

# **PROCEDURES COMMITTEE**

Tuesday 22 June 2004  
(*Morning*)

Session 2

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## PROCEDURES COMMITTEE

### 11<sup>th</sup> 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

#### CLERK TO THE COMMITTEE

Andrew Mylne

#### SENIOR ASSISTANT CLERK

Jane McEwan

#### ASSISTANT CLERK

Lewis McNaughton

#### LOCATION

Committee Room 4



## Scottish Parliament

### Procedures Committee

*Tuesday 22 June 2004*

*(Morning)*

[THE CONVENER *opened the meeting at 10:16*]

### Work Programme

**The Convener (Iain Smith):** Welcome to the final meeting of the Procedures Committee before the summer recess. We have received apologies from Bruce Crawford. As members may be aware, he has seriously damaged his knee and will be out of action for three months. I am sure that the committee would wish to send its best wishes to him for as speedy a recovery as possible.

**Members** *indicated agreement.*

**The Convener:** Linda Fabiani is due to attend as a substitute, but she might not appear.

The first item of business is our work programme. The item was deferred from a previous meeting, so I hope that members have had a chance to look through the papers. Do members have any views on which one of the three possible major inquiries we should undertake first? We will probably be able to undertake a couple of them over the next six months, but we should make a start on one.

**Richard Baker (North East Scotland) (Lab):** The issue that we should take up as a matter of urgency—and I should say that I am a member of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee—is private bill procedures. A number of private bills are going through at the moment, so this is an opportune time to consider the procedure.

Finding members who are able to be on the committees has thrown up a lot of problems. I know that my Green colleague is aware of those problems—indeed, every party is aware of the problems because, even with the bigger parties, the number of members who are eligible to be on a particular committee is very small.

The convener of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee has written to the Parliamentary Bureau and the Presiding Officer to outline his concerns over the process. For a number of MSPs, being on such committees has turned out to be a major part of parliamentary work. Huge issues arise over the efficiency of that and over whether the Parliament

should be doing that work at all. We should consider that as a matter of urgency.

**Mark Ballard (Lothians) (Green):** I apologise for arriving late. I do not know whether Sewel motions were mentioned before I arrived.

**The Convener:** We had only just started; Richard Baker was the first to speak.

**Mark Ballard:** As paragraph 6 of paper PR/S2/04/11/1 says, it is public knowledge that we will hold an inquiry into Sewel motions. Pressure has built up—perhaps not so much among MSPs as among concerned people outside the Parliament. People may not really understand how the Sewel motion process works, why it is used and how it relates to Westminster and to some of the issues in paragraphs 7 and 8. Members of the public who are watching the Parliament expect us to investigate Sewel motions. We should bear that in mind.

**The Convener:** We will investigate Sewel motions; the question is which of the options we start on first and not whether we investigate Sewel motions.

**Mark Ballard:** Yes, but the paper says:

“there is an expectation that the Committee will begin this inquiry before the end of this year.”

**The Convener:** It is a long time before the end of the year.

**Karen Gillon (Clydesdale) (Lab):** I do not know where that expectation comes from. It is not the most pressing concern that has been brought to my attention—in fact, nobody has raised the issue with me. The issue of private bills has been raised, however. Given the length of time that it takes for a new rail link to be put in place and given the number of major transport infrastructure projects that are being planned, the danger is that the whole system could grind to a halt if we do not sort the procedures out. The present system is not working and it is taking up an awful lot of members' time. We need to get something sorted out so that we can progress effectively the public works proposals that will come before the Parliament in the next six to 12 months. Unless we do that sooner rather than later, we will be unable to undertake those bills, because we will not have a sufficient number of members to carry them forward. I think that an inquiry into private bills procedures should be our priority.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I agree. Even some of the papers that have been distributed to members on the issue—particularly the article that highlights the public's concerns about the process—suggest that the private bills process is a joke. The private bills that have gone or are going through the parliamentary process seem to me to be planning issues that

should be dealt with locally, through either a local public inquiry or some other mechanism. We need to get into the nuts and bolts of the private bills process and find a better system, with which the public feel comfortable and in which they can have their full say. Current procedures seem to prevent members of the public from having their say. Our next inquiry should be into private bills procedures.

**Mr Jamie McGrigor (Highlands and Islands) (Con):** I agree with what Cathie Craigie has said on the subject.

**The Convener:** I welcome Linda Fabiani to the meeting. Although I do not want to drop you into the debate at such short notice, Linda, I wonder whether you have anything to add.

**Linda Fabiani (Central Scotland) (SNP):** No. It is lovely to be here and I will just listen to the experienced people.

**The Convener:** A majority of members seems to be in favour of the private bills procedures being the subject of our next inquiry. We would start it in September when we return after the summer recess. That would not rule out an inquiry into Sewel motions, however, on which, as previously indicated, we can start before the end of the year if we are so minded.

The paper sets out two options for an inquiry into the private bills procedure. The first is that we take a fairly wide approach, which I think is what Cathie Craigie suggested. Under that option, we would consider whether private bills should be used to enable major public works. The second option is for a narrow inquiry on the existing rules of the private bills procedure. I think that the way in which we want to proceed is to hold a full review of whether private bills are the right way of dealing with public works, as outlined in paragraph 15 of the paper. Do members agree?

*Members indicated agreement.*

**Mr McGrigor:** What about the annex?

**The Convener:** I was just about to come to it. Annex A sets out the possible minor inquiries that we could undertake in parallel to our next major inquiry. Does any member have a comment to make on the various issues that are listed in annex A?

**Karen Gillon:** I am becoming increasingly concerned about the way in which members are using the public petitions process in an inappropriate way. The point of that process is for members of the public to be able to petition the Parliament. Members have a wide range and variety of ways in which to make their views known—ways that are not open to the public. If an issue is important to a local community, a member of the public, not an MSP, should submit a petition on it. We need to look into the issue and deal with it quickly.

**Mr McGrigor:** The issue that relates to policy memorandums, which is set out on page 7 of the paper, is important. Consideration of a bill should cover the expected impact of the legislation on economic growth. The issue should be thought through before legislation is introduced.

**The Convener:** Personally, I would rather examine the issues in the round, instead of considering just one small aspect of policy memorandums. I would prefer to have a more general inquiry on accompanying documents for bills as we consider various parts of the legislative process over the coming years. The issue of policy memorandums would form part of a major inquiry rather than be the subject of a minor one. We might wish to consider other issues at the same time.

**Karen Gillon:** We have to do the commissioner for public appointments stuff. We do not have any choice about that.

**The Convener:** I do not think that there is an immediate need to do that. As soon as we establish from the commissioner that we need to do that work, we will ensure that time is found for it.

Are members also content that we commence a minor inquiry into the issues raised with us by the Public Petitions Committee?

*Members indicated agreement.*

**The Convener:** There is one more matter under the work programme: whether we wish to have an away day at some point. I do not think that we will have one over the summer recess. Members of the procedures clerking team are heavily involved in a lot of the preparatory work for the move down to Holyrood and it would be unfair to expect them also to organise an away day for us. If members think that there would be benefit in having an away day at some later point in the year, possibly during the October recess, we can consider having one. We might also wish to think about having training on questioning techniques as part of that.

**Karen Gillon:** I wonder whether it would be worth doing that as a first meeting after the recess. That could give us the chance to have some time away, to think about what we are doing, to get some focus for the year ahead and then to get on with it, rather than starting with meetings and then stopping and re-evaluating where we are.

**The Convener:** Are you suggesting that, instead of having a meeting on 14 September, we have an away day?

**Karen Gillon:** Yes.

**Richard Baker:** I have an Enterprise and Culture Committee meeting that afternoon. Will a whole day be involved?

**The Convener:** I have a Local Government and Transport Committee meeting. It would be difficult for me, too.

**Cathie Craigie:** What about just having an away morning?

**Karen Gillon:** Yes—an away morning.

**The Convener:** An away morning? Well—

**Linda Fabiani:** The day before—

**Karen Gillon:** Perhaps the Monday and the Tuesday.

**Cathie Craigie:** Would that be Monday 13 September?

**The Convener:** Yes, it would be Monday 13 September. Before I commit myself, I had better just check that I am not due to go away somewhere.

What topics might we wish to consider? It would be useful to have a briefing session on private bills. That would be a factual, information-gathering session. Do members also wish to undertake the seminar that has been offered on questioning techniques?

**Richard Baker:** How long is the seminar? How much of the day would it take up?

**The Convener:** The options are either a half day or a whole day, but I suspect that we could stretch or reduce that, depending on how much time is available.

**Richard Baker:** I think that a half day would be fine.

**The Convener:** So we do not want any more than a half day on that.

**Richard Baker:** Absolutely.

**Karen Gillon:** Would it be possible to have a forward look to the year ahead, so that we could plan through to the next summer recess?

**Mark Ballard:** I agree with Karen Gillon. We need to think about how we will deal with the options for Sewel motions. We will also need to consider the review of the parliamentary week, which will link into what we are doing on question time and First Minister's question time. We need to think about the process, rather than about what we will actually come out with.

**The Convener:** I ask members to e-mail any other suggestions to me or to the clerk before the start of the recess. We could send out a draft programme during the recess. Members will be able to have a look at it then and make any further suggestions. Are members content with that?

*Members indicated agreement.*

## Bills (Timescales and Stages)

10:29

**The Convener:** Agenda item 2 is on the issues arising from our inquiry into the timescales and stages of bills. We have a number of interrelating documents, but the key one is paper PR/S2/04/11/17, which was circulated at the previous meeting and which is a list of issues that were raised during the inquiry. The present paper is a slightly extended version of the one that was circulated previously. A number of the other papers tie into parts of that paper. I suggest that we go through the questions in paper PR/S2/04/11/17 to get preliminary ideas and views on the issues. Where appropriate, we will consider the wider options that are contained in the back-up papers. Are members content that that is the best way of dealing with the matter?

*Members indicated agreement.*

**The Convener:** I suggest that we try to complete this agenda item by 11.30 am at the latest to give us time to consider our report on members' bills. If we do not get through everything, we can come back to the issue at our first meeting after the summer recess.

The first section of the paper contains four bullet points on the pre-legislative stage. Do members have any comments?

**Cathie Craigie:** On the first bullet point, I do not think that we can prescribe how committees should set up their work programmes. We will have to reflect on the issue, but some people have suggested to us that pre-legislative work is useful, whether it is done through briefings or taking evidence. However, certain work depends on whether a draft bill has been published. We cannot prescribe that committees should do pre-legislative work. Perhaps referring to good practice is the most that we can do. I feel that such work has been useful in considering the bills with which I have been involved. The work is for the benefit of members—it is like a training exercise to allow members to get to know the issues that they will consider later in the process.

**Richard Baker:** Some pre-legislative work takes place already. In this session, the Enterprise and Culture Committee has taken briefings from officials on a range of issues, although that has been for inquiries, not legislation. That work has been helpful. What I take from the evidence is that we should encourage committees to engage more in issues before they deal with bills at stage 1. However, as Cathie Craigie said, we cannot be prescriptive. Perhaps we can suggest a number of ways in which committees might work—for example, a committee might designate a small

group of members to consider the issues before a bill gets to stage 1. We should suggest that committees should not only consider briefings from officials, but sift through the major evidence that the Executive has taken. We should not be prescriptive, but we should certainly encourage.

I am not convinced that pre-legislative work will always reduce the time that is needed for a stage 1 inquiry, although it might do so in some circumstances. We do not want to be prescriptive about that timescale issue, but I would like to encourage committees to engage in more pre-legislative work. I take on board Ross Finnie's point that, although considering draft bills can sometimes be helpful, it could mean framing a debate too early or setting things in stone. The Enterprise and Culture Committee has experienced that to some extent with the draft bill on the merger of the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council. We do not want to be too fluffy about the matter—we want to give direction, but at the same time say that, although pre-legislative work can be useful, that is not the case in every circumstance.

**Karen Gillon:** I have worries about the issue because committees have to do what they think is right. We have to get the balance right between the committees' role in considering legislation and their role in dealing with their own agenda, such as inquiries and other work. If, in effect, we introduced another stage in the legislative programme, that would further curtail what committees can do independently of the legislative programme.

I have not been on a committee that has not taken a briefing from Executive officials before handling a bill. I have not been on a committee that has not looked at the evidence that has been presented to the Executive in the consultation process. That happens. However, I would be slightly wary of a committee getting involved in the formal pre-legislative scrutiny.

There is a role for committees in being independent from the Executive and that role comes at stage 1. I am wary of the suggestion that is made in some of the evidence that a committee should become a formal consultee in the pre-legislative scrutiny. That role could compromise the committee's role at stage 1. We can report what we have been told, give examples of when people have said that the more formal role has been helpful and suggest good practice, but we should not go any further than that.

**Linda Fabiani:** I concur with that, convener.

**Mark Ballard:** Quite a lot of our witnesses felt that there should be more pre-legislative scrutiny by committees, but that did not crystallise into any

specific suggestions. Before agreeing to anything, I would want to see some suggestions of how that could be done so that we could assess it. We have identified a problem but no specific solutions.

**Cathie Craigie:** It must be for each committee to make that decision. I remember the experience of the Social Justice Committee—Linda Fabiani was also on that committee—during the passage of the Housing (Scotland) Bill. The bill was published in draft form and the committee took the opportunity to go out and speak to people about it. That was helpful for committee members and, when the bill was introduced, we were ready to run because we were well aware of the issues that were important not only to tenants but to the professional organisations that had responded. Such involvement is useful, but the decision has to be made taking into account the legislation that is coming before the committee and the views of the individual members.

**Richard Baker:** Reflecting on the evidence that we have received, we could say that greater pre-legislative scrutiny by committees could be useful and could be seen as best practice, although it would be up to each committee to decide whether and how it wanted to do that.

**Cathie Craigie:** From experience, I do not think that a committee would be compromised by undertaking such scrutiny.

**Linda Fabiani:** I am wary of using the phrase "best practice". If it is up to each committee to decide what to do but we say that a particular course of action is best practice, we are accusing a committee that does not follow that course of action of not following best practice. That can bring its own problems.

**Karen Gillon:** I was going to make that point. There is also a difference between scrutinising a draft bill and taking part in a consultation process. With a draft bill, a committee knows what is being proposed, whereas a consultation process is about forming the bones of the bill and, in that case, it should be for everyone to decide the correct approach.

**The Convener:** I think that we have a fairly clear steer on the first three bullet points on the list of issues at the pre-legislative stage. Do we want to make any comment on the publishing of draft bills?

**Karen Gillon:** It should be considered on a case-by-case basis.

**The Convener:** Okay. Let us move on to the section on stage 1. I draw members' attention to committee paper PR/S2/04/11/3, which gives some averages for the time that has been taken by committees in getting written evidence. Do members have any comments on the section on stage 1?



**Mr McGrigor:** The first bullet point asks:

"Should there be a mandatory or advisory minimum duration for Stage 1 – either in a Rule or in guidance?"

Surely that depends on how much evidence comes in. That is why I think that the duration should not be mandatory. It should be sufficiently flexible that it can be extended if there is a whole mass of stuff coming in and if there is a lot of comment on the bill. Equally, if there is not a great deal of interest in a debate, the period could be shortened. I am not sure how we could bring that about, but it is an important point. We are asked whether the timescales should be different for different types and sizes of bill, but we do not always know what the size of a bill will be—often we start with a proposal that ends up as an enormous piece of legislation.

**The Convener:** First, is anyone minded to suggest that there should be changes to the rules governing stage 1 timescales?

**Members:** No.

**The Convener:** Secondly, do we want to consider making recommendations on how committees should conduct inquiries? I do not want to use the phrase "best practice".

**Mark Ballard:** The second and third bullet points are more important than the first. The Scottish Council for Voluntary Organisations indicated specifically that it did not believe that there was enough time for the submission of written evidence. The time between the call for evidence and the deadline for submission varies widely—between 22 and 84 days. That may be a more important factor than the overall limit in ensuring that stage 1 is opened as widely as possible.

**Karen Gillon:** The bill for which the period between the call for evidence and the deadline for submission was shortest was the Education (Additional Support for Learning) (Scotland) Bill. However, there was no member who did not know in great detail the views that people held on the bill, despite the fact that the lead committee had only 22 days to take written evidence on it. The bill was one of the most controversial pieces of legislation considered by the Parliament and people made their views on it known to members. The paper does not take into account the fact that the Executive consultation on the draft bill ran right through from March 2003. The submissions that were made to that consultation were very similar to those that were made to the committee's consultation and to everything that I received during stages 1, 2 and 3 of the bill; the views expressed in those submissions were similar to the views of the people who were not happy when the bill was passed. To some extent, it does not matter how long we have to consider a bill, as members must make decisions.

**Mark Ballard:** People had 84 days to submit written evidence on the Antisocial Behaviour etc (Scotland) Bill. That is the same as the 12 weeks that we have asked members to set for their initial consultation with members' bills. If we want to get the views not just of members and of organisations that can respond within tight timescales—the usual suspects—we must recognise that longer periods for the submission of written evidence and consultation are needed. Most members knew the position that they would take on the Prohibition of Smoking in Regulated Areas (Scotland) Bill, but 71 days were allowed for the submission of written evidence on that bill.

**The Convener:** The Antisocial Behaviour etc (Scotland) Bill is slightly different from the Education (Additional Support for Learning) (Scotland) Bill, as there were two, if not three, secondary committees on the former bill, all of which had to take evidence and complete their reports before 30 January. Although the lead committee took evidence up to that date, the Local Government and Transport Committee had taken written and oral evidence and submitted its report by 30 January. We must bear in mind the fact that we are not necessarily comparing like with like.

**Richard Baker:** I note some of the points that Jamie McGrigor has made about flexibility and not wanting to stipulate to committees what the arrangements for dealing with their business should be. We can recommend that committees should allow adequate time for consultation. However, it must be for committees to set their work programmes and to allow adequate time for consultation. We should say that there needs to be adequate time for consultation, but that the evidence that we have taken suggests that the committees will have to consider different amounts of evidence for every bill. There may be more or fewer secondary committees, so each occasion is different.

**The Convener:** Decisions will depend on issues such as whether a draft bill, if there was one, was very different from the bill as introduced. Such factors have an impact on the amount of additional evidence that is needed. There has to be a case-by-case approach.

How we set the deadline for the end of stage 1 is perhaps more important. Currently, the Parliamentary Bureau allocates a bill to a committee and then determines a week later when stage 1 will be completed. Should we suggest that committees should be a little more involved in discussions with the bureau about a bill's timescale, to ensure that they have an input into decisions about how much time is needed for evidence taking?

10:45

**Cathie Craigie:** Do committee conveners and clerks discuss such matters with the Parliamentary Bureau?

**The Convener:** The convener discusses the matter, but I wondered whether the committee should have an input.

**Cathie Craigie:** Is it not one of the convener's roles to work with members of the committee and to make assumptions about their thinking on the basis of previous discussions? We heard evidence from committee conveners and the Minister for Parliamentary Business that there is flexibility for conveners to go back to the Parliamentary Bureau and say, "Look, there's a problem. We won't be able to manage." I do not think that anyone has given us an example of a committee's request for an extension to stage 1 being refused.

**Karen Gillon:** Politicians fill whatever space they have. If we have six months, we will fill six months and if we have three months, we will fill three months. Someone somewhere must set a deadline; if a committee considers that it has not been given enough time, it can make that case. That has been the system in the past and it seems to have worked relatively well. We should not try to fix something that is not broken.

**The Convener:** I do not share that view, but my view is obviously not shared by other members of the committee, so I will not press my case. I do not suggest that the Parliamentary Bureau should not set the timetable, but I think that it should at least wait a while before it does so to allow more time for discussion with committees than is currently the case.

**Linda Fabiani:** How does the current system work? I do not know. Did you say that the Parliamentary Bureau waits for a week before it sets the timetable?

**The Convener:** By and large, the Parliamentary Bureau sets the timetable the week after it allocates a bill to a lead committee.

**Linda Fabiani:** What happens during that week?

**The Convener:** Discussions take place with the clerks and the convener, but there is rarely an opportunity for a committee to have a full discussion about how much time it needs.

**Linda Fabiani:** Do conveners discuss that with their committees?

**The Convener:** That depends on whether the committee meets during that week. Quite often there is no meeting; that is the problem.

**Mr McGrigor:** Are you suggesting that committees should have more time to consider the timetable?

**The Convener:** I am suggesting that a committee should have the chance to meet at least once between its being designated as lead committee and the setting of the timetable by the Parliamentary Bureau, to discuss whether it wants—

**Linda Fabiani:** That might cause difficulties with timing. It would not be possible to stipulate a time, because that would depend on other—

**Karen Gillon:** Given that no one mentioned the issue in evidence, which is the line that we have drawn in the sand in the past, we cannot take a view on the matter.

**The Convener:** We can take a view.

**Karen Gillon:** I will remember that, convener.

**The Convener:** We can take a view on anything that falls within the remit of our inquiry, as this matter does. However, no other members share my view.

**Cathie Craigie:** It seems to be that your suggestion—

**Mr McGrigor:** I still do not know what the convener's view is.

**The Convener:** I thought that I had made that clear. My view is that a committee should have an opportunity to meet to discuss the timetable and offer its views to the Parliamentary Bureau before the bureau sets the timetable. At the moment, that does not necessarily happen.

**Mark Ballard:** That suggestion seems to be fair.

**Linda Fabiani:** The suggestion seems to be reasonable, but the practicalities would be difficult.

**Cathie Craigie:** Some committees meet fortnightly, so there could be further delays. The Procedures Committee is charged with trying to improve parliamentary processes so that members take decisions. One of the convener's roles, as well as being an impartial chair—as the convener pointed out—is to help to manage the committee's business. Committees have the opportunity to talk about their forward work programmes and timetables, as we did earlier. If we were dealing with legislation, that would have been flagged up to us and we would have discussed the matter. We might suggest that an extra week should be allowed, but the extra time needed might run to two or even three weeks. I do not think that there is a problem. Jamie McGrigor said that any decisions would be set in cement. However, evidence that we have received suggests that they are not set in cement and that we already have the flexibility that he seeks to be able to extend or shorten stage 1 consideration.

**The Convener:** I thank you for those comments. However, I think that we are having an extended

debate about an issue that I said I was not necessarily going to pursue, because there was no consensus in favour of the idea when I floated it.

The next bullet point, under the heading "Stage 1", concerns timescales for secondary committees to submit reports and for lead committees to consider them adequately.

**Karen Gillon:** There are genuine difficulties in that area. For a start, I do not think that there is enough consultation between lead committee conveners and committee clerks to determine how secondary committees will fit into the agenda. Indeed, if such consultation happens, no one knows about it. It becomes incredibly frustrating for both sides. For example, a committee might want to get through a bill and get on with the rest of its work but finds that it is tied because it is waiting for a report from a secondary committee. I know that lead committees do not have adequate time to consider secondary committees' reports because the dates do not add up. That situation is also incredibly frustrating for a secondary committee, which might have its own huge legislative work load and be getting pushed by a lead committee to deliver a report within an unrealistic timescale. We need to make some recommendations about timescales, because the whole problem comes down to individuals and the relationships between committees. If the system does not work, it simply does not work.

**Linda Fabiani:** That is true, and it leads us directly to what Stewart Stevenson said when he gave evidence. I cannot give specific examples, but I am familiar with situations in which a secondary committee's report has been paid no real attention at all, but has been simply tacked on as an appendix to the lead committee's report.

**The Convener:** Members have raised a valid concern. Indeed, a related issue is how we handle situations in which people give evidence on the same topic to more than one committee. Perhaps we need simply to recommend that everyone should work together better to sort out the role of secondary committees, to sort out evidence taking from witnesses when more than one committee is working on a bill and to sort out the timescales for receiving reports. Are members happy to say something about those matters in the report? I do not think that they require that standing orders be changed; we just need better practice.

*Members indicated agreement.*

**The Convener:** I now seek members' comments about the minimum period between the publication of the stage 1 report and the stage 1 debate.

**Karen Gillon:** I think that the period should be seven days. It is not fair to give members only a

night to think about their contributions to a stage 1 debate and to make balanced decisions on the evidence that the lead committee has taken. Such an approach is unrealistic and does not lead to good legislation.

**Linda Fabiani:** Of course, that seven-day period could be altered in emergencies.

**Karen Gillon:** Yes.

**The Convener:** We might find it difficult to formulate a rule change that would define that.

**Karen Gillon:** We could specify a period of five sitting days.

**The Convener:** That is not quite the problem. At the moment, the rules provide for the bureau to set a date for the completion of stage 1. However, a date for the stage 1 debate might not necessarily have been set at that point.

**Linda Fabiani:** Is there a rule that covers that situation?

**The Convener:** I will ask the clerk. Would the bureau be able to set a timetable stipulating that a committee must publish a report by a certain date?

**Andrew Mylne (Clerk):** Yes, I think so.

**The Convener:** So instead of setting a completion date for stage 1 consideration, the bureau could set a completion date for the report. It could then timetable the stage 1 debate no less than five sitting days, seven sitting days or whatever after the report's publication. Would that work?

**Andrew Mylne:** One practical difficulty is that the bureau might want to establish the date of the stage 1 debate in the business programme some time ahead and before the committee would be in a position to know for sure whether it would hit its publication target. Every committee has discovered that sometimes it is not known how many meetings it will take to agree a draft report. However, if the committee wants to pursue the idea, I will be very happy to work up a few thoughts on the matter.

**The Convener:** Clearly, there is a view that the present system is not satisfactory.

**Karen Gillon:** To be honest, there is no point in the inquiry if we cannot make the changes that people have asked us to make. That issue has come back time and again. We need to find a way of doing it.

**Andrew Mylne:** I will look into the issue.

**The Convener:** Are members agreed that we need to do that?

*Members indicated agreement.*

**The Convener:** The next issue is the minimum interval between stage 1 and stage 2. Given that,

for the most part, stage 2 consideration has started after a period that is considerably longer than the minimum period that is required, do we want to make any changes to that?

**Mark Ballard:** If we are considering extending stage 2 amendment deadlines, we may need to provide a greater gap between the stage 1 debate and the first stage 2 meeting to allow proper time for amendments to be lodged.

**The Convener:** I think that you are right, but we will consider that in paper PR/S2/04/11/4, which deals with stage 2 amendments. At the moment, we are considering what the gap between stages 1 and 2 should be in principle. We are considering not just whether to change the gap by a day or two to reflect the changes to amendment deadlines, but whether there needs to be a much longer gap than the present seven sitting days. For example, should the gap be twice as long as that? Are members content that, other than make a change to reflect the change to amendment deadlines, we do not need to change the gap between stages 1 and 2?

**Karen Gillon:** Changing the minimum gap to 10 sitting days would allow us to accommodate the amendment deadlines.

**The Convener:** We will consider the consequences of that when we come to consider changes to stage 2.

If there are no other comments on stage 1, let us move on to stage 2 and consider the first bullet point on the second page of paper PR/S2/04/11/17 on whether we want to make a comment on the pace of stage 2. The recommendations come slightly later on in the paper.

**Karen Gillon:** The issue is all about how “unreasonable” is defined. We all react differently to stage 2 debates. I love stage 2 because it really gets me going—which is quite sad, really. Stage 2 debates allow members to become involved in a much more detailed way, which gets the adrenaline pumping. There is a huge amount of pressure, but is that pressure unreasonable when it is partly what the job is about? However, whether unreasonable pressure is put on clerks and Executive officials is an issue that we need to consider in the wider context.

**Cathie Craigie:** I agree with Karen Gillon. I like stage 2 debates and the pressure that they put on us and I get the feeling that the clerks and the civil servants quite like them, too. Perhaps they put up a good front and pretend otherwise, but there is something exciting about having to work to such a tight timescale. After members have worked on a bill for a long time, stage 2 provides an opportunity to make the changes that members feel can improve it. I think that all members feel that way.

I do not know whether it is reasonable for employers to put such pressure on staff. We never really got round to asking the staff whether unreasonable pressure was put on them. There are better ways in which to manage the process, which we will come to later. We need not interfere too much with the interval between stages 1 and 2.

**The Convener:** In our consideration of such matters, we have a tendency to look inwards by considering only the effect on members and staff. We must also think about people outside Parliament who have an interest in legislation. Sometimes such people have been involved in the process for two years and have participated in various consultations, but suddenly—whack!—they find that stage 2 goes bang, bang, bang. I am not saying that we necessarily need to make changes to the timescale, but we need to bear in mind the fact that that may be an area of public concern.

**Cathie Craigie:** Once a bill is published, organisations often know what amendments they need to make. By stage 2, they have already had time to think up amendments. The difficulty lies in whether organisations are able to get into gear to lodge their amendments at the right time.

**The Convener:** I accept that outside bodies know the key amendments that they want to lodge, but they also want to be able to respond to amendments that others have lodged. That is where the timescale issues impact on outside bodies. At certain stages in the process, outside bodies simply do not have sufficient time to consider the overall picture and to keep themselves informed of the situation and members informed of their concerns.

11:00

**Mark Ballard:** The point about keeping members informed is vital. One of the things that I have heard said a lot in this committee is that we need to move beyond the usual suspects. The kind of timetable that we have been discussing might be fine for organisations that have full-time staff, but there is a big issue about how people who are not full time or who work for voluntary organisations can interact with Parliament if there is a short timetable.

**Karen Gillon:** Maybe I have just been lucky, but I have never gone into a committee not knowing the arguments on both sides of a debate around big amendments. The process might put pressure on organisations, but they certainly get to MSPs and they know what buttons to push. I do not buy the suggestion that organisations are not able to influence legislation, although I accept that they might not like what we do.

I would love to get beyond the usual suspects because I am not convinced that the umbrella organisations always represent the people whom they say that they represent. However, it is not realistic to do that at stage 2. At that stage, decisions have to be made. The time to reach out to organisations other than the usual suspects is during stage 1, during the bill's consultation period and during our day-to-day work as MSPs. If we do that at stage 2, however, we would never make decisions and legislation would take four years to get through Parliament.

**Linda Fabiani:** I have not heard any of the evidence, so all that I can do is consider what is set out in our papers. It is interesting to note that everyone who has responded, apart from Patricia Ferguson, has said that there is not enough time, although Ross Finnie said the opposite, which simply shows that there is a split in the Executive.

Although I understand what Karen Gillon says—I feel that way myself sometimes—the hard evidence that we are faced with is that people find the timescale to be a problem. We should be moving away from how the process feels for members and clerks and thinking about how it feels for the other people whom we want to involve.

Karen Gillon said earlier that work expands to fill the space when a process is stretched out. That is a danger and we have to be careful in that regard. However, evidence that we have been given suggests that the process is not quite perfect and that some work should be done on it.

**Karen Gillon:** The process is not perfect, but unless committees decide to extend the legislative process by meeting fortnightly to consider amendments, we will not be able to deal with those concerns. If people think that that is what we should do, we will have to make that call. However, it is not realistic or honest of us to say that we will meet fortnightly during stage 2. That would not be good for the legislative process.

**Cathie Craigie:** Members who are dealing with amendments will be aware of the various sides of arguments because they will have heard the evidence and been lobbied through letters, e-mails and so on. MSPs are elected to make decisions and must do so based on evidence that they have received and their experiences. The buck stops with the members.

**Linda Fabiani:** The papers that are before us show, however, that many members are saying that the lack of time makes the process difficult.

**The Convener:** The changes that we propose in relation to extending slightly the lodging deadlines for amendments will make a big difference to the process. It would not be reasonable to suggest that committees meet only once a fortnight during

stage 2; that would simply confuse the process even more. I hope that the committee will agree to the suggestion that those slight changes be made.

**Mark Ballard:** Rather than have committees meet fortnightly, we should do what is suggested in the fourth bullet point, to which the convener was probably going to come: we should give committees more control over the timescale so that they can take more time to cope with the problems that Stewart Stevenson raised; for example, their being unable to process amendments in the time they have been given.

**The Convener:** If significantly more amendments to a bill are lodged than was originally expected, the Parliamentary Bureau has to consider sympathetically any request to extend the deadline for completing stage 2, but I am not convinced that that necessitates any change to standing orders. If a committee is deeply concerned about its not having enough time to consider amendments, it should simply approach the Parliamentary Bureau to say that that is a problem.

The problem is that members often do not lodge amendments as early as they could; it therefore becomes more difficult to judge how long it will take to consider them. For one bill that Parliament has considered, about 100 amendments were lodged on the last lodging day before the final day for consideration of stage 2 amendments; it would have been a bit unreasonable to expect the Parliamentary Bureau to give the committee another two weeks to deal with them.

**Karen Gillon:** We do not want the lodging of amendments to become a way in which to wreck a bill, which can happen at Westminster. If we allow that to happen and we say that a committee must be flexible enough to respond to however many amendments are lodged by whomever whenever, bills will be wrecked. The Protection of Wild Mammals (Scotland) Bill, for example, would never have been passed in such circumstances.

**The Convener:** That is a valid point. Let us move on.

On committees taking evidence on amendments at stage 2, the power exists for them to do that, so we do not need to say anything other than that committees should remember that they have that power if they need to use it.

The suggestion that committees should not meet more than once per week at stage 2 is probably better dealt with by the suggestion that we have a single lodging deadline.

**Cathie Craigie:** Yes. When the Communities Committee was considering stage 2 amendments on the Antisocial Behaviour etc (Scotland) Bill, it agreed to meet all day one day, but Parliament

met for the First Minister's statement on the explosion in the Stockline Plastics factory, and we could not suspend the committee. We had to close the meeting and start a new committee meeting in the afternoon, and the staff had to go away and reprint the marshalled list and do some more work. That situation is just stupid. If committees require to meet once, twice or three times a week when they are considering bills, that is for them to decide, but there should be a mechanism whereby one meeting can be called, all the paperwork be made available and that meeting be suspended and reconvened. That is how all the members of the Communities Committee feel: not being fully versed in Parliament's standing orders, we all could not believe that we could not suspend the meeting for half an hour and return.

**The Convener:** That point is noted and I am sure that it will be reflected in the report.

We have already discussed the fourth bullet point, so I draw members' attention to paper PR/S2/04/11/4, which has a series of options for how lodging of amendments should be dealt with. It might be useful for us quickly to go through the paper page by page and then to consider the options.

**Cathie Craigie:** Do we need to go through the paper page by page? The next three bullet points in paper PR/S2/04/11/17 address all of paper PR/S2/04/11/4. Could we not come back to paper PR/S2/04/11/4 later?

**The Convener:** There are a number of options for the minimum notice period; it would be helpful if we could make a decision on those options.

**Cathie Craigie:** We will probably get tied down in discussing the options before we make a decision.

**The Convener:** One of the options is that there be "no change".

**Cathie Craigie:** Well, there you go.

**The Convener:** I do not want to spend a lot of time on the matter, but we need to go through the paper to see whether there are any queries. It is important that we make a decision on the options. I am fairly clear about the one that I want to go for.

**Mr McGrigor:** I am unclear about what is meant by the first bullet point in paragraph 14 on page 3, on non-Executive members.

**Karen Gillon:** At the moment, two and a half days are available to consider Executive amendments, which are lodged five days before a stage 2 meeting. If we move the deadline back by one day, there will be only one and a half days available, unless the Executive moves its deadline back by one day. It will not do that, because it would then have to lodge its amendments before

the debate on the previous sections—nobody would do that; it would be stupid. There would therefore be less time to consider the implications of Executive amendments before a member lodged his or her amendments. However, I guess that most people know what amendments they will lodge anyway.

**Mark Ballard:** On the third bullet point in paragraph 14 on page 3—

**Mr McGrigor:** Do you mean the one that says

"Members may not get access to the groupings until late in the day before the Stage 2 meeting (which may begin in the morning)"?

**Mark Ballard:** Yes.

**Karen Gillon:** That is true. It is a fact.

**The Convener:** Yes. It is one of the issues about which I am concerned. We do not have sufficient time to see the marshalled list and the groupings before the debate. I hope that we can solve that problem.

We should move on to page 9, read through the options and see whether we can reach agreement—preferably about which option we prefer, but we should certainly knock out some of the options. Option 1 is certainly knocked out. Option 2 is to increase to three days the notice period for the first day of stage 2. I do not think that that is an option. Option 3 is to change to three days the notice period for each day of stage 2. Another option makes a slight adjustment to that by increasing to four days the notice period for the first day of stage 3 and to three days thereafter. Is anyone interested in that?

**Linda Fabiani:** That would cause confusion.

**The Convener:** I agree.

**Mark Ballard:** The letter that we received from the Health Committee suggests four days rather than three days.

**Karen Gillon:** Would that mean that amendments would have to be considered on the same day as the Executive lodged its amendments?

**Andrew Mylne:** There are disadvantages in having a four-day notice period as a matter of course if the committee is meeting weekly. As I said in the paper, that would cause significant difficulties. The suggestion in the paper is to increase the notice period to four days only for the first day of stage 2—for which the bulk of amendments tend to be lodged—and where there is no previous committee meeting a week before stage 2. Obviously, the decision is up to the committee.

**The Convener:** Do we agree to stick to three days for all stages?

**Members indicated agreement.**

**The Convener:** That raises an issue that we referred to earlier. Should the interval between stage 1 and stage 2 be increased, either from seven days to eight days or by another week, from seven days to 12 days?

**Karen Gillon:** I do not think that it should be 12 days.

**The Convener:** Should we choose option 4A?

**Karen Gillon:** My suggestion was 10 days. Is that not an option?

**The Convener:** There is something about the sitting patterns—

**Andrew Mylne:** The reason for the proposed number of sitting days relates to the number of weekends in between. Given the normal sitting pattern of when meetings of the Parliament and committee meetings take place, if you want to increase the interval you will—to be realistic—have to increase the period by a whole week. If it was to be increased only by one, two or three days, you would create anomalies in respect of when committees sit and the weeks in which they could do things. In some ways it is easier to think of the interval in terms of weeks, rather than days, although the wording of the rule in standing orders refers to sitting days.

11:15

**Mr McGrigor:** Is a sitting day a working day, or is it a day when Parliament sits?

**The Convener:** Sitting days are Monday to Friday.

**Karen Gillon:** So 10 days means two weeks.

**The Convener:** Yes, but if Parliament meets on a Thursday and a committee meets on a Tuesday, an interval of 10 sitting days takes you through to the Thursday two weeks later, not the Tuesday two weeks later, which means that it is three weeks before the committee can meet.

**Richard Baker:** But eight days takes you to two weeks anyway.

**Karen Gillon:** That is fine. We do not want to go to 12 days.

**The Convener:** Paragraph 26 of paper PR/S2/04/11/4 explains it. We will go for eight days.

The next question is whether we want the deadline on the final lodging day to be noon.

**Karen Gillon:** Yes, because that will make it easier to produce marshalled lists and groupings, which are what people want.

**Cathie Craigie:** I do not know whether it is appropriate for the Procedures Committee to be

involved in this, but no parliamentary rules prescribe how the marshalled list should be published. One amendment in a group might be on page 1 of the marshalled list, but another amendment in the group might be on page 98. Instead of having separate marshalled lists and groupings, we should publish the groupings with the amendments in the group printed underneath. There is overwhelming support for that among members.

**The Convener:** There are a number of issues about how amendments are made available and published. We can include a number of suggestions in the report. We do not need to make changes to standing orders; some changes just require changes in practice. Making marshalled lists and groupings available as early as possible would be helpful.

**Cathie Craigie:** Are people who are in the gallery for stage 3 given copies of the marshalled list and groupings list if they wish them?

**Andrew Mylne:** There are difficulties with that because of copyright issues, but that is really a matter for participation services; it is not something with which we deal.

**Cathie Craigie:** I imagine that it must be a nightmare for people from professional organisations who have been involved in the process if they have to sit in the gallery with their papers on their knees and follow what is happening. The public should be able to track our progress, as that would improve communication with them.

**The Convener:** Marshalled lists are available on the Parliament's website, as are bills. Groupings need to be published somewhere so that people are aware of them. I would have thought that the best place to do so would be the *Business Bulletin*.

**Cathie Craigie:** If this is not an issue that we can deal with, can we raise it as a committee, or can Andrew Mylne raise it in discussions with the clerking teams?

**Andrew Mylne:** Discussions are going on with relevant clerking staff about ways of improving the presentation of material. The aim is to bring ideas back to the committee. The issue has to be dealt with at administrative level for practical reasons.

**Mark Ballard:** Is there a reason why we do not get this in the *Business Bulletin* on the day of stage 3? People have asked me why other amendments and material go in the *Business Bulletin*—sometimes at great length—but this does not.

**The Convener:** Do you mean the groupings list?

**Mark Ballard:** Yes.

**The Convener:** I have never understood why the groupings list is not included in the *Business Bulletin*, particularly for stage 3. It should also be included for stage 2.

**Cathie Craigie:** That information is not published in the *Business Bulletin* probably only because of the timing, as sometimes it is not available until the morning of the committee meeting. Linda Fabiani will remember that when we were doing the Housing (Scotland) Bill, it was 8 o'clock in the morning before members were able to pick up the marshalled list. If we are bringing forward the process a wee bit and having a 12 o'clock deadline, staff will be able to work on the amendments for three or four hours and there might be an opportunity for that information to be published in the *Business Bulletin*.

**The Convener:** Those points are noted. Can I have confirmation that the committee supports option 6, which is that a second or third stage 2 meeting in any particular week should be treated as a continuation of the first?

**Members indicated agreement.**

**Karen Gillon:** Have we agreed to options 5 and 6?

**The Convener:** Yes.

**Karen Gillon:** Good.

**The Convener:** The final bullet point on stage 2 is about whether there should be a formal opportunity for committees to review the bill as amended before it goes to stage 3.

**Cathie Craigie:** I do not think that we need to have that. When the committee is going through the bill, it has the opportunity to review each section when it is being agreed to. In my experience, few members have taken the opportunity to debate sections again but, as I understand it, they have the opportunity.

**The Convener:** Giving committees a formal opportunity to review might affect issues such as the time between the stages. That is the only issue.

**Mark Ballard:** It seems to be logical that if the Finance Committee can feed into the bill at the start of the process, it should have an opportunity—rather than a requirement—to have another look at the implications of amendments that have been made at stage 2. I can see the argument against making it a requirement that committees review the entire bill after it is amended at stage 2, but I do not see what is wrong with giving them an opportunity to do that if they choose to, especially given how complex stage 2 processes are, as Stewart Stevenson described.

**The Convener:** We are not considering making changes to standing orders. We are simply saying that committees—

**Karen Gillon:** Can if they want to.

**The Convener:** Yes. We are saying that committees can review the bill after stage 2 if they want to.

That raises the question whether the interval between stage 2 and stage 3, which is currently nine sitting days, is sufficient or whether it should be amended.

**Karen Gillon:** It is sufficient.

**The Convener:** The general view seems to be that nine days is sufficient. It is usually exceeded in any case, so it is unusual for there to be only nine sitting days between the two stages. Are members happy to leave that interval as it stands?

**Members indicated agreement.**

**Linda Fabiani:** Are we dealing with the point on the Finance Committee?

**The Convener:** The decision is that we will indicate that committees should have an opportunity to review the bill, but we are not going to make it a formal requirement.

**Linda Fabiani:** Okay.

**The Convener:** We move on to discuss stage 3. The first issue is whether we should change the notice period for amendments at stage 3. I refer members back to paper PR/S2/04/11/4, which contains our options. Do we want to leave the notice period for amendments at stage 3 at three days or do we want to extend it to four? Four days would give more time for publication of the marshalled list.

**Karen Gillon:** We need to go to four days in order to allow the marshalled list to be published.

**The Convener:** That is particularly important at stage 3 because the amendments at that stage are selected and members do not know what amendments have been selected until the marshalled list has been published. Are we agreed that we should extend the notice period to four days?

**Mark Ballard:** Given that there would be only four sitting days between stage 2 and stage 3 if a bill is unamended, having a notice period of four sitting days for stage 3 amendments might cause a problem. If we are extending one period, should we not extend the other?

**The Convener:** That is an important point. We shall come on to that when we discuss option 8. The suggestion is that we should just remove the present four-day limit for unamended bills and have a single deadline.



**Karen Gillon:** There has never been a bill that went through unamended.

**The Convener:** I think that my bill, the University of St Andrews (Postgraduate Medical Degrees) Bill, was unamended at stage 2.

**Andrew Mylne:** A number of smaller bills have gone through unamended—at both stages, in some cases.

**The Convener:** I suggest that we go for the option of having a single deadline for all bills, whether they are amended or not. If there is a need to get a bill through more quickly than that, standing orders can always be suspended. Is that agreed?

*Members indicated agreement.*

**The Convener:** Do we also wish to move the lodging deadline for stage 3 amendments from 4.30 pm to 2 pm?

**Karen Gillon:** Yes.

**The Convener:** Is that agreed?

*Members indicated agreement.*

**The Convener:** We have sorted all the issues to do with amendments. We now move on to the other stage 3 issues, and the first question that we must consider is whether enough time is allowed overall for consideration of stage 3 amendments. I think that that depends on the bill in question—how long is a piece of string? Do members have any comments?

**Mark Ballard:** Six-party politics will create more and more of a problem.

**Linda Fabiani:** Oh dear.

**The Convener:** There might be seven parties after the end of this week. Who knows?

**Mark Ballard:** There will be an increasing problem with the final stage 3 debate being only half an hour long if all six parties in the chamber want to get a cut at it. There must be a fair proportion of time available for all the parties so that the smaller parties do not get a disproportionate time, so we will need a longer time for the debate. Stage 3 of the Antisocial Behaviour etc (Scotland) Bill, which we all sat through, provided a good example of there simply not being enough time. I felt that that was particularly true in the case of the amendments in the name of Paul Martin; there was not really enough time to find out what those amendments were really about, so they did not get enough consideration.

**Cathie Craigie:** Thank you for raising that point. I thought that it was totally unfair that, during the open debate on the Antisocial Behaviour etc (Scotland) Bill, back benchers were allowed to

come in despite not having moved an amendment or said a word all day. I am also talking about the Green and Scottish Socialist Party members. They had not lodged any amendments, yet they were allowed to participate in the open debate—they are just back benchers, the same as me. Regardless of their party, they are competing for time against the Executive and the front-bench spokespersons from the major parties. However, Parliament always has the opportunity to extend the debate. If we had wanted to sit until 7 o'clock or half past 7 on Thursday, we could have moved to extend the debate until that time. If there is flexibility to do that, people will do it.

The Housing (Scotland) Bill was a huge piece of legislation, and the committee that was handling it felt strongly that stage 3 should take place over two parliamentary days rather than one. I cannot remember how much time was allowed for the open debate at the end, but I do not remember feeling aggrieved that we had cut the time short in any way. I do not think that there is a will among members to extend stage 3 debates any further. However, we should maintain our right to be able to move a motion without notice to extend the debate if necessary. My complaint was about not being able to speak in the open debate, but that decision rests with the Presiding Officer, and back benchers of all parties are treated in the same way.

**Karen Gillon:** I find it slightly frustrating when we get amendments at stage 3 that are not debated. I do not know how we can legislate for that, but I do not think that we should be voting on amendments on which there has been no argument. We need to find a way of having that debate, and if it means that we have to move the timetable by 15 minutes to allow those amendments at least to be moved and spoken to, that will let us know the policy intention behind an amendment before we vote on it. At the moment, we are in the ridiculous position of voting on amendments that nobody has spoken to, and I just do not think that that is right.

11:30

**Linda Fabiani:** That is one of the issues that I intended to raise. I, too, find reaching the cut-off point frustrating. I keep harking back to the Housing (Scotland) Bill, but I remember that I felt hard done by because members were voting on an amendment to that bill that I felt was terribly important—perhaps nobody would have agreed—and that I believed they had misunderstood because we had not had time to talk about it. I do not know whether the committee's discussions and evidence have covered that matter.

Mark Ballard talked about the open debate time at the end of stage 3. Regardless of the number of

parties or anything else, that debate usually lasts half an hour, which is limiting on speakers, no matter what party they belong to. In the short time that I have attended the Parliamentary Bureau in Bruce Crawford's place, I have noted two requests, which were made last week, to extend time for debate at the end of stage 3. I requested extended time to debate the Local Governance (Scotland) Bill. That request came directly from members of my party who want to speak in that debate, but it looks as if nobody will have the opportunity to speak, apart from those who have lodged amendments and are taking the lead.

**Richard Baker:** I take on board the points about the open debate, but I think that a priority has to be the fact that we vote on amendments to which no one has spoken, which came as a surprise to me when I was elected.

At times, we debate amendments that do not seem important—that is a subjective opinion—whereas some serious issues are not allocated the right amount of time. I note that the Presiding Officer has said that it might be difficult to give the Presiding Officers the flexibility to determine timing. As Karen Gillon said, it might be difficult to legislate for that. However, we need to flag up and tackle those matters.

**Karen Gillon:** The one person who can do something about the issue is the Presiding Officer. If five minutes at least were allocated to each amendment, that would allow every amendment to be spoken to. The timetable could allow for that. We should not end up with no speaker in one debate because a long debate earlier had an extra speaker. Somebody, somewhere must make the hard decision. If that means that we must change timetabling motions, that is what we will have to do.

Half an hour is far too short for the open debate at stage 3. We spend much time reaching that point, yet people who feel strongly about a bill—as Cathie Craigie and Johann Lamont did about the Antisocial Behaviour etc (Scotland) Bill—are not all called to speak. In no situation will everybody have the opportunity to speak, but half an hour is not realistic. Mark Ballard thinks that his situation is bad, but after time has been allowed for two ministers to speak, only one other member of an Executive party can speak. We should recommend that that debate should last an hour.

**Linda Fabiani:** As a minimum.

**Karen Gillon:** Yes.

**The Convener:** That time would not always be needed for every bill, because with some fairly minor bills, nobody has anything to say by the end of stage 3. However, Karen Gillon is right that an hour is more reasonable than half an hour for discussing most major pieces of legislation.

**Cathie Craigie:** Perhaps we would not need to stipulate that in standing orders; we could just make a recommendation to the bureau.

**The Convener:** The time for the open debate is not specified in standing orders, but we will recommend to the bureau that the time for the debate should normally be at least an hour.

The Antisocial Behaviour etc (Scotland) Bill is a bad example. I feel that the bureau should have allocated an extra half day to that bill, as it was clear that it would be a struggle to fit it into one day.

**Cathie Craigie:** The bill should have been given three weeks, so that we could all speak about it.

**The Convener:** In relation to amendments, I draw members' attention to paper PR/S2/04/11/5, which is on timetabling motions.

**Karen Gillon:** I thought that the meeting was to stop at 11.30.

**The Convener:** We are pretty close to getting through the whole lot; we may do that in the next 10 minutes.

**Cathie Craigie:** Where are we?

**The Convener:** We are now looking at the bullet points at the top of page 3 of the note on the list of issues. On timetabling motions, there is a question mark over whether the procedure that was adopted last week when an extension of 15 minutes was granted was in order, but we will brush over that now.

**Karen Gillon:** We should change the rules so that such a procedure is in order.

**The Convener:** That is the key issue. Do we want to give flexibility to the Presiding Officer to allow some adjustment, do we want to change the rule or do we want to do both? Should there be the opportunity during the course of a day for a motion to be moved?

**Karen Gillon:** We have to do both.

**The Convener:** We will do both. That is agreed.

The final issue in this section is raised in PR/S2/04/11/6, which addresses whether there should be a gap between the debate on amendments and the motion to pass the bill.

Several options are outlined in the paper. One is that there should be no change and that we continue with the presumption that the debate follows immediately. The second option is that that presumption should be removed, which still allows the Parliamentary Bureau to timetable the debate as it sees fit. There are various other options. Do members agree to the first option, that there should be no change?

**Members:** Yes.

**The Convener:** I draw members' attention to the fact that the Subordinate Legislation Committee has made a strong recommendation that if a major change to subordinate legislation is made at stage 3, there should be a deferral of at least a week to allow that committee to consider the change. Do we support that proposal?

**Richard Baker:** When has that been a huge problem so far?

**The Convener:** PR/S2/04/11/8 gives a couple of examples of when such changes have been made at stage 3. The main example is the Land Reform (Scotland) Bill, in which additional powers were taken by ministers at stage 3.

**Mark Ballard:** What are Henry VIII powers?

**Karen Gillon:** You get your head chopped off.

**The Convener:** Ministers give themselves such powers to amend primary legislation by subordinate legislation, although the approval of Parliament is still required.

**Linda Fabiani:** Why are they called Henry VIII powers?

**The Convener:** I presume that it is because he was the first to use such a procedure.

**Linda Fabiani:** You would think that we would have found a better way by now.

**The Convener:** Are members content that there is no need to change the procedure with regard to subordinate legislation?

**Karen Gillon:** There is an issue. My experience is that subordinate legislation is the one part of the Executive's legislation that is very badly drafted—that continues to be a problem. If the Executive says that the use of those powers will be subject to affirmative resolution, I am relaxed about it, but some issues arise if their use will be subject to negative resolution. If we do not change standing orders, we must send a message to the Executive that we expect that it will use those powers only in extreme circumstances.

**The Convener:** Are members happy with that?

*Members indicated agreement.*

**The Convener:** There are three miscellaneous issues. The first is whether the Executive memorandum on delegated powers that is provided to the Subordinate Legislation Committee should be an accompanying document. The Executive is not very keen on that, but that does not mean that we should not require it. I am not convinced by the Executive's argument, because it must know whether there are subordinate legislation procedures in a bill—

**Linda Fabiani:** Can you clarify what that means?

**The Convener:** Currently, when a bill is referred to the Subordinate Legislation Committee, the Executive provides a memorandum on subordinate legislation provisions within the bill for that committee to consider. That committee has asked that that memorandum should become an accompanying document, like the policy memorandum and the financial memorandum, so that it has to be published with a bill.

The Executive suggests that that is not required and could cause problems, because such a memorandum is not needed if the bill is not referred to the Subordinate Legislation Committee, as it is only a bill that is referred to the Subordinate Legislation Committee that contains subordinate legislation powers. However, in the event that a bill is not referred to the Subordinate Legislation Committee, the memorandum could say simply that the bill contains no subordinate legislation powers, so I cannot see a problem.

**Linda Fabiani:** I do not see a problem, either.

**The Convener:** I suggest that we make that memorandum an accompanying document.

*Members indicated agreement.*

**The Convener:** Should the Executive also provide a revised memorandum at the end of stage 2? I think that it should.

*Members indicated agreement.*

**The Convener:** Should further information be made available to assist members preparing for amending stages? We have already discussed that and the clerks are going to come back to us with some thoughts on the related administrative issues.

**Karen Gillon:** If it is possible, we should have that information.

**The Convener:** The final question is whether the Executive should be required to provide updated explanatory notes on the bill as amended at stage 2.

**Mark Ballard:** I am surprised that it does not.

**Cathie Craigie:** From memory, the minister said that she would consider that matter and come back to us. I do not think that it is a big problem. However, there might be problems for the Executive if an amendment were passed at stage 2 that the Executive felt would have a negative effect on the bill. The explanatory notes would probably not support the amendment and the member who lodged the amendment might feel that the Executive was taking an opportunity to argue against their amendment. That would be fair enough, however, because if it were Executive legislation—

**Linda Fabiani:** Does the Scottish Parliament information centre provide anything at that point? I cannot remember.

**Cathie Craigie:** SPICe provides a briefing—

**Linda Fabiani:** Does SPICe update the briefing after stage 2?

**Cathie Craigie:** It does.

**Linda Fabiani:** Surely that is of more impartial benefit to a member than updated Executive explanatory notes.

**Cathie Craigie:** That briefing deals with Executive amendments as well. I always find it useful to look at the explanatory notes to a bill, as they can clarify matters.

**The Convener:** The minister has said that she will get back to us on that point and we have time to wait for that. The issue is whether the Executive will provide explanatory notes when amendments that it did not propose are passed. Do members agree to come back to that issue?

**Members** *indicated agreement.*

**The Convener:** That concludes our consideration of timetables and stages of bills, which was very helpful.

I suggest that if we are in a position to look at draft reports at the next meeting, we should do that in private. Is that agreed?

**Members** *indicated agreement.*

11:42

*Meeting continued in private until 12:23.*

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