PROCEDURES COMMITTEE

Tuesday 26 October 2004

Session 2

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CONTENTS

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PROCEDURES COMMITTEE
13th 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)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING GAVE EVIDENCE:

Ms Margaret Curran (Minister for Parliamentary Business)
Colin Miller (Scottish Executive Legal and Parliamentary Services)
Damian Sharp (Scottish Executive Enterprise, Transport and Lifelong Learning Department)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 26 October 2004

[THE CONVENER *opened the meeting at 09:32*]

Commissioner for Public Appointments

The Convener (Iain Smith): Good morning, colleagues, and welcome to the 13th meeting in 2004 of the Procedures Committee. We have apologies from Richard Baker—at some point in the meeting, he will be substituted by Irene Oldfather. Karen Gillon has advised us of the traffic problems that members are experiencing en route to the building. She hopes to join us shortly. The minister is also delayed in traffic on her way from Glasgow and has advised us that she, too, will be with us shortly. In order to avoid wasting time, I suggest that we bring forward item 2 and hear from the minister when she arrives. Are we agreed?

Members *indicated agreement*.

The Convener: We have a note from the clerk. Is there anything further that you would like to add at this stage, Andrew?

Andrew Mylne (Clerk): I do not think so.

The Convener: The note sets out the background to the proposal for an inquiry into the procedures that are required for the Parliament to respond to consultation by the commissioner for public appointments and her reports under the Public Appointments and Public Bodies etc (Scotland) Act 2003. Are members content with the recommendations that are set out in paragraph 13?

Members *indicated agreement*.

Mr Bruce McFee (West of Scotland) (SNP): I assume that, under the second recommendation, we have agreed to invite the commissioner to give evidence.

The Convener: Yes. I suggest that we invite the commissioner to give oral evidence on 23 November; our agenda is slightly lighter on that day. Are members content with the suggestion?

Members *indicated agreement*.

Private Bills

09:34

The Convener: I am pleased to say that, as the minister has managed to fight her way through the traffic, we can revert to item 1, which is the first oral evidence-taking session in relation to our work on private bills. I welcome Margaret Curran, the new Minister for Parliamentary Business, to her first meeting of the Procedures Committee—I am sure that her appearance today will not be her last. Accompanying the minister are Colin Miller, head of the Executive's constitution unit, and Damian Sharp, of the Executive's public transport major infrastructure team. Our normal format allows the minister a few minutes to make an opening presentation before taking questions from members.

The Minister for Parliamentary Business (Ms Margaret Curran): It is unfortunate that my first appearance before the committee has to start with an apology. I have a transport colleague with me; perhaps he can sort out my transport problems so that I am not late again in future. I am pleased to make my first appearance before the Procedures Committee. Indeed, this is my first appearance before a committee in our wonderful new building.

I look forward to working with the committee. Obviously, I am aware of your work—I know that the committee is energised by its wish to ensure that the Parliament's structures are modern and appropriate and that they facilitate the involvement of Scots. My officials and I look forward to working with the committee in any way that we can that will further its work.

I was delighted to discover that the first topic on which I was to give evidence was private bills. It will be quite a challenge for me to master all the issues that need to be resolved. I am sure that we share the agenda of trying to meet the complexities and difficulties that private bills present to the Parliament.

The convener has introduced the officials whom I am pleased to have with me this morning. All of us recognise that private bills are an important part of parliamentary business. The Executive is pleased that the Procedures Committee has embarked on this timely inquiry. We want to be as helpful as possible to the committee in its work.

We recognise that there is scope for improvement. We accept that, in many respects, the current procedure is cumbersome, protracted and inefficient. We know that the processing of the three private bills that have passed through the Parliament to date put considerable pressure on the Parliament's resources. Given that another three private bills are before the Parliament at

present, and with several more in the pipeline, the Parliament's capacity to process such an extensive programme of bills must be in doubt.

As I know the committee agrees, it is therefore important to ensure that, as far as possible, improved procedures are developed in order to ease the pressures on the Parliament while continuing to provide proper safeguards for those who are affected by proposals and wish to object. I believe that the Parliament and the Executive share the common aim of seeking improvements to the current private bills system. The Executive is keen to do whatever it can to assist the committee and, if possible, to reach consensus on the best way forward.

As the committee knows, I have written to the Presiding Officer and the convener identifying three main options, all of which I think are worth pursuing. I would be happy to discuss the detail of the options this morning. Two of them could be implemented quickly by means of changes to standing orders. The third option—to confer order-making powers on the Parliament—would require primary legislation along the lines of the Transport and Works Act 1992.

I recognise that the committee is at an early stage in the development of its thinking on the subject and that a great number of detailed issues will have to be addressed. Although this might not therefore be the right time to go into too much detail, I confirm that my officials stand ready to work with the parliamentary authorities on developing proposals for changes to the standing orders that are based on the ideas that I canvassed in my letter of 22 October.

With the committee's agreement, a working group at official level could be established to take forward the work with a view to preparing draft standing orders for the committee's consideration. I am happy to enter into discussions with the committee on that proposal. I am also happy to answer questions and address any issues that members might flag up this morning.

The Convener: Thank you, minister, for those remarks. I open the meeting to questions.

Mark Ballard (Lothians) (Green): In your third option, minister, you discuss the possibility of dealing with major transport infrastructure projects differently from other private bill issues. One thing that surprised the committee when we started investigating the area was that major transport infrastructure projects for roads do not have to go through the private bill procedure, unlike rail, canal and other transport infrastructure projects. I am interested in getting a bit more of your thinking on whether there is scope for differentiating transport infrastructure private bill issues from other private bill issues and on the relevance of separating rail transport infrastructure proposals from those for road transport infrastructure.

Ms Curran: That is an interesting point. I am trying to come to terms with the issues, but it seems to me that there are several historic reasons for the existing situation. Perhaps this is the time to consider whether to continue with those historic arrangements. Colin Miller will give you a detailed explanation of why we are where we are. In our discussions from this point on, we can consider where we should take the matter.

Colin Miller (Scottish Executive Legal and Parliamentary Services): One answer to the question is that there will always be a need for a private bills procedure, along the lines of the long-established one at Westminster and of the Scottish Parliament procedure, to deal with certain types of private bills. As you will know, two of the three private bills that the Parliament has passed were not transport bills. Those two bills were the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill and the National Galleries of Scotland Bill. There will always be a category of private bill that has nothing to do with transport. There may be a case for streamlining existing private bill procedures, but I do not think that the Executive would contemplate departing from them altogether.

The major transport infrastructure bills are perhaps in a different category, particularly those that have national significance and that cannot, for one reason or another, be processed efficiently—or at all—through a private promoter. There may not be a suitable private promoter. That is where the Executive is coming from in its focus on the proposal for a hybrid public bill for major transport infrastructure projects, which the Executive would introduce. On the difference between road and rail projects, the reasons behind the distinction are largely historic, as the minister said. Damian Sharp might be able to say a bit more about that.

Damian Sharp (Scottish Executive Enterprise, Transport and Lifelong Learning Department): The reasons are partly historic and partly to do with different responsibilities. The Scottish Executive promotes major roads orders in part because it is the trunk roads authority—the Scottish ministers are directly responsible for the trunk roads network. Even after the outcome of the rail review, the Scottish ministers will not be the trunk rail authority in the same way as they are the trunk roads authority. However, there is still a question about whether there should be different private bill procedures because ministers' roles in relation to trunk roads and the rail networks are different. We would have to explore that issue. Should we have different procedures? Alternatively, should the procedures be similar or even the same? We would wish to explore that in more detail with the Parliament.

Mark Ballard: I understand the point about the different roles of the Scottish ministers, but beyond that I do not see a major difference between the types of powers that are required for a rail proposal and those that are required for a road proposal.

Damian Sharp: Many of the powers for a heavy rail proposal and a road proposal are similar—for example, the compulsory purchase of land, the power to construct and the power to enter land to survey and to do ancillary works such as drainage. Those are common to all major civil engineering projects. There are also private bills to do with tramways. Those include provisions around operations, fares and so on, which are distinct from and additional to the powers required for operating a road. Some aspects are different, but many are common.

09:45

Mr McFee: I am just at my second meeting of this committee, so I am a fellow rookie. I want to explore something a wee bit further. I am thinking about the option of going down the route of the Transport and Works Act 1992 and I am not thinking too favourably about it, to be honest. If we followed that route, would you anticipate that procedures would be speeded up? I am mindful of the length of time that is required for the procedure, particularly if it involves a public inquiry—it can take up to four years. Is there any benefit to following that route as far as timing is concerned?

I would also like you to comment on some of the accountability issues that have been raised. There seems to be a potential loss of accountability. With no disrespect to you, minister, it is ministers who ultimately take the decision and we do not really have much of an input into that. Could you expand a wee bit on that?

Ms Curran: Again, that is an area that we need to think about. When we considered the possibility of using the model of the 1992 act, we were mindful of the fact that the procedure has not necessarily speeded up the process at Westminster. Given that we are trying to streamline the process and to make it more efficient and effective, that is obviously something that we need to bear in mind.

On our side, officials think that there are opportunities to improve on the current Westminster model. We would not necessarily just replicate it directly, because that would not speed up the process for us, nor would it make it more efficient. My impression from the meetings that I have had during the short time that I have been in my current post is that it would be possible for us to develop a more efficient and effective model.

I will let Colin Miller comment in detail on the point about accountability. Generally speaking, the Executive would expect to be held fully to account for its work. Given the approach that we are taking now, I do not think that it would be in our interest to exclude committees or other members from having powers and influence. We should be discussing the details in that light. We would not want to undermine accountability in any way. I invite Colin Miller to speak more about the details.

Colin Miller: As the minister says, we would certainly not regard the 1992 act as a panacea or as a blueprint that we would suggest the Scottish Parliament simply adopt. It is certainly a model that is worth examining, however, and it is worth exploring whether we could develop something along similar lines in Scotland, but something that achieved the twin objectives of streamlining the process and of continuing to provide proper rights for objectors.

As far as the parliamentary process is concerned, using a model that was based on the 1992 act would mean that proposals would not go through the Parliament itself. However, it would be possible to build into that process a requirement for some form of parliamentary involvement. That could be in the form of the affirmative or negative resolution procedure, which would give the Parliament a say in the scrutiny of decisions taken by ministers.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I think that Bruce McFee is right. When we heard about the 1992 act at our away day, people were initially attracted to it, as that approach would be less cumbersome and difficult than the current system here. Obviously, we would not want simply to put a tartan ribbon on it.

I am interested in what the minister said about the proposed working group. I ask her to widen her comments and say how long the group will take to report and what scope it will have.

Ms Curran: We obviously do not want the working group to take too long to report, given that the objective is to try to reduce the time taken. The matter is dependent on the committee's approach, but I am told that the work could be done efficiently and quickly because we already have information to work with. If possible, we want to achieve a consensus on how to progress. I see the group's scope as being fairly wide. I hope that there will be a partnership approach to resolving some of the issues. We have not as yet laid out terms for the process, but we see the work as evolving from discussions with the committee.

Mr McFee: I have reservations about going down the route of the 1992 act, simply because we would, in essence, end up with two different systems—one for transport projects and one for

non-transport projects. As your colleague correctly said, three private bills have been passed so far, one of which was for a transport project. My feeling is that the process should be streamlined because we should not delay unnecessarily major infrastructure projects if we can avoid doing so, although we must protect people who have relevant interests.

The Anderson Strathern submission suggests a reporter system in which the reporter would consider

"competence, compliance, affected interests of objectors, the detail of objections, the detail of amendments and the technical provisions".

That would still give members a role, but it would take away some of the drudge—for want of a better word—and potentially streamline the process. The reporter would be able to commit much more of his or her time to the process and the work would not have to be done in committee. Is that a possible option?

Ms Curran: That is a possible model and we are interested in considering it to see whether it would provide solutions. We do not rule that out at this stage. We are genuinely interested in your assessment of the 1992 act. From the limited understanding that I have of the matter, the reporter option is a possible one and we are sympathetic to it, although it would be interesting to ask the officials to consider the details and complexities, which we might not grasp at this stage. With the committee's permission, we would want the working group to consider that option.

Damian Sharp: The member draws an important distinction between technical matters, on which MSPs or civil servants do not necessarily have core skills—

Ms Curran: Does anybody?

Damian Sharp: On such matters, we need a lot of help from technical experts to reach decisions. However, private bills also involve matters of policy and questions about the effect on people and how Scotland should or should not change, which are very much matters for MSPs. To improve the existing process, we need to use MSPs' time on matters on which MSPs can add value. From my experience of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill process, the committee that considered the bill at times had to take advice at face value because it had no means of knowing whether technical details were true. If such technical matters were dealt with more efficiently and the MSPs' role was to ensure that the process was right, proper, fair and thorough, rather than to go through the details, that could help everyone concerned, including the objectors.

The Convener: The solution might lie in some sort of amalgamation of the processes from the Transport and Works Act 1992 and the Private Legislation Procedure (Scotland) Act 1936, which used to apply to such bills in Scotland. There could be a parliamentary process to consider the general principles and whether the project should get the go-ahead—because there is public involvement in the financing of the schemes involved—and a process for final confirmation, but the detail of the bit in the middle could be dealt with through the public inquiry-type approach.

Ms Curran: Yes. We need to examine the detail to ensure that it works, accords with parliamentary procedures and will get the job done.

Karen Gillon (Clydesdale) (Lab): Having read a lot of the evidence and having heard the various speakers, I know that one of the biggest criticisms is that the procedure is, in many ways, a rubber-stamping exercise. There is little room to amend bills. I do not know what value the process has. One criticism is that people have said, "If you want to amend it, that's fine, but that means we can't go ahead with it." We need a system that has value for objectors and that enables the Parliament—if it is to have a role—to influence the process, rather than just to rubber-stamp a proposal and to tinker at the edges, which is where we are at the moment.

Ms Curran: Absolutely. The work that we are doing just now should help us to address some of the serious concerns that members have expressed to the Executive and through parliamentary platforms about their frustration at the current level of involvement and at the whole process. We recognise that, which is why we are keen to work with you to see whether we can develop different models and move on. As Bruce McFee said, there are projects that we need to get under way. There is work to be done. We need to sort out some of the issues. We accept your points.

The Convener: Could you explain how you envisage a hybrid bill procedure operating and how it would differ from the present process, because, of the various solutions, that is probably the only one that could be introduced without primary legislation?

Ms Curran: That model offers a number of attractions, which I am sure you can see. May I refer you to Colin Miller, who is more on top of the detail?

Colin Miller: Essentially, when we refer to a hybrid bill, we mean a public bill—in other words, a bill that is brought forward by the Executive—but one that is hybrid because, unlike normal Executive bills, it affects specific private interests as well as the general public interest that lies behind the project.

As you know, standing orders do not in any way preclude the Executive from bringing forward such a bill, but neither do they provide specific procedures for dealing with one. The Presiding Officer in 1999 and the Procedures Committee in its second report in 2000 recognised that there was a need for standing orders to be developed to deal with such a bill.

One issue is what provision should be made for objectors to have a right to be heard. Another issue is whether such a bill—assuming that it was a transport infrastructure bill, for example—should be dealt with by the Local Government and Transport Committee in the normal way, by an ad hoc committee or perhaps by a combination of the two. For example, it would be possible for the Local Government and Transport Committee to consider the proposal at stage 1 and then to turn it over to an ad hoc committee that is perhaps advised by a reporter at stage 2.

In other words, there are all sorts of different ways in which the details might be worked through, but the essence is that the subject would be one that the Executive itself brought forward in the form of a public bill, almost certainly because it was in the nature of a major infrastructure project of national significance and perhaps because there was no suitable private promoter.

The Convener: I wish to pursue that, because I am not entirely clear how the stage 2 process would differ from the present consideration stage of a private bill, in that the members of the ad hoc committee, or whichever committee was dealing with the bill, would have to consider all the evidence and objections and make recommendations. If that is the case, how would that speed up or streamline the process?

10:00

Colin Miller: The parallel issue is exactly that: how one can find ways of streamlining the process to get a transport infrastructure bill through more quickly, while continuing to allow for rights of objection. In other words, it is exactly the same issue as would arise under almost any of the models that we are considering. In every case, the objective is to find ways of streamlining and expediting the process while allowing proper scrutiny and rights for objectors.

The scenario in which the Executive would be most likely to introduce a hybrid bill is where there is a project that the Executive is committed to delivering and there is no suitable private promoter to introduce a private bill. At present, that is a clear gap, and the obvious way of dealing with it would be to introduce an Executive bill that had the nature of a hybrid bill because it affects private interests.

Karen Gillon: You have confused me slightly because you gave the impression that we could keep the private bill system for other things. I have spoken to a number of members who agree that, whether it is for a wind farm or a railway line, the private bill process does not work because one cannot amend or influence the legislation. The question is whether the process can be fixed or whether we need to start again.

Ms Curran: Members might want to question details of what Colin Miller has said. Although the committee's inquiry is helpful, if members are agreeable, I believe that we need to have a working group to consider the details. There are attractive models that could help us to streamline procedures, but we need to consider the detail of how they operate. It seems that some of the models that we propose are up for discussion. They are certainly fliers for possible ways to proceed, but we need to go into the details rapidly so that we can start to address the situation.

I will let Colin Miller answer directly. Perhaps I should not have said that—he always gets landed with the hard stuff. I know that I am a horrible minister.

Colin Miller: Not at all.

An answer to one of those points is that there will always be a need for a process that allows private individuals from outside the Parliament or from other bodies to submit a proposal for a private bill to the Parliament. Two examples of that are the Robin Rigg Offshore Wind Farm (Navigation and Fishing) Scotland Bill and the National Galleries of Scotland Bill. In those cases, there was a specific desire on the part of private promoters to secure legislation for a specific purpose. If the private bill procedure had not existed, those projects would simply not have been possible. That does not mean that the existing procedure works well because, as the minister said, it is slow, cumbersome and inefficient. However, we take the view that, in addition to a streamlined and modernised private bill procedure, there is a need for something else, whether it follows a Transport and Works Act 1992 model or whether we have hybrid bills introduced by the Executive, the Anderson Strathern proposal or, indeed, more than one of those models. There might be circumstances in which the Executive is committed to delivering a major transport infrastructure project and there is no suitable private promoter, so that the private bill procedure simply does not provide a way forward.

Karen Gillon: My concern about the private bill procedure is that Parliament just rubber-stamps a private idea and does not have any influence. The experience has been, "Well, if you want to amend the bill, that's fine, but we aren't going to do so." How can the Parliament have more genuine

influence on a private bill, instead of being involved in just a rubber-stamping exercise?

Colin Miller: One answer to that question might be for the committee that scrutinises the bill to appoint an expert reporter to assist it in dealing with what Damian Sharp describes as the technical aspects of the project—assessing the objections and the reasons for them and making recommendations to the committee. It, in turn, would be able to influence the content of the bill—not simply whether the project goes ahead, but the terms under which it goes ahead.

Cathie Craigie: Why bother setting up the working party? Why bother considering changes? Why does the Executive not just introduce the practice that operates for major road improvements or major new roads, of publishing orders? Why do we not just adopt that system for major transport infrastructure projects?

Ms Curran: There might be details with which I am not yet familiar but, as I understand it, the standing orders of the Parliament were framed in such a way as to allow private bills to deal with issues such as those in the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill and the National Galleries of Scotland Bill, where there is a requirement for an order of Parliament before projects can proceed. The way in which land is managed in Scotland and the way in which decision making is structured meant that there would have been a gap if we had not provided for private bills.

Cathie Craigie: I accept that and I know that we would need to make other changes if we changed how we deal with private bills. Instead of having everyone spend more time on this, we want to speed the process up. Instead of spending more time having working parties and inquiries, why do we not just adopt the system that we use for major trunk road developments or improvements?

Ms Curran: I do not know that the Procedures Committee would want us to do that. It might complain about us if we did.

Cathie Craigie: The point that I am trying to make is that we use that method if we want to extend a motorway and in many other situations, so why do we not regularise transport issues by using that method for a new rail or tram line?

Ms Curran: I will let Damian Sharp speak in a minute, but the primary point is that that would reduce accountability.

Cathie Craigie: So are you saying that the way in which ministers deal with road improvements, by publishing orders, means that they are not accountable to the objectors?

Ms Curran: No; it is about the interface—not only in road use. There are broad comparisons with the planning system, where there are different forms of scrutiny and accountability. I am not pretending that I am familiar with all the details, but as a principle I do not think that the Parliament would be happy with the Executive if we were to move away from scrutiny to more direct decision making.

Damian Sharp: There are two aspects to this. It is perfectly possible to make the change that Cathie Craigie suggests, but it would require primary legislation, so there is the issue of timing. There are already three transport bills before the Parliament. There might well be another four before the end of the parliamentary session in 2007. That means that there would be seven bills to deal with before an order-making power could hit the books and be operational. There is a need to deal with issues of the here and now as well as to implement a long-term solution.

When considering why we do not use the same procedure, you have to think hard about the fact that Scottish ministers are the trunk roads authority, but in no sense would they be the rail authority for Scotland. That needs to be thought through carefully. The provisions of the Transport and Works Act 1992 are reasonably similar in their operation to the trunk roads powers, but one of the crucial differences is that ministers cannot promote an order under the 1992 act, which reflects the fact that they do not own and run the rail network.

Karen Gillon: On that specific point, you will be aware that I have had considerable experience of one rail line. Does the fact that we went through the private bill process here in Scotland mean that the Stirling to Alloa and Kincardine rail line will not encounter the problems from the private sector that the Larkhall to Milngavie line encountered?

Damian Sharp: It will not, not because the bill was passed in Scotland rather than at Westminster but because having had those problems, we took account of them and ensured that there was a provision within the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill that made sure that one promoter could not hold all the powers and hold everyone else to ransom.

Karen Gillon: Good.

Ms Curran: That is good.

The Convener: Is not the distinction between the trunk road orders and the rail, tram and canal orders that once a trunk road is built, anyone can use it, whereas if a rail line is built, only specified operators can use it? A private toll road, for example, would be different and would require a private bill procedure.

Damian Sharp: That is a further difference that is also part of the issue. Once a trunk road is built

and operating, it is governed by a different set of rules to the very complex rules on how a railway operates. There are some differences there.

Mr McFee: I am aware that this meeting is sounding like an episode of "Yes Minister". I am in favour of streamlining, but there have to be counterbalances, primarily for objectors. What will you be considering, or what should the Parliament be considering, in relation to notification and objection procedures? Most people are pretty au fait with how to go about objecting to a normal planning application, or can find out relatively quickly if they are not, but this is a different set of circumstances. Should professional help be available to objectors in respect of what can be very technical issues, not least to ensure that an objection is competent in the first place? If so, at what stage and to what level should such professional help be available? I am talking about help not for those with vested interests or for companies, but for ordinary people who do not have the information at their disposal.

Colin Miller: I am not sure how specific an answer this will be but it lies at the heart of all the options that have been canvassed so far. The critical question is how and where to strike the balance between the right to make informed objections and streamlining the process so that the whole thing is not interminably protracted to the frustration of everyone, including the objectors. The same question will arise whatever option the committee decides to run with. If we end up with a menu of different procedures—for example, the existing private bill procedure in certain circumstances, a hybrid bill introduced by the Executive and possibly also something modelled on the 1992 act—there might be at least three different processes, and the same question would have to be addressed in relation to each one of them.

That does not answer your question in detail—I do not think that it is possible to do so today—but that is the issue that lies at the heart of the inquiry.

Ms Curran: I understand Bruce McFee's point. There is a lot that we can learn from trying to improve the planning process, in essence to empower people to participate in it appropriately without slowing down the process and while ensuring that the objectives are still met. Those are the kind of issues that we can examine as we move through the process. We should consider the issues around supporting people and legitimate participation within processes. Perhaps we could move on to discuss that in detail.

Mark Ballard: A consultancy firm's report on Westminster Transport and Works Act 1992 orders recommended more consultation and direct negotiation before an application is produced for ministerial or parliamentary scrutiny. How much scope will exist for introducing such measures under a Transport and Works Act 1992 model or a streamlined reporter model?

10:15

Ms Curran: Damian Sharp tells me that encouragement is already given to take such measures. In general, in the management of any project—especially one that involves procedures and legal guidance—consultation and use of the maximum number of opportunities to disperse information should always be encouraged. That should be embedded in everything that is done as a matter of principle. The more that people are informed, the more effectively they are helped to participate. That leads to better decision making.

We want to carry through that principle, but we need to ensure that the details and the full ramifications are understood. It is easy to state the principle, but the devil is in the detail, because what has been discussed might not happen to people's satisfaction. We must balance that with effective decision making. Early participation works best, because it leads to better decision making. However, the right balance must be achieved between participation and decision making. We will consider such matters with all the models that we are examining.

The Convener: No matter how we consider the position, the inevitable conclusion is that we will probably need primary legislation to implement some of the available options, even if that just gives the Parliament more flexibility about when it acts internally through committees or externally through reporters. If the committee recommends a committee bill or an Executive bill, what commitment can you give to providing support in drafting resources and time?

Ms Curran: I am sure that members know that I cannot pre-empt the First Minister's announcements on the legislative programme. However, we would be as sympathetic as we could be to facilitating an answer. We do not have unlimited resources, but we want to resolve the situation as best we can. I am sure that members appreciate that I cannot be more definitive, for which I am sorry.

The Convener: The answer does not surprise me.

Members have no other questions, so I thank the minister and her team for giving evidence. If the committee agrees, we are willing to accept the offer to establish a working group of officials. We could ask the clerk to liaise with the Executive and the Presiding Officer to produce a remit that might go on the agenda of the next committee meeting.

Ms Curran: Thank you.

Karen Gillon: Will the group involve just officials?

The Convener: The group will deal with technical stuff on drawing up standing orders and will not make decisions. It will consider how proposals would work in practice, so that we have information on which to base decisions.

Cathie Craigie: I thought that the Executive was establishing the working group. As a committee member, I would like to see the working group's remit.

The Convener: We have asked for the remit to be provided for our next meeting. If the committee agrees to the remit, the working group can get on with its work. The group will report to us.

Cathie Craigie: We could agree to a remit that covered all the available options. The committee might want to consider the pace of the inquiry, because it might be useful to have the working group's report before we go into more detail.

The Convener: That is why I suggest that we should have the suggested remit to consider at our next meeting.

Cathie Craigie: If the working group is in the process of being established—

The Convener: It is not. If we agree to it, it will be established. The Executive has expressed willingness to participate in a working group. I suggest that we should accept that offer and ask our officials to work with Executive officials to produce a remit to which the committee can agree. The group will help to inform our inquiry.

Mr McFee: I clarify that, as you said, we will have a suggested remit for a working group at the next meeting, which we will be able to approve or otherwise, and that we will be able to approve the working group or otherwise. We will take it from there.

The Convener: That is my suggestion.

Cathie Craigie: I do not think that the committee has the power to approve the setting up of a working group. If the Executive is to establish a working group, it should get on with getting the working group set up and report, so that we can comment on that.

The Convener: I think that the minister was making a suggestion to help us with our inquiry.

Ms Curran: We are talking at cross-purposes, I think, and I do not want to confuse matters even more. What we are proposing is that we have a joint working group, so that my officials work with your officials to consider the different models. We would seek members' views on the viability of different models. We are not trying to interfere with the committee's inquiry—that is for the committee to determine and I am not trying to tell you how to run your inquiry—but we should get down to the details and work jointly. We hope that we can achieve a degree of consensus in the Parliament on the matter.

The Convener: It is important that we see a remit for what the working group intends. That is why I am suggesting that that should come to our next meeting. If we are not happy with that, we can say so then.

Ms Curran: Yes.

The Convener: I thank the minister for attending.

The next item for consideration is the paper on oral evidence. We have already agreed that a number of people will give evidence, and the suggestion is that we should invite some people who have been participants in the private bills process as objectors. The paper makes suggestions as to who might be asked to come.

Karen Gillon: I have some slight concerns about having people who are objectors to the Edinburgh Tram (Line One) Bill. We would have to be very clear that we are not considering the objection or the process that the bill is currently going through. For that reason, I would prefer to stick to people for whom the process has finished. I am slightly worried that we could be seen to be taking sides in something that another committee is determining, and for that reason I do not think that we should hear from objectors to the Edinburgh Tram (Line One) Bill.

The Convener: I know the point that you are making and I share your concerns. However, the written evidence that we have received, in particular that from Alison Bourne, made some useful suggestions on the process rather than on her specific concerns, and she could provide evidence on that as part of a panel. We made it clear to the witnesses that we would not in any way be considering the merits of the Edinburgh Tram (Line One) Bill, and that we would be considering only the process.

Mark Ballard: I agree with you there. Many issues about the process have been raised in the papers that I have seen from John and Wendy Barkness and from Alison Bourne. Those issues are procedural rather than being linked to the specific bill that they are involved in objecting to.

Karen Gillon: If we change the process, will that affect bills that are currently going through the Parliament? If not, are we saying that the process that they are going through is in some way wrong, and so giving credence to objections, even though we do not have the full information? If we are involved in something that is being determined by another committee, whatever the procedural

aspects might be and whatever the merits of what witnesses are saying, we will be seen to be taking a view on those objections, no matter what we decide about the process.

Mark Ballard: We have just heard the minister say that the current process is cumbersome, protracted and inefficient, so there has already been criticism of the process. There is a valid role for the committee in considering all criticisms of the process.

Mr McFee: I, too, have concerns about taking evidence from somebody who has been involved in a process that is not entirely finished, and I wonder whether it would place us in any technical difficulties if we were to open the door to the introduction of some other process or form of appeal. I think that everybody accepts that there are problems with the procedure, but if, having taken evidence from objectors to the Edinburgh Tram (Line One) Bill, we were to say that we agreed that there is a problem with the procedure, would we be opening ourselves to anything else? Can we have legal advice on whether such a course of action is advisable?

The Convener: I note the points that members are making, although it would be helpful for the committee to take a wider range of evidence, not only on one bill. On the concerns that are being expressed, it is probably better that we do not invite anybody who is involved in the Edinburgh Tram (Line One) Bill or the Edinburgh Tram (Line Two) Bill, so I suggest that we invite representatives from the Clackmannan railway concern group and the Kincardine railway concern group to give evidence.

Karen Gillon: Could we not invite people who were involved in the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill? It was a private bill, and we are concerned with private bills full stop, not only transport bills. The bill has gone through the parliamentary process and there were objectors to it who did not feel that they were able to influence the process.

The Convener: We have not received written evidence from any objectors to that bill. The idea was to select witnesses from among those who submitted written submissions.

Mr Jamie McGrigor (Highlands and Islands) (Con): I was on the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill Committee. Halfway through the process, there was a bit of a breakdown, because it was discovered that some of the powers were reserved to Westminster. Most of the objectors objected to the erection of wind farms, which the bill did not cover, because it was concerned only with the navigation and fishery matters connected with the possible erection of the offshore turbines. Most of the objections had nothing to do with the bill, although there were one or two about fisheries, but perhaps we should contact the promoters.

The Convener: We have been in contact with the promoters of all private bills. The National Galleries of Scotland made a written submission on the process, but we have not had anything from the promoters of the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill or from any objectors to it. It would be difficult for us to call for oral evidence from them if they have not felt that they want to give written evidence. I propose that we invite representatives from the Clackmannan railway concern group and the Kincardine railway concern group to form a panel to give evidence on 23 November. Is that agreed?

Members *indicated agreement*.

The Convener: A number of papers have been submitted together with the paper on oral evidence. If any committee members have any questions or require any clarification, particularly on the summary of private bill procedure or the summary of the Transport and Works Act 1992, they should feel free to ask now or subsequent to the meeting.

Commissioner for Public Appointments (Witness Expenses)

10:28

The Convener: Item 3 is the standard request that any request for witness expenses in the inquiry on the commissioner for public appointments should be remitted to me. Is that agreed?

Members *indicated agreement*.

Bills (Timescales and Stages)

10:29

The Convener: Item 4 concerns the timescales for, and stages of, bills. We need to take a couple of decisions following our earlier discussions. I draw members' attention to papers PR/S2/04/13/9 and PR/S2/04/13/13. The first point that we have to agree on paper PR/S2/04/13/9 is how to deal with the publication of committee reports. We need to agree what to do if a report is not available within the suggested timeframe.

Karen Gillon: I find paragraph 3 of the clerk's note slightly confusing. Is it suggesting that we should not have a procedure whereby members can raise a matter in relation to a rule individually, and that members should instead go through the Parliamentary Bureau?

Andrew Mylne: The current position that has been agreed by the committee is that there should be a five-day interval between the publication of a stage 1 report and the stage 1 debate. The committee has agreed that there should be a rule that, essentially, requires committees to publish their reports within that timeframe. The committee has also agreed in principle to the idea of employing a further mechanism if that condition is not met. That would involve a motion being moved to allow a stage 1 debate to go ahead on the day that had been planned for it.

The question that needs to be clarified with the committee is whether members want that additional procedural hurdle. Would it be sufficient simply to impose, through standing orders, a duty on committees to ensure that their reports are published in compliance with that time limit and to leave it at that? That leaves open the possibility of that condition not being met under some circumstances, for various reasons. Would nothing happen if such a standing order were not complied with, or does the committee want there to be an extra mechanism, involving a member having to move a motion?

Karen Gillon: The rationale behind the idea was so that we would know why the rule had not been complied with. For example, it might have been the committee's fault or the Executive's fault, or something might have happened that nobody had known about. There is a general frustration that stage 1 reports can sometimes be published on a Monday, with the debate following on the Wednesday. Under those circumstances, members cannot scrutinise reports effectively ahead of the debates on them. It should be set down that the member concerned should have to come before Parliament and justify why their debate should be able to go ahead.

The Convener: Do members agree with that?

Members *indicated agreement.*

The Convener: We will come to the wording of the proposed standing order in our private consideration later, but we will proceed as has been agreed.

We come now to motions without notice to alter stage 3 timetabling motions. The matter arose from discussions on how much time could be added to a stage 3 debate without there being serious implications for members and other parliamentary business. Essentially, we need to determine whether to impose an upper limit to the amount of time by which stage 3 timetabling motions can be amended in the course of the debate.

Karen Gillon: After having a considerable amount of discussion with colleagues, I think that we should impose such a limit to ensure that people can make whatever arrangements are necessary should Parliament be extended. Such extensions should not conflict too far with the Parliament's family-friendly policies and objectives.

The Convener: What Karen Gillon is essentially proposing is that we adopt option 1A, as described in paragraph 9 of the clerk's note. Is that agreed?

Mr McFee: I have some difficulty with that. There could be the odd set of circumstances in which, in order to get the matter thrashed out, we would need to go beyond a specific time. I am not sure what Karen Gillon is proposing as a maximum extension to stage 3 debating time. Frankly, it should be left to members to decide. Presumably, if a member moves a motion without notice to extend a debate, members are perfectly entitled to say no.

Karen Gillon: It is majority voting.

Mr McFee: Absolutely—it is a democracy. It should be left to the good sense of members. I understand where Karen Gillon is coming from but, given the number of stage 3 debates that there are likely to be in a year, the good sense of members should prevail. That is where the final arbitration should lie.

The Convener: There is a stage 3 debate every three weeks on average, I think.

Mark Ballard: As paragraph 10 of the note sets out, the Presiding Officer would have a role in addition to there being a vote among members. Convention would not normally allow further such motions to be moved after extensions totalling 30 minutes had already been agreed to. That would appear to achieve 95 per cent of what Karen Gillon wants while giving some flexibility and avoiding a situation where stage 3 debates are curtailed due to unforeseen circumstances—perhaps if an important issue came up that was not thought of when the motion without notice was moved, perhaps an hour or two previously.

Karen Gillon: I do not believe that those circumstances would arise. People know where the contentious issues are at stage 3—those issues do not, or at least should not, come up suddenly in a debate. Members should be better informed.

The problem is that if we do not get the timetabling motion right, the onus is on members to ensure that their business managers are aware of where the contentious issues are and on the business managers to fix a timetable that reflects those contentious issues. We are seeking a small degree of flexibility, not a substitute for a timetabling motion, but we are in danger of discussing a substitute for a proper timetabling motion. If the timetabling motion is not right and continues not to be right over the course of the session, the Parliament will have to do something about that. We should not be setting up a process that allows the bureau not to lodge a proper timetabling motion.

The Convener: That is a valid point. Part of the reason for the changes to the timing of amendments at stage 3 is to allow for a more informed timetabling motion to be lodged. Because we will know the groupings earlier, members should be able to make clearer to their business managers, before the timetabling motion is drafted, how long they think that they will require for debate and what the contentious issues are. My personal view is that if option 1A were introduced initially, it could be reviewed at a future date and would be sufficient to allow the flexibility that is needed. Are members content to accept option 1A?

Mr McFee: No. I move that we accept option 1B.

The Convener: The question is, that the committee agrees to accept option 1A. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gillon, Karen (Clydesdale) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Smith, Iain (North East Fife) (LD)

AGAINST

Ballard, Mark (Lothians) (Green)
McFee, Mr Bruce (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 2, Abstentions 0. Option 1A is accepted.

We move on to the knock-on effects of motions without notice to alter stage 3 timetabling motions being agreed to. Could you please quickly run through the options, Andrew?

Andrew Mylne: The question is whether, if there is a change to the timetabling motion, the member moving that motion should have the option of specifying that they want only the next time limit in the timetable to be altered, or whether the only option should be to move back all the time limits. The issue is the balance to be struck between simplicity and flexibility. I have sketched out a scenario that could arise, in which the extra flexibility would be useful although, on the other hand, giving members extra latitude in relation to the motions that they move complicates the process of moving them and disposing of them clearly in what is necessarily a last-minute procedure of which members do not have much notice. It is a matter of striking a balance between simplicity and flexibility, and it is up to the committee to decide which of those is more important in this circumstance.

Karen Gillon: I have a point for clarification. I am attracted to option 2A. It contains flexibility in that, if we come to the end of a section quicker than is timetabled, we can just move on to the next section and keep moving on until we are finished. I am not sure what the merits of option 2B are—forgive me if it is very simple and I just do not understand it. My assumption is that if I move a motion without notice on a section, it extends the time for the whole debate by, say, half an hour and each section just moves according to the timetabling motion by that half an hour. If the debate on the specific section finishes a bit sooner, there is more time for the next section. Am I right?

Andrew Mylne: That is correct. If you chose that option, whereby any motion without notice under the new procedure would automatically move back all the deadlines, you would be more likely to keep running ahead of all the deadlines subsequently and you might well finish the whole stage 3 ahead of the final deadline. The possible disadvantage of that approach would be that, while you were completing stage 3, there would be some uncertainty about when things were going to finish. You would not know until the end of the process that you were going to finish ahead of time and you would introduce a degree of uncertainty about when people would be able to leave at the end of the day. If all you wanted to do was to extend the next part of the timetable for a specific group of amendments, you could do that without introducing any uncertainty about when stage 3 was going to finish.

Karen Gillon: But you would then reduce the agreed timetable for the following groupings.

Andrew Mylne: Yes, and whether that is a realistic approach depends entirely on circumstances. In some cases, quite large chunks of time are allocated and it might be reasonable to assume that a 10-minute overrun in one area could easily be made up in the next area. However, that will not be the case in other circumstances. Again, the question is whether you need flexibility to adjust for different circumstances.

Mr McFee: My question is a simple one. Would choosing option 2A not mean that we could end up losing certain groupings or large amounts of certain groupings later?

The Convener: Under option 2A, if it were agreed through a motion without notice to extend consideration of amendments by 30 minutes, 30 minutes would be added to everything. For example, if one hour had been allocated to the first block of amendments and two hours to the next and you agreed to extend consideration by half an hour, you would then have one and a half hours and two and a half hours respectively for consideration.

Mr McFee: I am concerned about the sentence in the paper that reads:

"However, there may be cases where the overall time-allocation is probably adequate but one particular time-limit has been set too early."

Am I reading something into that that is not there?

Karen Gillon: We could still make that time up.

The Convener: It is important to bear in mind that the timetable sets limits, not targets. As Karen Gillon has just pointed out, if we add extra time to an early block of amendments but then make it up because we do not need it later, so what?

Mr McFee: In simple terms, would adopting option 2A disadvantage any items of business that might follow that day's consideration of amendments?

Karen Gillon: No.

Mr McFee: Is that a definite no? I am picking up a maybe.

Andrew Mylne: Option 2A straight away extends the upper limit for the whole of stage 3. As a result, reaching that revised upper limit will have a knock-on effect on decision time or any following items of business. However, in practice, you might not use that extra time at the end of proceedings. You will be able to pull things back. The question is whether you want to introduce uncertainty about the timing of later items early on in proceedings.

Karen Gillon: The whole point behind option 1A is that it provides only a half-hour's flexibility at the end of proceedings, which means that we can still

have decision time and members' business within a fairly sensible timeframe. We should not lose any business at the other end. I understand Andrew Mylne's point that, when we agree to an upper limit and therefore do not know exactly when we will finish our consideration of amendments, we might not need all that time. However, in reality, members have usually timetabled to be in the chamber until the end of the stage 3. If things run half an hour longer, so be it; no one would say, "Stage 3 is timetabled to end at 5.30 pm; I'll nip away at 4 o'clock." That does not happen. Members have to be around until stage 3 consideration is over.

The Convener: If we are introducing such flexibility, we should make the procedure as simple as possible at this stage. We can always revisit the matter in future if we feel that more flexibility is needed. As a result, I propose that we accept option 2A. Are members agreed?

Members *indicated agreement*.

The Convener: The third question concerns the Presiding Officer's discretion to allow debate on an amendment to a motion.

I have lost the point behind that question.

Andrew Mylne: This is simply a question of balancing flexibility and simplicity. We propose that, during the normal course of events, motions to extend proceedings should not be debated or amended. The point is to reach a decision quickly and not to spend time debating such motions. After all, that would take time away from debating the amendments to the bill.

The Convener: I confused myself over what was meant by debating an amendment to a motion.

Andrew Mylne: The question is whether that would be a blanket prohibition or whether we should build in some flexibility for the Presiding Officer to allow however much debate he thought fit on such a motion if he felt that there was a particular need. For example, different members might argue for different lengths of extension and the Presiding Officer might need some flexibility in his back pocket.

10:45

The Convener: I presume that that relates to the fact that, if a 10-minute extension was proposed, a member who wanted a 30-minute extension would have to move an amendment to the motion without notice.

Andrew Mylne: Such a situation would be precluded if we went for the simpler option and said that such motions could not be debated or amended.

Karen Gillon: For the sake of simplicity for folk who are watching, if a motion without notice is moved, can members speak against it?

Andrew Mylne: Not if the motion cannot be debated or amended. The motion would simply be moved formally and disposed of immediately.

Karen Gillon: There is sometimes confusion in the public gallery. For example, if a motion is moved and members vote immediately, the public do not know why members are voting against it. There is no explanation of why some members do not think that there should be a 20-minute extension. No one gets up and says, "We're going to vote against this because of X, Y and Z." There is sometimes confusion about why 55 Labour members or 20 Scottish National Party members vote against a motion, because there has been no opportunity to tell the public why that decision is being made.

Mr McGrigor: The only problem with that is that, if we had the opportunity to make a decision, we would probably need a longer extension, because we would use up the half-hour.

Karen Gillon: Yes, okay.

Mr McFee: There are merits in a system in which somebody moves a motion for a 20-minute extension and we go straight to the vote. Otherwise, we would end up wasting the very time that we are seeking to use.

Karen Gillon: A member would have to move another motion later if they wanted to extend the debate for a further 10 minutes.

Andrew Mylne: The suggestion is simply to enable the Presiding Officer to allow a limited amount of debate; we are talking about unusual circumstances, not the norm.

The Convener: On an individual upper limit on time extension, I am inclined to say that, as we are setting a maximum of 30 minutes, there is no need to specify other limits at this stage.

Karen Gillon: If members used up all the time in one go, that would be that.

The Convener: That would be up to members.

On revised or supplementary financial memoranda, the question is whether the committee wants to accept the good will of the Executive and agree that we should also require a revised financial memorandum when significant financial implications arise from amendments at stage 2.

Members *indicated agreement*.

The Convener: The final paper is on implementation. Are members content to endorse

the approach that is set out in the paper? The approach seems to make sense.

Karen Gillon: I took the liberty of discussing the matter with the minister. There seems to be some confusion on the part of the minister and her officials about paragraph 6 and whether the preceding paragraphs have been agreed to.

Andrew Mylne: I can clarify that. The matter arose at a relatively late stage in our discussions and all we were able to do was discuss it informally with Executive officials. As far as I know, it did not go to the minister. However, what Executive officials take to the minister is a matter for the officials. We discussed the matter with officials and they indicated informally that they were content with it. That is all that we have secured.

The Convener: There is a suggestion that, if we secure a debate in the chamber in December, the implementation date would be some time during the Christmas recess.

Andrew Mylne: That sounds about right.

Karen Gillon: Would the recommendations apply to all bills that are in the process, whether or not consideration had started?

The Convener: Yes.

Mark Ballard: The recommendations will have an effect on the timetabling of business, so should the Parliamentary Bureau be consulted as well as the non-Executive bills unit and the Executive?

Andrew Mylne: Yes.

The Convener: There is no reason why we should not consult the Parliamentary Bureau, too, if we are considering implementation after the debate. The bureau will certainly have three, four or more weeks' warning, so there should be no major implications for the timetabling of business. We can consult the Presiding Officer about the matter.

Karen Gillon: We should do so sooner rather than later. We do not want a protracted discussion between every party in the Parliament about the timetable that suits each party's agenda. If the Parliament makes a decision as a result of the debate, that decision should be implemented as soon as possible.

Andrew Mylne: The approach that has been outlined, which the committee is being asked to agree in principle, is simply that there should be a single date on which the proposals come into effect across the board for all bills, rather than a phased approach, which would be more complicated. If the committee agrees that in principle, it is suggested that the date itself should be discussed in the run-up to the debate, so that the motion that is lodged specifies a date that has been arrived at through discussions among all the people who would be affected, by which I mean the Executive and all the people who would have bills going through committees at the time. The aim would be to choose a date that would have the least impact on bills in progress.

The Convener: Do members agree to endorse that approach?

Members *indicated agreement*.

The Convener: That concludes the public part of the meeting. I thank members of the public for their attendance.

10:51

Meeting continued in private until 11.22.

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