PROCEDURES COMMITTEE

Tuesday 12 April 2005

Session 2

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PROCEDURES COMMITTEE
5th Meeting 2005, 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)
Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Bill Aitken (Glasgow) (Con)
Mark Ballard (Lothians) (Green)
George Lyon (Argyll and Bute) (LD)
Margo MacDonald (Lothians) (Ind)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Jonathan Elliott

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 12 April 2005

[THE DEPUTY CONVENER *opened the meeting at 10:32*]

Sewel Convention Inquiry

The Deputy Convener (Karen Gillon): Good morning. I welcome to the fifth meeting this year of the Procedures Committee Bill Aitken MSP, the Scottish Conservative and Unionist Party business manager, and George Lyon MSP, the Scottish Liberal Democrat business manager. We are taking evidence on our inquiry into the Sewel convention. Gentlemen, we have your written comments, but it would be useful if you made some introductory comments. Bill, will you go first?

Bill Aitken (Glasgow) (Con): Yes. I am obliged for the opportunity to address the committee.

The issue of Sewel motions has unfortunately become slightly controversial. It has caused some concern of late, but that need not be so. The Scottish Conservative and Unionist group is not opposed to the Sewel principle at all. The convention seems to be a commonsense and practical approach to the issues surrounding legislation that affects the United Kingdom where the Scottish component is fairly minimal. We have not had in the past, nor do we anticipate having in the future, serious issues with the procedure generally. It is worth noting that the majority of Sewel motions have been nodded through the Scottish Parliament.

Nonetheless, we have concerns about the frequency with which it has been felt necessary to legislate using that device and about the nature of some of the legislation that has been passed. We have been left with the inescapable conclusion that, from time to time, the Executive sees the Sewel procedure as providing a way out of dealing with legislation that might be too controversial for comfort. Having come through the excoriating experience of the section 28 debate, the Executive seems to be anxious to avoid similar problems and has, from time to time, sought to pass the buck to Westminster on matters that are more the concern of Holyrood.

As I said, we also have concerns about the number of Sewel motions that have been brought forward. It is worth reflecting that, when the Scotland Act 1998 was passed, Lord Sewel's view was that such motions should be used sparingly. Indeed, he mentioned them being used only once or twice a year. Against that background, it is clear that we require to review the situation. At present, debating time on Sewels is limited and, although the current Minister for Parliamentary Business has made a genuine effort to allay concerns about truncated debates, there is still a difficulty.

Any review of procedures requires to be based on the principle that the United Kingdom Parliament legislates in devolved areas only when that is appropriate. It is vital that matters that should be determined in Scotland are determined here. The very least provision that should be made is that there should be adequate debating time. For example, it was ludicrous that the recent Sewel motion on the Serious Organised Crime and Police Bill was subject to such a short debate. That was a classic example of where the existing system falls down. The bill was an important piece of legislation that impinged directly on the Scottish legal system and policing matters generally and there was a clear argument for the Executive to have introduced such legislation. The need for a much longer debate on the matter cannot be gainsaid.

Most Sewel motions go through quickly with unanimous agreement, but the Executive inadequately understands their purpose. To keep it short and simple, the Executive seeks the consent of the Parliament to remit matters to Westminster to legislate on our behalf. No view should be expressed in the Sewel motion. We should simply agree to Westminster dealing with the legislation. We should not express actual or implied agreement with the legislation.

In summary, our view is that the Sewel approach is used far too frequently and that we require to return to the basic principle that was agreed in the run-up to the Scotland Act 1998, which was that the mechanism should be used sparingly. We must also adhere firmly to the principle that, when legislation is considered necessary and the Scottish component is predominant or overriding, that legislation should be initiated and processed within the Holyrood Parliament.

The Deputy Convener: Thank you, Bill.

George Lyon (Argyll and Bute) (LD): On behalf of the Scottish Liberal Democrats, I thank the committee for giving us the opportunity to express our views.

In principle, the Liberal Democrats support the use of the Sewel convention, although we have concerns in a number of areas. First, it is clear that a substantial number of Sewel motions transfer ministerial powers from the UK Government to Scotland or create new ministerial powers. Indeed, it is estimated that 44 out of 63 Sewel motions have given various executive powers or duties to the Scottish ministers. The Sewel convention was not drawn up with that purpose in mind, so we

believe that there should be a separate process for dealing with legislation that confers new powers on the Parliament or ministers—as I said, it has partly been for that purpose that so many Sewels have come through the system.

We agree that the convention should continue to operate primarily between the UK Government and the Scottish Executive. A key concern of Liberal Democrat members is to ensure that sufficient time is allocated to committees to allow them properly to take evidence and to prepare reports on Sewel motions that deal with substantive legislation. In the case of the Serious Organised Crime and Police Bill, clearly there was not enough time for committees to take evidence and prepare an in-depth report before the motion was debated in the chamber.

For Sewel motions on substantive matters, we need to find a way of ensuring that committees have the proper amount of time to take evidence, prepare reports and allow the information to be reasonably well circulated before there is a debate in the chamber. It is interesting to note that, in the Parliament's first session, only seven of 41 Sewel motions were classed as having a major impact on a devolved matter. Most Sewel motions are minor but, on the rare occasions when big matters are being decided, we must ensure that the proper amount of time is allocated to committees to do their work properly before the debate in the chamber.

Scottish Executive memorandums are sufficient for Sewel motions that are not substantive, but more substantive motions require more detailed information, which should include copies of the Westminster bill with the relevant provisions highlighted. That would inform committee members, especially about motions that relate to substantive measures. The Scottish Executive memorandum on the Serious Organised Crime and Police Bill did not do justice to the contents of that bill, and only by referring to the bill could we obtain detailed information about the bill's impact on Scotland.

The appropriate place for decisions on how Sewel motions should be dealt with is among business managers at the Parliamentary Bureau. The time that is allocated for a debate in the chamber must relate to how substantive a Sewel motion is. In some ways, that is the practice of business managers. If a motion is substantive, a reasonable amount of time should be given for a full debate. In the past three to four months, three quarters of an hour to an hour has been allocated to Sewel motions that the bureau has agreed are substantive. That is the right approach.

It could be argued that more time should be allocated, but that takes us into a debate about the totality of debating time in the chamber. If everyone wanted more time for members' business motions, Opposition days or Sewel motions, the bureau would have to examine the totality of debating time. There is big demand for time, especially at the current stage of the parliamentary session, when many bills are being considered for stage 3 and stage 1 approval.

The right way of proceeding with Sewel motions whose content is minimal is to have committee scrutiny followed by a vote in the Parliament, as is the current practice. We have no problem with that.

The committee asked whether it is appropriate for the Parliament to impose conditions on the extent of any consent that it gives through the wording of a Sewel motion, as was the case with the Serious Organised Crime and Police Bill. That is an appropriate way in which to proceed, as the Parliament is giving the Westminster Parliament permission to legislate on matters that fall within the Scottish Parliament's competence, so the Sewel motion must reflect the degree of consent. If the Parliament gives 100 per cent support for all parts of a bill to be dealt with at Westminster, the motion should reflect that. A motion should be open to amendment, as was the Serious Organised Crime and Police Bill Sewel motion. We did not give Westminster permission to legislate on one matter in that bill. The Liberal Democrats agree that the process for amending a motion to reflect the Parliament's views is the right way forward.

A Scottish Parliament committee must always take the lead in scrutinising the subject of Sewel motions before they are debated in the chamber. In practice, the Scottish Parliament gives Westminster its consent to legislate, so the Scottish Parliament should take the lead in determining whether to give consent.

The responsibility for an early-warning system for Westminster bills that will require a Sewel motion should lie with the office of the Minister for Parliamentary Business. When Sewel motions are likely to be required, the minister should signal that to the bureau at the earliest possible opportunity. The relevant committee should then be notified as soon as possible to allow sufficient time for it to deal with the issue properly. If necessary, committees should be willing to schedule extra meetings to carry out proper scrutiny of Sewel motions.

With those few comments, I hand back to the committee. Thank you once again for the opportunity to give our views.

10:45

The Convener (Iain Smith): I thank George Lyon and Bill Aitken for their opening statements. I apologise for being slightly late this morning.

Mark Ballard (Lothians) (Green): Both witnesses remarked on the ad hoc nature of the current system for dealing with Sewel motions. Would it be appropriate to formalise in the standing orders the procedure for dealing with Sewel motions, as distinct from the procedure for other motions, to give the clarity about committee time and timetabling that the witnesses talked about? Obviously, there would have to be a proviso that Sewel motions are all different creatures.

George Lyon: One danger of going down that route is that we might lack flexibility in dealing with Sewel motions. Clearly, the content of Sewel motions covers a substantive range. For example, what was appropriate for the motion on the National Lottery Bill—which was basically just a nod-through—would not have been appropriate for the motions on the Serious Organised Crime and Police Bill, the Gambling Bill and the Railways Bill, the last of which involved the transfer of substantial powers to Scotland. Because of the need to retain flexibility, I am not convinced that the procedure needs to be set down in the standing orders.

Bill Aitken: There are always dangers in over-formalising a procedure. The Sewel procedure is one case in which being too rigid in our approach could cause more problems than it solved. It is important to stress that the vast majority of Sewel motions have been totally non-contentious. Where there has been controversy, the motions were not only unusual, but pertinent to the Scottish Parliament's individual identity—that is the real issue that has come up. The Procedures Committee should recommend an approach that allows sufficient flexibility, in recognition that controversies over Sewel motions are not frequent and that the problem has possibly been exaggerated in recent months because of the inevitable deck-clearing exercise at Westminster before the forthcoming general election.

Mark Ballard: My next question is on a slightly different tack. You both made strong remarks about the need for proper timetabling and for a decent amount of time for parliamentary and committee discussion. How would such changes here impact on the process and timings at Westminster and how should the interaction between the Scottish Parliament and Westminster work?

Bill Aitken: It is apparent that the Scottish Parliament must set a timetable for its input to the procedure that is totally consistent with what is happening at Westminster. It should not be beyond the wits of the Parliament to do that, so I do not see that as a particular difficulty. On our internal timetabling, I again pay tribute to the bureau's mature and measured approach to the matter in the past. Additional time has been agreed by the Minister for Parliamentary Business for motions such as that on the Serious Organised Crime and Police Bill. However, as George Lyon said, time is fairly tight in our procedural system and until we meet for longer—as I think we should—we will run into difficulties. We will have to overcome those difficulties on the odd occasion that a Sewel motion proves to be controversial.

George Lyon: There could be a change in the Westminster timetable. As I understand it, we need to complete our consideration of and agree a Sewel motion before the second reading of the bill in question, which is a change from the procedure in the first session of the Scottish Parliament. As I recall, I think that it was the first reading—

The Convener: It was the second reading. The deadline is now the last amending stage in the first house.

George Lyon: In any case, it is clear that we are driven by the Westminster timetable. We have to complete our work on and give parliamentary consent to a Sewel motion before the Westminster timetable is completed because not doing so would prevent any amendments being made to the bill in the event that we withheld that consent.

I want to make two points. First, the Minister for Parliamentary Business's office must give early notification to the bureau of its expectation that Sewel motions will be lodged on certain bills. Secondly, once that notification is made and the lead committee has been notified, the committee should prioritise its work to give itself a reasonable amount of time to take evidence and produce a report, if required. As a result, there is an onus on committees to prioritise the consideration of Sewel motions in their timetable.

For example, with the National Lottery Bill, although the clerks had been notified of a Sewel motion on 19 December, they did not timetable consideration of it for the next committee meeting. In the event, the motion was timetabled to be debated in the chamber before the committee had even had the opportunity to discuss it. As I have said, there is an onus on committee clerks and conveners to timetable such business as quickly as possible. If necessary, committees might well have to schedule an extra meeting to give enough time to deal with the issue properly.

In summary, as well as the onus on committees, there is an onus on the Minister for Parliamentary Business to ensure that early notification of a Sewel motion is made to the bureau so that decisions can be made about which committees will consider it, whether the issue is substantive and how much time should be allocated for the debate in the chamber.

Mr Jamie McGrigor (Highlands and Islands) (Con): It seems to be generally agreed that the Sewel mechanism is perhaps being used too often. Indeed, Mr Aitken has even suggested that the Executive is using it to get rid of embarrassing matters. How can we prevent that from happening? Is there any process that would allow us to know which bills should not be Sewelled?

Bill Aitken: We simply need to study the nature of the bill and the degree of feeling that it is engendering. Earlier, we mentioned the Serious Organised Crime and Police Bill; recently, we have also dealt with the legislation on same-sex partnerships. The Executive—no doubt conditioned by the fairly febrile times that we went through a couple of years ago when section 28 was debated—did not wish to have a lengthy debate on that matter. However, although the issue attracts strong views, they are not necessarily political ones. It is generally known that I did not apply a whip on that motion; indeed, I voted for the legislation, while other members with perfectly principled views opposed it. Nevertheless, people should have been given the right to express a view on the matter if they felt strongly about it. That did not happen because, as I recollect, the debate was restricted to 30 minutes.

The Sewel motion on the Serious Organised Crime and Police Bill, which impinges deeply on the Scottish legal system, was allowed only a 45-minute debate. That in itself caused some hassle at the bureau, because the Minister for Parliamentary Business found herself restricted in what she could do with the remainder of the parliamentary time that day. There should have been a full debate on that Sewel motion and there should be a full debate on other issues that are controversial. Unfortunately, that is simply not happening.

George Lyon: Just for the sake of clarity, I did not say that the Executive was using the Sewel procedures too often. I think that it was Mr Aitken who said that.

Bill Aitken: I accept the odium for that one.

George Lyon: I know that Jamie McGrigor sometimes gets a little confused, but I just wanted to put that on the record.

On the figures, it is important to note that only seven of the 41 Sewel motions in the first session were classed as having a major impact on devolved matters. The fact that the majority were of a very minor nature must be borne in mind when we talk about the number of Sewel motions. The other point that we must bear in mind is that 44 of the 63 Sewel motions to date have been about transferring extra powers to Scotland. That takes me back to my original point about the need to separate out the process by which we are transferring powers rather than giving permission to Westminster to legislate. That would bring more perspective and context to the figures on the use of Sewel motions. I do not think that anyone around the table would disagree with the notion that transferring powers across to the Scottish Parliament from Westminster is a good thing. Mr Aitken might disagree with that, but I would not have thought so.

Bill Aitken: That depends on the issue.

George Lyon: The group's key concern has been about timing. First, we were concerned about the amount of time allowed for the committee to do its work. Secondly, we were concerned about ensuring that proper time is given for debate in the chamber if the motion deals with a substantive matter. That point impacts on the total debating time that we have in the Parliament, which may also need to be considered at some stage.

The Convener: I assure you that that issue is in our forward programme for discussion at some point in the future. I am not sure exactly when, but it is one of the issues to which we will, we hope, return at some point during the current session.

Karen Gillon (Clydesdale) (Lab): I am slightly confused. Bill Aitken suggested in his initial comments, and I would agree, that a Sewel motion should not advocate a specific view on legislation. However, he suggested that, in the case of the Civil Partnership Bill, there should have been a debate to allow members to express a view. I find that slightly confusing. Is he saying that the Civil Partnership Bill should never have been Sewelled in the first place? I suppose that that is a different issue.

Bill Aitken: I do not think that I am being inconsistent in my stance. I am saying that, basically, the Sewel motion that the Executive puts to the Parliament should simply be about authorising the Westminster Parliament to legislate on our behalf. It should not express a view one way or the other on the desirability of the legislation. I think that that viewpoint is quite clear. The motion on the Civil Partnership Bill expressed a view, but I do not think that it should have done, although I voted in favour of the legislation.

We cannot disregard the necessity for proper debate on such issues. As I say, it was not a party issue, although there are other issues that clearly will be political and party political. That is the nature of the beast with which we are dealing—we are a Parliament, after all. However, given that a Sewel motion seeks the permission of the Scottish Parliament for Westminster to deal with a matter on our behalf, we should not be expressing a view on the legislation one way or the other. The matter should be remitted to Westminster simpliciter.

The Convener: George Lyon talked about having separate processes for the different types of Sewel motion, but what if a bill both confers powers on the Scottish Executive and deals with devolved matters? Most of the bills are hybrid in some way. Should there be two separate processes for that, or are we talking about the nature of the motion and how it is dealt with?

George Lyon: That would depend on the balance within the bill—how much was to do with the transfer of powers and how much was to do with giving consent to Westminster to legislate in a devolved area. If the majority of the bill was to do with giving Westminster permission to legislate, that would clearly come under the Sewel convention.

My concern is that Sewel is getting a bad name because it is being used to do things that it was not originally envisaged that it would do. Two other mechanisms allow the transfer of power to the Scottish Parliament and to the Scottish ministers: orders in council under sections 30 and 65 of the Scotland Act 1998. I believe that Westminster has used those mechanisms on a number of occasions.

As I understand it, the Sewel mechanism is sometimes used because of the need for speed or because it saves duplication of effort. There is a question about how often the Sewel mechanism is used to transfer powers when two other procedures could be used. I am not 100 per cent clear about the reasons why 44 of the 63 motions that we have dealt with were about transferring powers to ministers.

11:00

Karen Gillon: I understand George Lyon's point. Would he be averse to a system that applied to anything, as is currently the case, but in which it was much more clearly defined whether the motion dealt with a technical matter, a transfer of powers or a substantive policy issue?

George Lyon: That might be one way of getting away from the notion that huge numbers of Sewels are coming through the system and that, as some might try to make out, the procedure is all about us handing everything back to Westminster because we are not willing to do the work and carry out the scrutiny.

There seems to be a lack of clarity about what the Sewel convention is being used for. It is used for a range of reasons: first, to transfer powers to Scottish ministers; secondly, to deal with minor matters when there is a slight impact on devolved areas; and, thirdly, on a small number of occasions, to give Westminster permission to deal with substantive legislation on devolved matters. If we could separate those three categories, while still keeping them under the banner of the Sewel convention, that might be one way of tackling the misconception that we constantly hand back the power to Westminster to legislate on matters over which we have competence.

Karen Gillon: Does Bill Aitken have any views on that?

Bill Aitken: What George Lyon says is correct, but a knock-on difficulty would be the task of defining a substantial change. I envisage that that would cause the committee a little bit of a problem.

It is important to stress that the issue is not as significant as some people might pretend. The vast majority of the Sewel motions are non-contentious. As far as we are concerned, we would be content if adequate debating time were allocated when a matter was likely to be the subject of some controversy. That is the nub of the matter. We will not slavishly object to Sewel motions just because they are Sewel motions. That would be irresponsible.

George Lyon: I will add one point about trying to separate the substantive matters from those that have only minimal effect, which we do regularly in the bureau. If the bureau agrees that the matter is substantive it automatically gains a slot for debate at a meeting of Parliament. There is an argument about how much time should be allocated and in some ways I am in the Bill Aitken camp. If it is a big issue, we should devote a substantial amount of time to the debate so that we give all parties a reasonable opportunity to put their views on the record in the chamber. There should be no problem with the committee coming to a view about what is substantive and what is minor as such decisions are already being made.

Karen Gillon: I am not necessarily suggesting that we should deviate from that, but it is not clear to members how the Parliamentary Bureau comes to its decision and how it then feeds that decision back to Parliament. It is not clear how the bureau decides that the matter is a minor technical one, or that the measure gives new powers to ministers that the bureau welcomes but for which it wants Parliament's endorsement, or that the matter is a substantive policy issue on which there should be a debate. It is a matter of firming up those categories and communicating better to members what is already happening. I have spoken to a number of members and have established that that is where the process is falling down.

George Lyon: The bureau's decision is usually taken on the basis of what is in the Sewel motion, the feedback from committees if it comes in early enough, and on the basis of reports from business managers who have spoken to their committee representatives. We take soundings and a general view is reached around the table. We might say,

"This is a substantive matter and people wish to see it taken to the chamber. Therefore, we need to allocate it an hour." That is how the process has worked in the past three months. That is not how it worked previously, but in the past three to four months we have had many Sewel motions to consider. In some ways the bureau has been undermined because the timetable has been so tight and we have tried to ensure that committees have had time to deal with the motions and have been able to reach a conclusion before the motion has come to the chamber. That has all been driven by the Westminster timetable in the run up to the general election; that is how the difficulties have arisen since January.

Bill Aitken: It is important to stress that there has been a reasonable degree of accommodation in the bureau. However, that can go only so far because of the limited time available. Of the Sewel motions that have caused controversy, to my mind only those on the Civil Partnership Bill and the Serious Organised Crime and Police Bill would have merited a full debating slot on either a Wednesday afternoon or Thursday morning. However, the Minister for Parliamentary Business could not allow that because of other considerations. That demonstrates the extent of the problem. It is fairly limited but it must be addressed.

Mark Ballard: One of the issues that some of the conveners raised relates to the feedback mechanisms. The convener of the Enterprise and Culture Committee said in his letter:

"where currently a committee raises concerns in relation to UK legislation with a minister and is assured by the minister that its comments will be taken on board and addressed through the legislative process in Westminster, there is no mechanism for that committee to verify whether the concerns have been addressed in the legislation. Furthermore, it was felt the Parliament may be missing an opportunity to return to the legislation at a later stage and consider whether it would be happy to pass the Bill as amended."

I would be interested to hear your thoughts on the fact that bills can and will change after this Parliament gives Sewel consent and on what kind of feedback mechanism or check you would like in those situations.

Bill Aitken: A bill that one of our committees has considered might be altered so radically that by the time that it hits the statute book it is quite different, which is undoubtedly a problem. The obvious way for that to be remedied would be for the committee to consider it again prior to the final stage of the Westminster proceedings. There could be a facility for feeding any contrary view back into the parliamentary process.

George Lyon: I am not sure about this. Bill Aitken argued earlier—and I support this view—that the Sewel motion is about giving consent and is not necessarily about commenting on the principles of the bill. We are asking our colleagues at Westminster to do the work on behalf of the Scottish Parliament. It is about giving permission.

I am not sure that we can argue that we need a feedback mechanism that tells us whether the bill changes down south, given that the initial passing of the Sewel motion is about granting consent, not giving a view on the general principles of the bill. We are saying that we are giving our consent to Westminster to take evidence, do the work and pass the bill.

There is a slight contradiction in what has been said. The initial question that the Scottish Parliament is being asked is, "Do you agree to allow Westminster to legislate in this area?" If the bill is substantive and the Parliament decides that it does not agree to do that, it can withhold its consent and we can carry out the scrutiny up here. It is a contradiction to say that there needs to be feedback from Westminster on what is happening.

The committee has taken evidence from our Westminster colleagues and one of the problems that they have is knowing when a bill has been Sewelled. Given the timing, it is difficult to see how we could get feedback that would have any meaning here in Scotland, especially in relation to controversial bills that bounce back and forth between the House of Lords and the House of Commons, with amendments being made on a regular basis in the game of ping-pong that goes on down there.

The Convener: I accept your point that when the Scottish Parliament gives consent to Westminster to legislate it is essentially up to Westminster to decide how to legislate. However, what would happen in circumstances in which a bill was amended to take it beyond the scope of the original Sewel motion? Should there be a mechanism to allow the Scottish Parliament to review the situation before the bill is enacted?

George Lyon: I agree that there should be a mechanism in those circumstances. I am not sure how that would work, given the Westminster timetable, but clearly that is a matter for the committee to examine in some detail.

Bill Aitken: I concur with that view, which is what I said in response to Mr Ballard.

Mr McGrigor: Mr Aitken, in your previous remarks I thought that you insinuated that things are being done through Sewel motions simply because there is not enough time for them to be taken through the Scottish Parliament. Do you think that if the Executive tried to do less better, there would not be as many Sewel motions?

Bill Aitken: Obviously, I am an enthusiastic proponent of the Executive doing much less.

Whether it is capable of doing it better is a matter for another occasion.

There could be temptations in the respect that you mention, because time here seems to be desperately limited—that must be a consideration. However, in fairness, I have to say that I have difficulty in highlighting any particular Sewel motion that I thought was based on a shortage of time rather than on parliamentary convenience. It is clear that in many instances it is much more convenient for matters to be dealt with at Westminster and I am reasonably relaxed about that.

George Lyon: The way in which the Sewel convention has worked until now is based on a position in which the biggest party in the Government in Scotland and the party in power at Westminster are one and the same. The Sewel convention might come under a great deal of strain when those circumstances change. Whatever we come up with has to be pretty robust because it will need to stand up to the rigours of that situation, which will come eventually, although there is certainly no prospect of it in the immediate future.

Bill Aitken: We will see in four weeks' time. It will probably take about six weeks for the new arrangements to find themselves under pressure, but I am sure that we will be able to resolve matters.

The Convener: I am fairly sure that the party that is in government in four weeks' time will be one of the parties that are represented in the Scottish Executive.

George Lyon referred to the fact that although the Sewel convention is theoretically a convention between the Parliaments, in effect it operates as a convention between the Executives, with parliamentary approval at this end. At the other end, as far as we can work out, parliamentarians might be told about it or they might not. Do you think that that is satisfactory? As the convention is theoretically between the Parliaments, stating that Westminster will not legislate without the permission of the Scottish Parliament, should there be clarification at both ends that it is a parliamentary convention rather than an Executive convention?

George Lyon: De facto, it is for the parties that are in power to reach a view on which pieces of legislation should be dealt with here and which are more appropriately dealt with at Westminster. That is the reality of the situation in which we find ourselves. It is always going to be the parties that are in power here dealing with the party that is in power at Westminster: it will always be Government to Government, rather than Parliament to Parliament. That is the practical reality of where we find ourselves, and I do not think that that will change.

11:15

Bill Aitken: We have a political forum here and Westminster is a political forum. The real politics of the situation is that the interface will, inevitably, be between Governments. We must accept that.

The Convener: Let me explore one issue with you further. You have both referred to the need for committees to have more time to carry out their scrutiny. What sort of scrutiny do you envisage the committees carrying out? We are not necessarily talking about the policy or the principle of the matter, just about whether it is appropriate for Westminster to legislate in such circumstances. What sort of evidence and timescale would be required to enable committees to fulfil that function?

Bill Aitken: Let us take, as the most obvious example, the handling of the recent Sewel motion on the Serious Organised Crime and Police Bill. That was not one of the Executive's finest hours; all sorts of things went wrong in the timing and timetabling of that bill. In such situations, Westminster should give Edinburgh sufficient time to enable the legislation to be fed into our process. That would allow one of the justice committees to consider the legislation as a whole and immediately discard matters that were not relevant to Scotland in isolation.

Various provisions in that bill clearly were relevant. We could not expect any committee of the Parliament to spend hundreds of hours in carrying out a full inquiry and taking evidence on a bill of that type. Nevertheless, a committee should have taken evidence on, for example, the relationship between the prosecuting authorities in England and the Crown Office in Scotland. It is clear that that should have been done. We should have considered how the serious organised crime agency would impinge on the Scottish Drug Enforcement Agency, but that did not happen.

It would be up to the designated committee to isolate one, two or three issues in the legislation that would have to be studied carefully north of the border and to take evidence as appropriate. It is not rocket science, and the procedure need not be convoluted or time consuming. All that the committee would have to do is consider what was particularly relevant in the Scottish context.

George Lyon: I concur with what Bill Aitken has said. The amount of time that would be required would be determined by how substantive the Sewel motion was and how much impact the legislation would have in Scotland. A classic example was the Sewel motion for the Railways

Bill, on which the Local Government and Transport Committee took evidence for six hours—

The Convener: It was longer.

George Lyon: It was longer. You were involved in that. That was appropriate because the bill dealt with not only the transfer of powers but a whole lot of finance issues that will have a long-lasting impact on the Parliament's ability to deliver a decent railway system in Scotland. In that instance, the committee was right to take that time. It could be argued that the committee should have had more time, so that it could have had a couple of evidence sessions on the issue instead of having to sit until 9 or 10 o'clock at night, or whenever the meeting finished. The substance of a Sewel motion will determine how much time the scrutiny takes. In the case of the Sewel motion for the National Lottery Bill, only a quick look was required because it contained little of substance.

The Convener: That again raises the issue of the interface between the Westminster Parliament and the Scottish Parliament. The timescales to which we are operating are not necessarily of our choosing: we are driven by the timescales to which Westminster operates if we are to submit our comments and views before the relevant stage at Westminster. How can we square that circle and say that, in one instance, a committee does not require to take a great deal of evidence and can agree the Sewel motion within a week or two and that, in another instance, because the committee needs to take evidence, Westminster should hold fire on the next stage until that has been done? How can we deal with that? At present, there is nothing in the Westminster system to allow that.

George Lyon: The political reality is that Westminster's timetable is not going to be changed to suit the Scottish Parliament, especially in the run-up to an election. Whether we like it or not, it is up to us to try to make the necessary time to ensure that committees can do their work properly.

The key is early notification by the minister as soon as it is realised that a substantive Sewel motion is coming down the track. It is then incumbent on a committee's convener, along with the clerks, to ensure that scrutiny of the Sewel motion is scheduled for a committee slot as soon as possible. If that is not possible, the committee could be forced to hold another meeting outwith the normal time—that is the reality of the timetable that has been set. However, I expect that that will happen only in the run-up to Westminster elections, as has happened this time. In the normal course of events, there is more time to play with at Westminster and it should be possible to ensure that committees have the appropriate time in which to do the work.

Bill Aitken: I concur with that viewpoint.

The Convener: As there are no other questions, I thank Bill Aitken and George Lyon for their evidence. Our inquiry has a few weeks left to run, so it will take a while for us to reach our conclusions, but your evidence has been very helpful. Thank you very much.

We will take a short break while we assemble the next group of witnesses.

11:21

Meeting suspended.

11:28

On resuming—

The Convener: We move to our next panel. Carolyn Leckie is unable to be here to represent the Scottish Socialist Party. Mark Ballard is here on behalf of the Scottish Green Party, so he will have to sit at both sides of the table. Margo MacDonald will represent the independents group. I will give Margo MacDonald and Mark Ballard the opportunity to make opening remarks and then we will ask questions.

Margo MacDonald (Lothians) (Ind): Thank you so much. I thought that I would get the chance to finish the piece of fruit that I am eating.

At the outset, I should say that I am sitting in for Dennis Canavan, who has been detained on a family matter. Because we do not have a party policy as such—we simply have individuals, all of whom have an attitude towards or an opinion on Sewel motions and their use—the committee may spot differences of opinion between what I say and what Dennis Canavan said in his written submission. That submission refers to the difficulty that was experienced with the Serious Organised Crime and Police Bill, when the use of the Sewel mechanism did not quite accord with the decision of the Scottish Parliament on access to private property that is owned by the Queen and the heir to the throne. I have nothing to add to the information that Dennis Canavan has provided. I may be able to answer questions on that, but I may not be, as the matter has been of particular concern to my colleague rather than to me.

Dennis Canavan begins his letter to the committee by saying:

"As a mere 'convention', the Sewel Procedure has no legal status. It is merely an understanding between the current Scottish Executive and the current Government at Westminster and therefore has no protection against change or abuse by any future Scottish Executive or"

Government at Westminster. Although I would not necessarily disagree with that, I think that it is entirely sensible to have a mechanism such as the

Sewel convention while there are two Parliaments that have jurisdiction in Scotland. Given that I think that the mechanism should be as flexible as possible, it is preferable that it should have the status merely of a convention rather than that of a statutory requirement. Obviously, I am open to argument, but that argument will be had among the independents.

Although I am representing the independents group in place of Dennis Canavan, my next point is a personal one, which may or may not be echoed by my fellow independents. Even if this Parliament becomes sovereign—I hope that it will do so as soon as possible—a practical mechanism will still be required that allows us sometimes to agree and sometimes to agree to differ with our southern neighbours. It is self-evident that even if there are two sovereign Parliaments operating north and south of the border, although there will be policies and actions on which they will agree to act jointly, there will be others on which they will decide to act separately or not at all. In my view, while we have a devolved legislature here and a sovereign legislature at Westminster, the Sewel convention gives us an opportunity to build up attitudes and good practice that could provide a building block for the future.

That said, I have some criticisms of the use that has been made to date of Sewel motions in the Scottish Parliament. I will not labour the point, as John Sewel himself made it, but there have been far too many Sewel motions. When John Sewel introduced the mechanism that is called after him in Westminster, he thought that it would need to be used only in exceptional circumstances.

It is interesting to ask why there have been too many Sewel motions and what we need to do to correct the situation. In some cases, I suspect that a Sewel motion has been used because of a lack of debating time in the Scottish Parliament. It would not surprise me at all to find out that the convention had been used merely as a convenience—in other words, because something had to be tackled as quickly and efficiently as possible and because time constraints meant that we could not give it the priority that we should have given it. Another examination might be required at another time to find that out. There may be linkage between the way in which we have structured our meagre amount of chamber time and the use that has been made of Sewel motions.

A second possible reason for the convention having been used so much is suggested in point 3 of Dennis Canavan's letter, which states:

"Sewel Motions are sometimes abused by the Scottish Executive to avoid controversial issues being fully debated and decided in the Scottish Parliament".

Mr Canavan gives an example of legislation that he thinks was dealt with in that way. That is perhaps understandable, given that we are a new institution—although some of us are younger than others. Perhaps the battering that many people felt they experienced during the section 2A debate influenced decisions that have been taken by the Parliamentary Bureau or the Executive about whether to deploy a Sewel motion.

I would argue—and I speak on behalf of my colleagues on the independent group on the matter—that, if the Parliament is to mature as an institution and if its members are to develop as legislators, it must be prepared to tackle every and any challenge, difficulty or dilemma that faces our fellow Scots and, indeed, the rest of humanity; we cannot duck out of anything. It is good for our souls to debate the Gambling Bill, the Disability Discrimination Bill, the Civil Partnership Bill, the Gender Recognition Bill and the Asylum and Immigration (Treatment of Claimants, etc) Bill. If we debate all those subjects, our competence, experience and imagination will grow and the quality of the legislation that emanates from the Scottish Parliament will improve as a result. Even if we decide that a Sewel mechanism is the most sensible way of disposing of such issues, we should debate the issues nonetheless.

The main point that I want to make is that we should never allow issues to go undebated. I am aware that debates on Sewel motions allow members the opportunity of saying something, but that is not enough. Those debates do not engage all members and they most certainly do not engage people outside the walls of the Parliament. We must be careful to engage people at all times: if people in Scotland are talking about problem gambling, so should we. Our debates should echo what goes on outside the walls of the Parliament and in those debates we should amplify the ideas and solutions, which might be heard outside the Parliament. If Sewel motions are used too often, their use will discriminate against that happening.

Mark Ballard: I thank the committee for giving me the opportunity to speak not as a committee member, but wearing my other hat as Green party business manager.

I make my party's position clear. Unlike some other parties, the Greens recognise that as long as both Westminster and Holyrood have the power to legislate on devolved issues, we need something like the Sewel convention. Currently, Westminster is the sovereign Parliament and the theory is that it can do what it likes. Commitments have been made that Westminster will not use its ability to legislate in devolved areas without the consent of the Scottish Parliament. As Henry McLeish, among others, indicated, that raises major issues about the right constitutional relationship between

the Parliaments in the UK. That said, I recognise that the Procedures Committee's inquiry is limited to the procedures of the Scottish Parliament and that it does not extend to the constitutional arrangements of the UK Parliament. I will therefore limit my remarks to the subject of the inquiry.

The Green party recognises the wide variety of Sewel motions and the fact that ad hoc mechanisms have evolved over the past six years to deal with them. My experience of the system over the past two years has led me to believe that those ad hoc mechanisms are the cause of much of the wrangling about Sewel motions. Different procedures have been used at different times and we need to formalise them, because that would enable us to move away from some of the procedural wrangling and get into the real political discussion.

We need to consider separate procedures for modifying or extending the powers of Scottish ministers as opposed to amending or introducing legislation in devolved areas, but that would not necessarily mean different Westminster procedures. I can see logic in the introduction of hybrid bills that contain elements of legislation in devolved areas and extensions or modifications of ministerial powers. That said, changed Holyrood procedures need to be involved. We should recognise that our procedures are quite different and use them in different ways with regard to how we give consent for Sewel motions to be used.

As people who have given evidence have said, an early scrutiny stage at Holyrood is important. The key question is whether it is appropriate for Westminster to legislate in the area in question. I am attracted to Lord Sewel's thinking on the matter and to his test for appropriateness. He has said that that test should ask

"if the bill dealt with a technical matter which, if sorted out at Westminster, would save time"

or whether there is an overwhelming need not to have different provisions north and south of the border. The Scottish Parliament should focus its early discussions and evidence taking on that test.

On questions that arose earlier, the Sewel motion that is laid before the Holyrood Parliament should not support the principles of a bill. Perhaps there should be more constraints on the bill's remit in the areas in which Holyrood has given consent for Westminster to legislate. That issue arose in relation to the Serious Organised Crime and Police Bill, when trespass was discussed. An amendment was lodged that indicated the limitations of the consent that Holyrood was prepared to give to Westminster. An early stage of selective scrutiny, discussion and examination at Holyrood would enable more flexibility in the Westminster timetable.

There must be a post-amendment stage, and there may be a role for varying commencement orders between England and Wales and Scotland to allow that stage to fit in with the Westminster timetable. We need to explore whether the limits of the remit to legislate to which the Scottish Parliament consented have been observed by Westminster. Currently, there is provision for the Executive to report back if it thinks that Westminster has gone beyond the consent for amendments that the Scottish Parliament has given; that is perfectly proper, particularly if Opposition amendments have been agreed to. However, Lord Sewel was right to say that we should not rely on the Executive advising us in the parliamentary process and that parliamentarians must satisfy themselves about such matters. It is important that there is a check for parliamentarians to determine whether the conditions of our initial consent have been adhered to and whether we are still content to give our consent to the amended legislation if Westminster has gone beyond that initial consent.

It must be recognised more widely that the Sewel convention should not be based on motions and that the process should look a bit more like a legislative process. Committees should have time to take and consider evidence and then to report to the Parliament using the principles that Lord Sewel laid out—that is, using the test of whether having the same provisions is technically expedient or makes overwhelming sense rather than the test of whether it is politically expedient. Sticking to discussion of those two principles in the committee would give a framework for proper discussion about consent.

As I said, such consent should be discussed as early as possible in the Westminster process in order to allow proper time for committee discussion at Holyrood. A later debate would be required to discuss the amended bill or act and whether its details should apply to Scotland. Having an early debate at Holyrood would allow the potential links and relationships that Alistair Carmichael MP talked about between the Holyrood committee that is dealing with the bill and the Scottish Affairs Committee at Westminster, which should have an opportunity to feed into the standing committee that is considering the bill. The two-stage process would allow much earlier intervention and input by the Scottish Parliament and a check to ensure that the consent process is working.

In that context, we could move forward to a more robust system of consent giving by the Scottish Parliament, which would be more limited in its application and in which there would be more rigorous examination. There would be a stronger model for discussing the relationship and interface between Westminster and Holyrood.

The Convener: I thank Margo MacDonald and Mark Ballard for their opening remarks—they have given fairly extensive explanations of their positions. Members may now ask questions.

11:45

Karen Gillon: The clerks will have an interesting job trying to find a consensual approach on this issue. Mark Ballard mentioned a post-amendment stage. What would we do after such a debate—would we withdraw our consent?

Mark Ballard: We would have had the earlier debate to indicate our consent to Westminster legislating in the area in question. If Westminster legislated within the limits of that consent, the process would be no more than a formal check and there would be no debate. However, if Westminster had gone beyond that consent, or if parliamentarians felt that it had done so, that would be the subject of the debate. Formal provision for that check—which exists anyway, because ministers have the power to bring a Sewel motion back to the Scottish Parliament if they feel that the consent has been exceeded—would set at rest the fears of many people about the process.

Karen Gillon: What would happen then? Would we simply withdraw our consent?

Mark Ballard: That would be the option if a minister felt that the consent had been exceeded, brought a new Sewel motion to the Parliament—as per the current procedure—and the Parliament then voted down that Sewel motion. We already have that procedure—

Karen Gillon: But that debate would be on the specifics of the changes. The debate would be not on the substantive issue that had been debated in the first place, but on the new issues.

Mark Ballard: It would be on whether the Scottish Parliament, having seen that Westminster had exceeded its original consent, was content for Westminster to have legislated more widely.

Karen Gillon: I am confused. If the Scottish Parliament has consented to Westminster legislating and it does so, are you suggesting that we should be able to say no to that legislation?

Mark Ballard: No. The initial consent should prescribe more closely the areas in which we are giving Westminster consent to legislate. If Westminster goes beyond those limited areas, there should be a further opportunity for the Scottish Parliament to give its consent to the areas beyond those limits. I illustrated that point with reference to the trespass amendment to the Serious Organised Crime and Police Bill, whereby the Scottish Parliament agreed to an amendment that limited the power of Westminster—

Karen Gillon: I absolutely understand that. However, that happened before Westminster had concluded its consideration of the bill, which enabled an amendment to be tabled at Westminster. However, you seem to be suggesting a stage after Westminster has concluded its consideration of the bill. I do not know how that could be done in practice.

As I understand it, a Sewel motion would have to be lodged by a minister before consideration of the bill had been completed, but you seem to be suggesting something slightly different, namely a post-Westminster completion vote by the Scottish Executive. That cannot be done. What would the Parliament do after the legislation had gone through? How could we stop that process? There is no revising chamber after the bill has been amended—

Mark Ballard: That is where the commencement orders would come in. There could be a gap, because there would be a different commencement date for Scotland compared with England and Wales. That would allow the timeslot for that further consent to be given.

Karen Gillon: It is not the timeslot that I am concerned about, but the legislative process. When would there be a second opportunity to revise the bill at Westminster? It does not undertake post-legislative scrutiny.

Mark Ballard: If the commencement order varied so that commencement in Scotland did not take place until the further check had been completed in the Scottish Parliament, and if the Scottish Parliament rejected the bill as it had been finalised, commencement would not take place in Scotland. Therefore, it would need to be tied in to the variation in commencement orders that we—

Karen Gillon: There is no way of doing that other than for the Scottish Parliament to legislate. If we are not happy with the bill, we can introduce a bill of our own in the Scottish Parliament to amend the legislation, but there is no process whereby the Scottish Parliament can amend a Westminster bill once Westminster has completed its consideration. The Scottish Parliament can amend Westminster legislation in devolved areas only by introducing a separate bill. Once Westminster has passed a bill, there is no process whereby we can ask it to agree to amendments to the Scottish provisions in a bill, even if those provisions had a separate commencement date

The Convener: To be fair, that is not what Mark Ballard is suggesting. His suggestion is that the Scottish Parliament could choose whether to commence the Scottish clauses of a Westminster bill that had been passed. The Executive could choose, in the commencement order that it laid before the Scottish Parliament, not to commence

those sections that went beyond the original consent. Is that Mark Ballard's suggestion?

Mark Ballard: Yes.

Karen Gillon: Every Scottish clause in a bill would then need a separate commencement date.

The Convener: The commencement orders could have the same or differing dates. It would be for the Scottish Executive or the Scottish Parliament to determine which orders should be agreed to. I think that that is Mark Ballard's suggestion, but he will correct me if I am wrong.

Mark Ballard: That is broadly what I meant.

The Convener: I am aware of Scottish clauses in Westminster bills that have never been commenced. That has happened in the past, so the proposal is not impossible.

Margo MacDonald: May I ask a question? If separate commencement dates for Scottish clauses were built into Westminster bills as a technicality, the Scottish Parliament could endorse whether it wanted the same commencement date or a different one. However, what would happen if Scottish provisions with a different commencement date posed a substantive and irresolvable difficulty for the Scottish Parliament? Given that the Scotland Act 1998 allows Westminster to override a decision of the Scottish Parliament, we need to work out whether we would be content to be overridden or whether we should suggest to Westminster that we would need a specified time—either in statute or by informal agreement—within which such issues could be batted backwards and forwards between the two Parliaments before Westminster could invoke sovereignty.

The Convener: We may be getting into too much technical detail. The question is whether it would be possible to have a mechanism whereby ministers at Westminster and Scottish ministers could lay separate commencement orders so that such orders would then be subject to the approval of the Scottish Parliament. I think that that is what Mark Ballard is suggesting.

Margo MacDonald: It would be difficult to have a precisely prescribed mechanism. Even were we to give Westminster three months' or a month's notice about something, it still might not do it, no matter how long or hard we whistled. I believe that, every now and then, we need to be able to say no. Westminster would then need to work out whether we meant it.

The Convener: Indeed.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Convener, I apologise for being late this morning. I might end up being marked as absent for the majority of this morning's meeting, but I had to attend another committee. I meant no discourtesy to my colleagues by entering the meeting midway through Margo MacDonald's presentation. I assure her that I got the gist of what she said.

Most political parties and independent members in the Scottish Parliament appear to agree that it is sensible to have a mechanism for dealing with issues that should rightly be addressed in partnership by the Westminster Parliament and Scottish Parliament. However, like Dennis Canavan—whose letter, at paragraph 2, mentions the issue—Margo MacDonald, Mark Ballard and other witnesses and commentators have made much of the fact that Lord Sewel has been quoted as saying that the Scottish Parliament has passed many more Sewel motions than he originally envisaged. Nevertheless, when the committee put that point to Lord Sewel, he said that during the passage of the Scotland Bill at Westminster he had absolutely no idea—those are not his exact words—how many Sewels would be used. Do you agree that the appropriateness of Sewels is much more important than the number of Sewels?

Margo MacDonald: Appropriateness should be the test. I agreed 100 per cent with that part of Mark Ballard's presentation. However, appropriateness will vary according to the parliamentary timetable, the temperature, the party balance and so on. It is not an exact science, which is why we need more practice at properly questioning and dealing with matters.

Mark Ballard: I am not surprised that Lord Sewel did not have access to a crystal ball and could not say what Scottish political conditions would be like six years down the line. I completely agree with Margo MacDonald that it is not about the absolute number of Sewel motions but about whether we are putting through inappropriate Sewel motions. The test should be whether a Sewel motion applies to a purely technical matter or whether there is an overwhelming reason not to have separate situations north and south of the border. I have no problem with the numbers.

Cathie Craigie: Margo MacDonald said that we are a new Parliament and that it is good to debate every challenge, difficulty and dilemma that comes before us. We have had a few of those over the past few years. Was your point about the time for debate? Other witnesses have suggested that there has been insufficient time in the chamber for debates.

Margo MacDonald: Although I take the point about the role of the committees in scrutinising the substantive nature of proposed Sewel motions, a chamber debate is of another complexion. It comes at the same question or dilemma from a different angle, because the whole Parliament is represented. Our squashed timetable for chamber debates has impacted on how we use Sewels.

The Executive can fairly be criticised for choosing to duck out of properly debating gambling, which touches many families and people. There may be differences in Scotland in basic attitudes to gambling and its operation. Even if there are no differences, we know that the electorate in Scotland pay more attention to what happens in the Scottish Parliament than to what happens at Westminster. Gambling is a problem in Scotland, but we have to learn to live with it. If we are to give it proper attention and focus the attention of people outside Parliament on it, we must debate it in Scotland. We might still decide to Sewel the legislation because it makes more sense to take a UK-wide approach, but my concern is that the topic should not go undebated, given that we have opted out of a number of debates that we should have had in difficult social areas.

Cathie Craigie: So your point is that although Sewelling legislation means that it will be scrutinised at Westminster, we should have a full and open debate.

Margo MacDonald: Yes, if we have time. Obviously, it is our responsibility if we introduce something and say that it should be Sewelled, but I think that Westminster has been less than organised or scrupulous in providing the time that we should have to scrutinise substantive issues and to apply the appropriateness test here before the Westminster mechanism proceeds. More time is needed. Debate must not be ducked even if we decide that we will Sewel something because that is a better way of organising matters.

The Convener: On the Gambling Bill, do you accept that, because gambling is a reserved matter, the issue that was subject to a Sewel motion was only which powers would be exercisable by Scottish ministers? The main issue is not currently within the Scottish Parliament's legislative competence.

12:00

Margo MacDonald: I accept that it is a reserved issue, but the electorate to whom we answer and whom we are supposed to represent do not think of issues in neat and tidy reserved and devolved compartments. They consider an issue and want to know what we think about it. That is my point.

Mark Ballard: Unless we have a proper mechanism for feeding back our discussions in committee meetings or a meeting of the Parliament to some appropriate Westminster body, that debate takes place in a vacuum.

Margo MacDonald: I am certain that we could find a way to ensure that Westminster knows what we think.

Karen Gillon: I am thinking off the top of my head about what you have said. You make a valid point, especially on gambling. Although the regulation of gambling is a reserved issue, the social effects of gambling are felt throughout Scotland and can be a cause of antisocial behaviour. There might have been a case for having an afternoon debate on the social issues surrounding gambling that could have influenced and supported our thinking on the regulation of the gambling industry. Is that the sort of thing that you are talking about?

Margo MacDonald: Yes, it is. We might still decide to Sewel such an issue, but we would be more proactive as a Parliament if we debated it, as we would have something to contribute. We would not just tell Westminster to legislate on it but would say that, although we accepted that it would be better for Westminster to legislate, we would like Westminster to take certain things on board.

The Convener: We should put on the record the fact that the Sewel motion on the Gambling Bill was a case of our being asked about a specific aspect of a matter within Westminster's province on which it was legislating, not a question of our asking Westminster to legislate.

Margo MacDonald: I have used that bill as an example, but we could talk about the Civil Partnership Bill or the Gender Recognition Bill, if you would like that. We should talk about them all.

The Convener: I am not disputing the point that you make, but we must be clear for the *Official Report* of the meeting that the Gambling Bill concerns a reserved issue.

Cathie Craigie: Mark Ballard made a point about how we should let Westminster know what we think. The committee has had good evidence from Pauline McNeill about the way in which the Justice 1 Committee dealt with the Civil Partnership Bill. That committee was able to engage with the process and relay its views to ministers at Westminster and the officials who were responsible. We should not consider that to be a hurdle, although we might want more mechanisms to be put in place so that the process is open and transparent and MSPs know how the information has been passed on.

Mark Ballard: As I said in my opening remarks, the issue is the ad hoc nature of the consideration of Sewel motions. Examples of best practice exist, but the issue is how we ensure that that best practice is followed more widely. Some formalisation of procedures would help in that.

Margo MacDonald: There is nothing wrong with having a transparent code of best practice to which we all have access, but we must always leave as much room as possible for flexibility. At the moment, we have two Administrations of the

same party—one at Westminster and one at Holyrood—which, it can be argued, makes things a little easier. The system will really be tested when we have Administrations of different parties north and south of the border and we should keep it flexible, as we will want to duck and dive in that situation.

Mark Ballard: I was interested in the evidence that Alistair Carmichael MP gave to the committee on his thinking on how the Scottish Affairs Committee could work more effectively with the Scottish Parliament. Such Parliament-to-Parliament links will be key if we end up with different Administrations.

The Convener: I thank Margo MacDonald and Mark Ballard for their evidence, which has given us even more food for thought.

We will probably have another two oral evidence-taking sessions for the inquiry, as we have still to hear from the minister, from Tricia Marwick of the Scottish National Party and from some academics. I ask members to let me or the clerks know before the next meeting if they wish to take oral evidence from anybody else who has submitted written evidence. We will probably conclude our evidence taking at our first meeting in May and then consider how to draw up our report.

Item in Private

12:06

The Convener: Before we move on to the next item, I ask members to confirm that they are content to consider in private the final draft report on private legislation and the draft changes to standing orders on private bills at our next meeting.

Members *indicated agreement*.

The Convener: That concludes the public part of the meeting and we now go into private.

12:06

Meeting continued in private until 13:06.

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