard: The committee has heard a more general concern about the way the marshalled list and groupings operate. There is a feeling that the Parliament is not operating in a particularly transparent way. The procedures can be confusing for members, so I do not know what it must be like for people who try to follow the process from the public gallery or the television. Should consideration be given to finding a more transparent way of operating stage 3 debates? A different process might take more time but it might be more comprehensible to people who had not followed the bill through its committee stages.

Patricia Ferguson: Such a process would undoubtedly take more time—that is a given. I am not sure how we could make the system more transparent than it is. The process is not easy and it must be done in a particular way if it is to work. It is hard to make a judgment without seeing proposals for an alternative system. I am all for trying to make processes as easy to understand and as open and transparent as possible, but the process that is in place was arrived at after a lot of consideration and, ironically, it would probably be difficult to make it more transparent, open and easy to understand. It is one of those processes in which we must get into its rhythm to make it work; I am not sure whether we could do that in a way that would be as inclusive as we might all want it to be. If there is a way of doing so, I will be happy to consider it.

Mark Ballard: One comment that was made to the committee was that speaking times are often curtailed, so if a member has only a minute to speak to an amendment it can be difficult for people to understand the amendment and its consequences. If more time was allowed for members to speak to their amendments, stage 3 would take longer but might be much more comprehensible to the outside world.

Patricia Ferguson: I agree about speaking times, but I disagree with your conclusion. We

need to give the Presiding Officer more power over speaking times. There are no limits as such on speaking times in stage 3 debates and members sometimes speak for relatively long periods when it is not necessary. It might be more useful to allow the Presiding Officer to intervene on such occasions. We frequently find ourselves in a situation—or rather, we have done so occasionally; it does not happen frequently—in which an amendment cannot be spoken to. That concerns me and I do not like it to happen although I am conscious that earlier sections of a bill may have generated many speeches, which is reasonable. However, some of those speeches may have been relatively lengthy and the same ground may have been gone over more than once. The Presiding Officer could have a greater role in managing the time for a particular grouping, which would be helpful for everyone.

Mark Ballard: Should the Parliamentary Bureau be more flexible about scheduling longer periods for a stage 3 debate? That would make the Presiding Officers' job easier by giving them more time to juggle than they might have in a debate that lasted only one day.

Patricia Ferguson: We could try allowing the Presiding Officer to juggle within the context of a debate that lasted one day, or a debate that lasted just a few hours—as is sometimes the case, depending on the size and complexity of the bill. We must also juggle the requirements of members to be in other places for part of their parliamentary time. Passing legislation is Parliament's most important job, but we must take account of the fact that members have other ties and responsibilities. The Parliamentary Bureau has always striven to be clear that when it thinks that a debate will run on into a Thursday evening, for example, members are given as much notice as possible, so that they can deal with other responsibilities that they might have. If we try to use a bit more discretion about speaking times we might find that we do not need to extend the overall length of debates.

10:15

Richard Baker: Sometimes a bill is amended quite heavily at stage 3. As you know, it has been argued that there should be a gap between conclusion of the debate on amendments at stage 3 and the debate on the motion that the bill be passed. Has the Executive encountered any problems at that point that meant that it needed time to consider its position, or have there in practice been no difficulties in considering the impact of amendments during the stage 3 debate?

Patricia Ferguson: There is a mechanism whereby the member in charge of a bill, be that the minister or a back bencher, can propose that

the bill be reconsidered, so that has not been an issue for the Executive. The procedure has not been required yet—I do not know whether that is just luck or whether it is evidence that the scrutiny process is effective. I think that that procedure would be used only when a bill had been changed out of all recognition or when legislation would be difficult to sustain or unworkable.

The Convener: The Subordinate Legislation Committee's most recent memorandum suggests that if significant changes are made to subordinate legislation provisions in a bill at stage 3, there should be a delay in order to allow that committee to consider the new provisions. What is the Executive's view on that?

Patricia Ferguson: When it has been necessary to supply a supplementary memorandum, we have always attempted to do so as quickly as possible. I do not think that the Subordinate Legislation Committee needs to have such a role in the process. If the Procedures Committee wants to consider the suggestion further, I will probably want to discuss the matter more with you, either by letter or through oral evidence. At this point—without having spoken to the Subordinate Legislation Committee—I do not see what the effect of the suggestion might be or how it might better enable that committee to deal with a bill.

The Convener: Is the Executive aware of bills in which subordinate legislation provisions have been substantially or unexpectedly changed at stage 3, other than after its having being agreed with the lead committee or indicated in a supplementary memorandum that you produced? I am not sure whether that has happened.

Patricia Ferguson: I would not want to say that it has never happened, but I do not think that my officials or I can recall such an occasion off the tops of our heads. Again, if the committee wants to pursue the matter, I will be happy to discuss it further.

The Convener: If there are no further questions, that concludes the evidence-taking session. I thank the minister for coming along again to give us evidence that is helpful to our inquiry and I hope that over the next few weeks the committee will form views on the various issues that the inquiry has raised. We look forward to receiving the note that the minister promised us on the viability of preparing revised explanatory notes in advance of stage 3—that will be helpful.

Before we move on to the next item, I draw members' attention to paper PR/S2/04/10/3, which is the note from the clerk on the issues that have been raised in the inquiry. We need at this stage of the inquiry to draw out the main issues; it would help the clerks in producing a discussion paper

before we consider the matter next if members could comment on the paper now or as soon as possible. In particular, members should say whether they think anything has been omitted from the paper.

In the absence of any comments, I assume that members are happy that the note reflects the issues that we need to consider.

Karen Gillon: It would be useful for me to reflect on what the minister has said and perhaps to e-mail my comments by the end of business on Thursday.

The Convener: Yes—that would be fine.

Question Time Review

10:20

The Convener: We move on to agenda item 2, which is on the question time review. We had a preliminary discussion of the issue at our previous meeting, when we agreed that we would defer the further review while the information that we agreed that we need was being produced. We now have a series of papers—including some additional papers—that provide information on the question time review.

A note from the clerk—PR/S2/04/10/19—suggests options for completing the review. I would like the committee to consider the note and agree how to proceed. If there are any papers that we need to consider as a consequence of our agreeing how to proceed, we can do that before we move on.

The note from the clerk gives three options for the review: the first is to carry on as we agreed at our meeting on 11 May; the second is to endorse a provisional timetable for the review to which we agreed on 11 May; and the third is to extend the trial for a shorter period and complete the review by the October recess. Do members have comments on the options?

Mark Ballard: With my Parliamentary Bureau hat on, I will say more about the discussions in the bureau. Some members of the bureau were concerned that a further change—to move question time to Wednesday afternoon—would be tinkering with the parliamentary timetable, but others were quite positive about the idea. Some bureau members proposed that we should go back to the previous format of having question time followed by First Minister's question time. It is fair to say that a variety of views were expressed.

The Convener: I should have announced at the start of the meeting that we have received apologies from Bruce Crawford. I apologise for not doing so.

The reply that we have received from the Presiding Officer suggests that the bureau would like more information about our reasoning. Do you think, Mark, that if we provide a more detailed explanation of why we wish to consider such a change the bureau might be minded to accept it, or do you think that the idea is a non-starter?

Mark Ballard: As I say, the bureau was divided on the suggestion; its members might be minded to try it. I certainly think that if the committee decides that the suggestion would be the most effective way of going forward we should put that proposal to the bureau. I do not think that the

bureau will not agree to the proposal, but I do not think that they will necessarily agree to it.

The Convener: Do members have views on whether we should pursue that option? Karen Gillon suggested it.

Karen Gillon: I drew together the suggestion from a number of suggestions that had been made on which there was some agreement. When question time is held will make little difference to what people think about it. If we need to go to the wall with the bureau on the matter, I would not bother—I would leave question time on Thursday and conduct our review on that basis. People's views are about the format, content and effectiveness of question time rather than about when it is held. I could be wrong, but that is the feedback that I have received from people whom I have spoken to in the past couple of weeks.

The Convener: Are there any other views or does the committee generally endorse those comments?

Mark Ballard: I still think—as I said at the previous meeting—that there is some frustration about the current format and timing of question time. I wonder whether evidence that we were taking those concerns into account by trying a different question time would be helpful. In order to conduct a proper experiment there must be a control. It is necessary to try different things to establish from the experiment what is failing. Is it the time or the format that is failing? If we change the time and question time is still perceived not to be successful, we would know that the format was the problem rather than the time at which question time is held.

Cathie Craigie: We have not had long enough to assess the format. The evidence and information that we gather might be all over the place and may give us no direction. As has been said, we have to give members and the general public time to see question time working. It would be a waste of time if we were to spend time arguing with the bureau about whether question time should be on Wednesday or Thursday. We should go with option 3.

Karen Gillon: To be honest, the issue for members to whom I have spoken is certainly whether the separation of First Minister's question time from question time has made both events better or worse. It does not matter whether question time is held on a Thursday afternoon or on a Wednesday afternoon; it should not be held together with First Minister's question time. We must recognise that that is one of the main concerns. It is important that we give question time a chance to stand on its own.

I find the figures remarkable. The number of members participating and in attendance and the

number of people in the public gallery have increased. That is certainly not my perception but, from the sample that we have examined, that seems to be what has happened. Whether things had got so bad by 4 March and 26 February that people had opted out completely remains to be seen. I am very surprised by the figures.

Last week's question time showed that there is a problem with the number of questions that are lodged and then withdrawn. We cannot legislate for that—we cannot put a provision in standing orders—but a problem is emerging in that members are either lodging questions that they do not really want to ask, or they are not committed to coming to question time, so when their questions are selected, members withdraw them. That pulls the agenda apart.

If we have a dialogue with members, it has to be a serious one about what is and what is not working, and what changes they want to be made. If questionnaires are to be given to people in the public gallery, one of the things that I would be interested to find out—particularly from people who come to First Minister's question time—is whether they would have attended it if it had been held in the afternoon. One of the big selling points of the current slot is that people who would not be able to come in the afternoon are able to come in the morning. I want to know whether that is borne out by the evidence.

The Convener: Those are helpful comments. My personal view is that question time should be on Wednesday, because that would separate it entirely from First Minister's question time and would perhaps engender more interest in question time among the media. In particular, question time could feature on "Holyrood Live", which it does not currently. There are advantages to its being on a Wednesday afternoon that are not there on a Thursday afternoon; those advantages might make members more interested in it. However, if the consensus of the committee is that we carry on with Thursday afternoon for the moment, I am happy to accept that.

Mark Ballard: I would support a shift to Wednesday afternoon.

The Convener: The issue is whether we write to the bureau again to explain further why we wish to go for Wednesday afternoon. Ultimately, the decision on parliamentary timetabling is for the bureau. I argue that there is a case for a complete—rather than the present lunch-time—separation of question time and First Minister's questions, because that would provide an additional focus on question time and would allow us to determine whether it can stand on its own feet, which is an issue that Bruce Crawford, in particular, has raised in the past. If question time were held on an occasion on which it would get

separate coverage, that might engender slightly more media interest and, as a result, slightly more member interest.

10:30

Karen Gillon: Would we be suggesting that the parliamentary timetable should be changed? If the parliamentary timetable were not changed, moving question time to Wednesday would leave only an hour and a half of unallocated parliamentary time, which would preclude the holding of a great deal of business on a Wednesday afternoon. For example, it would preclude the holding of stage 3 consideration, because it is not possible to complete that in an hour and a half; Opposition business could not be held on a Wednesday afternoon, either. Although the proposal would allow us to have nice, worthy debates, we would not be able to get any serious business done on a Wednesday afternoon unless the meeting opened earlier, at 2 o'clock.

The Convener: I agree. My proposal is that, if question time were to be moved to a Wednesday afternoon, the bureau would be asked to start the Wednesday afternoon meeting at 2 o'clock and to move the start of the Thursday afternoon meeting back to 2.30 pm.

Cathie Craigie: We are in the second week of June. At this stage of the parliamentary year, there will be a number of stage 3 debates—

The Convener: I am sorry, but we are not proposing that we move anything until after the summer recess.

Cathie Craigie: Over the next few weeks, there will be a number of stage 3 debates. The convener's proposal would mean entering a dialogue with the bureau. As Karen Gillon has said, members are not entirely happy with the way in which question time is running at the moment. I suggest that they would be less happy if we were to change the timetable again, even though that would not happen until after the summer recess.

The whole idea of extending the present experiment was to enable us to get a feel for things over a period of time. I do not think that we have allowed the experiment to run for long enough and, as I have already said, we do not have time to get into an argument with the bureau. We should go with the suggestion in the second bullet point in paragraph 3 of the clerk's note.

Mark Ballard: At the moment, the Parliament has afternoon sessions of two hours and of two and a half hours. If oral questions started at 2 o'clock on a Wednesday, that would simply mean that the two-and-a-half-hour session would be on a Thursday rather than a Wednesday and that the two-hour session would be on a Wednesday

rather than a Thursday. We would still have afternoon slots of two hours and of two and a half hours, so I do not think that there would be a great deal of difference as regards stage 3 scheduling.

Karen Gillon: There is a fundamental difference between having a 2 o'clock start on a Wednesday and having a 2 o'clock start on a Thursday, because committees meet on a Wednesday morning. Last Wednesday, the Justice 1 Committee did not finish until about 1.45 pm. If we were to move the start of Wednesday afternoon meetings of the Parliament to 2 o'clock, the effect of that would be to prevent members of the Justice 1 Committee from having a gap in which to have their lunch and from being able to ask a question at question time.

It is not possible to tell for how long a committee meeting will run. A committee that meets on a Wednesday morning could have a huge item of business that would mean that the meeting would run until 2 o'clock. Members of that committee would then not be able to participate in question time—or rather, they would not be able to do so in such an effective way. If we start saying to members that we are going to change the format of Parliament meetings so that they start at 2 o'clock on a Wednesday, without discussing with the committees that meet on a Wednesday morning the implications of that for their business, we will get ourselves into bother with the Parliament.

The Convener: My view is that there is no consensus to put the case to the bureau for moving question time to a Wednesday. If the committee cannot reach a consensus on that proposal, there is no point in our trying to persuade another body to adopt it. I suggest that we stick with the present timetable. We must decide whether to carry on with the experiment until October and conduct the review between October and December or whether to carry on with the experiment until the summer recess and conduct the review before the October recess. Do members have comments on that?

Mark Ballard: I feel that, by the end of June, we will have had enough time to be able to conduct a proper investigation, so I argue that we ought to do that as soon as possible and go ahead with the questionnaires.

The Convener: Are there any other comments?

Cathie Craigie: Where have we got to, convener? We seem to be going round in circles.

The Convener: The question is whether we carry on with the experiment until the summer recess and conduct the review before the October recess or whether we continue with the experiment until the October recess and conduct

the review between the end of the October recess and the Christmas recess.

Cathie Craigie: That is what we agreed at a previous meeting—we said that we would continue with the experiment until the October recess.

The Convener: That was on the basis that we were asking the bureau to move question time to a Wednesday. I am just trying to clarify whether the committee wants to stick to the timetable that we agreed last month or to conduct the review earlier, given that question time is not going to be moved to a Wednesday afternoon.

Cathie Craigie: There were good reasons for last month's decision to continue with the experiment. After the recess, we will be in the new building. Our intention was to see how things would go in the new building. The fact that we will be in the new building might encourage people to attend question time in greater numbers. I propose that we agree to the second bullet point in paragraph 3 of the note by the clerk. If you would like, I can move a motion to that effect.

The Convener: At this point, I do not think that it is necessary for motions to be moved; I just want to find out whether there is a consensus. I am not pushing for agreement to a particular option. There are two options. We can conduct the review between the summer recess and the October recess or we can do it between the October recess and the Christmas recess. Cathie Craigie is suggesting that we choose the latter option. I invite Karen Gillon and Richard Baker to give their views.

Richard Baker: I agree with Cathie Craigie. I think that we should continue with the review until Christmas, as we decided at a previous meeting. For me, the moving of question time to Wednesday was not essential to keeping the review going. As Karen Gillon said, we must acknowledge that some concerns are developing about the present arrangements, but I am persuaded by Cathie Craigie's argument that we should give the changes a proper chance to bed down before we make final decisions about reviewing them. I accept Cathie Craigie's point.

Karen Gillon: If we were not moving to a new building, I would go with the third option but, given that we are moving down the road, where there will be a completely new dynamic, I will go with the second option.

The Convener: Mark, are you happy to accept that we carry on with the experiment until the October recess and review it thereafter?

Mark Ballard: As I have said, many concerns have been expressed to me. People feel that the present arrangements are not working. The proposed option would mean continuing until

Christmas with a set-up that a lot of feedback tells me is not working. I am concerned about that but, if that is the majority view of the committee—

Richard Baker: I do not think that we want to understate Mark Ballard's concerns about some members' feelings on the current set-up. However, to come to a proper, considered decision about the way in which question time is running, the current arrangement needs to have been running for a substantial length of time. We can debate what a substantial length of time is, but I am still persuaded that we should continue with the experiment until Christmas.

The Convener: I think that the committee's majority view is that we should carry on with the experiment until the October recess and conduct the review thereafter. I suggest that we proceed on that basis and issue the questionnaires at some time between the summer recess and the October recess. Are members content with that?

Mark Ballard: What will happen after the October recess?

The Convener: The committee will review all the evidence and make a final recommendation to the Parliament on what to do.

Mark Ballard: Question time will remain in its current slot.

The Convener: That will have to remain the case until we have completed the review and made our recommendations.

If members have specific comments on any of the information in the papers, I would be happy to receive them. Although we are not going to conduct the review for some time, it might be better if members submitted their views—on the questionnaires, in particular—to the clerks between now and the next meeting. I do not think that there is any need for detailed discussion of the questionnaires at this stage. I ask members to provide the clerks with their comments as soon as possible, so that we can finalise the questionnaires at the next meeting.

Work Programme

10:40

The Convener: Agenda item 3 is the committee's forward work plan. It would be useful if we could decide at this meeting what our next inquiry is likely to be so that the clerks could give some thought to how to proceed before our next meeting. However, it is not essential that we do so if members wish to have more time to consider the matter, as long as we decide at our next meeting. There are three options for major inquiries: Sewel motions, private bill procedures and the parliamentary timetable. Which of those do members think that we should go with?

Karen Gillon: I would like time to consult other members to determine what their pressure points are and what they think are the most important issues. We can put the item on the agenda for our next meeting.

The Convener: I am happy with that. If members want to say what they think our next inquiry should focus on, they can do that. Otherwise, we can bring the matter back to our next meeting, although we will have to make a decision then.

Mark Ballard: Members have been asking me whether the Procedures Committee is going to look at Sewel motions. I have said that we will.

Richard Baker: I agree with Karen Gillon that it would be good for us to have some time to speak to other members before we make a final decision. I do not see a great groundswell of opinion on the need to review the parliamentary week. There is a fine line between whether we pursue option 1 or option 2 for our next major inquiry. Being on a private bill committee and having seen what Westminster has done, I believe that, at some point—whether as our next inquiry or not—we need to review those procedures and perhaps whether we should keep the private bill process in Parliament at all. There is, therefore, merit in pursuing option 2.

The Convener: I hope that we will be able to deal with both those items within a reasonable timescale. Whichever we chose to take first, the other would follow soon after. I agree that, for various reasons, there are significant problems with the private bill procedures. I hope that, at our next meeting, we will be able to give serious consideration to pursuing both those options, although we may have to stagger our consideration of them within a reasonable timeframe. For the moment, shall we defer further discussion on the matter until the next meeting?

Members *indicated agreement.*

The Convener: That concludes the public part of the meeting.

10:42

Meeting continued in private until 12:04.

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