PROCEDURES COMMITTEE

Tuesday 7 December 2004

Session 2

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PROCEDURES COMMITTEE
16th 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:

Tom Adam (Clackmannan Railway Concern Group)
Karen Carlton (Commissioner for Public Appointments in Scotland)
Alison Gorlov (Society of Parliamentary Agents)
Ian McCulloch (Society of Parliamentary Agents)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 6

Scottish Parliament

Procedures Committee

Tuesday 7 December 2004

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

Item in Private

The Convener (Iain Smith): Good morning, colleagues, and welcome to the 16th meeting in 2004 of the Procedures Committee. No apologies have been received, but we have an early start this morning and one or two members might be running slightly late due to transport arrangements.

The first item on the agenda is consideration of whether to take item 5 in private. Do members agree to that?

Members *indicated agreement*.

Private Bills

09:32

The Convener: Agenda item 2 is the next stage of our private bills inquiry. We will take evidence from two panels of witnesses this morning. I welcome our first panel, representing the Society of Parliamentary Agents: Alison Gorlov is a partner with John Kennedy & Co and Ian McCulloch is a partner with Bircham Dyson Bell. I ask the witnesses to make a few opening remarks, after which members will ask questions.

Ian McCulloch (Society of Parliamentary Agents): Thank you for inviting us to give evidence to the committee. We realise that the committee's inquiry into private bill procedure has led it to examine in particular so-called works bills and to consider whether works that must currently be authorised by private bills should be authorised in some other way. We know that the committee is considering the Transport and Works Act 1992, which operates in England and Wales, as a possible model.

In our written evidence, we commented on that part of your inquiry only to a limited extent, because it is a big question in its own right. First, it raises the fundamental question of who should be the decision maker in such cases. It seems that the choice is between the Parliament and Scottish ministers. Secondly, if a new process is to be created outside the Parliament, what should that process be?

The Transport and Works Act 1992 is one model, but there are others. For example, in Scotland, harbour works are authorised by a procedure under the Harbours Act 1964, pipelines are authorised under the Pipelines Act 1962, roads are authorised under the Roads (Scotland) Act 1984 and light railways can be authorised under the Light Railways Acts 1896 and 1912. Works by statutory undertakers are authorised under other acts. There are many different procedures, depending on the type of works and what they entail.

A Scottish equivalent to the Transport and Works Act 1992 could be added to the list, but that solution might be extreme because it would remove authorisation from Parliament completely. A more logical approach might be to review how public works are authorised rather than to review the current private bill procedure and those works that must currently be authorised by private act.

It would also be desirable to be clear about the reasons for any new procedure, for example whether it would make the authorisation process quicker, less costly or better in some other way. A different procedure would not necessarily be a

better procedure. Therefore, the emphasis of our evidence is on the current private bill procedure and whether it can be improved rather than on possible alternatives to it.

As we have indicated in our submission, we believe that there is scope for improvement. I add that there is scope not only for tinkering but for quite substantial change. The debate on the need for new primary legislation and a new procedure is no doubt worth having, but we have concentrated on trying to suggest improvements to the current procedures. We hope that that approach has been helpful.

The Convener: Thank you for those opening remarks.

Mark Ballard (Lothians) (Green): The Transport and Works Act 1992 requires parliamentary approval for measures of national significance. As I understand it, the report in 2002 by MVA consultancy and others recommended that such parliamentary approval be widened to include all proposals, whether or not they are of national or regional significance. Is it not possible to have a process that maintains a role for the Parliament in taking decisions but removes from the Parliament the burden of consideration of the evidence and to move to the model contained in the Transport and Works Act 1992? Is the situation as clear cut as you describe it? Does the function have to be carried out by either Parliament or ministers?

Alison Gorlov (Society of Parliamentary Agents): If English practice is anything to go by, it is not as clear cut as that. The fact is that it looks on paper as if it is, but the proof of the pudding is in the eating. In England, only one debate has been held under section 9 of the Transport and Works Act 1992. That is not because there have not been schemes of national importance, but because the schemes that are deemed to fall within the scope of the act are very limited. It is also doubtful whether the provisions in the 1992 act give Parliament much of a handle on the process itself; it does not provide for the sort of policy debate that could result in having close involvement in the process. Of course, that is the position specifically under the Transport and Works Act 1992 and I am sure that it is possible to devise a remit for the Parliament that would bring it closer to the policy behind a given bill.

A difficulty is that the Parliament might well decide that if it is to make an informed decision, it wants to have a chance to consider some of the evidence and to do rather more than have a policy debate. It might also decide that all it wants is a general policy debate, as it would have on any public measure. Those are very much matters for the Parliament and they are policy decisions that might be governed by issues that are rather different from those in England and Wales. In our written submission, we say that the Parliament might feel the need to stay more closely involved in works measures that are largely financed by the Executive. Public money finances English schemes as well, of course, but the involvement of the Government is slightly more distant than seems to have been the case with many transport schemes so far in Scotland. The Parliament might take the view that a process in which the detailed decision was left with the Scottish ministers would make them too much judge and jury.

Those are all policy issues for the Parliament. I am tempted to say that anything is possible, and it is, but something different will produce slightly different results.

Mark Ballard: The main consideration for me is the burden on the Parliament and, in particular, on parliamentarians. It is not possible for the whole Parliament to have the detailed discussion, because, under the current system, that is done by committees of only five parliamentarians. From the testimonies of members of private bill committees, it appears that the burden on parliamentarians is so onerous that it detracts from the other, potentially more important, representational aspects of their work. What is your opinion on that issue and how would you reduce the burden on parliamentarians?

Alison Gorlov: We understand that members must not be overburdened, and we hope that our written submission might assist in suggesting how that burden might be relieved. I see a huge advantage in having MSPs directly involved in the process. That is born of experience of parliamentary committees at Westminster and of trained inspectors' inquiries. The down-to-earth involvement of a layman who knows nothing about transport or little about the detailed subject matter of a railways bill, for example, can have huge advantages for all concerned, provided that the layman is given the technical information. The greater advantage is for the objectors, and it is certainly something that objectors appreciate.

The burden is in the gathering of detailed evidence, which is why our written submission suggests a process whereby it would be open to a private bill committee to delegate part of that exercise to somebody who is more familiar with gathering evidence and with the subject matter of the bill. That person could then report to the committee having digested the evidence. To some extent, that would mean that the private bill committee would have to take what it gets from its reporter—or whatever the official is called—but that would be the object of the exercise. Either members have direct, hands-on involvement and are directly responsible for gathering the evidence,

or somebody else does it for them and they rely on the expert's report.

The Convener: In your written submission, you suggest that primary legislation would not be required to introduce the changes that you propose, but I am not clear where in the legislation under which the Parliament is set up we can find the power to allow us to go for the approach that you suggest of an external inquiry that reports to the private bill committee. As far as I am aware, the Parliament does not have the powers to set up such inquiries.

Alison Gorlov: We did not consider that as setting up a public inquiry, which is one of the reasons why we suggested that it should be done bill by bill; it would be a case of a private bill committee delegating to an official the function of gathering certain detail and producing a digest of written evidence. The committee would not relinquish the role of considering the evidence; however, just as the clerks digest what is before the committee and make recommendations but the committee still has to do the work and consider what it is reporting on, we see the evidence-gathering role being devolved to an official. The committee would still perform its function but by doing no more than considering the report of the official.

09:45

Ian McCulloch: I would like to make a few comments in response to Mark Ballard's earlier question. We quite understand that there is a genuine issue about relieving the burden on MSPs, but policy questions and questions of expediency arise in that regard. To relieve the burden on MSPs, the most expedient solution would be to pass something like the Transport and Works Act 1992, and so pass the whole responsibility to Scottish ministers and have nothing more to do with it in the Scottish Parliament except, possibly, in cases of national or regional significance, when the Parliament might want to have some involvement. However, that might be expediency at the expense of policy. The policy might be that Parliament should retain a more active involvement in whether legislation should be authorised. In the evidence that you have already heard, I read that there is a desire to have a degree of transparency and democracy in the authorisation process. In that case, you could find that you have chosen an expedient solution that does not conform with current aspirations on policy.

Therefore, there is a question of the extent to which Parliament should become involved. Should it become involved just to approve the principle of the matter before it, which Alison Gorlov talked about, or should it retain further influence over the outcome—the scope of the powers to be permitted and whether protections should be written into the legislation in the interests of affected parties? Once the Parliament chooses to become involved to that extent, it has to find a way of doing so in a way that is manageable. We have suggested that one way of making it more manageable would be for the Parliament to retain overall control, but to delegate some of the labour-intensive tasks to someone to carry out on its behalf.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I would like to ask about your practical experience of the operation of the Transport and Works Act 1992 south of the border.

One concern that objectors and members who have experience of the committees that are charged with considering private bills have raised with the committee is the lack of opportunity for objectors to become meaningfully involved. I realise that you will most likely be representing the other side, but I would like you to tell us how objectors engage in the process.

Ian McCulloch: To be honest, I do not fully understand the negative comments made about the ability of objectors to participate in procedures relating to private bills or the Transport and Works Act 1992. I readily accept that there are ways in which objecting to a measure could be made easier and less intimidating for people. I know that the committee has discussed whether people should have to pay a fee before they are allowed even to submit an objection. I know that members have also considered the issue of legal representation for parties. I would not say that it is more or less difficult overall for an objector to participate in a Transport and Works Act 1992 order inquiry than in a private bill inquiry, a roads inquiry, a harbour inquiry or many of the other procedures that are available.

Alison Gorlov: For individual objectors, there is no difference from a procedural point of view: they are required to submit an objection on a specific day and are faced with an inquiry. However, it is easier for an unrepresented individual objector here in the Scottish Parliament than it is in almost any other proceeding that I have come across. There are a number of reasons for that. As I understand it—I have no first-hand experience of the procedure—when an objector submits his objection, the private bills unit is exceedingly helpful, in ways that it is not possible for an inquiry officer to be. At the outset, the objector—who is understandably lost in all the procedures—is guided in ways that are not available elsewhere.

No doubt the committee hearing is intimidating for many people, but it is probably equally intimidating for people to appear in an inquiry room before a trained inspector. They would not be appearing before a committee of MSPs, which

some might see as daunting in itself, but a trained inspector could be inviting or otherwise, depending on the individual concerned. An inspector is much more in the nature of a judge. I do not know this from personal experience, but I hazard a guess that, for the average layman who never does this sort of thing, it is a great deal less intimidating to be faced with a committee of MSPs, who are much closer to being ordinary individuals like him. In a way, it is probably much easier for an objector to appear before a private bill committee.

There are obvious difficulties, but those are difficulties that any unrepresented person faces in any proceeding. The unrepresented, unadvised individual will almost certainly find life more difficult and be at a disadvantage compared with someone with representation. That is true in a court of law, a council's planning committee or a committee of the Parliament. The situation is probably unavoidable. However, the procedure in the Parliament seems extremely user-friendly from the point of view of objectors.

Cathie Craigie: Do you bring experience from the process that was used at Westminster prior to the passage of the 1992 act?

Ian McCulloch: Yes. Some worthwhile changes have been made for the Scottish Parliament bill procedure, not least the ability to hold the committee meeting at which objectors are heard in the locality to which the proposal relates. Under the Westminster procedure, people would come from all corners of the country to the Palace of Westminster to appear before a parliamentary committee. The process was intimidating for many people. Under the Scottish private bill procedure, the committee goes to them.

Cathie Craigie: Under the Roads (Scotland) Act 1984, major motorway and trunk road developments are usually dealt with by a public local inquiry that is held in the locality concerned. Does that happen with inquiries that are held under the Transport and Works Act 1992?

Ian McCulloch: Yes, it does; the inquiry would be held locally. Indeed, for one Transport and Works Act 1992 order not long ago—for the west coast main line, I think—the inquiry was held at different times and in different places according to the locality affected by the subject matter that was being considered at the time.

Richard Baker (North East Scotland) (Lab): I will be interested to hear from Mr Adam about his experiences of being an objector. It is a mountain to climb, especially in an adversarial context, when objectors are up against all the resources of the promoters, including a QC. I was a member of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee. The process requires a big commitment from the Parliament—that is fine; I have no problem with that. However, to justify its being a parliamentary procedure, the process must enable objectors to make their case better than they could through other procedures—in an easier and more accessible way—and must aid scrutiny of the proposal.

You have said that a reporter might be involved in evidence taking, which is perhaps a good suggestion. I am interested to hear any further comments that you might have on why the parliamentary procedure offers more opportunity for objectors and better scrutiny than would a planning inquiry that takes place in a locality, which might take longer but is perhaps required for better scrutiny, at which point recommendations would go to ministers. At the moment, the Parliament is involved in decision making but, because the issues are highly technical and because such a wealth of data is involved, which can be impenetrable and take a long time to understand, MSPs are limited in their ability to feel empowered to make decisions about the policy. I wonder, at times, whether the present process is the most effective way of achieving scrutiny of the policy.

Alison Gorlov: I will deal with your question and then return to another issue, if I may. The decisions on Transport and Works Act 1992 orders are made by ministers. One supposes that, if a similar procedure were introduced in Scotland, the ultimate decision would be made by ministers on the recommendation of a reporter. The reporter's job would be to analyse the technical detail and to sift out recommendations, which the minister might or might not follow. The minister would act on advice and would not be an expert. I would hazard a guess that the minister would be no more expert, at bottom, than MSPs are when they first sit on a private bill committee.

By the time that a committee's scrutiny has finished, MSPs are probably approaching the expertise that a minister has after he has mastered his portfolio for a year or so. The fact is that all MSPs come to the job as relative laymen, and ministers are not really an exception to that. The suggestion that the decision might be more the decision of an informed person is perhaps based on a misapprehension. By the time that all the evidence has been presented to and analysed by the committee—or, in our suggestion, for the committee—it will be as well informed as the minister is and in as good a position to make an informed decision.

Ian McCulloch: The question that we have posed in our evidence is whether the reporter, panel or other investigator—whoever it might be—should report to Scottish ministers or to the Parliament.

Richard Baker: That is a good point. Ministers making a decision are accountable to Parliament as well. If Parliament objected to a decision, there would be some scrutiny of ministers at that point.

The key issue for me, which has emerged in evidence, is that there should be adequate scrutiny. Obviously you feel that proposals undergo more scrutiny as a result of the parliamentary process than they would in a planning inquiry. However, that does not seem to be the uniform opinion.

Alison Gorlov: The perception is not that there is more scrutiny, but that the scrutiny is slightly different.

Richard Baker: Is it better?

Alison Gorlov: I suppose one might say that that would depend on the quality of the committee. However, a planning inquiry also depends on the quality of the inspector, and individuals are individuals.

10:00

Ian McCulloch: Although ministers are accountable to Parliament in a very general sense, it is not at all clear how a minister who makes an order under the Transport and Works Act 1992 is accountable to Parliament for any of his decisions. In practice, he is not accountable; it is his decision whether to make the order, and he is not brought to Parliament to account for it in any particularly meaningful way.

Richard Baker: But there are various ways in which he could be brought to account by Parliament.

Ian McCulloch: Yes, but there is little comfort in that for an objector to an order made under the 1992 act who is dissatisfied with the decision.

Richard Baker: I am sure that, given the decision on the line, objectors to the Stirling-Alloa-Kincardine railway do not feel that they are as empowered as they might wish to be.

Ian McCulloch: From our Westminster experience, it is clear that even if some objectors feel that the decision of a parliamentary committee is a slightly rougher form of justice than that of a trained inspector who trawls over every technical aspect and detail of a project, they accept it more readily. When we promoted bills instead of orders, we had the sense that objectors felt that the decision was being made by elected politicians, not by bureaucrats.

Richard Baker: Given that response, I should perhaps refer Mr McCulloch to the evidence that we received at our previous meeting from John Dick of the Kincardine railway concern group.

Alison Gorlov: I should point out that, in the evidence that I have read, concern was expressed mostly by people who were understandably disappointed when they objected on grounds that were ruled out of order further down the line. Many of these problems could be overcome if the rules were clarified. At the moment, they are logical but operate rather confusingly. The concept of the split between general principles and detail is clear enough, but it is exceedingly difficult to apply that in practice. There is a risk of repetition or having to rule people out of order. In the event, we had both outcomes, and neither was desirable.

It must be very upsetting for an objector who wants to object to an issue to find out that he is not entitled to object at all. In such cases, we tended to question ourselves and ask whose fault it was. In fact, I do not think that it is anyone's fault. The rules were put together in a perfectly logical manner and it was accepted that we would have to see how they bedded down. In some respects, they have not bedded down quite as the Parliament might have wished. It would be possible to remove all those uncertainties and to clarify the rules to ensure that individuals knew that they could object only to the detailed consequences of the bill as they adversely affected them. I know that that is the intention behind the rules, but it is not how they are understood.

Alternatively, we could throw the whole argument wide open and say that anyone who could show that a provision could affect them adversely has the opportunity to object to the whole proposal. That happened at Westminster, and is what happens with orders that are made under the Transport and Works Act 1992. Individuals would understand that and know what the rules were about; they would be able to say what they wanted to say and would not experience the frustration of finding themselves ruled out of order.

The Convener: Is the problem that private bills for railways and tramlines are a hybrid form of legislation that not only address the public policy issue of whether a particular project should go ahead but cover planning aspects such as the details of the route and objections? Is there not a slight problem in that such private bills try to deal with two things at once but neither gets satisfactory treatment because of the way in which the system operates and the fact that in the private bill procedure there is not really an opportunity to object properly to a line or railway?

Alison Gorlov: I do not think that there is such a problem—or at least there does not need to be. On the philosophical concept, there is a distinction to draw between the overall policy and the detailed application. However, in a great many cases, the

two interact to such a degree that it is an artificial distinction to draw. I do not think that the process is the cause of the problem. After all, one has to deal with those policy-versus-detail issues whether one is in front of a committee of Parliament or an inspector at an inquiry.

Ian McCulloch: Often the policy decisions that a parliamentary committee has to take are not based simply on whether the work should be authorised but arise from a detailed examination of the proposals, such as whether the compulsory purchase of a home, office or factory is justifiable in the context of the scheme and whether the scheme should be permitted as it stands or should be changed in some way. Those are the sort of policy issues that can arise from an examination of the detail. As Alison Gorlov has said, we believe that in most cases it is somewhat artificial and unhelpful to draw a distinction between the principle of the bill—sometimes I struggle to understand what that means—and the detail. I believe I am right in thinking that even if the principle of the bill is approved, it can still be defeated if examination proves the detail to be sufficiently unsatisfactory. We advocate the consideration of the principle and the detail of the bill at the same forum, not in two separate stages.

Mr Jamie McGrigor (Highlands and Islands) (Con): You have sort of answered my question. I sat on the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill Committee. The bill was not about an offshore wind farm but two points of law relating to navigation and fishing rights within the area of the proposed wind farm. A good many of the objectors objected simply to the possibility of a wind farm being erected in the Solway firth. It seemed difficult to get across to them the fact that the bill had nothing to do with whether the wind farm should be there in the first place but dealt with smaller legal matters. One objector asked me, "Why are they discussing that when they should be discussing whether the project should go ahead first?" When you said that the forum should discuss both aspects at the same time, is that what you meant?

Ian McCulloch: Not necessarily. It would be wrong for me to comment on that bill. Your question raises the issue of scope. What is the scope of a bill and what is the scope of the consideration of a bill? To what extent do other factors that bear on the issue become relevant or irrelevant to the consideration of the bill? It would be desirable for the scope to be made clear early on in the proceedings so that objectors, as well as promoters, understand fully the scope of the tribunal that we are talking about. Objectors would then understand that any of their concerns that did not fall within that scope would need to be raised elsewhere, such as in an objection to the planning application for the wind farm or in some other process. It would be desirable for the scope to be made clear at the start of the process, as happens in other tribunals. The terms of reference need to be made clear.

My earlier comment was addressed not at that issue but at what we regard as the artificial differentiation between the principle of works—I appreciate that the bill to which Jamie McGrigor referred was not a works bill—and the detail of works. Whether the works should be allowed depends as much on the detail as on the principle, whatever that principle is.

The Convener: Who determines the scope of a bill in those circumstances? Obviously, the promoter will want the scope to be as narrowly defined as possible to minimise objections. However, the committee that is considering the bill will not want to be proscribed from considering the wider issues that arise as a result of its considerations. Who determines the scope and terms of reference?

Alison Gorlov: Ultimately, it is a legal issue. The scope of the bill is a legal matter on which the committee's legal adviser and the promoter's legal adviser will have a view. It is to be hoped that the views of the two will coincide or be made to coincide at some point. Otherwise, it will be for the committee that is in charge of the bill to determine, on legal advice, the proper scope of its inquiry. A committee might want to examine issues that are beyond the legal scope of the bill but which it considers to be material to its inquiry. I have no doubt that a committee's lawyers would advise that it would be proper for the committee to consider those issues. It must be for the bill committee to retain control of its bill, but one hopes that it would do so in discussion with other parties' lawyers.

Ian McCulloch touched on the stage at which the scope is defined. In the case of an order under the Transport and Works Act 1992, there must be a meeting at which that happens. At such a meeting, people do not so much discuss the scope of the inquiry as receive directions that are essentially of a procedural nature but which in effect govern the inquiry's scope. It would be immensely helpful to have such procedural directions at a very early stage in proceedings. In our experience, the way in which the timetable for the bill developed as it proceeded was exceedingly difficult for everybody to handle, even though one understands why it fell out in that way.

An indication of the scope at that early stage might not be awfully helpful to objectors who had already objected. This committee's concerns might be better met if there were some way of indicating to the public what the parameters were when the bill was introduced. Many of the problems about

which this committee has heard have come from people who did not understand the scope issue. There is no particular reason why they should have done, but that resulted in frustration all round, which everybody would have liked to avoid.

I heard positive reports about the meetings that the clerks had with the objectors. As a promoter's representative I did not attend those meetings, but the objectors to whom I spoke found them extremely helpful. I wonder whether there might be scope for those to evolve into public meetings. Such meetings could be held shortly after a bill was introduced to enable the clerks to indicate how the procedures work and what the parameters for objections might be. My proposal is not in our submission, but I suggest it at random as something that occurs to me.

Mr McGrigor: I entirely agree with that. One frustration for us was that the scope of our bill had been made quite plain to us but it did not appear to have been made clear to the objectors. A great many objectors turned up, but they went away disappointed and frustrated because they felt, whether rightly or wrongly, that they had been shoved to one side on an issue that was very important to them.

10:15

Ian McCulloch: It would be highly desirable if there were a point at which closure could be reached on matters of compliance and procedure, whether that were established through procedural directions or as part of a revised process. We refer to the matter in our paper. Under the current procedure, issues of compliance, such as whether the promoter has adequately served notices on people or lodged documentation that is satisfactory for the purposes of the inquiry, run on for a considerable time—indeed, we know from experience that they can run on for 11 months without being resolved. That is not in the interests of the promoter or the objectors. Matters of compliance could be dealt with more quickly and without burdening committees, so that for better or for worse, according to one's point of view, a decision could be taken on whether the right procedural steps had been taken up to a certain stage. If a bill was allowed to proceed, one would move on to consider the merits of the project.

Mr McGrigor: If someone who objects to a project sees that a committee is considering legislation to facilitate the project, they will be bound to object at any stage.

Ian McCulloch: Yes. I do not suggest that someone's right and freedom to object should in any way be curtailed. However, there should be early and clear determination of whether an objection can be admitted and heard, so that objectors know where they stand. Similarly, it would be desirable for promoters, who must deposit a range of documentation, serve notices and publish advertisements about the project in accordance with rules, to know that it is possible to conclude that aspect of the process after a reasonable period of time, subject to allowing for challenge if others do not agree that they have proceeded correctly.

The Convener: I have a couple of final questions. First, you mentioned the different legislation that applies to different types of works, such as the Harbours Act 1964 and the Roads (Scotland) Act 1984. Is there any logic to the fact that railway and light rail works are subject to a different type of procedure than that which applies to major road construction? Would it be more logical if there were a single process that dealt with all major public works?

Alison Gorlov: There would be a logic to that. This is quite interesting if one is an historian: the various procedures all spring from the same source, because they were all originally dealt with by the United Kingdom Parliament. At various stages, Parliament devolved the procedures in different ways. The system grew like Topsy: when it was expedient Parliament would fling off one set of procedures and then another, until the next time it got fed up with a set of procedures. That is how the current procedures developed. If the Scottish Parliament were to pass an equivalent of the Transport and Works Act 1992, it would simply be following an old tradition.

The Convener: Finally, objectors raised concerns that the battle is unequal: the promoters of bills have access to all the technical information and to QCs for legal advice, whereas objectors tend to do the work on their own and fund it themselves. Should objectors have access to support for technical and legal representation at inquiries, whether they are public or committee inquiries?

Alison Gorlov: Ian McCulloch and I both represent promoters and from time to time we represent objectors. Self-evidently, some of the objectors whom we represent are people who have access to much the same sort of resources as promoters do. The playing field is not level, but it is impossible to make it level in the real world. However, one strives to assist as much as one can. The ill-informed objector does not help anyone: himself or the promoter. It would be to everybody's advantage if objectors were assisted as far as possible. Patently, a promoter cannot give an objector advice, but if the Parliament thought that it was right to provide independent advice to objectors, any sensible promoter would welcome that. One would not have to agree with the advice, but at least that would mean that

objectors were given a steer that they might find helpful.

Ian McCulloch: It is obviously desirable for people to have access to professional advice when they feel that they need it. The problem is not confined to the Scottish Parliament; the same point arises for people who have issues with the Inland Revenue or issues about legal aid in the courts—legal aid is denied to many people who feel that they ought to have it. Planning inquiries and bills that are before the Parliament are other areas in which it would be desirable for more parties to have access to professional advice if they needed it. We would not resist a move in that direction, if such a move were possible.

The Convener: I thank the witnesses for their evidence, which has been helpful.

We will now have a short break for a changeover in witnesses.

10:21

Meeting suspended.

10:23

On resuming—

The Convener: The next witness is Tom Adam, who is a representative of the Clackmannan railway concern group, which was an objector to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill. I thank him for coming. Before I ask Mr Adam to make his opening remarks, I remind him that we cannot rerun any of the issues to do with the railway scheme; we are considering the processes of how the bill was dealt with, not the arguments for or against it. I am sure that the clerks have briefed him on that point.

Tom Adam (Clackmannan Railway Concern Group): Thank you for allowing me to speak. I will try my best not to encroach on the merits of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, although it is difficult to divide them from the process. However, I am sure that the convener will keep me right. I appreciate that the purpose of the meeting is not to rehearse the arguments that were presented at the consideration stage of that private bill, but it would be helpful to the committee if members were aware of the circumstances behind the objection that we lodged, as that will indicate the nature of the thinking behind my evidence. My evidence relates only to the Clackmannan section of the Stirling-Alloa-Kincardine railway project.

From the outset, we stated that we were not opposed to the reopening of the railway, but we felt that our situation was unique in as much as an opportunity presented itself for a deviation to allow the heavy freight transport element to bypass our community. The deviation would have had the benefit of preserving residents' quality of life and safety, without compromising the project objectives. Our view was not unreasonable and it had the support of our member of Parliament, the provost of Clackmannanshire, our local councillor and the community council. In addition, 235 residents raised objections and a 1,090-name petition was collected.

In spite of all that, the end result of the exercise, which involved two years of our time and effort, was that nothing was changed in the original proposal to take the line directly through the heart of our community, even though that option was not essential to the project. By implication, that meant that the private bill committee accepted the promoter's case totally. We were further disadvantaged by the fact that our MSP is also the Presiding Officer and was required to remain impartial. In effect, we therefore had no advocate in the Parliament when the bill was debated. The private bill committee should perhaps have taken that point into account.

Richard Baker: Given that you have a lot of experience with local authorities and with local initiatives in your area, do you have any opinions on the effectiveness of scrutiny in local planning inquiries compared to that in the parliamentary procedure? Were objectors given a greater and more effective role in the parliamentary procedure compared to what happens in a local planning inquiry?

Tom Adam: I do not have much experience in planning matters. My experience is merely in the issue that is before us. I do not think that I could add anything that would be of great help.

Richard Baker: Thank you for that clarification.

Tom Adam: I have served on the local authority and I have a lot of experience of how politicians work. The system, if not the procedure, was faulty from the beginning. The scheme was handed down to the local authority on the basis that it was of great historic importance. One can imagine local councillors preening themselves and thinking that they were going to get their place in history. There is no doubt that that affected their approach.

Another issue was the timescale. The council wanted the bill to come before Parliament in a short period. A year and a half's work had gone into planning the route before it arrived on our doorstep. Against that background, the council decided that it was going to consult the people, but it was a wee bit late in the day for consultation, when all that work had gone before. Nevertheless, we spoke to our local councillors and told them about our problems and objections in the hope that they would be able to resolve the matter. Part

of the procedure should be that councillors resolve the immediate problems of their constituents.

If that were done in the proper fashion, it would save the private bill committee a whole lot of problems because the major problems would have been resolved before they came to the committee. However, our experience was that, because of the timescale that was imposed on the local councillors and because of the historic importance of the project, they did not want to talk to us about it. We were a bit of a nuisance to them in raising objections to the railway because they wanted it to go ahead.

10:30

We asked on several occasions whether we could address the council, but our request was refused. The representatives of the promoter who were doing the consultation then came to the local community and told us what they were going to do. I do not think that they expected any objections. When we raised our objections, they backed off and there was no more consultation. We had to get to grips with the promoter and invite it along to meetings, which we paid for, and question it about the issues. However, we did not get very far at all.

Eventually, the councillors, in their wisdom, decided to take the resolution to submit the bill at the last meeting of the council prior to the next election. That was in March and the election was in May. The council passed that resolution almost unanimously—I think that two councillors voted against it—but it was sod's law that, when the election was over, three quarters of the councillors had been dismissed and replaced by another group of councillors. The new group of councillors had never discussed the bill and knew nothing about it—one day, they were working in the mill or in the co-operative; the next day, they were on the council. The issue has never been discussed again by the council.

Only three councillors on the newly constituted council had been involved in the passing of the resolution. Of those, one had abstained, one had voted against it and one had voted in favour of it. That was the position that we were faced with—it was madness.

Richard Baker: So, the parliamentary procedure was not the be-all and end-all of democratic scrutiny. Some of the local issues were just as pertinent.

Tom Adam: That is correct. That is how it was.

Cathie Craigie: I know that you have said to Richard Baker that you are not an expert in the local planning processes, but would it have been better if the bill had come through a local planning process whereby objectors would have had the right to put forward their objections and possible solutions to those objections and to encourage the applicant, as it were, to amend the plans? Would that have been a better way in which to proceed? I know that, in the parliamentary process, witnesses were either for the bill or against it—there was no way to amend the proposal. You appear to be suggesting that you were not against the railway but just wanted a different route.

Tom Adam: That is correct. I do not think that it would have made any difference. The procedure that we experienced was an excellent one—it was democracy on our doorstep and I could not find any fault with it whatsoever.

The Convener: In your written evidence, you suggest that the committee perhaps had a vested interest in passing the bill and that an independent review might be a better way forward. Is it still your view that some independent element needs to be introduced into the system with the parliamentary process?

Tom Adam: Yes. At the end of the process, once the evidence has been heard by the committee in the normal way, the final decision should not be left totally to the committee. Some independent body should review the evidence and come to a conclusion that could be passed back to the committee, if that were necessary, or passed to the Executive. That is what should happen.

I am sure that the committee was under a lot of pressure for the bill to be passed. Time constraints were on its mind. It wanted to finish consideration of the bill so that the bill could get royal assent and the project could go ahead. The passage of the bill had historic importance for the committee, but it had no historic importance to us—the people who lived in the community. The objectors did not look at the bill from that point of view. They had simple objections. It has been said that the process makes it difficult to object, because expertise and lawyers are necessary, but it is not necessary to have lawyers to object. Objections are a fairly simple matter.

Our objection was that we felt that the railway would be a danger because it would be coming through our community and the population would be very close to it. We are talking about people who will be living 5m from a line down which a 2,000-tonne freight train will travel at 60mph every half-hour. We thought that that represented a potential danger to people, so we suggested that the trains be switched to a different route that would bypass the town. The track was there—the old system was a two-track system, with one track running just outside the town and the other track running right through it. The track that runs through the town provides the most direct route to Longannet power station; the route of the other

track is not as direct. We suggested that, instead of running the trains through the town, which we thought had attendant dangers, consideration could be given to the other route. That is not a difficult concept. We did not need a lawyer to put that to anyone. Someone either understands that as being a problem or they do not.

We put that case to the committee, but because of time constraints and its desire to finish its consideration of the bill, it felt that going down the new route would have meant opening up the debate again, talking to other people and perhaps having another environmental assessment carried out. The committee was right—it would have meant all that. That is the problem with democracy; it takes an awfully long time. However, it is the right way to handle things. If that had been done, people would at least have been satisfied, either because it had been proved that what they were suggesting was totally wrong or because the people whom they were paying to represent their interests were doing just that. The private bills system did not give us that feeling.

I am putting the point of view of the ordinary layman. His point of view is that he elects people to represent his interests. Contrary to popular belief among politicians, they are not elected because of their superior intellect or their great intelligence; they are elected because the electors believe that they are part of a group that will look after their interests.

The Convener: I can assure you that I make no claim to have a superior intellect.

Mark Ballard: You will have heard from earlier evidence that one of the advantages of the private bills system is that the final decision is taken by the Parliament as a whole rather than by Scottish ministers. You made the point that because your constituency MSP was the Presiding Officer, you were denied representation in the final stage—in other words, the stage after the consideration stage, when the motion to pass the bill was debated in the Parliament. You have just talked about representation by MSPs. Do you think that your regional list MSPs played an effective role in representing you? Do you feel that they had an effect on the final stage debate?

Tom Adam: No. We were assured that, in the final stage of the bill procedure, which is the stage that we are talking about, we would have the right to lobby our MSPs. That is how things should work. I attempted to do that—in fact, I e-mailed every member of the Mid Scotland and Fife group of MSPs. I received a reply from Bruce Crawford telling me that he was injured and would not be able to attend the debate, but received no reply from any other MSP. I even e-mailed Jack McConnell. I got a reply from his office a fortnight after the bill was passed saying that if I had any complaints I should raise them with my local authority. That was the total response that I got.

George Reid, who is our MSP, wrote to tell me that because he could not participate in the debate he would have a word with some other MSPs who would take up the point in the chamber, which I thought was not a bad idea in the circumstances. One of them was Nicol Stephen, who was the minister who was pressuring everybody to pass the bill. As I said in correspondence to the committee, he had about four bites at the cherry, and was really over the top.

On the day the bill was passed Nicol Stephen stated:

"This is an important and historic day."

He was still on the historic aspect of the bill. Like other members, he said:

"The new passenger service will be able to take all of us from Alloa, through Stirling, to Glasgow Queen Street station. One of the first passengers on the new service will be our Presiding Officer".

He went on to say:

"I am sure that the member for Ochil"—

he was talking about the Presiding Officer again—

"would have wished to speak in today's debate, but he cannot speak or signify his support, save through the strength of his smile at decision time. I suspect that if there was a tied vote at four o' clock, or whenever the vote is taken, we know which way he would exercise his discretion." —[*Official Report*, 1 July 2004; c 9812-14.]

Now this is the guy who we were advised was going to take up our case on the floor of the chamber and advocate for us. That was not satisfactory.

The Convener: By the time a bill is lodged, much of the background has been sorted out. You mentioned accompanying documents, such as environmental statements. In that respect, were there sufficient opportunities for you to exert influence before the bill reached the final stages? Should there have been more early consultation with affected communities such as your own, before it got to the stage of drawing up the preferred route?

Tom Adam: Yes, there should have been more consultation. When the promoter realised that there were serious objections—236 objectors is a lot of people—it should have come back to the community and reassured us that the problem could be resolved, but it never attempted to do that.

As far as information is concerned, I do not think that I have ever seen as much information as we received. In fact, when we went to the hearing in the town hall, the problem was not so much the evidence as the carrying it in. We could not have

carried the stuff that we had into the hearing. There is no way that we could have gone through the documentation. I do not know how committee members went through it, because there was so much of it. Then again, it is common among civil servants who want to hide something to give you more information than you could ever get through. I had the feeling that that is what was happening. We were inundated with information, but our argument was such that we did not have to go through all the noise levels and the environmental problems, which did not affect our immediate problem, even if they did affect the concept of the project. As I said, our problem was fairly straightforward.

The Convener: I have one final question that we have been asking most of the witnesses. It is about the availability of professional, technical and legal advice to objectors. Do you believe that you had enough access to such advice or should more be provided to objectors to enable them to make their case to any inquiry, whether it is done by a committee or whether it is a public inquiry?

10:45

Tom Adam: Of course, we had no legal advice at all. We paid £20 for the pleasure and privilege of raising an objection. We do not know where that money goes. It certainly did not buy us anything that we required. We were very conscious of the thought that we, as taxpayers, had paid for everything. We even paid for a Queen's counsel to act against us and there is something fundamentally wrong with the way in which that works. The only people who really had to dip into their own pockets were the objectors.

Legal representation would not help with the presentation of the case because anyone can raise an objection by saying what the objection is. I would be fearful because once lawyers get into a case, they tend to make it their own and argue and talk for ever. That is how they work and I do not think that that would be at all helpful.

If we required legal advice on specific matters, it would be helpful if there were someone from whom we could ask for it.

The Convener: One suggestion might be that there should be an independent panel of experts from which any objector could get technical advice about how to present their objections. The panel would not present the objectors' case for them; it would just be available to give technical advice. Would that sort of thing be useful?

Tom Adam: That might be helpful because some objectors obviously felt that they were left out on a limb when they had to raise their objections. It might be comforting to think that if they had any difficulties, they could go to such a panel and have them resolved.

The Convener: You mentioned the £20 fee for lodging an objection. Do you think that it is reasonable that there should be a fee for lodging an objection?

Tom Adam: It does not make any sense to me that an objector should have to pay to raise an objection. I understand that triviality must be filtered out of the system, but the people who had to pay £20 so that their objection would be considered to be non-frivolous are the same people who vote for MPs and MSPs. They are not considered to be frivolous at that stage; they are considered to be very discerning and responsible then.

At every stage, objectors seem to be thought of as a bit of a nuisance. It is as if life would be made much easier if people did not object to things and those things just went ahead. I think that that is the basis on which committees look at objectors and that is why obstacles are put in the way of objectors.

I am bound to say that the idea of the Parliament coming to Alloa to meet in the town hall was brilliant. That really encouraged people to believe that democracy works for them. However, the difficulty was that people who wanted to get into the meeting had to contact Edinburgh to get a ticket, which was very off-putting. It would have been great if people who were passing the door and saw a notice saying that the Parliament was meeting there could have been able to walk in. There was plenty of security at the meeting so it would have been all right. The very idea that people had to phone Edinburgh to make arrangements for tickets and then pick the tickets up meant that people just said that they could not be bothered. That is how people are and the Parliament missed a great opportunity there.

The Convener: Thank you for that final remark and for giving evidence to the committee today. The points that you have made have been very helpful and we look forward to considering them when we draft our report in due course.

There will be another short break while we change witnesses for our next item.

10:49

Meeting suspended.

10:51

On resuming—

Commissioner for Public Appointments

The Convener: Agenda item 3 is the start of our inquiry relating to the commissioner for public appointments. We are examining the process that the Parliament must put in place in order to consider the documents that the commissioner is required to submit under the Public Appointments and Public Bodies etc (Scotland) Act 2003. I am pleased to welcome Karen Carlton, who is the first commissioner for public appointments in Scotland. We have received an advance copy of your submission, which is helpful to committee members. I invite you to make some brief comments before we proceed to questions.

Karen Carlton (Commissioner for Public Appointments in Scotland): I am here today to inform the committee's work on developing procedures for parliamentary consideration of consultation documents and reports. I would like to take a few moments to outline to the committee the statutory consultations with which I will engage with the Parliament, the reports of non-compliance that I may need to bring to the Parliament and my views on the options available to the Parliament in order for it to address both issues.

The legislation that created my post outlines four key requirements of the commissioner. The first is for the commissioner to prepare, publish and revise a code of practice for ministerial appointments to public bodies in Scotland, in consultation with the Parliament, and to do so in two stages. First, an interim code of practice must be produced. Until my appointment in June this year, ministerial appointments to public bodies in Scotland were regulated by the code of practice produced by the commissioner for public appointments, Dame Rennie Fritchie. To comply with the requirement to produce a code of practice and to ensure that, while we prepare the new Scottish code, we have a framework in place to guide the appointments process, I plan to adopt Dame Rennie's code as the interim code for Scotland. I am currently consulting with the Parliament on the adoption of this interim code.

My next consultation will be about the adoption of the new Scottish code. I anticipate that the new code will depart from the interim code, reflecting the processes that have been adopted in Scotland and the requirements of our legislation. For example, I anticipate that our code will be more specific about the methods and practices to be used in making appointments—how vacancies are published and how applications are encouraged. It will be a detailed document, designed to ensure that the people of Scotland are served by a fair, open and transparent public appointments process that commands confidence. The code will require support from everyone involved in making ministerial appointments, so I would welcome active participation in the consultation process.

The note prepared for the committee by the senior assistant clerk outlines the options that are open to Parliament for engaging in consultation about the code of practice and the equal opportunities strategy, which is the second requirement placed on me by the legislation. Paragraph 10 of the note describes the formal mechanism for informing the Parliament about a consultation—by laying the consultation document before Parliament. I favour that option for informing the Parliament about consultation on the code and the equal opportunities strategy. The formal nature of the act of laying documents before Parliament reinforces the importance of the statutory consultation and provides a public record of it.

I do not think that the convention that documents are not made publicly available prior to being laid before Parliament is necessarily restrictive. On the dates on which the code and equal opportunities strategy are laid before Parliament, I would forward copies to others who are involved in the consultation and post a copy on the office of the commissioner for public appointments in Scotland website.

An alternative method of informing Parliament would be for receipt of the consultation documents to be recorded in section H of the *Business Bulletin*, as described in paragraph 12 of the note. That does not appear to give the same significance to the consultation process as the formal laying of documents before Parliament, but it would be acceptable. The third option, which is outlined in paragraph 11 of the note, appears to be used for issues that need to be brought before members urgently. Although I regard consultation about the code of practice and equal opportunities strategy as important, I consider that consultation is best effected in a measured way and need not be addressed urgently.

On consulting Parliament, option 1 in the note suggests informing members about the consultation document via the *Business Bulletin,* but that might mean that, although members are informed, few are active in the consultation. A member might wish to lodge a motion to make their views known, but the Parliamentary Bureau might decide that the motion should not be debated. Option 2 is for a mandatory debate, but that would give one member the power to hold up the consultation process. Option 3 is for a debate on the consultation, but that would require parliamentary time, which could be devoted to

more pressing matters. Moreover, there is doubt about who would lodge the motion for debate.

The most suitable way of holding meaningful consultation with the Parliament as a whole is through a lead committee, as outlined in paragraphs 18 to 20 of the note. That would offer all members the opportunity to comment without overburdening the extremely busy parliamentary timetable. Members of the lead committee would build up a degree of knowledge about the public appointments process, which would be invaluable when considering revisions to the code, the equal opportunities strategy and non-compliance with the code. I have considered which committee should lead the consultation on public appointments issues. The consultation that preceded the passing of the Public Appointments and Public Bodies etc (Scotland) Act 2003 suggested that a public appointments committee should be established, but I believe that that is no longer a viable option due to the pressure of parliamentary business and the fact that the workload for such a committee is unlikely to be high.

I ask the Procedures Committee to consider extending the remit of the Standards Committee to include public appointments. The Parliament might consider that to be appropriate, as we are dealing with the standards by which people are appointed to the boards of public bodies. The Standards Committee would lead the consultation about the code that governs public appointments and the consultation about the strategy to ensure equality of opportunity in the attraction and appointment of candidates.

The legislation also requires me to report to the Parliament any case in which the code of practice has been materially breached and Scottish ministers have failed, or are likely to fail, to act on that breach. Examples of the type of action that I may require to report to Parliament include unwillingness to follow the commissioner's code, interference with a particular appointments round and appointment of a candidate who has failed to demonstrate that he or she is the most suitable candidate for the post. Again, I think that the most suitable method of addressing such breaches is through a lead committee and that it would be appropriate for the committee that I consult about the code and the equal opportunities strategy to consider cases of non-compliance with the code. The Standards Committee has in place procedures for breaches of the code of conduct for MSPs and those procedures could be adapted to deal with breaches by ministers in failing to address non-compliance with the code of practice. If the Standards Committee becomes the lead committee for the consultation, its members will build up a body of knowledge about the public appointments process, which will be invaluable when they consider breaches of the code.

On informing the Parliament about material breaches of the code of practice, I recommend that reports are not laid before Parliament but given to the lead committee and considered in private. There are three reasons why I recommend privacy. First, such reports are likely to contain personal information about the people who are involved in the appointments round. Secondly, if the person appointed is a suitable candidate, even though inappropriate procedures were used to make the appointment, confidence in the person could be damaged if information about the appointments process is communicated to the full Parliament. Finally, confidence in the public appointments process could be compromised.

However, in the interests of openness and transparency, I believe that a summary of the case and findings, highlighting the process followed rather than the individual appointed, could be published by the Standards Committee, were it to become the lead committee, and in my annual report. I recognise that reporting to a committee in that way on a breach of the code would require arrangements to be in place should I need to report on an appointments round during the summer recess.

In summary, I consider the most suitable method of consulting the Parliament to be via the laying before Parliament of a consultation document that is referred to a lead committee for consideration and I believe that reports of material breaches of the commissioner's code of practice should be made directly to the same lead committee.

11:00

The Convener: Thank you for that extremely helpful opening statement.

Richard Baker: I have questions about the role of the Standards Committee and about the extent to which you have been able to liaise with that committee about any role that it might have in future. How will it be clear to people who might wish to make a complaint about an appointments process that they should go to the commissioner rather than appealing straight to the committee? Do you think that any work will be done to ensure that people do not go away with that sort of misapprehension?

Karen Carlton: I shall answer the second question first. No one would appeal directly to the committee, whichever lead committee were chosen. The process is quite clear. We already have a complaints process. That process will be detailed on my website once the website is finalised. Any complaint that I referred to the committee would have been thoroughly

investigated by me in advance, so I would be the first port of call for any complainant, whether a member of the panel or an applicant.

Richard Baker: If anybody went directly to the committee, they would obviously be referred straight back to you.

Karen Carlton: Absolutely.

The answer to the first question that you asked is no, because I thought it inappropriate to investigate what the Standards Committee might do until I had made my proposal to the Procedures Committee today.

Mark Ballard: Thank you for providing a copy of your submission. In the final sentence of your paragraph on the interim code of practice, you say:

"I am currently consulting with the Parliament about the adoption of this interim code."

What is the relationship between the procedure for adopting the interim code and the procedure that you outline later for adopting the new Scottish code?

Karen Carlton: I do not think that there is any strong relationship. The adoption of an interim code is a measure that must be taken, but in the absence of any formal procedure to consult the Parliament, the Presiding Officer is consulting the parties and a motion has been lodged by the Deputy Presiding Officer for adoption of the interim code. However, I would not expect that process to be mirrored when we go into the full consultation on the new Scottish code and on the equal opportunities strategy.

Mark Ballard: My next comment is on your feeling that consulting via committee would enable consultation with the whole Parliament. Could you outline how you see that working?

Karen Carlton: My understanding is that any member can contribute to a consultation by the committee and that all members would be informed through the *Business Bulletin* that the consultation was happening.

Mark Ballard: Do you envisage the committee producing a final report on that consultation?

Karen Carlton: I would hope so. I would hope that the committee would produce recommendations.

Mark Ballard: Would one option be for the Parliament to debate the report, with the report being proposed, as committee reports are, by the convener of the committee? Might that allow the Parliament to have a chance to give the clear and unambiguous endorsement of the code that was envisaged at stage 3 of the bill? Given that several Procedures Committee reports have been discussed by the Parliament but have taken only about 15 minutes of parliamentary time, might that be a way of ensuring that there is proper parliamentary scrutiny by the committee, followed by an unambiguous endorsement by the Parliament of the results of that scrutiny?

Karen Carlton: My understanding is that that would be a decision for the Parliamentary Bureau. However, I would welcome the kind of debate that you have described, because I could only be in favour of an unambiguous endorsement of my code of practice by the whole Parliament.

Karen Gillon (Clydesdale) (Lab): The suggestions that you make are eminently sensible and I share your view that the Parliament as a whole should endorse the code at some point on a motion from the convener of the lead committee. Mark Ballard is right that that does not need to be a long debate, but it needs to happen to ensure that the Parliament has ownership of the code that it is setting in place. I am content with the proposals that you have outlined; they make sense to me. As a former member of the Standards Committee, I can see how they would fit and I am happy to support them.

The Convener: When do you anticipate publishing your draft code and laying it before the Parliament?

Karen Carlton: We have a timetable in place. Given the parliamentary recesses, the most sensible time to produce it seems to be immediately after the Easter recess, so the plan is to publish it in the week of 11 April. I hope that the consultation might be effected within a couple of months, but that might not be possible—I am liaising with one or two colleagues on that at the moment. When the United Kingdom commissioner's code was revised, the process took a year, but I hope that the process in this case will not take as long as that. We have started the process. We are doing a lot of the early consultation with the independent assessors, who operate on my behalf daily, so I hope that, when I bring the code to the Parliament, it will be a robust document that has benefited from scrutiny. Therefore, I hope to have a consultation period of about two months.

The Convener: Do you have any concerns about the laying of non-compliance reports during parliamentary recesses, particularly the long summer recess? There are times when the office of the clerk is not open for the formal laying of documents, although such times are relatively few, so that should not cause too much of a problem.

Karen Carlton: That could be an issue, although some of the appointments rounds can last between six and nine months—they are not effected quickly. However, if I was aware of an

issue, whatever lead committee is established might be required to be reconvened in an emergency over the summer recess.

The Convener: I thank Karen Carlton for her evidence. If all witnesses were as helpful, we would have a much easier time.

We must now consider the options for parliamentary consideration of statutory consultations and reports by the commissioner. There is a note on the matter from the senior assistant clerk, to which Karen Carlton referred in her evidence. I welcome any comments, but I think that what Karen Gillon said is right—the public appointments commissioner's proposals seem to make eminent sense.

Karen Gillon: We should stipulate wherever we can that the Parliament should debate the lead committee's report. That should be in our report. I am not sure what the standing orders say about recalling committees. I think that it is possible, but we should check that that is the case, because an emergency might arise during the summer recess that would mean that a committee would have to be recalled.

The Convener: Committees can meet during the recess. It is not normal, but it happens. It certainly happened that one committee of which I was a member had to have an extra meeting before the start of the summer term to complete some business on time.

Mark Ballard: Paragraph 20 of the note by the senior assistant clerk mentions amending the standing orders. Would we need a new procedure for dealing with consultations? If, as well as getting into the issue of the code, we have to come up with a new procedure in standing orders for dealing with consultations, that seems a complex matter.

The Convener: We are talking about dealing with statutory consultations where acts of the Scottish Parliament require consultation with the Parliament on a document. We would probably want a procedure that would apply to other statutory consultations. The logical way in which to deal with statutory consultations is probably to start with the laying of the document. The document would then be referred to the bureau, which would determine how to deal with it.

Mark Ballard: How does that fit in with the timescale that was discussed? The proposal is to have the new Scottish code produced by the end of the Easter recess. Would we have time between now and Easter to discuss new standing orders and then get a debating slot in the chamber to allow the changes to be made?

The Convener: Given that we are talking about relatively straightforward changes, I think that we would be able to persuade the Executive to give us a short debate at some point. We would not necessarily have to use our committee time. That should be possible, as we would be implementing Executive legislation. I am keen to put a strong case to the Minister for Parliamentary Business that we be given a short debating slot on an appropriate day to get the changes through.

Mr McGrigor: Would that be the only standing orders change?

The Convener: The other one would be to extend the remit of the Standards Committee to include public appointments, but, again, that is relatively straightforward.

Mark Ballard: Would we need to check what the standing orders said about recalling committees?

The Convener: I am certain that committees can meet during the recess. In fact, I am sure that this committee met during the recess once, because we wanted to deal with changes to standing orders relating to First Minister's question time. I think that we had a meeting a week before the Parliament resumed. I am pretty certain that committees can meet during the recess, but we will obviously check that.

Karen Gillon: Given the timescale, would it be appropriate for us to write now to the Standards Committee and to the Minister for Parliamentary Business to let them know what we are intending and to get their views so that we can press ahead early in the new year?

The Convener: I was intending to recommend that we inform the minister and that we write to the convener of the Standards Committee suggesting that that committee adopt the commissioner's proposal. I hope that we will have a draft report for our next meeting. I do not think that we have to wait until January.

Andrew Mylne (Clerk): I am not sure that I could commit to that timescale.

Karen Gillon: It would be appropriate to give the Standards Committee time to consider the options.

The Convener: I was hoping to be able to consider our draft report along with any response that we had received from the minister and the Standards Committee.

Mark Ballard: Paragraph 27 states:

"One option would be for the Bureau to refer the report to a committee for consideration and the preparation of a response."

Would that be covered by an extension of the remit of the Standards Committee to include dealing with breaches of the code? Is there a decision to be made or has the decision already

been made, in that we have agreed that the Standards Committee will be responsible?

The Convener: If we extend the remit of the Standards Committee to include public appointments, I do not think that reports of non-compliance would have to be referred individually. We would want the standing orders to make it clear that non-compliance reports would go straight to the Standards Committee.

Mark Ballard: The impression given in paragraph 27 is that the bureau would still be referring things on a piecemeal basis.

The Convener: My preference is that the standing orders would state that non-compliance reports would go directly to the Standards Committee, partly because of the confidentiality issues that the commissioner mentioned, which are important. The reports need to be treated on the same basis as standards commissioner reports are and go straight to the Standards Committee for consideration.

Will we recommend that a report on the draft code be debated by Parliament? Do we agree to adopt what the commissioner is suggesting and write to the Standards Committee to seek its view? Do we agree to write to the appropriate minister, who I presume would be the Minister for Parliamentary Business, although perhaps it is the Minister for Finance and Public Service Reform?

Members *indicated agreement*.

Private Bills (Dublin Visit)

11:15

The Convener: Item 4 is our report from the visit to Dublin.

Richard Baker: It is all right for some.

Karen Gillon: It was very hard work.

The Convener: I remind members that we are still in public session.

The visit was helpful and the information in the report is useful. The meetings with the Department of Transport officials and the private bills clerks were especially helpful. In Ireland, the definition of a private bill is much narrower than it is here. If a bill has any public policy implications, it is not treated as a private bill. Transport bills would, therefore, never be treated as private bills in Ireland, as there are public policy aspects to them.

Do members have any comments on the visit or the report?

Mr McGrigor: Paragraph 11 of the report states:

"Both Acts were superseded by the Transport (Railway Infrastructure) Act 2001."

Alison Gorlov talked about the parliamentary process being done away with and the buck being passed to someone else. That seems to have applied in the Irish Parliament just as it has in the Westminster Parliament.

The Convener: Indeed, that is the case. The Irish Parliament has gradually got rid of just about everything that went through the private bills procedure. It is now looking for ways of getting rid of what is left; it is essentially getting rid of the private bills process altogether. However, I am not sure that we can do that in Scotland, as certain things require private legislation.

Mark Ballard: I am unfamiliar with the language. Paragraph 23, on parliamentary involvement, states:

"All Orders made by the Minister under the Act are laid before both Houses of the Oireachtas and are subject to annulment within 21 days."

The Convener: Such an order is a negative instrument, in our terms.

Mark Ballard: Have any debates been triggered by that process?

The Convener: No. I do not think that there have been any motions to annul under that process.

Mark Ballard: So the parliamentary involvement is theoretical rather than practical.

The Convener: The procedure is the same as that used for any negative instrument in the

Scottish Parliament. If members have concerns, they can lodge a motion and trigger a debate.

Mark Ballard: But that has not happened in Ireland.

The Convener: As far as we are aware, that has not happened in the Irish context yet. An alternative would be to lodge an affirmative instrument, which would require at least a short debate in committee.

Mr McGrigor: I was a little sad that we did not meet more than one member of the Committee on Transport, but there was trouble with the roads.

The Convener: Indeed, there were transport difficulties.

It was interesting to hear about the extent of prior consultation on works acts before the orders are made. A considerable effort seems to be made to clear the ground before the formal stages of the process are reached. Perhaps the key to speeding up the process is what is done in advance, rather than the procedures themselves.

Karen Gillon: For me, the visit demonstrated how important it is for us to separate genuine private bills from those that seek to implement public policy. The railway bills are clearly the latter, as we have a clear statement from the Executive on railway bills. We also have democratically elected local authorities producing bills that are said to be private, but the authorities are not private institutions but public bodies. I think that we have got the wrong process. The visit clearly demonstrated the difference between public and private bills in a manageable and understandable way.

The Convener: We note the report, which is useful. It has not necessarily simplified our considerations, but it has been helpful to them.

Members *indicated agreement*.

11:20

Meeting continued in private until 11:22.

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