PROCEDURES COMMITTEE

Tuesday 10 May 2005

Session 2

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PROCEDURES COMMITTEE
7th 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:

Ms Margaret Curran (Minister for Parliamentary Business)
Jim Johnston (Scottish Parliament Directorate of Clerking and Reporting)
Michael McMahon (Hamilton North and Bellshill) (Lab)
Colin Miller (Scottish Executive Legal and Parliamentary Services)
Murray Sinclair (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Jonathan Elliott

LOCATION

Committee Room 3

Scottish Parliament

Procedures Committee

Tuesday 10 May 2005

[THE CONVENER *opened the meeting at 10:19*]

Sewel Convention Inquiry

The Convener (Iain Smith): Good morning, colleagues, and welcome to the seventh meeting in 2005 of the Procedures Committee. This morning, our business starts with further evidence on the Sewel convention. I am pleased to welcome to the meeting the Minister for Parliamentary Business, Margaret Curran. She is accompanied today by Colin Miller, Paul Allen and Murray Sinclair. I invite the minister to make a few opening remarks and I will then open the meeting to questions.

The Minister for Parliamentary Business (Ms Margaret Curran): I am pleased to be here to give evidence this morning. As I think you all know, I strongly welcome the committee's inquiry. The discussion about Sewel motions has been with the Parliament for some time. The Parliamentary Bureau has discussed the matter and it, too, welcomes your inquiry. My officials and I have followed it with considerable interest and we genuinely look forward to the conclusions because they will help the Executive in taking its work forward. The inquiry is useful and timely, because we are considering similar issues.

In our view, the Sewel convention is an important and valuable aspect of the devolution settlement. Many of the academics and commentators who have given evidence to the committee pointed out that it is difficult to see how the devolution settlement could have operated successfully without the Sewel convention. As Alan Trench commented in his evidence, the convention is

"a practical necessity, such that if it did not exist it would be necessary to invent it."

The starting point, as all your witnesses have recognised, is the fact that the first principle of the convention makes sense. Far from undermining the devolution settlement, as is sometimes suggested, the convention reflects and respects it. It recognises that although in legal and constitutional terms Westminster can legislate on devolved matters, it will not normally do so without the Scottish Parliament's consent. In practice, since devolution the United Kingdom Government has never knowingly breached the convention. The UK Government recognises that the Sewel convention is an essential part of the devolution settlement and it is instrumental in ensuring that it works well.

On some occasions, the perfectly valid and well-accepted principles that underlie the convention have been ignored for—I argue—essential political reasons. In such cases, unfounded assertions have been made that powers are somehow being transferred back to Westminster. I do not believe that such assertions bear scrutiny when we consider the evidence, but a good deal of misconceptions and misunderstandings have grown up around the convention and they have created a degree of misplaced and artificial public and political controversy. We are happy to address that. I hope that we will get an opportunity this morning to deal with the range of issues that have led to that position and I hope that we will arrive at some consensus on what the convention is about and the best way to take matters forward.

It is accepted on all sides that there are circumstances in which it is entirely sensible and appropriate for the Executive, with the Parliament's agreement, to invite Westminster to legislate on devolved matters. In my memorandum to the committee, I give some examples of circumstances in which the Executive has invited the Parliament to agree to Sewel motions, and we can talk about those if members wish to do so.

I draw to the committee's attention a point that is important to the Executive: if we did not have the Sewel convention, there would be serious consequences. We would be faced with a stark choice: either we would have to set aside our own legislative plans and priorities to make room for a separate Scottish bill in parallel with the process at Westminster, or we would have to do without legislation that everyone agreed it would make sense to pass. There are a number of commonsense examples of that. The Executive might face the criticism that it was not taking up opportunities that were open to it and was not making the most of the situation in the best interests of Scots. Despite our political differences, I do not think that anybody would want us to be in that situation.

In the situation that we are in—and I accept that some people want to change that—the Sewel convention makes sense both in principle and in practice. As I have argued before, it gives us the best of both legislative worlds at Holyrood and at Westminster. I appreciate that there are a number of issues with the operation of the convention, but I contend that it has improved considerably and that the Executive has played its part in that improvement. Through greater committee involvement, parliamentary accountability has been emphasised time and again. If there is one issue that I want to emphasise today, it is that the Executive wants to co-operate as fully as possible

in relation to parliamentary accountability and involvement. It is not remotely in our interests not to be accountable, because when we are as accountable as possible that leads to better and more effective legislation. We are open to ideas that the committee may have on that.

There is always scope for reviewing processes. When my predecessor, Patricia Ferguson, contacted the committee, she made it clear that we are open to agreeing procedural improvements and we want to do that. I hope that as a result of the committee's inquiry and the evidence that it has taken from a range of distinguished people, including Lord Sewel, we can move on to a debate that leads to improved parliamentary processes and improved parliamentary accountability rather than to a rehearsal of the same arguments over and over again.

I re-emphasise how timely the inquiry is and how useful it is to the Parliament and all business managers. The Executive will examine the committee's conclusions comprehensively. We look forward to having a dialogue and, hopefully, a partnership with the committee on improving parliamentary accountability and the legislative process.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Thank you for your opening remarks and for the Executive memorandum that you submitted. You are right to say that the evidence that we have taken from many interested parties has shown that we need a convention similar to the Sewel convention. However, this morning and in your written submission, you have recognised that there is scope for improving the process. Some of the evidence that we have taken indicates that there is a bit of uncertainty among members, never mind the general public, about the categories of Sewels. Some people suggest that it might be useful for the Executive to highlight what category a Sewel falls into when it lodges the motion.

Another issue that has been raised is notice for members. Often members do not know about a Sewel motion until they see it in the business list for a meeting of the Parliament. There is also the question of the time that is available to debate Sewels in the Parliament. Obviously, that will vary depending on the scope of the Sewel concerned. You say that you have read the evidence that we have taken, so you know what issues have been raised. Have you, as a business manager, and the Executive considered ways in which the three problems that I have highlighted could be addressed?

Ms Curran: Yes. We have given a lot of thought to these matters. In the time that I have been the Minister for Parliamentary Business, Sewels have been the dominant issue. My one foray into the headlines concerned Sewels, and I hope that I do not make any other unfortunate forays of that kind.

I am perplexed by the fact that there is such misleading comment on Sewels. There are political agendas regarding the issue, which we respect—that is the nature of the game that we are in. However, sometimes there is genuine confusion about Sewels that is not malevolent and is not part of a conspiracy theory or an attempt to do down the Executive or a member of it. I have struggled with the issue of why there are misleading headlines that do not seem to tie up with the evidence. The confusion may arise from the way in which we have communicated about Sewels, where there is considerable room for improvement.

Your first question was about categorisation. The term Sewel is now a bit misleading. I have heard respected commentators and members of the Scottish Parliament say that Sewels mean handing back powers to Westminster. I can get agitated and frustrated and say that that is not the case, but people genuinely believe it and have been led to believe it, because the quick translation of a Sewel is that it involves handing back powers to Westminster. We need to make an effort to clarify the issue for people, as we believe that we have not done that properly. Perhaps some categorisation is necessary. We need to make a clear distinction between Sewels that relate to minor and technical issues and the matters of substance that sometimes arise. One of the academics who gave evidence to the committee said that the Executive goes to great lengths to explain minor and technical issues in case anyone should suggest that it is doing something improper. Sometimes we spend an inordinate amount of time on such issues.

There is another category of Sewel motions: when the Scottish Parliament receives powers from Westminster. Lord Sewel thinks that a Sewel motion is not the proper title for that mechanism. There is scope for categorisation and we will consider it, as it would lead to greater clarity about the use of the convention. Irrespective of where we stand on the principle of Sewel motions and our view of constitutional politics, it is in everyone's interest that there is clarity about the procedures that we are using and their outcome. We are giving some thought to that issue.

I have been giving a lot of thought to the issue of notice to members. We have done considerable work to provide members with more information about Sewels—for example, through the Sewel memorandums that we provide to committees. I think that all Sewel motions are now debated in the Parliament.

10:30

Murray Sinclair (Scottish Executive Legal and Parliamentary Services): Most of them are.

Ms Curran: We need consistency. We are looking at mechanisms that we can use to ensure that proper notice is given to members. The focus of my interest has been the subject committees, which have the knowledge to debate Sewel motions. There is proper and full accountability when a committee is consistently involved in the process and has accumulated knowledge of the subject that is being addressed.

However, it is important that all members of the Parliament should be properly informed. Last year, in response to an inspired parliamentary question, I announced the number of Sewel motions that we intended to lodge. I did so to ensure that all members had access to that information. As a result, members knew what playing field they were on, what the Executive's intentions were and what work we were trying to progress, regardless of whether they agreed with us. Because of the improved provision of information, members could attend committee meetings at which motions in which they had an interest were being debated. That is the sort of detail in which I am interested. We can improve the procedures.

We have increased considerably the time that is available for debating Sewels. My Tory counterpart is on record as saying that I have been sympathetic and forward thinking when it comes to ensuring that there is more time for that. However, I will not hold Jamie McGrigor to account for those comments. My frustration in the Parliamentary Bureau is that there has been inconsistency and that decisions have been made on a week-by-week basis. If someone says that a committee needs more time to debate a Sewel motion, or the committee asks for more time, we are likely to be sympathetic to that request.

I have no interest in preventing committees from debating a Sewel, if they want to do so. Why should I? When we put a Sewel before the Parliament, we are proud of the work that we are doing, so I am happy for the time that is needed to debate it to be made available. However, sometimes it is not possible to correlate the substance of the Sewel with the amount of time that is given over to debating it. Too often, such decisions are dependent on the politics of the time. I would be much more satisfied if there were an objective link between the meat of the Sewel and the amount of time that was accorded to debating it. I want to give some attention to that issue, to ensure that standards are consistent. We should have standards that are applicable to the work that we do, so that members know how much time is likely to be available for debating a Sewel. It should also be okay, in particular circumstances, to increase the amount of time for debate.

Cathie Craigie: I want to focus on the issue of the time that is available for debating Sewel motions. Some of the evidence that we have taken suggests that often, when Sewels are discussed in the Parliament, members talk more about the constitutional aspect of the issue concerned, and whether or not it should be Sewelled, than about the substance of the motion. That view is shared by members from outwith the committee with whom I have spoken. Should we stipulate in standing orders that debates should relate to the subject matter of Sewel motions, rather than to constitutional issues? I have asked other business managers where we will get more time to debate more important Sewels, if we agree that that is necessary. They all put the blame on you and say that you must find the time. No other party was willing to offer you assistance and to give up some of its time.

Ms Curran: There is no magic bullet that can provide an answer to your question; it will always be a matter of judgment. Other business managers would accept that I have gone out of my way to address time issues that they have raised. I am also influenced by committees, if they request more time to debate a Sewel motion. That always has a downside: if we make available more time for one thing, we must take it away from another. However, if we are level headed about some of the work that we are discussing and about allowing the Parliament to do its business, we can agree a set of working procedures that strike the right balance between being sensible and getting through the Parliament's workload, and ensuring that there is proper parliamentary scrutiny and accountability. We must encourage people to work towards striking that balance.

We have to nail the idea that somehow there is a hidden agenda behind Sewels. That is what worries me most of all. People confuse the principle with the process. There are issues to do with process and it is proper that business managers, and the Executive business manager in particular, should listen to concerns about process because we all have to be the guardians of process and it is proper that I am held to account for that. However, sometimes people raise issues to do with the process when in fact they are questioning the principle. If we are going to keep debating the principles behind the Sewel convention, we will be locked in a sterile debate for a long time to come. If I were to be brutally honest, I would say that I would not be sympathetic to passing over parliamentary time for members to talk about the same things over and over again. That seems a pointless exercise. I do not dispute that people should have debates about the principle of the Sewel motion, but the

committee's inquiry could help us to be very clear about the difference between the principle and the process. Most people would say that in current circumstances, we need some kind of convention that allows us to have a constructive and effective working relationship with Westminster and that we should manage it properly and transparently. We can have other debates about constitutional matters and it is proper that we have those, but perhaps we should not bring up the Sewel mechanism within that.

It has crept up on us that people sometimes think that there is a hidden agenda behind Sewels; that somehow the Executive is trying to pull a fast one over members; and that we have all sorts of controversial policies behind members' backs on which we are too frightened to have debates in Scotland so we try to get legislation in through the back door with a Sewel. That is just not true. Sewels exist for a clearly defined purpose and we use them for that.

The Executive is proud of its track record of introducing legislation in the Parliament, and we have nothing to hide. The hidden agenda theory is illogical—why would a Government want to introduce legislation through a hidden process? Governments want to show off about the legislation that they introduce. There is no hidden agenda and we need to shake off some of the notions about that. As we shake them off and people gain more confidence in the process, they will stop confusing the principles with the process and we will get into working practices that allow the Parliament to be more involved.

The Convener: I will follow up on one or two points about the transparency of the process. The parliamentary question that was lodged to show what in the Queen's speech might require Sewel motions was welcome. It might be even more transparent if that were done by way of an oral statement. With the best will in the world, PQs are not always spotted by everyone. If we formalised the Sewel convention by including it in standing orders and the Sewel memorandum thereby became a lodged document in Parliament, would that also help with transparency? As the situation stands, it is difficult for non-members of the committee in question to find such documents.

Would it be possible to make clearer in Sewel motions what the Parliament is being asked to give Westminster permission to legislate on? At present, the motions tend to be worded in general terms.

The Sewel memorandums tend to provide good explanations of the technical information, but they are not very clear about the policy intent behind the motion. Could the Executive look at the nature of the memorandum and include a policy as well as a technical commentary at the start?

Ms Curran: We are very open minded about all those points. I do not want to commit myself absolutely to them at the moment, but I will be very interested in the conclusions of the committee's inquiry. I will look at each of those points in that context, but I will certainly not rule any of them out at this stage. In fact, we are already actively considering a number of the points as part of our regular review of Sewel motions.

If the memorandum is not clear about policy intent, we should address that immediately. We have looked at some of the issues that have been raised about the text of Sewel motions and we want to be clear about that.

Although some people did not notice it, the inspired parliamentary question worked better. I have been thinking that we should directly inform committee members at an earlier stage. I did not fully address the issue of timing with Cathie Craigie, but I am sure that we will come back to it. Sometimes committees get caught in that truncated period of time at the end of the process and we need to think about how to create opportunities for consideration. One option was to direct people to the IPQ answer through committees. However, if is another, I will not rule it out—we could do both.

Mr Jamie McGrigor (Highlands and Islands) (Con): Far be it from me to suggest that there is any hidden agenda. There is a feeling in some quarters that Sewel motions are being used much more often than it was originally thought that they would be, including by Lord Sewel. Can you give a reason for that? What are the criteria for granting a Sewel motion? Are there any definite relevant criteria to determine whether a proposed measure is a minor adjustment, or whether it relates to a regime that it is worth having the same north and south of the border?

Ms Curran: After our six years of devolution, it is interesting to ask whether it is possible to conclude that we have had more Sewel motions than we anticipated. If we look back six or seven years, I do not know how we could possibly have projected how many Sewel motions we were likely to have. If someone had asked Donald Dewar when he said that the use of Sewel motions should be "sensible and proper" how many we would have, I think that he would have said that it was not possible to give a figure.

Mr McGrigor: Lord Sewel said that there would be one or two a year.

Ms Curran: When Lord Sewel was pressed, he could not justify that.

Cathie Craigie: When Lord Sewel was pressed in evidence, he said something to the effect that when he made the statement at Westminster to

which Jamie McGrigor refers, he had no idea how many Sewels there would be.

Ms Curran: I am strong in my defence of the Executive not using Sewels improperly and I resist the idea that we have got lost in a merry-go-round that has made us lodge more Sewels than we anticipated. I speak strongly on behalf of my colleagues, who do not introduce Sewels unless they think that it is absolutely the right call.

There is no imbalance, which is at the core of what Jamie McGrigor is saying. That was reflected in some of the press comment to which I referred earlier. People seem to have a genuine concern, which is not malevolent or just political knockabout, that the Executive might have introduced too many Sewels and that the balance is wrong. I have searched through the Sewel motions because if there were an imbalance, I would be anxious about it, but I do not think that that is the case. When one looks at some of the statistics about the use of Sewels—I think that one commentator said that there had been 63 Sewel motions compared with 83 Scottish bills, but the details will be in the evidence—one does not compare like with like. Some people say that one minor technical Sewel is comparable with one act of the Scottish Parliament, but it is not. We need to nail that.

We have looked at every Sewel motion and we have taken examples and asked people, "Should we not have Sewelled that? Should we have gone another way?" Invariably, when we considered the consequences of going another way, we ended up with the decision to take the Sewel route because of a variety of different factors. Therefore, I defend our Sewel record and I do not think that we overuse Sewel motions.

Unless there is evidence from before my time in the Executive, there is no sense that Sewels have caught us by surprise. People have not felt, "Oh my God, why are we doing so many all of a sudden?" On average, there have been about nine or 10 a year, and they have been expected. The officials down south think that that number is properly manageable. It is not as if they have diverted us from our legislative programme. We have never found Sewel motions to be a disruptive influence and to us they are the norm.

I cannot remember who it was, but someone said, "It is the nature of devolved relationships that the use of Sewels will be a routine experience." Whatever one calls it, that kind of relationship goes on. Heaven forfend that there should ever be a Tory Government—it does not look likely for a wee while. Forgive me—that was my one foray into the events of this week. If there were a Tory Government, we would still have a Sewel convention, we would have to have some kind of relationship because that is the nature of the experience. The criteria for using Sewel motions would be clear. As the officials will bear out, we are robust in ensuring that, whenever possible, the Scottish Parliament legislative vehicles are of the first order. It is proper that that is where our focus lies, and our inclination would be to legislate in Scotland for all the political reasons that I have mentioned.

I am responsible for the technical criteria. The process and opportunities for a Sewel motion would be clear, but the portfolio minister would have the policy criteria for determining whether a Sewel motion would be appropriate—I think that the majority of Sewel motions have been on justice matters. Clear categories, which are laid out in our memorandum to the committee, are associated with that decision. The most obvious category is when there is a chance country interest or there is a Great Britain-wide statutory regime that has a slightly different implication in Scotland because one bit of Scottish legislation 300 years ago was a wee bit different. It makes sense to Sewel in such instances.

The best way to sum up the situation is to say that we use a commonsense approach. We would never want to use a Sewel motion if the most appropriate vehicle would be Scottish legislation. We would be mad to do that, as it would not be in our political interest. Why would we want to use Westminster legislation when we could use our own and customise it in the way that it needs to be done in Scotland?

10:45

Mark Ballard (Lothians) (Green): You talked about the relationship between the Parliaments. As you say in your memorandum, the Parliament at Westminster is sovereign, so there needs to be some kind of relationship with the devolved Scottish Parliament. One thing that has come up in discussions is that the Sewel convention was viewed as being about the relationship between Parliaments, not Executives. What is the best way of ensuring that the Scottish Parliament stays abreast of developments as the bill that has been Sewelled passes through its Westminster stages? You talked about ways of making the Scottish Parliament more aware of bills that could be Sewelled when they are announced in the Queen's speech, but how should the Parliament stay abreast of those bills as they pass through Westminster?

Ms Curran: You cannot deny the authority of the Executive or the Westminster Government to introduce legislation. That is our function and purpose; it is why we go to elections. We want to win more seats than you so that we have that authority. That is proper; there is nothing bad in having executive authority. That process is the

reason why we are all here. It is the Executive's job to introduce legislation and that is what we will do. Accountability comes with that job, too, but the legislative programme comes from the Executive.

There is probably more involvement as bills go through Westminster than the committee has acknowledged. Perhaps Colin Miller can take us through the technicalities. As things stand, if Westminster was to change the legislation once a Sewel motion was passed, we would bring back the Sewel motion, as we have done in the past when a bill has changed—I think that we are obliged to do that—and we would keep the subject committee informed. The focus of much of our work is on the subject committee involved in the scrutiny of the Sewel motion because of its accumulated knowledge and specific interest. The committee system is so much a part of our parliamentary system that that seems the appropriate way in which to inform the Parliament, as we do already. However, if members wanted us to be more emphatic or clearer about involving the appropriate subject committee or the Parliament, we would not rule that out.

Murray Sinclair: That is part of what the minister said earlier about reconsidering the terms of Sewel motions and Sewel memoranda. We can consider the involvement of the committees and the Parliament with a view to ensuring that the information that we provide is as good as it can be, but the minister is correct that there are rigorous procedures for ensuring that the Executive is kept aware of any relevant changes that are made at Westminster and brings those changes back to the Scottish Parliament by amending the Sewel motion if necessary, although that has rarely been required in practice.

Ms Curran: I think that we have done so only once. However, if anything was to change in such a bill, the Executive, and not only the Parliament, would have a strong interest in that, because we are clear about the terms of the Sewel motion and a lot of effort has been put into establishing proper and appropriate discussions between officials in Scotland and officials in the UK Government to ensure that our interests are protected. Those discussions have borne fruit.

Mark Ballard: Another issue that has come up in evidence is that there does not seem to be a clear mechanism for informing Westminster of the issues that are raised in committee or parliamentary scrutiny of Sewel motions. Do you have any thoughts on how that could be done more formally?

Ms Curran: Formality is a theme that runs through all the evidence. I noticed that a number of your commentators said—I paraphrase—that the system has worked well but that it is based to a certain extent on good will and good working relations. That is why we need to examine some of the procedures and think about how we can bed them in should that good will ever evaporate, not that that is likely—I will not go back to that.

To date, there has been a lot of partnership and discussion between the Executive and the Government at Westminster to ensure that we are kept abreast and informed of any changes at Westminster. That is at Executive level. We work hard to ensure that the UK-level administrative machine—which is important in protecting the details—is tuned into the devolution settlement. Although this did not come out as much in evidence to the committee as I thought that it might, a lot of progress has been made on that point.

I need to be careful about what I say but, with the greatest respect to my colleagues and the mandarins at Westminster, the devolution settlement is new to them. We live and breathe it, but they do not, so we have to ensure that they are alert to the different circumstances in Scotland. That is not top of their agenda when they are dealing with a huge variety of other things, but I am positive about the response that we have had at a UK level. Colleagues and officials at that level have paid attention to Scotland and the fact that the governance of Scotland is now different. We are always on the ball on that one. Officials change and we keep them aware.

I do not know whether I am directly answering the question. Were you asking about Westminster and the Scottish Parliament, as opposed to Governments?

Mark Ballard: Yes, and in particular how the debates on Sewel motions in the Scottish Parliament and its committees are fed into the Westminster process. I am asking about information from here going there, rather than about the information flow back from Westminster.

Ms Curran: The process operates at two levels. That information is passed on formally. Formal notification of whether the motion is passed is a requirement. Copies of the memorandum that is given to the subject committee are also passed on. I think that copies of the committee reports are passed on, too, although I do not know whether that practice is formal or informal.

Colin Miller (Scottish Executive Legal and Parliamentary Services): It is not a formal requirement.

Ms Curran: There is also a lot of discussion between officials about what was said and what the big issues are. That kind of discussion is normal. For example, there was a degree of surprise about the Parliament's reaction to the Sewel motion on the Gambling Bill. Officials were

interested in the fact that the Scottish Parliament did not want the powers that it was being offered, as that is not what the Parliament normally says. However, we clarified and explained the matter and ensured that the officials were aware of the slightly different context in Scotland.

That is the level of discussion that takes place. There is formal communication on the passing of the motion, the votes at the subject committee and the memorandum that is given to the subject committee. Does the Westminster Government send memoranda to the committees at times?

Colin Miller: No, not as a rule.

Mark Ballard: Would it be possible for the passing on of committee reports to be made a bit more formal?

Ms Curran: I see no reason why not.

Mr Bruce McFee (West of Scotland) (SNP): The discussion has been useful so far. Obviously, we start from different points of view—I support independence and want the Scottish Parliament to have the powers of a full sovereign Parliament, whereas others have different ideas.

You talked about misunderstanding, minister. Some of that misunderstanding surrounds sovereignty. When told that Westminster retains the right to legislate on devolved issues, although it does not normally exercise that right, many people are quite surprised, because they believe that the Scottish Parliament is sovereign on such issues. Perhaps some of the misunderstanding that you described arises from the belief that the Scottish Parliament has the sole right to legislate on such matters, which is not the case, as Westminster remains sovereign.

With a devolution settlement rather than a sovereign Parliament, it is clear that a convention is needed to deal with a crossover of subjects, which can be messy and intricate. A mechanism is needed to manage that. One reason for some of the misunderstanding is that people are not sure of what they have.

Lord Sewel was right about some of the things that are now called Sewel motions—he almost says, "Not in my name." That must be addressed. He is probably right to say that motions to extend ministerial powers should be removed from the equation, which would do away with one element of confusion. I am not sure how we determine whether a matter is minor and consequential or a more major legislative change, so the two categories must sit together in one form or another, but what the Parliament is being asked to approve must be clear.

We must accept that the minister's party and my party will occasionally disagree about what Westminster and Scotland should legislate on, particularly as the Scottish Parliament can legislate. Political disagreements about the course that should be followed will always arise and we cannot produce a mechanism that will do away with all those arguments. We are talking about tidying what can be tidied.

Cathie Craigie was correct to talk about the time for debate of a Sewel motion. That is critical, because a five-minute debate or whatever it happens to be in the Parliament is not good enough, particularly if an issue is controversial. That relates to the allocation of time by the Parliamentary Bureau. I understand why Opposition parties say, "Not in our time, thanks very much," because Opposition time is limited.

Karen Gillon (Clydesdale) (Lab): But it is not well used.

Mr McFee: As Opposition time is limited, we look to the Executive to make time available. [*Interruption.*] I am sure that Cathie Craigie agrees.

Ms Curran: Your recommendation is popular.

Mr McFee: The subject of a Sewel motion should be clear and I agree with the convener that the memorandum should make the policy intent clear.

I ask you to consider two matters. First, should the response to a Sewel motion be a straightforward yes or no? Should the Parliament be able to amend a motion so that it can agree to the motion subject to X, Y and Z, to express its will clearly? That would require the debating time that I talked about, but as such motions would arise only about nine times a year, that could be accommodated.

Secondly, should we have a process of signing off—for want of a better expression—whereby the Scottish Parliament can sign or not sign off the legislation as passed by Westminster? I recognise that, if a bill is changed, we can reconsider the Sewel motion. However, we cannot alter a Sewel motion once legislation has been passed at Westminster. Instead, we are invited to legislate differently.

It might be more useful to act under our procedures, because asking Westminster to change its official procedures might involve a long and tortuous process. Do our procedures allow us to decide whether to enact such legislation or to pause between passing and implementing legislation? Some legislation comes into force some time after it is passed. Could we consider a formal signing-off process whereby the Scottish Parliament determines whether legislation will be fully enacted? That might require changes at Westminster, too. I invite you to consider those two issues.

11:00

Ms Curran: There were more than two issues, but I will have a bash through them. Those comments were helpful. We have thought about such issues for a considerable time. I appreciate your acknowledgement of political disagreement—it makes the debate much more interesting. The core element—on which we would disagree—is that we are tasked with making devolution work and such arrangements are intrinsic to making devolution work, which is what we will do. The public expect that. We have political disagreements, but when we are given a mandate, we make the system work.

We must have a sense of perspective. Sewel motions are important and we should not dismiss them, because they go to the heart of big constitutional issues with which Scotland has grappled for a considerable time. However, the focus should be on the outcomes of the work. What matters is that the legislation improves Scottish life and services. We must not lose the focus on that. That is why I argue that, broadly speaking, Sewel motions have been effective and have worked well. We have become a wee bit lost in the controversy about the number of Sewels and how they compare and we have forgotten what they have achieved. Some of the related achievements have been significant. I plead with the committee to keep that in mind when it writes its report.

I move on to the detail of Bruce McFee's comments, some of which is very interesting. On allocating time, we will never solve the problem that the Opposition always wants things but we must always give it Opposition time. I am sure that Mark Ballard would testify that I try to be as reasonable as possible without being daft—not to put too fine a point on it. If the categorisation of Sewels is right, that will solve many problems. A bit of me does not want to spend much time on discussion and repeated discussion of Sewel motions. If the system is right, negotiation among ourselves will become more reasonable.

For us, much of the emphasis has been on the committees. Perhaps we need to think about giving the Parliament more time for discussion, but we must have the right balance. There is no point in just repeating in the Parliament what a committee discussed. I say with the greatest respect that—I know that Bruce McFee would not do this—people play games. That is what they are there for, in a sense. If someone loses a debate in committee, they want to rehearse it and go on and on about it in the chamber.

Mr McFee: We know that you would not do that, either.

Ms Curran: I would not dream of it.

Karen Gillon: We do not need votes in committee.

Ms Curran: Indeed. All the business managers have a shared interest in the matter, because parliamentary time is precious, so we do not want just to hand it over. We must achieve a balance.

We should be clear about the subject of a motion. If our memoranda are not focused and tight enough, we must give that immediate attention. We are attentive about ensuring that committees and members are well informed. We can put quite a bit of work into the memoranda.

I need to give a wee bit of thought to your points about amending Sewel motions and a signing-off process. My plea is that we need an effective and proportionate system. The Procedures Committee is the most appropriate place to say that we cannot afford to blow out of proportion the significance of Sewels. They represent a minor part of the legislative programme. If we disrupted the Parliament's procedures to become focused on Sewels, I would end up back here being given a hard time by committee members because we did not have enough time for our own legislation, policies and proposals, which are far and away our most significant work—they form the majority of our work and require thorough scrutiny. We need proportionate procedures that allow us to focus properly on our priorities.

We should not create a system for Sewels that does not allow us to put them to bed or to conclude them appropriately but drags them on improperly and gets them out of perspective. It is important to have a proper system for dealing with the motions. I am a wee bit nervous about debates on whether we could do this, that or the other. Changes might not seem significant by themselves but, if added together, they could produce a cumbersome process. We must be careful to avoid that and to keep our eye on the ball of our legislative programme, which is where it should be.

Karen Gillon: You must have very interesting surgeries, Bruce, if people are coming to debate the principles of the Sewel convention with you.

Mr McFee: I have a very intellectual electorate.

Karen Gillon: I am afraid that people have more pressing issues in Clydesdale—perhaps that is what differentiates the experiences of a list member and a constituency member.

Mr McFee: Thanks.

Karen Gillon: We have discussed the issue of the text of motions. Is it always appropriate for the motion to state that the Parliament supports the principles of a bill when we have not had adequate time to debate the full content of the bill, or would it be more appropriate for the motion to allow

Westminster to legislate if that is what the Parliament thinks is the most appropriate vehicle? What assistance could your officials give to committee clerks earlier in the process to flag up what is coming and how it will work, so that committees can begin appropriate consideration of Sewels earlier in their timetable, not precluding what might happen in a Westminster legislative programme? If members are aware of the background of a forthcoming Sewel and have worked on the policy detail, we might reduce some of the rush when a Sewel motion is lodged. Is that something that you would consider?

Ms Curran: Let me answer your second question first. The answer is yes, in theory. We would need to be careful. What you suggest is a bit like the process that ministers use to determine whether we will get a Sewel, as I described to Jamie McGrigor. Just because legislation is proposed at Westminster for which a Sewel might be a possible route, that does not mean that the minister will go down that route. In fact, unless it was obvious that the Executive would agree to a Sewel, all possibilities would need to be exhausted. The timing would be critical. There is no point in starting a committee down a route that the minister may not wish to go down.

That comes back to the point about the authority of the Executive. If we did not consider a Sewel appropriate but a committee did, we might pull rank on our preferred route. We cannot get carried away and spend all our time with a committee considering such matters. However, assuming that it had been determined that a Sewel was the best route, we would be as co-operative as possible in giving the background.

I was sympathetic when members of the Parliamentary Bureau said that the Parliament needs more time on these matters. This is an area in which I thought discussion was truncated, particularly in committees. Committees have a particular responsibility. It is not only the Executive that informs the Parliament about the complexities of our work; committees have a critical role in the settlement. We need to ensure that committees are as fully informed and as engaged as possible in that process. In other areas, we have a good track record on relationships and on the proper distance between clerks and Executive officials.

Murray Sinclair: Once the memorandum has been laid and the position is, we hope, clear, there is scope for co-operation between committee and Executive officials to clarify where the concerns lie so that those concerns can be properly addressed at as early a stage as possible.

Ms Curran: The other point—which I meant to mention to Bruce McFee and I perhaps did not emphasise enough—is about consistency. Practice has, understandably, changed over the six years of the Parliament because of the effort that we have made to get committees and members more involved. We need to establish a norm and a standard of consistency. I take Karen Gillon's point. If committees are considering a Sewel motion that might seem to be merely technical, but is in fact extremely complicated, especially because of the legal aspects, it is proper for them to expect a certain amount of time for their deliberations, particularly if they already have an onerous workload. We could try to establish consistent opportunities for members to get access to information. That is where we need to improve standards.

On Karen Gillon's other point, the text of motions has evolved. As time has gone on, motions have become more prescriptive—rather than just being a sort of sweeping agreement to the bill, they have become more focused, along the lines that she mentioned. We are likely to move to the more focused approach.

Karen Gillon: In relation to the three categories of Sewel, I think that we should find a new name for the process. I am not convinced that we need to separate the three out. We are trying to overcomplicate the game.

Mark Ballard: A Gillon convention.

Karen Gillon: I do not want to be destined for the House of Lords.

Ms Curran: I shall remember that.

Karen Gillon: Please do.

There is a case for saying that any situation that involves a relationship between the Scottish Parliament and Westminster—whether it involves additional powers to ministers, technical changes to legislation or a major policy shift—should go through a clear process in which the Executive informs the Parliament which road it wants to go down and the Parliament either gives its consent or does not. A committee would consider that. By considering two or three different processes, we are in danger of making the procedure unduly complicated and burdensome on the Parliament. If the Executive is clear about why it believes that a Sewel motion is necessary, the Parliament can debate that motion, or a committee can consider it in detail. I am not keen for us to separate the Sewel convention into different processes for each type of relationship with Westminster. That was more of a statement than a comment.

Ms Curran: There is consensus that some of the things that we are doing are misnamed. We need to consider that issue and some of the options around it.

Richard Baker (North East Scotland) (Lab): The number of Sewel motions coming through as Westminster approached dissolution produced a

lot of debate and there was perhaps some unfairness about the process. Has that put any pressure on the convention? Is it something that you need to consider in future?

Ms Curran: Should I be honest? Sorry, I do not know whether that is on the record. It would be fair to say—

Murray Sinclair: As always.

Ms Curran: That is right—I am always under pressure.

As the Westminster Parliament moved towards dissolution we felt an increased pressure not only to conclude our deliberations but to be certain about what would be coming through the Parliament in time. I felt frustration about that. There was no way out of it—it was nobody's fault, but I would have preferred it if the process had been much more manageable and if we had been much clearer about what was going to happen. There are procedures in Westminster for that.

We are now in the reverse position. We are anticipating a Queen's speech in the near future in which lots of fantastic, invigorating and empowering legislation will be announced that will be great news to the British people. I have the happy task of working out what should happen. We have procedures through which we properly inform the Parliament of the many proposals associated with the legislation, but the issue is the stage at which we do things.

All of that is a matter for public discussion—there are no hidden agendas. At the moment, the question is not whether we agree with the legislation, but what stage the legislation is at and which parliamentary process should kick in. If a proposed piece of legislation is just the germ of an idea and the legislation will not come to the Westminster Parliament for two years, there is no point in my clogging up a committee's time by saying that the committee should take lots of evidence on the matter when it has legislation in front of it that is much more significant to Scottish people in the immediate future. There are those sorts of judgment calls to make.

My instinct has been always to be up front about issues that we have to manage, with business managers, with other committees and, I hope, with this committee as well. There are key things that we need to do as an Executive and as a Parliament to manage the relationship with Westminster and to ensure that we get the best out of it. We need to keep our eye on the ball in relation to the outcomes. After all, the point is not the debate that we have over the various Sewel motions, but the powers that we now have over Network Rail, for example, and other matters. In fact, over the coming period, one of the pieces of legislation might well have something to do with animal rights. Such legislation is good and important; although it might not take centre stage in any Scottish legislative programme, it is not to be sniffed at either. The point is that we must have a sense of perspective and consistency.

11:15

Richard Baker: Presumably that means that, when we make our recommendations on the Sewel convention, we should point out that it must retain a certain amount of flexibility because not every Sewel motion relates to a huge, controversial issue. On the other hand, we might want UK-wide legislation to be introduced on a major issue and some of that might be very technical. A pertinent question for us is how parliamentary committees can be empowered to have more scrutiny. Perhaps we should emphasise their role as forums in which a reasonable debate on such matters can take place. That would allow us to flag up early whether a certain issue requires more debate in the Parliament or whether the debate can be finalised at the committee stage.

Ms Curran: As I said to Karen Gillon, my concern is that people are connecting Sewel motions with questions of controversy and time, when the connection that should be made involves the subject of the Sewel motion, the time that is needed to scrutinise it and the controversy that it might give rise to. My plea to committee members is not to throw the baby out with the bath water; the committee must keep a sense of perspective on the matter, because otherwise we could all live to regret it.

Mark Ballard: Karen Gillon said that we should have one clear process for all Sewel motions. However, there is a huge difference between a minor or technical, uncontroversial Sewel motion and a Sewel motion that is lodged

"where the UK Parliament is considering legislation for England and Wales which the Executive and the Parliament believe should also be brought into effect in Scotland, but sufficient Parliamentary time is not readily available at Holyrood".

You are talking about a piece of legislation that could be introduced and considered at Holyrood but, according to the Executive, there is not enough time to do so. Just as it would be inappropriate for the Parliamentary Bureau not to give enough time to a major bill, it would be inappropriate for the bureau to give too much time to a minor and technical piece of legislation. Do you agree that we need separate ways of dealing with these two different aspects of the Sewel procedure?

Ms Curran: I acknowledge Karen Gillon's remarks on consistency. As I said to Richard Baker, we perhaps need to clarify not the different

types of Sewel motions but the process itself. However, I am inclined to try to secure some consensus around how we manage the technical aspects. Everything is still under discussion.

Mark Ballard: As far as management is concerned, it has been suggested that we could introduce some kind of reception committee—which might be the Subordinate Legislation Committee—that would have a chance to examine any forthcoming Sewel motions and to clarify whether they relate to minor, technical and uncontroversial legislation or to major legislation. Such scrutiny could help to guide the rest of the parliamentary processes. Given that the Parliamentary Bureau deals with time matters and that the committees deal with the subject that is under debate, is there a role for a reception committee to analyse whether a piece of legislation that was subject to a Sewel motion would need either the complex and full scrutiny that one would expect with a major piece of legislation or the lesser scrutiny that would be required for minor and technical legislation?

Ms Curran: I am not sure about that suggestion, because it raises all sorts of questions. After all, we still need to discuss whether we should categorise these matters. I am not sure whether we can even make that call at the moment.

As I have said, the Executive is responsible for introducing legislation and needs to protect that interest. I do not think that such a position is undemocratic; we are simply ensuring that we can do our job. Moreover, we need a proportionate regime. We could be in danger of having a regime that would not allow us to get through the work.

As is proper, the Scottish Parliament's focus is mainly internal. However, for all its faults, one of the Scottish Parliament's many achievements is that it has already passed a substantial body of legislation. We have waited 300 years to sort out some of these issues in Scotland. We need to have a sense of perspective and be sensible about what we can do. I should also point out that the Subordinate Legislation Committee already has a lot of work on its hands.

The Convener: As there are no other questions, I thank the minister and her officials for their helpful evidence. I look forward to drawing together some ideas over the next couple of weeks.

Ms Curran: We look forward to reading the committee's conclusions.

The Convener: We will have a short suspension while we change over the witnesses.

11:20

Meeting suspended.

11:22

On resuming—

Public Petitions (Admissibility)

The Convener: As far as the previous item is concerned, I hope that a report on the evidence that we have received on the Sewel convention will be available for our next meeting. That should allow us to decide the direction of our report, which I hope will be published before the summer recess.

Our next item of business is a new inquiry on the admissibility of public petitions, which is a referral from the Public Petitions Committee. I am pleased to welcome to the meeting Michael McMahon MSP, the convener of the Public Petitions Committee, and Jim Johnston, clerk to the Public Petitions Committee, who will give evidence on why such changes require to be made. I invite Michael to make a few opening remarks, after which I will open things up to members' questions.

Michael McMahon (Hamilton North and Bellshill) (Lab): I thank the committee for the opportunity to talk about this issue. The Public Petitions Committee welcomes the Procedures Committee's support for a recommendation to amend standing orders in order to prohibit MSPs from submitting petitions. However, I understand that you have some questions about the proposal on resubmitting petitions. Although I am happy to answer those questions this morning, it might be useful briefly to outline the background to our proposals.

Members will be aware that one of the strengths of the public petitions system is the emphasis on openness and accessibility, which is reflected in the admissibility criteria that are set out in the standing orders. The Public Petitions Committee has emphasised that its proposals on resubmission are not in any way intended to limit such openness and accessibility. Indeed, the rolling programme of committee events that promote awareness of public petitions and provide practical guidance on petitioning illustrates that our intentions are quite the opposite. In that respect, we aim to visit all eight parliamentary regions in the current session.

However, as our first report in 2005 makes clear, we aim to prevent abuse of the system in which a petitioner who is dissatisfied with the outcome of his or her petition simply resubmits it. For example, some petitioners have indicated that they intend to resubmit their petitions until they get the result that they want. At the moment, no procedure prevents that from happening.

Although the practice is not widespread, colleagues will be aware of the extremely heavy

workload of the Public Petitions Committee. At each meeting, we usually consider a total of 14 petitions, of which six are new petitions, and hear evidence from three groups of petitioners who we have invited to give oral evidence. The volume of petitions that we receive means that there is little or no slack in the system. Although the volume of resubmitted petitions may not be great, they can act as a drain on the limited resources that our clerks have available to them.

The Scottish Civic Forum has stated:

"It would be unfortunate if new petitions were delayed for consideration because of repeat petitions clogging up the system."

Moreover, they can be seen to undermine the credibility of the system.

I hope that I have made it clear that the Public Petitions Committee seeks to enhance the effectiveness of petitions and, at the same time, not impinge on the ability of all members of the public to petition the Parliament.

In a previous paper on the subject, the Procedures Committee referred to the scope of the ban on resubmissions. The Public Petitions Committee does not want to ban resubmissions, but to control them. I appreciate that procedural matters are often more complex that they might initially appear, and I am happy to take questions on any of the difficulties that may arise from our proposals.

Karen Gillon: You can correct me if I am wrong, Michael, but I assume that the Public Petitions Committee has more petitions than it knows what to do with. If a petition is constantly resubmitted, it will take up the time not only of the Public Petitions Committee but of the other committees to which it is referred. In turn, resubmitted petitions prevent new petitions from getting on to the agenda.

The Procedures Committee is being asked to agree to your proposal. Is the driving force behind that proposal the Public Petitions Committee's wish to enable new petitions to be considered more quickly than is the case at present? I ask you to confirm or reject the suggestion.

Michael McMahon: Thank you for the question, which allows us to confirm that that is exactly what our proposal is all about. I have some ballpark figures for the committee: last year, we considered 110 new petitions, of which 7 per cent were resubmissions, or work that the committee had already undertaken. I am sure that any committee of the Parliament would agree that that is a substantial proportion.

The primary difficulty in resubmissions relates to the work that the clerks have to do in preparing them for the committee's consideration. If a petition is resubmitted, the clerks have to investigate it and undertake all the paperwork and research that is required to make the petition presentable for our consideration.

Clearly, the Public Petitions Committee is under pressure because of the number of petitions that we receive. Given that we are trying to increase the number of the petitions, we have to see what we can do at the other end of the scale. We are not saying that people should not be allowed to resubmit petitions; we are saying that we have to create the space in which to grow new petitions by not just considering petitions that we have already addressed.

The Convener: Before I ask Karen Gillon to come in again, will you clarify the additional work that the clerks are required to do in order to determine that a resubmitted petition requires no further action?

Michael McMahon: I will ask the clerk to answer the question.

Jim Johnston (Scottish Parliament Directorate of Clerking and Reporting): Obviously, it is not appropriate for the clerks to prejudge how the committee looks on a resubmitted petition. It is therefore important that a resubmitted petition is considered in the same way as any other petition is considered.

Dialogue usually takes place between officials and petitioners on a petition, and that is also the case for a resubmitted petition. It may be that aspects of the resubmitted petition are inadmissible, in which case dialogue would need to take place on those elements of the petition. The resubmitted petition also has to be treated in the same way as any other petition: it has to be lodged in the business bulletin, added to the committee agenda and set out in a briefing note for committee members. A lot of the material may seem the same as the material that we prepared when the petition was initially submitted, but that is not always the case.

11:30

Karen Gillon: Having read the paper—some of which I agree with and some of which I do not—I have a second issue to raise. Every petition goes through the process in this Parliament and before members elected to this Parliament. The Public Petitions Committee considers each petition and may decide to refer it to another committee or the Executive and to consider the committee or Executive response; it may then agree to close the petition. You suggest that a ban should not carry over into the next parliamentary session. I assume that that is because no Parliament can bind its successor—different members may take a different view of a petition. Although the suggestion is sensible, why have you taken the arbitrary figure of a year rather than six months?

Michael McMahon: I agree that it is an arbitrary figure; we accepted that the figure would be an arbitrary one from the outset. That said, it is not uncommon for a petition to take two or three years from the start to the finish of the process. Some of the more substantial petitions that we have considered have taken that length of time to go through the process.

Although some petitions can take a lot less time to address and take forward, we feel that a year is around the average length of time for a petition to go through the process. If a petition that has been closed or has been subject of a committee inquiry is resubmitted, it is not outwith the bounds of possibility that it could take a year to address the issues that it raises. Although we decided that a year was the appropriate timescale, Karen Gillon rightly says that we could have decided on a timescale of six months—or, indeed, 18 months.

We are looking not for a hard-and-fast rule, but for an element of flexibility. If a petition was resubmitted and we were made aware that a substantial amount of new information was involved, we would consider it as a new petition. We do not want to close off the subject matter; we want to address the fact that a petition that has been completely addressed by the Parliament has then been resubmitted without any substantial change having been made. We believe that a year is the appropriate timescale, as it gives the petitioner enough time in which to reassess the situation.

Mr McFee: Committee members are sympathetic to what the Public Petitions Committee is trying to achieve. It is fair to say that people should not be able to come back again and again with a petition, as that takes up time that could be used to consider other petitions on a wide variety of subjects. That said, I am concerned that you are using a sledgehammer to crack a nut.

The Public Petitions Committee either has a rule on the resubmission of petitions or it does not. On the criteria that the committee sets down for the clerks to apply, how can the clerks take decisions on whether enough new information is involved? Surely such decisions have to be taken by the committee.

We have some suggestions about how to deal with the proposal, and I will float one of them past you. If it is clear that a petition is simply a resubmitted petition, surely the Public Petitions Committee should have the power to say, "The petition is closed. We will not reconsider it". Would that not be a better way of doing things? If a petition were resubmitted—perhaps in a better format or because of a change in circumstances—surely the one-year rule would prohibit the Public Petitions Committee from reconsidering it. Is there not another way to achieve the same objective—one that gives the committee the flexibility that it seeks so that it can deal with petitions that it may want to consider again?

Michael McMahon: You raised two or three issues. I will give a concrete example of why the suggestion would not work. A number of petitions were submitted on the closure of rural schools. The petitions were passed to the Education, Culture and Sport Committee, which was conducting an inquiry into the subject. A substantial amount of time elapsed before the inquiry was concluded, at the end of which the petitions were closed.

Before the end of the process, a petition on the same subject was submitted through our e-petitioner system. Given that it raised a matter that the Parliament could address, we could not rule it out as inadmissible; however, we had no power to say that the subject had been addressed by the Parliament. That allows petitioners' expectations to be raised, although the matters raised in their petitions have been addressed by the Parliament, and means that we are asking them to use the system without having regard to the subjects on which the Parliament has adjudicated. We still have a petition out there on a matter that clearly has been closed. We cannot do anything about that and the petition will have to come before us. If we had powers to prevent that from happening, we could save everyone a lot of time.

Mr McFee: I am suggesting that, as a committee, you get the power to close a petition.

Michael McMahon: We have that power.

Mr McFee: Do you have the power to close a petition immediately, before you consider it?

Michael McMahon: No.

Mr McFee: So if a petition on a matter that clearly has been considered is resubmitted—you gave the example of petitioners going on and on until they get the answer that they want—you want the power to say, "No, we regard this petition as closed." Would that solve the problem?

Michael McMahon: It would to an extent, but although a petition may be closed, it may be resubmitted by another equally legitimate source, and we would have difficulty if it was not considered in detail.

Mr McFee: But your proposed rules on the resubmission of petitions would not prevent someone from simply getting somebody else to resubmit a closed petition. I am suggesting that the committee be given the power to examine the petition and say, "No, we've dealt with this matter substantially, and we simply aren't going to consider it. We're going to close the petition."

Michael McMahon: We are trying to stop not the petitioner but the subject matter of the petition.

Mr McFee: I understand that, because if a petition is resubmitted under another name, you could find yourselves in the same trap.

The Convener: Defining what a resubmitted petition is might be as difficult as saying that a petition is closed. That is the issue that we are trying to get at. Would it be better simply to improve the rules to allow the committee to say, "We consider that this matter has already been adequately considered by the Parliament"?

Michael McMahon: The difficulty is that the committee would have to make that decision; therefore, the clerks would have to do all the work to present the petition. That approach would also give the petition the same legitimacy as every other petition is given.

The Convener: But should not the committee make that decision, rather than the clerk? Would not the system come into disrepute if a petitioner felt that their petition was not considered by committee members?

Michael McMahon: With all due respect, that is what happens at present. The problem that we have identified is that once a petition is submitted, the clerk has to go through all the processes to get that petition on to our agenda before we close it. All the work is done and the resources are used before we get the petition on to the agenda, which is when the committee makes its decision. We do not have the power to talk to a petitioner and prevent a petition that has already been addressed by the Parliament from coming forward.

Mr McGrigor: That is the point. Suppose you get a petition from Caithness, the subject of which has, in your opinion, already been dealt with in a similar petition from Galloway, albeit from different people. Can you go to the petitioner and say, "These are the findings from an earlier petition, so do you still want to submit your petition?"

Michael McMahon: At the moment, we have no power to do that. If the petitioner insists on submitting their petition, we have no power to stop them.

Mr McGrigor: Do you think that you should have that power?

Michael McMahon: Yes. That is what we are asking for. At the moment, the petition will get on to the agenda, and in getting there it ties up the resources of the clerks. It also prevents new petitions on new issues from getting on to the agenda quicker.

Mr McGrigor: What happens if you have a petition that is similar but not the same?

Michael McMahon: That would be treated as a different petition. The clerks are not there to prevent petitions from coming forward. If a petitioner submits a petition on a particular subject that highlights a different issue for the Parliament to address, it is treated as a different petition.

This may be happening because we are in the second session—I do not think that it happened much in the first session—but petitions that have gone through the system are being resubmitted because the petitioner is not happy with the outcome of the original petition, and we have no power to prevent that. If a petitioner insists on resubmitting their petition, the clerks have to start the process of getting it on to the agenda, which is where the problem kicks in.

Mark Ballard: You talked about 7 per cent of petitions being resubmissions. How did you reach that figure?

Jim Johnston: It is a rough figure that arose from our examination of the 110 petitions that were lodged during the period of the current annual report. My team considered all the petitions that were lodged and made a judgment.

Mark Ballard: Did you consider whether petitions were identical but from a different petitioner, identical and from the same petitioner, or similar to other petitions?

Jim Johnston: There was a mixture. We appreciate that the matter is complex. Some petitions were clearly identical, others were the same but lodged by a different petitioner, and others were on the same issue.

Mark Ballard: I can appreciate Michael McMahon's point if he seeks to eliminate substantially equivalent petitions, but I am unhappy with the wording

"the same or similar terms",

because "similar terms" is far broader and could include petitions that are on the same subject but from a different source or which have a different perspective.

Michael McMahon: We are looking at only those petitions that have already gone through the system. At any given time in the system, we can have four or five petitions on the same subject—on telecommunications masts or the closure of rural schools, for example. However, when the Parliament—either through the Public Petitions Committee or another committee—closes a petition and another one is submitted on the same subject, we start the process of considering a petition that has already been addressed. We want to address only those circumstances. We are not saying that because we already have a petition on a subject we do not want to take any more.

Mark Ballard: I can understand that that would apply to "the same" subject, as you describe it, but the paper refers to "similar terms". The difference

between "the same" and "similar" is giving the committee some concern.

Michael McMahon: I can give examples. Some organisations submit a petition in the name of an individual. Consideration of the petition is concluded, and the same or a similar petition—on a subject that has been addressed and which seeks the same thing from the Parliament—is brought forward in the name of another person who is a member of the same organisation. The wording of the petition could be different, but the petition is similar and we know that the request in the petition is the same.

Mark Ballard: But the question relates to who should exercise that judgment. Should it be the committee or the clerks?

Michael McMahon: The clerks do not make that judgment anyway.

The Convener: With respect, if your suggestion is agreed to, the clerks would make the decision.

Michael McMahon: Only in conjunction with me. Ultimately, the committee decides on petitions that come before it. We are trying to stop the clerks' time being taken up in examining petitions that we know from the outset are quite clearly the same.

Mr McFee: I hear what Michael McMahon is saying, which is that the clerks have to do a degree of work to get a petition on to the agenda before it can be closed. I see a democratic danger in leaving to a clerk the decision whether a petition can be readmitted. Somewhere down the line, clerks, who cannot defend themselves, will be accused of taking an arbitrary decision. Would not it be useful if the rules were changed such that, instead of doing all the work, the clerks simply referred straightforward resubmissions—as defined by a set of criteria—to the committee with a recommendation that they not be considered? The committee could close such petitions at that point, without the clerks doing all the preparatory work. In other words, the clerk could say, "We believe that these eight petitions to the Public Petitions Committee are resubmissions," or whatever they are called, and the committee could say, "We will close them."

Michael McMahon: I refer you to the clerk, because he has the practical experience.

Jim Johnston: There is no question of clerks deciding on anything. The role of the clerk is to advise on petitions. If the petitioner rejects or contends the advice of the clerk, the petition goes to the committee for a decision. The standing orders are quite clear that it is for the Public Petitions Committee to decide on a petition's admissibility. Therefore, if there was any dispute about whether a petition had been resubmitted, I would first discuss the matter with the convener, and if the petitioner was unhappy that their petition had been classified as resubmitted, the matter would go to the committee for a decision.

11:45

Cathie Craigie: I do not follow everything that happens in the Public Petitions Committee—I am sure that Michael McMahon will be disappointed to hear that—but I agree that matters go back and forward and that sometimes a petition rings a bell with members, who realise that they considered the subject some time ago. I agree that something has to be done, but I understood that Dr Johnston would make a recommendation to the Public Petitions Committee about whether a matter had been dealt with previously by a committee of the Parliament. Let us imagine that there are half a dozen petitions on the agenda for a meeting. The clerk's recommendation might be that a matter had been dealt with in the past and that a particular petition should proceed no further. That would be like a paper exercise. Is that the intention?

Michael McMahon: That is what currently happens.

Cathie Craigie: You said that for that to happen, the clerks must do all the work and follow the agreed procedure. However, the process could be different. For example, you might agree that, of 12 new petitions on the agenda, nine should go forward because they raised matters that the Parliament had never considered, but three petitions should go no further than that meeting.

Michael McMahon: If such a petition appears on the committee's agenda, there is a question about the legitimacy of the original decision of the committee—or whatever the process—to consider the petition. The expectations of the people who lodged the petition are also raised and the credibility of the agenda can be in question.

Cathie Craigie: I am sure that your committee has discussed the matter long and hard. Did you agree that your proposed approach offers the best way forward?

Michael McMahon: Yes. We produced and discussed a paper that considered the practical difficulties. As you said, members of the Public Petitions Committee recognise petitions as they progress through the Parliament and we often get a feel for the organisations that are behind them. Members identified an issue to do with our taking time to consider petitions on matters that we have already considered, which come from organisations that have already submitted a petition, for which the clerks have had to do all the preparatory work.

Cathie Craigie: I am sympathetic to the need for a solution to the problem. However, Bruce McFee suggested that you might be setting aside your democratic responsibility to make decisions that are delegated to you as convener. How does such an approach tie in with the Parliament's principles of inclusion and openness?

Michael McMahon: I have not convened other committees, but I have raised issues with conveners of other committees who have said, "That is not a priority for us at the moment," or "That is something that we might look at." It is then for that convener to decide when the matter will come before their committee. As the convener of the Public Petitions Committee, I do not have that authority. I cannot say that a petition should or should not go forward; I must accept that once a petition is lodged, a process is started and the petition will reach the committee. Only when it reaches the committee can we decide whether it should have come before us in the first place.

The Convener: Jim Johnston might be the best person to answer this question. Currently, standing orders require that the Public Petitions Committee decides whether a petition is inadmissible. How does that happen in practice?

Jim Johnston: In practice, the role of the clerk is to advise on admissibility and a lot of work is done with officials and the petitioners. For example, we often have to get advice from the legal team on whether it is within the Parliament's competence to deal with the matter that the petition raises. Having sought that legal advice, we go back to the petitioner and, if necessary, explain why a petition is inadmissible. In the vast majority of cases, the petitioners are happy with that advice—and it is made clear that it is advice. When a petitioner is unhappy with the advice, I discuss the matter with the convener and the convener decides whether the petition should go on the agenda so that the whole committee can make a decision on its admissibility. Crucially, it is the committee that makes any decision.

The Convener: So the committee is seeking an additional criterion to the three that exist regarding what is inadmissible—the additional criterion being whether a petition in the same or similar terms has already been discussed—so that the clerk can go to the petitioner and say, "We think that the petition involves the same or similar terms and so it will not be acceptable." If the petitioner disputes that, the matter will go to the committee for a decision. Is that what you are saying?

Michael McMahon: The fact that a petition has been resubmitted means that it must have been admissible in the first place. At present, if it is admissible, I do not have any powers to rule it out.

The Convener: I am trying to clarify the procedure that the petition would then go through. At present, if a petition is resubmitted, it must be considered before the committee can decide not to take any further action on it. You are saying that you want a procedure that would allow the clerk to say to the petitioner, "This is a resubmission, so it cannot proceed for at least another X months." If the petitioner disputed that, the matter would still go to the committee to—

Michael McMahon: Ultimately, that decision would have to be made, yes.

Karen Gillon: I was trying to find a way through this, but I think that the convener may well have done so—

Mr McGrigor: I wanted to ask—

The Convener: I am sorry to interrupt, but I want to make it clear to Jamie McGrigor that, as the convener, I will ask members to speak when it is their turn. Karen Gillon indicated some time ago that she wanted to speak and I indicated that she would be allowed to speak. I will ask Jamie McGrigor to speak next.

Mr McGrigor: As long as we remember that I am a member of the committee, too.

Karen Gillon: The convener may have found a way through by establishing another criterion that would make a petition inadmissible. I presume that, in whatever process was gone through, a report would be made to the committee; it would not be just an arbitrary decision of the convener that would not be reflected anywhere. At some point, a report would have to be made to the committee on petitions that had been ruled out and the committee would endorse the decisions and conclusions that had been reached. That process seems quite simple. You would not be taking the committee out of the process and you would not be creating an extra layer of work for the clerks ahead of the committee making that decision.

Michael McMahon: Ultimately, we need you to give us the powers that we are asking for. At the moment, we do not have them. If a petition is clearly admissible—if it is a readmission, it must initially have been admissible—we have no powers to say to the petitioners that they cannot lodge that petition. That is what we need to be able to do. If we cannot do that, the petition must be considered as a new petition and the clerks have to use up the resources of the committee to present it as a new petition.

Karen Gillon: If we created an additional criterion (d) in rule 15.5.2 that reiterated the words that are in your report—that a petition should not be in

"the same or similar terms"

as a petition that has been closed—would that give you the power that you require?

Michael McMahon: I think that it would.

Mr McGrigor: I was slightly concerned by what you said about groups using individuals to lodge petitions. Are you suggesting that the system is being taken over by lobbyists? The whole point of the Public Petitions Committee is to allow individuals to lodge petitions that are relevant to their area. Do you think that that is happening? Moreover, do you think that individuals should be limited in the number of petitions that they can lodge in a year?

Michael McMahon: We should not try to limit the number of petitions that are submitted. Through practice and through dealing with organisations and individuals, the committee becomes aware of the source of a petition. However, that does not present any difficulties. We deal with each petition purely on its merits; we are interested not in where it has come from, but in its content and what it is asking for. If a petition meets the admissibility criteria, we are not concerned whether its source is A, B or C.

That said, we are concerned that, after we close a petition, the organisation that is behind it might simply choose another member to try to make the petition's contents appear new and to resubmit it, when the substance might be the same or similar to that in the petition that the committee had already rejected or that the Parliament had already addressed. The difficulty is that we cannot stop that happening.

Mark Ballard: Has it ever been appropriate for a petition to be resubmitted? For example, circumstances might have changed, new information might have come to light or the information might have been poorly presented the first time around. Is there a danger that amending rule 15.5.2 might simply make it impossible for petitions to be resubmitted even though there might be occasions when doing so might be correct, helpful and appropriate?

Michael McMahon: No, because in the circumstances that you have outlined such a petition would be entirely new. We are talking about a petition that is similar in wording and identical in request to a petition that has already been rejected.

Mark Ballard: What if a petitioner felt that the petition had been referred to the wrong committee and was trying to get it back on to your agenda so that it could be sent to a different place?

Michael McMahon: That would be a resubmission. In other words, the same petition would come back to the committee again. If a petitioner wanted their petition to be sent to a particular committee, they would have to say so in the petition. That would make it a new petition, and we would then have to consider the question whether it was appropriate to meet their request. We do not simply comply with every request that petitioners make. However, if a petitioner submits new information and asks for something different to be done, they have submitted a new petition.

The issue is the resubmission of a petition that makes the same request purely because the petitioners are not happy with the outcome of our consideration of the first petition. For example, one committee spent a lot of time on an inquiry that was based on a petition. When the inquiry was concluded, the petitioner resubmitted the petition because they were not satisfied with the outcome. Moreover, because the committee membership had changed, they wanted the new committee to consider the matter.

Mr McFee: There seems to be agreement that amending rule 15.5.2 and changing the criteria would prevent the clerk from having to carry out more work, because he or she would have already done that work when the petition was first submitted.

We should perhaps leave aside the question of the period during which the petitioners cannot resubmit a petition. After all, if we stipulated that the period should be six months, a petitioner might resubmit their petition after six months and a day, or if we stipulated that it should be a year, they might resubmit it after a year and a day. You would simply have to go through the whole procedure again.

I wonder whether, by changing only rule 15.5.2, we will end up in the same situation six or 12 months down the line. Because you do not have the ability to close a petition formally, you might end up constantly having to reconsider resubmitted petitions six months and a day or a year and a day later and with the same end result. People will soon become wise to how quickly they can resubmit their petitions. Obviously, such a ban cannot be continued into a new session—we cannot tie the hands of a new committee or Parliament.

I invite you to reconsider the prospect of having the ability formally to close petitions. There are situations where there is just a time lag between a petition being closed and its being resubmitted. You outlined to Mark Ballard a number of ways in which people can easily circumvent the impression that a petition is simply being resubmitted, such as by adding another element to it or asking for a different outcome, which might be totally impractical but which you would be required to consider. You might have come up with only a temporary solution to the problem.

12:00

Michael McMahon: We have the power to close petitions and we do so; in fact, we close more

petitions than the previous Public Petitions Committee did.

Mr McFee: Before considering them?

Michael McMahon: No. We never close a petition before considering it; it would be wrong to do so. We want the power to avoid asking the clerks to use up the resources of the committee; we want to avoid having the time of other petitioners taken up because people are continually coming back to us and asking us to reconsider issues. We think that a year is a reasonable time in which circumstances could change. If we thought that circumstances had changed, we would consider the matter again. However, we do not think it appropriate that, just because a petitioner is dissatisfied with the original outcome, they should be able to ask us to start the process again. That can happen at the moment, because we do not have the power to deal with such situations.

Mr McFee: We want to get this right, despite some of the murmurings that we have heard. Would it be useful not to specify a time period of six months or a year, but to say, for example—I do not have the form of words—that the committee considered that it had deliberated on the matter in a reasonable timescale? That would avoid recurrences of petitions after six months and a day or a year and a day.

Michael McMahon: You might have a point. The Public Petitions Committee agreed that a year would be an acceptable timescale and I am not at liberty to change what the committee agreed in its discussions. However, if the Procedures Committee wants to reconsider that issue, I will have to leave it to you. We did not feel that a year was an unreasonable time. The question is not just about our considering the petition; we would ask the petitioner to take the time to think about whether it would be useful to lodge the petition again.

Cathie Craigie: This meeting has been useful in clarifying the position for me. It is clear that the convener of the Public Petitions Committee in no way wants to prevent people from lodging petitions. Let us imagine that a member of the public petitioned the Parliament asking for a bus from Glasgow to Kilsyth. If, after the Parliament had considered that petition, someone lodged a petition asking for a bus from Kilsyth to Glasgow, we would say that that matter had already been considered. The issue is as basic and simple as that. I really do not get the feeling that the Public Petitions Committee or its convener would want to stop people having the right to petition Parliament; they just want to ensure that false hopes are not built up. That is reasonable. Reasonable politicians would want to ensure that people did not have hope that a petition could be opened again when that was clearly unnecessary.

Michael McMahon: Thanks for that, Cathie. That is exactly what we are trying to say. We just need a bit of protection from those people who want to exploit the current situation, because we have experience of such attempts. We are in no way trying to prevent people from lodging petitions. Given that, as I said in my opening statement, we are going out to the regions to try to encourage a wider range of community groups and individuals to lodge petitions, we need to protect the clerks and ensure that the resources that are available to them are best used.

The Convener: I thank Michael McMahon and Jim Johnston for coming along; they have helped to clarify the issues.

I draw to colleagues' attention the paper on the admissibility of public petitions. I refer to paragraph 24. We need to consider a number of decisions, on the basis of which we will produce a draft report on any changes to the standing orders that might be required.

Karen Gillon: We should add a new rule, 15.5.2(d), stating that a petition can be ruled inadmissible if it is in the same or similar terms as a previous petition. I am drawn to Bruce McFee's suggestion that we should not impose a time limit—it should be up to the Public Petitions Committee of the day to decide the point at which a petition becomes readmissible. However, we cannot bind our successor Parliaments, so the measure should apply only to one parliamentary session.

Mark Ballard: Karen Gillon makes the important point that rule 15.5.2 should be able to be used when a petition is the same as a previous one. It is important to have flexibility—we should say not that petitions must be put aside, but that they can be put aside. Can we tighten up the definition and replace the word "similar" with the words "substantially equivalent", for example, to make it clear that we are referring to petitions that are more or less the same? The word "similar" seems too broad. Moreover, can petitions continue across parliamentary sessions, so that they can be opened in one session and closed in another?

The Convener: Yes.

Mark Ballard: In that case, I do not see why there should be—

Karen Gillon: Because the parliamentary composition will change. If there was a change of Executive—

Mr McGrigor: Perish the thought.

Karen Gillon: It is highly unlikely.

Given that the minister or something else might change in the subsequent session, the outcome for the petition might be different from what it was

in the previous session with a different Executive or committee.

Mark Ballard: But the Executive can change during a parliamentary session. Coalitions can fall apart unexpectedly.

The Convener: That might be a material change of situation that would allow the petition to be resubmitted. We are saying that, everything else being equal, if the same or a similar petition was proposed, it would not be reconsidered in that parliamentary session. However, if there was a material change, such as new evidence or a change of Government, it would be up to the committee to accept the petition.

Mr McFee: My comments are based on the assumption that, whenever a petitioner wishes to pursue a petition, the decision on it will be taken by the Public Petitions Committee. I want it to be clear that, when the clerk tells a petitioner that their petition is likely to be ruled inadmissible but the petitioner says that they want to pursue the matter, the petition will always go to the committee, not just the clerk and the convener, for determination. The evidence seemed to be that that is what would happen.

The Convener: Yes. Currently, standing orders state that the committee will determine admissibility, but in practice the clerk discusses the petition with the petitioner and, if the petitioner accepts that the petition is not admissible, the petition is withdrawn and does not go to the committee. If the petitioner does not agree, the petition goes to the committee. One of the suggestions in paragraph 24 is that we amend standing orders to make that clear.

Mr McFee: Standing orders should state that the committee makes the decision.

The Convener: Petitions go to the committee in cases where there is a dispute.

Mr McFee: Yes. The petitioner would have to dispute the decision. If the clerk speaks to the petitioner and the petitioner withdraws the petition, the question of admissibility does not arise, because the petitioner has withdrawn their petition. Only when a petition is pursued can it be ruled inadmissible. I want to be clear that the committee makes the ruling.

I do not have the exact form of words, but we should be clear that we are talking about a petition being in the same or similar terms in the same session—I am not getting into Mark Ballard's terminology. That point has to be clear. I will qualify that, because a petition might be in similar terms to a previous one, but the circumstances may have changed dramatically in a short period. Therefore, some other form of words is needed. The present suggestion is that we state that a petition

"in the same or similar terms may not be introduced in the same session".

I suggest that we add that the petition must be unlikely to produce a different outcome from the outcome that has already been produced. Let us say that I submit a petition on the colour of red apples or whatever.

Karen Gillon: We have had a petition on that.

Mr McFee: I am sure that you have.

Let us say that I want X, Y and Z to happen, but the Public Petitions Committee and the Parliament take the view that X, Y and Z will not happen. However, if something changes dramatically after my submission of the petition so that X, Y and Z can happen, the committee must be able to consider a similar petition. That is why we should add something about the petition being unlikely to produce a different outcome or likely to produce a similar outcome. If the Public Petitions Committee believes that a similar petition may produce a different outcome, it should have the ability to consider it. There might be a better way of wording that. Does anyone want to try their hand?

Cathie Craigie: That point was made clearly in the evidence today. To return to my point about a bus, if a person wants a bus to run from A to B and the Parliament has considered that fully and made a decision, a petition about a bus from B to A would not be admissible. However, if somebody wanted a bus from B to A and could demonstrate that 2,000 new houses were to be built, that would be a material difference that would mean that the petition should be considered.

Mr McFee: It would be likely to produce a different outcome.

Cathie Craigie: How can we tell that? If the circumstances and the evidence have changed, a similar petition should be considered.

The Convener: The clerk to the Public Petitions Committee said in evidence that, if there is a material change in circumstance or if new evidence appears, which might include a change of Government—

Mr McFee: The petition could be exactly the same, but there may be a material change in circumstances that is not reflected in the petition.

Mark Ballard: The current rule 15.5.2 states that a petition is inadmissible if

"(b) it contains language which, in the opinion of the Committee, is offensive; or

(c) it requests the Parliament to do anything which, in the opinion of the Committee, the Parliament clearly has no power to do."

I suggest that we add, "(d) it is the same as or similar to a previous petition"—or whatever wording we choose—"unless, in the opinion of the

committee, there has been a change in circumstances." That would give flexibility and would deal with Bruce McFee's point.

The Convener: That is a legitimate approach. We will try to find a form of words that reflects the intent.

Andrew Mylne (Clerk): I understand the direction in which the committee is trying to go, but I am concerned about some of the procedural practicalities if we build in such a criterion of admissibility. The principal purpose of admissibility criteria is to filter what gets to the committee in the first place, so that only petitions that should get to the committee get there. If we build into the admissibility criteria matters that only the committee can properly judge, we will set up a circular process.

Mr McFee: With respect, that is what happens at present, apart from under rule 15.5.2(a).

The Convener: The Public Petitions Committee wants a system in which its clerk can tell someone that, in essence, their petition is the same as one that has been submitted already and dealt with by the Parliament, so there is no point in pursuing it. At present, the committee has no power to do that and it wants a rule to that effect. However, if the person does not agree with the clerk and thinks that the situation has changed, the rule should not prevent the person from asking for the matter to go to the committee, which would then have to decide whether there has been a material change that merits the matter being considered. That is the rule that we want; I leave the wording to the good judgment of the various clerks and lawyers.

Mr McFee: Repeat petitioners are likely to insist that the matter goes to the committee.

Karen Gillon: May I suggest a form of words, convener? I suggest that we say: "In the opinion of the committee, the petition is the same or similar in nature and contains no significant new information or evidence."

12:15

Mark Ballard: What about circumstances?

The Convener: The words "information or evidence" would cover circumstances. A change of Executive, for example, is new information.

Mark Ballard: Run that by me again.

Karen Gillon: I suggested that we say: "In the opinion of the committee, the petition is the same or similar"—

Andrew Mylne:—"and contains no new circumstances or evidence." That is essentially what you said.

Karen Gillon: I said "information or evidence", but I am happy to use the word "circumstances".

The Convener: Can we use that as a working basis? We will have to come back with a draft report and any suggested changes to the standing orders anyway. That will allow the clerks to find out whether what has been suggested is procedurally acceptable.

Mark Ballard: It would be good to find a better word than "similar".

The Convener: A word similar to "similar".

Andrew Mylne: That criterion—"in the opinion of the committee"—will mean that the committee will have to take a decision in every case. I am therefore not quite sure how the rule will meet its intended purpose.

The Convener: Technically, that is the same with the other admissibility criteria.

Mr McFee: We would be adding on after (c): "It is the same or similar to a petition previously submitted in the same session and there has been no material change in circumstances."

Mark Ballard: In the opinion of the committee.

Mr McFee: That is added to all the criteria.

The Convener: We will have a chance to finalise the wording, but we need a clear steer from the clerks on the procedurally correct way of drafting any change to the standing orders. At the end of the day, we have to recommend a change to the standing orders.

Mark Ballard: Just to clarify for Andrew Mylne, rule 15.5.1 says:

"The Public Petitions Committee shall decide whether a petition is admissible."

At the moment, the committee has to decide on admissibility. We are talking about another admissibility criterion, but the committee has always had the decision on admissibility, not the clerk or the clerk and the convener.

The Convener: The suggestion is that the additional criteria will allow the clerk to say to the petitioner, "Unless you've got new information or evidence to support the petition, resubmitting it will not get you anywhere, so please withdraw it." That is essentially what we are trying to achieve. We will bring forward a draft report on this item at a future meeting.

Annual Report

12:18

The Convener: Item 3 is on the draft annual report. We will go through it page by page. It follows the standard format that is required for annual reports. Are there any comments?

Cathie Craigie: My understanding is that the annual report should cover two sides of A4, but Andrew Mylne has gone on to a third page.

Karen Gillon: You will need to knock out a few words.

The Convener: By the time you take the heading off, it will be fine.

Mr McFee: Reduce the print size.

Cathie Craigie: I am content with the content, which reflects the work of the committee over the past period.

Mr McFee: In paragraph 12, we should point out that we also had delegates from the Czech Republic.

The Convener: That will make the report run on even longer.

Mr McFee: Print size 5.

The Convener: Are we content with the report?

Members *indicated agreement*.

The Convener: I remind members about the private bills debate tomorrow. I hope that they are all looking forward to it.

Meeting closed at 12:19.

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