PROCEDURES COMMITTEE

Tuesday 24 May 2005

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Tuesday 24 May 2005

PROCEDURES COMMITTEE
8th 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

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Jonathan Elliott

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 24 May 2005

[THE CONVENER *opened the meeting at 10:18*]

Sewel Convention Inquiry

The Convener (Iain Smith): Welcome to the eighth meeting of the Procedures Committee in 2005. There are three items on the agenda today, none of which is in private.

Item 1 concerns the Sewel convention. There are five papers before us, but there are three key ones. The first of those is a summary of evidence, which is exactly what it says on the tin: it is a summary of the evidence that we have received. I do not intend to go through that paper in any great detail, but if members have concerns about evidence that is not included or that they think is overstated, they should feel free to make them known. In addition, there are two notes. One is on procedural issues and the other is on policy issues. I am keen that we get agreement today on the procedural issues, so that we can give the clerks and officials time to go away and consider the implications for standing orders. If we could reach agreement on the policy issues today that would be great, but I suspect that that might be slightly harder. There is no great time pressure, so we could come back to that at our next meeting if necessary. We will see what progress we make.

The summary of evidence is primarily there for information. Are there any comments on it?

Mr Bruce McFee (West of Scotland) (SNP): We will be able to refer to the summary of evidence as we proceed through the other papers. It is probably best to use it in that way.

The Convener: The second paper, PR/S2/05/8/3, is the note on procedural issues, which we will go through page by page. Paragraph 44 at the end of the paper contains the key questions. Does any member want to raise any points on page 1, on the early warning systems?

Mr McFee: We should leave out the idea of being able to facilitate the process through an inspired parliamentary question. There must be a way of involving all members.

Two options are set out in paragraph 7 of the report. I am attracted to the first of those, which is to have an oral statement, although I suspect that there might be arguments against that. The second option is that

> "The Minister for Parliamentary Business could include the information in a letter to the Presiding Officer",

which would then be announced via the *Business Bulletin*. That is a fallback position. I would like to hear whether there are any arguments against the first option of having an oral statement in the chamber.

The Convener: There is no argument against it in principle. The difficulty is that the existing standing order on oral statements states that they are made at the request of the minister. There is currently no provision in standing orders for a minister to be required to make a statement. Perhaps that should be changed, but that would require an inquiry into the issue.

Mr McFee: I thought that one of the issues that we would consider is whether we need to make changes to standing orders.

The Convener: It would be difficult to make a fairly significant change to that standing order without first having taken evidence on it. That is my only concern. If we wanted, we could recommend in the report that best practice would be for an oral statement to be made, but I do not think that it would be feasible to tag on a change to a standing order that might contradict other standing orders without having a full inquiry.

Mr McFee: Why is the option in the paper then?

The Convener: The paper refers at paragraph 9 to the problems in relation to the contradiction with existing standing orders.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Evidence from members and academics highlighted that there should be a warning to members and the general public that a Sewel might be coming forward. The second option seems to be a more realistic option. A statement to the chamber would take up chamber time. In other parts of the report we might call for an opportunity to debate a particular Sewel in the chamber, but that would be more difficult if we have added time at the early stage of the process. The second option is preferable and would flag up the issue. The *Business Bulletin* is available to members of the public and to members. The evidence that we have taken points towards the adoption of such an approach.

The Convener: One other reason not to stipulate an oral statement as the only way of giving an early warning is that not all Sewels will necessarily arise immediately from the Queen's speech. If a lot of Sewels come out of the Queen's speech, it might make sense to make an oral statement. However, if a bill comes up later that has a small Sewel requirement because of a technical issue, it might not make sense to have an oral statement on a relatively minor Sewel for

one bill. I do not think that stipulating an oral statement would be a sensible approach. We should not rule out the option of an oral statement, but we should not necessarily say that one must be made in every case.

Mr McFee: I am not sure how we deal with the matter then. I accept that there might be pressure on chamber time and that there might be competing interests elsewhere. The approach that is set out in the second bullet point of paragraph 7 would at least ensure that the information went beyond the written answers report and the relevant committee. I would not want to go to the wall on the matter, but we must have an approach that is based on more than just the hope that an inspired parliamentary question will generate an inspired reply that everyone will see.

The Convener: If there are no further comments on early warning systems, we move on to the lodging and content of Sewel memoranda. If members have no comments on paragraphs 10 to 13, which describe the current arrangements, we move on to paragraphs 14 to 16, on the timing of memoranda.

Mr McFee: Are you seeking members' preferences at this stage?

The Convener: I seek comments from members. You may express a preference when you comment.

Mark Ballard (Lothians) (Green): There is a suggestion in paragraph 13 that the proposed wording of the Sewel motion be included in the memorandum. However, paragraph 15 suggests that a fixed timescale could be set for the production of the memorandum. It is important that the proposed motion be included in the memorandum, to make clear what permission is being sought—the matter came up in evidence. However, if the Executive had a relatively short time in which to produce the memorandum, would there be enough time to include the proposed motion?

The Convener: The Executive ought to be able to produce a draft motion at the same time as it produces its memorandum, given that it will be addressing a matter that it has known about for some time. We will recommend that the memorandum should give a clear explanation of the Executive's intentions, which I presume would form the basis of the draft motion. The key point is that the draft motion would be subject to discussion in the committee on whether it should be amended before being lodged in the Parliament.

Mr McFee: Paragraph 12 says:

"There is still no mechanism for the memoranda to be lodged in, or laid before, the Parliament."

Perhaps we should be considering that issue.

The Convener: That is the current position. It is for the committee to decide whether the position should be changed by making the Sewel memorandum part of the formal parliamentary process. It is pretty clear that that is what we think should happen.

Cathie Craigie: Yes, I agree.

Mr McFee: I agree, but has not that been the practice of late?

The Convener: Yes, but the Sewel memorandum currently has no formal status. Because the memorandum is not a parliamentary document, it is difficult to follow its progress. A person who wants to find a Sewel memorandum must look on the Executive's website, but the information should be available on the Parliament's website. If the relevant changes are made to the standing orders, future memoranda will be parliamentary documents.

Cathie Craigie: Members who have been closely involved in the process recently say that the approach works, so we should find a way of making it the formal procedure, rather than just the current practice.

The Convener: Yes. Do members have other comments on paragraphs 10 to 16?

Karen Gillon (Clydesdale) (Lab): The memorandum should include the proposed motion. That would make it easier for people to understand and members would know what they were debating. The Executive has set the process in train by taking that approach.

The Convener: Paragraph 15 suggests that the Executive could be required to lay its Sewel memorandum within a fixed time, perhaps within a week of the relevant bill's first reading at Westminster. Therefore, the memorandum would be laid before the bill's second reading at Westminster.

Mr McFee: That approach would be desirable, but would it always be practicable?

The Convener: We could recommend that the timescale was normally adhered to—there are ways of finessing the standing orders that would ensure that the approach that we want is taken, while acknowledging that it might not be practicable in a particular case.

Mr McFee: I do not suppose that there would be a huge number of such cases, but if emergency legislation was introduced, for example, what would happen if the memorandum was not available, or had to be rushed to such an extent that it was not of much use?

10:30

The Convener: I do not think that we considered the implications of emergency legislation that would require a Sewel motion.

Andrew Mylne (Clerk): Emergency legislation is exempted from the Sewel convention, so under the current arrangements between the United Kingdom Government and the Scottish Executive, the Executive would not be required to seek the Parliament's consent to genuine emergency legislation. The committee could exempt emergency legislation from any formal procedure that it recommended.

Mr McFee: The clerk has experience at Westminster. Can he envisage circumstances in which it would not be possible for the Executive to produce a memorandum within a week?

Andrew Mylne: Such circumstances could arise, if there was a genuine emergency bill.

Mr McFee: But emergency bills are exempt.

Andrew Mylne: Yes, under the current arrangements.

Mr McFee: Could there be other circumstances in which a memorandum could not be produced within a week?

Andrew Mylne: Any new procedure could allow the flexibility that currently exists.

Karen Gillon: Before our next meeting, it might be helpful if we asked the Executive whether a week or a fortnight would be a more realistic timescale.

The Convener: Westminster procedure is that there is normally a minimum gap of two weeks between a bill's first and second readings. The advantage of having the memorandum within a week of the first reading would be that we could consider it before the second reading. If a timescale of two weeks was set, the memorandum might be published on the day that the second reading took place, which might not be helpful.

Mr Jamie McGrigor (Highlands and Islands) (Con): What does a week mean, in relation to the Executive? Are we talking about a certain number of working days?

Andrew Mylne: That would be a matter of drafting, but in essence we are talking about a calendar week.

The Convener: If the committee takes the view that there should be a fixed timescale for the production of the memorandum, we can check the practicalities with the Executive and ask it whether a week would be reasonable.

I move on to paragraphs 17 to 19. Is the committee content with the proposals on the information that should be specified in the Sewel memorandum, which are set out in paragraph 19?

Members *indicated agreement*.

The Convener: We move on to paragraphs 20 to 24, which suggest that the Parliamentary Bureau should formally refer the memorandum to the relevant committee. That is the practice in relation to most other parliamentary business. Are members content with that approach?

Members *indicated agreement*.

Mr McFee: The suggestion that a committee should be established specifically to consider Sewel motions is not workable.

The Convener: I agree. The approach would cause delays. The involvement of an intervening committee might make it impossible to scrutinise a matter when we were subject to a tight Westminster timescale. Does the committee agree that there should be no separate committee?

Members *indicated agreement*.

The Convener: Are members happy with paragraphs 28 to 32, on the time available for committee scrutiny?

Members *indicated agreement*.

The Convener: Paragraphs 33 and 34 outline current practice in relation to the lodging of Sewel motions.

Mr McGrigor: If a separate committee were established to consider Sewel motions, we would not know when or how often it would meet. The approach is not sensible.

The Convener: We are all content that there should not be such a committee.

Mr McGrigor: Good.

The Convener: Although if there ever were such a committee, we would ensure that you were a member of it.

Mr McGrigor: No, thank you.

The Convener: Are members content with paragraphs 33 to 34, which suggest that a Sewel motion would be subject to the same rules as any other motion, provided that a draft motion had been included in the memorandum?

Members *indicated agreement*.

The Convener: Paragraphs 35 to 38 are on the wording of Sewel motions.

Karen Gillon: The wording of Sewel motions has changed and it changes regularly. Recent Sewel motions have begun to take a view on the content of the bill in question. I am not always comfortable with that when the Parliament has not had an opportunity to debate the content of the

bill. We have moved away from the customary practice of agreeing simply that Westminster may legislate, which is the essential thing that a Sewel motion asks us to do. As a Parliament, we are not asked to debate and discuss the content of the bill that is the subject of the Sewel motion, because we do not have the time—we specifically do not do that. I have some concern about the direction in which the Executive has moved, because the Parliament is asked to give its consent to the principles of a bill that it has not been able to scrutinise effectively.

Mr McFee: Given the proposed increase in time for committee scrutiny of Sewel memorandums, which should include a draft Sewel motion, it is logical that a Sewel motion should indicate, without tying down every last detail, the general reason for the legislation and the parameters within which we want Westminster to legislate. It is a matter for Westminster what it legislates on, but our motion should indicate what we are interested in seeing apply to Scotland. Therefore, I think that the Sewel motion should have a certain direction.

Karen Gillon has a point when she says that a Sewel motion should not tie down every last detail, but that would probably not be possible. If that were to happen, the Executive might as well introduce its own bill in the Scottish Parliament. However, I think that draft Sewel motions should have a direction, which it should be possible to change when the motions come before the Parliament.

Mark Ballard: In her evidence, the Minister for Parliamentary Business said:

"motions have become more prescriptive—rather than just being a sort of sweeping agreement to the bill … We are likely to move to the more focused approach."—[*Official Report, Procedures Committee*, 10 May 2005; c 994.]

I agree with her on that, especially for issues on which the Executive believes that it would be more effective to legislate via a single United Kingdom-wide bill. Sewel motions should tie down what we are consenting to and why. If they did that, it would be much easier for a committee that was considering a Sewel memorandum and a draft Sewel motion to propose an amendment to the motion so that it reflected the committee's evidence. That would provide a much stronger and clearer definition of exactly what the Parliament was giving consent to. I agree with Bruce McFee and the minister on the issue.

The Convener: Standing orders could simply say that a Sewel motion should state, as Mark Ballard has suggested, the specific areas in which the Parliament consents, for example, to increased ministerial powers. That would not necessarily exclude the addition of a political element to a Sewel motion, if that was what the Executive or Parliament chose. A Sewel motion could have both a technical aspect and a political aspect; however, standing orders need prescribe only the technical aspects of what should be in a Sewel motion.

Mr McFee: The only people to give evidence who took the contrary view were Bill Aitken and Peter Duncan. Both the Minister for Parliamentary Business and Alasdair Morgan seemed to agree that Sewel motions should be more specific. Pauline McNeill also seemed to agree with that when she said:

"the Sewel motion should reflect what we are doing."—[*Official Report, Procedures Committee*, 15 March 2005; c 881.]

Karen Gillon: I have no problem with Sewel motions reflecting specifics, but I have a problem with their containing general, sweeping political statements that we have not debated. I have no problem with a Sewel motion giving our agreement that Westminster may legislate on a specific proposal. That was what happened with the Sewel motion on the Serious Organised Crime and Police Bill, for which the Sewel motion was amended so that some clauses of the bill would not apply to Scotland. I have no problem with those specifics, but I have a problem with Sewel motions containing general, sweeping political statements when we have not had a general, sweeping political debate.

Mark Ballard: The written evidence from the Executive gave the different categories under which the Executive said that it would consider using a Sewel motion. The third of those was:

"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".

Such Sewel motions are not minor or technical amendments, because they are on matters on which the Parliament has taken the position that legislation should be brought into effect. Such political decisions require some kind of political statement in the Sewel motion. I agree that minor or technical amendments are somewhat different, but Sewel motions that are used for those sorts of political decisions should contain a political statement.

Karen Gillon: However, the timescales do not allow for that kind of debate in the Parliament. Such debates cannot take place in half an hour when members have not been involved in the political decision. If all the discussion has taken place in a committee and there is no stage 1-type debate, members cannot make that kind of wide assumption after a debate of only 30 minutes.

The Convener: Presumably, the point of such committee scrutiny would be to allow a committee

to determine whether it agreed with the Executive's reasons for proposing the Sewel motion.

Karen Gillon: You are missing the point.

The Convener: I am not sure that I am.

Mark Ballard: If we follow Karen Gillon's logic, Sewel motions ought not to be used for the third category under which the Executive said that it would consider using a Sewel motion.

Karen Gillon: No. Such Sewel motions should not be used unless allowance is made for proper parliamentary debate.

Mark Ballard: In that case, Sewel motions of that kind would need a separate procedure, which would go above and beyond the kind of scrutiny that we have discussed.

Karen Gillon: We would not need a separate procedure, but we would need to ensure that there was effective parliamentary debate when such a Sewel motion came before the Parliament.

Mr McFee: Provision for such debates could be made, but a longer debate would not be needed for every Sewel motion. One of our other papers concludes a discussion of how much debating time Sewel motions should be given by recommending that such decisions should be left to the Parliamentary Bureau, as at present, especially when the issue is controversial. However, we should not say that, just because a longer parliamentary debate will not be an absolute requirement for Sewel motions, we should not tie down what Sewel motions are intended to do. When we address other issues, we will be able to agree whether a Sewel motion should be the subject of a parliamentary debate. Frankly, it should be for the bureau to determine how long such a debate will last. We must take cognisance of the fact that the main scrutiny of a Sewel motion will take place in a committee.

Mr McGrigor: If an issue obviously needs a long parliamentary debate, it should not be the subject of a Sewel motion. If it requires more time, it should be the subject of a Scottish Parliament bill in the first place.

The Convener: That is certainly a valid point of view, but it is a matter for the debate rather than for us to determine in advance.

Mark Ballard: In Karen Gillon's view, what kind of scrutiny would be proper and adequate for the kind of Sewel motions that we are talking about?

Karen Gillon: At the moment, Sewel motions are not required to have anything like a stage 1 parliamentary debate, which allows the Parliament to give its approval to the general principles of the bill on the basis of a committee report. Essentially, if a Sewel motion is on an issue of major political significance, it should be the subject of a debate that is equivalent in length to that of a stage 1 debate. My colleagues might not agree with me on that, but arguably issues of major political significance should be subject to parliamentary debate for longer than half an hour.

The Convener: Essentially, Karen Gillon's point is about the length of debate that should be allocated in particular cases.

Karen Gillon: My point is also about the wording of the Sewel motion. If a Sewel motion is of one line and is about a specific bill, there can be a very specific debate. However, there needs to be a general debate if, instead of a one-line motion, the motion is about general principles and big changes.

The Convener: Presumably, the nature of the memorandum and the attached draft Sewel motion would determine the length of committee scrutiny. Presumably, a committee could make a recommendation to the Parliamentary Bureau on the amount of debating time that should be required. However, I am not sure that that should be prescribed in standing orders.

10:45

Karen Gillon: I am not saying that we should prescribe anything in standing orders. I am just saying that I have difficulty with the issue.

Cathie Craigie: I wish that I had the papers from previous meetings, but we identified three different types of Sewels that might come before us. Members who gave evidence wanted to be able to identify from the wording of a Sewel the length of time or the level of scrutiny that it would require. As paragraph 38 of the clerk's note says, we need "clear and unambiguous" information before us. We should try to arrive at that position and I hope that, as we go through the paper, we will talk about debating time, which might allow us to take on board Karen Gillon's concerns.

Mark Ballard: Karen Gillon is right—it comes down to the wording of the motion. If we want to have a debate on the principles of a Sewel motion, the motion that we are debating has to have a section on the principles; otherwise we will have a debate that is not on the motion before us. If we want a principles debate, we have to have a principles motion.

The Convener: What Karen Gillon is saying is not inconsistent with anything else. I am suggesting that the motion should specifically ask for the consent of the Parliament for what Westminster is legislating on, but that does not rule out a motion that says that we are asking for that for a particular reason, which would essentially cover the principles. To use an

example from a forthcoming bill, we might say that we support the legislation to ban people in England and Wales from being nasty to animals, that we consider that that should also apply to Scotland and that we therefore give consent for the United Kingdom Parliament to legislate in that instance. There is no inconsistency there. Does Jamie McGrigor want to add something?

Mr McGrigor: I am not suggesting that there is inconsistency; I am just thinking about the example that you just used.

The Convener: I was referring to the forthcoming animal welfare bill, which will ensure that people in England and Wales are banned from keeping animals following conviction for cruelty. The ban in Scotland might not be as wide. The Equality Bill probably covered a wider policy issue, but some other Sewels are more technical.

Mr McGrigor: An issue would arise only if we had certain animals in Scotland that they did not have in England.

The Convener: I do not want to go further down that route—I was just taking the animal welfare bill as an example.

Mr McGrigor: We cannot be too general about all of this.

The Convener: Do members agree that the motion should at least specify what the Parliament is giving consent to, and that it should be clear about the difference between giving consent to legislate and giving consent for more powers? Do we agree that we should not prescribe how the motion is worded because, in some cases, the motion could include issues of principle?

Members *indicated agreement*.

The Convener: Does anyone have any comments on paragraph 39, on the lodging of Sewel motions? Should it be left the way it is?

Cathie Craigie: It should be left the way it is. Regardless of whether a Sewel motion results from legislation promoted by an MP, the Scottish Executive and the Government—or the two Parliaments—still have to work in partnership. We are changing the way in which things are done. We will have notice of Sewel motions. The Government parties have to manage the timetable, and it is right that we should continue with the system that we have.

Mr McFee: In the last sentence of paragraph 39, a case is made for allowing Sewel motions to be lodged in the name of the bureau. The example given is

"in cases where it was desirable to signify from the outset cross-party consensus"

on a particular Sewel. For example, if something non-contentious, such as a minor technical amendment, comes to the bureau, the bureau can say, "We will lodge a Sewel motion in the name of the bureau. The matter has been discussed and it is clear that it is a minor technical amendment." There is merit in indicating that there is general support for a motion.

Karen Gillon: We want a rule that reinforces the status quo, which is that any member can lodge a Sewel motion. I live in the real world, in which the two Governments that are in power may not be the same. The practice is that the Executive lodges the Sewel motion, but there is nothing to preclude another member from lodging a Sewel motion. For example, in the debate on the Sewel motion on the Serious Organised Crime and Police Bill, if we had been more prescriptive, the amendment in the name of Bill Butler could not have been lodged.

Mr McFee: I thought that you were saying that it should only be the Executive that lodges Sewel motions. I misunderstood.

Karen Gillon: The status quo should prevail.

The Convener: Does everyone agree?

Members *indicated agreement*.

The Convener: Paragraph 40 is on the chamber debate. At the end of the day, we have to leave it to the bureau to determine how much time to allow for a debate, but we may make recommendations in the report to ensure that the bureau takes account of committee views on that subject. We cannot probably write rules about it anyway.

I wonder whether we ought to say that, wherever practicable—or normally—the committee in question should report sufficiently far in advance of the chamber debate on the motion to allow the bureau time to make an adequate decision on how much time to allow. It may be a week, or it may be similar to the length of time involved in relation to stage 1 reports. In some cases, that will not really be possible because the timetable will have shrunk too much. However, we should encourage committees to report on Sewels at least a week before they are due to be debated in the chamber, which would give more time for the bureau to consider how much debating time would be required. Do members agree?

Members *indicated agreement*.

Cathie Craigie: We have to be clear in our report that members who gave evidence on the matter felt that we needed more time for debate in the chamber. In the case of an important issue, we may have wanted to legislate ourselves if time had been made available. However, the evidence suggests—and I agree—that there should be a debate in the chamber on the substance of the Sewel and not on the constitutional issues that we always seem to stray into. People of different political persuasions have all agreed that we need a mechanism. If it is a given that we need a

mechanism, let us stop talking about the constitutional aspects of a Sewel every time one arises, and talk instead about the substance of the Sewel. Such debates would be useful for colleagues in Westminster, who would at least get a sense of how the Parliament felt about an issue. If there was some way in which agreement could be reached among the political parties, the process would be much more meaningful for all members.

Mark Ballard: With respect, that goes back to the question that we are being asked to debate. If the motion has political issues in it, we are much more likely to get a political discussion. If the motion is a fair one, we are left with just the constitutional question: that this Parliament believes that it is appropriate for the Westminster Parliament to legislate in a given area. I agree with Cathie Craigie, but part of the process has to involve motions of sufficient breadth so that we can have the political debates.

I also want to ask about the final point in paragraph 43 about giving up to a full morning or afternoon to Sewel motions when there is real political debate. It would be appropriate for our report to mention that, to encourage the bureau to examine that option, when appropriate.

The Convener: I am happy for that to be included in the recommendations.

Mr McFee: I hear what Cathie Craigie is saying about debating the issues and not having a political debate—

Cathie Craigie: I am talking about a constitutional debate.

Mr McFee: However, especially if the motion is very bland, such issues are almost certain to collide. If greater reasoning for the Sewel motion is provided, the Executive may achieve what it wants to achieve by another means, but we must accept the fact that there will be times when people of a certain political opinion will say, "This matter should not be Sewelled," whereas others will say, "Yes, it should." We would not want the debate to be sterile, with everyone starting off in agreement with one another—that would make for a very sterile debate indeed. By making the motion state why the Sewel procedure is a good idea, the Executive may avoid the sort of debate that Cathie Craigie is talking about.

We should include a recommendation about the possibility of longer debates, but not in a way that would make the bureau throw up its hands in horror. Longer debates should be possible if more time is required.

Cathie Craigie: In no way was I suggesting that we should stifle political debate. If we accept that we need to have arrangements between Westminster and the Scottish Parliament for legislation in areas where there would be common benefit, the question of the constitutional debate—whether or not the Sewel procedure should be used—should be put on the back burner.

Mr McFee: That is not the constitutional debate, though, Cathie.

Cathie Craigie: I disagree with you on that.

Mr McFee: That is why we need debate.

Cathie Craigie: I know that, in practice, members would have to sign up to the Sewel procedure; however, it would be much more beneficial for members to have their input on the subject of the Sewel motion rather than on the mechanism. That is what I would like to encourage in the Parliament. We should be able to send the views of members of the Scottish Parliament to the committees that will deal with the legislation at Westminster. That would include the views of members of all parties in the Parliament, as the Presiding Officer would ensure that there was a fair allocation of time during debates, based on the make-up of the Parliament.

Mr McFee: I understand what Cathie Craigie is saying, but she must accept that, on particular subjects, because of the issues that are raised and which the Sewel motion is designed to deal with, some members will say that the matter should properly be dealt with by the Scottish Parliament. That is just a different political view and, in a democracy, she has to accept that. Matters are debated; somebody wins and somebody loses.

The Convener: I do not think that what you are saying is contradictory, but we are trying to get away from what was becoming a habit in the Parliament of members objecting to Sewel motions on principle and not on the basis of the subject matter.

Mr McFee: That is your view of what was happening.

The Convener: No, that is what was happening.

Mr McFee: That is your view. Others may take a different view.

The Convener: Well, I am entitled to my view.

Mr McFee: As are others.

The Convener: I think that that is what was happening. You are saying that we should debate the subject matter of Sewel motions but that, on principle, not all members will be able to agree that matters should ever be Sewelled. That is a perfectly legitimate point, which is not contradictory to what Cathie Craigie is saying.

Mr McFee: Absolutely.

Mark Ballard: A couple of procedural issues that came up in the evidence do not appear in the draft report.

The Convener: Do you want to run through them quickly? They may come up in our second paper.

Mark Ballard: The first is the point that was raised by the Justice 1 Committee about the lack of any formal procedure to require the Executive to lodge further Sewel motions in the event that a Westminster bill is amended, and the whole question whether committees or other parts of the Parliament should have a chance to look at the Westminster bill once it has been through several—

The Convener: I think that we cover that in the second paper, which is on the policy issues and what happens after we have Sewelled.

11:00

Mr McFee: There is a section on signing off a Westminster bill, is there not?

The Convener: Yes. We will come on to that. Mark, do you want to raise anything else?

Mark Ballard: No, it is okay. I will leave it there.

The Convener: We will address that matter when we discuss the second paper. Are there any other issues that you think have not been covered?

Mark Ballard: No—the second one was related to the issue that I mentioned.

The Convener: Okay. Let us quickly confirm what we wish to recommend in this paper. Further procedural matters will arise in the second paper, which is on policy issues.

In respect of paragraph 44, is the committee content to recommend that early warning should be given by way of a letter to the Presiding Officer that then appears in the *Business Bulletin*?

Members *indicated agreement*.

The Convener: Obviously, that does not rule out the option of a minister making an oral statement if they wish to do so.

Does the committee agree with the recommendation that there should be a rule setting out a normal timescale for the introduction of a memorandum after a bill has been introduced at Westminster? We will check the practicalities of that with the Executive.

Members *indicated agreement*.

Mr McFee: If we are recommending that there be a normal timescale, I am not sure that we need to check with the Executive.

The Convener: It is a matter of finding out whether a week is adequate or whether the period should be two weeks, 10 days, or whatever.

Mr McFee: But there are only two weeks between both processes.

Karen Gillon: No, there is longer than that.

The Convener: Two weeks is the minimum period at Westminster, under the standing orders. Normally, there would be longer between the introduction of a bill at first reading and its second reading.

We are agreed that there should be rules

"specifying the information to be included in the memorandum"

and

"giving the Bureau the role of referring the memorandum to a committee".

We have agreed not to have a specialist Sewel motion committee. We have also agreed that the wording of Sewel motions should specify what Westminster is seeking consent on; that there should be no special rules for the lodging of Sewel motions, but that the same rules should apply as for other motions; and that there should be longer debates, when appropriate. In addition, we have agreed that there should be a minimum length of time between the report stage and the debate.

Members *indicated agreement*.

Mr McFee: Before we leave this section, I want to pick up the point that Mark Ballard raised about the potential for a signing-off process.

The Convener: That comes under the policy issues that we will discuss in relation to the second paper.

Mr McFee: Can you tell us where it is dealt with?

The Convener: It comes under paragraphs 23 to 27 of the note on policy issues, under the heading "Consent to changes of devolved competence". No, sorry—it comes under "Parliamentary control of the process".

Mr McFee: I am sure that I read about it, but it seems to be hidden somewhere.

The Convener: Sorry—I am wrong. It is dealt with in paragraphs 17 and 18.

Mr McFee: Okay. I am happy that it is addressed there.

The Convener: We have got through the less controversial stuff. Let us see whether we can be just as successful in getting through the policy issues. I suspend the meeting for a moment to allow members to get a cup of coffee.

11:03

Meeting suspended.

11:06

On resuming—

The Convener: We turn now to paper PR/S2/05/8/3, on policy issues relating to the Sewel procedure. We should decide whether we want to address in our report any of the issues that it raises and, if so, how we should address them.

Paragraphs 3 to 7 address the issue of the frequency of use and reasons for use of Sewel motions. Those paragraphs raise the question whether we should have a set of broad criteria or categories that committees should consider in relation to whether a Sewel motion is appropriate in a particular case.

Cathie Craigie: When the Parliament started, some members and commentators in the media said that we used Sewel motions far too often. However, the evidence that we gathered did not back up that view. Even Lord Sewel suggested that, when the procedure was introduced, he hadnae a clue—those are not his words; I should use a better phrase. He suggested that he did not envisage that the procedure would be used as often as it was. What has emerged as a result of our inquiry is that the issue is to do with whether the use of a Sewel motion is appropriate and whether the people of Scotland can benefit from legislation that will improve the quality of the law in Scotland.

Karen Gillon: We have sometimes left ourselves open to criticism because our process has not been as clear or transparent as it could be. If we bring in the changes that we are suggesting in our first paper, which will mean that the process is more transparent because there will be a clear alerting process and a clear scrutiny role for committees and the Parliament, it will be for the Parliament to determine when it is appropriate for a Sewel motion to be used.

Mark Ballard is right to suggest that, on occasion, a general decision will be taken in relation to legislation that the Parliament wants to be passed but which it feels that it would be better for Westminster to deal with, perhaps because it would be impossible to fit it into the Parliament's legislative timetable or, as with the Civil Partnership Bill, the piece of legislation touches on reserved and devolved areas and it is easier to deal with everything together than to try to split off the devolved issues.

My difficulty with Lord Sewel's recommendations, which are included in the paper, is that they are too prescriptive and do not take into account the reality of the situation in which we find ourselves. With all due respect to Lord Sewel, until someone has been in the hot seat as an elected member who is responsible to an electorate, they do not know what it means to make such decisions. We have to make those decisions and are accountable for the way in which we vote in Parliament. As long as the process is open and transparent, it should be fine for this Parliament to decide when and where it is appropriate to use a Sewel motion.

Mr McFee: Karen Gillon will be amazed, but I agree with much of what she has said—she can have some tablets later.

There is a danger in trying to sanitise the process. We all have a rough idea about why people might want to Sewel a particular bill, even though we might come to different conclusions about whether a bill should be Sewelled. As Karen Gillon said, however, that decision should be a political one, and it would be correct for it to be taken by the Parliament. I differ from Karen Gillon on the question of how to resolve such situations, as I am in favour of our having a fully independent Parliament with full powers, which would mean that there would be no requirement to Sewel anything.

Cathie Craigie: Do the people of Scotland want that?

Mr McFee: We can continue that debate another time.

The day-to-day decisions about whether we Sewel various pieces of legislation have to be political. It might be that people decide to Sewel a piece of legislation because it deals with a minor issue or because they perceive it to be in everyone's best interests to have the same legislation north and south of the border—that, of course, is a matter that we can disagree on—but we should not go down the road of saying that there should not be a Sewel motion in relation to particular types of business. I would say that, in relation to a controversial issue that has a particular Scottish context, we should have a separate Scottish bill. Ultimately, however, that has to be a political decision and I am not sure how we could write a set of rules to get around that. If my party feels that the ruling parties are using a Sewel motion as a way of getting around a controversial subject, we will highlight that, as we do at the moment.

Mr McGrigor: The process is meant to be used to prevent duplication of work and wasted effort and to save taxpayers' money. That is outlined in what Lord Sewel says in the paper. The only issue that I want to raise is the question of why the procedure has been used much more often than Lord Sewel himself thought that it would be. That question must be addressed.

Mark Ballard: I agree with what has already been said. Nobody knew how the devolved Parliament in Scotland would interact in practice with the sovereign Parliament in Westminster. Lord Sewel indicated that he did not have a clue about that either. To put it simply, I think that the way in which the interaction has happened to work has meant that we have ended up with more use of the mechanism than Lord Sewel would have expected, but that is only because nobody knew how the process was going to work.

Lord Sewel was right to say that the mechanism that he came up with was not suitable for substantive matters of policy. I hope that we are going to be able to come up with a new set of procedures that enable us to deal properly with substantial areas of policy and political debate, as Karen Gillon suggested. The problem with the Sewel convention is that nobody knew that it would be used to deal with such matters. We need to have a procedure that is broad enough to cover both the minor, technical stuff and the substantial matters of policy.

Karen Gillon: For that reason—and to avoid complication and a lack of transparency and clarity—we will come up with a new name for the process. That will help us to move from where we have been to where we want to be. I do not particularly care what we call it—it might be that we call it a section 10 or section 11 agreement, for example—but I think that the time has come for us to move on to a new process and put the past behind us.

Mr McFee: Certainly, abolishing the term would be a new way of reducing the number of Sewel motions.

Karen Gillon: I am always creative.

Mr McFee: There are one or two accountants who say that from their prison cells.

If substantive matters of policy are involved, it is clear that the Scottish Parliament should legislate for itself, but that is a political decision for the Parliament to take. I understand the thinking behind Lord Sewel's evidence, but the issue is whether those who are elected to the Parliament believe that the circumstances that Lord Sewel laid out are the only ones in which a Sewel motion should be used. Some would say yes; some would say no; and others would decide on an issue-by-issue basis. As there will be different views on each issue, they must be considered separately.

In many ways, the paper attempts to mould everybody into one view that A, B and C can be Sewelled and X, Y and Z cannot be, when in fact there will be differences of opinion on each issue and each is a matter for political debate.

11:15

The Convener: You are right. The important point is that the process is made more transparent, so that the public are clearer about what is happening when a Sewel motion is considered. Our recommendation on the improvements that need to be made to the Sewel memorandum will lead to more transparency. Our recommendation is that the Executive should make it much clearer in particular cases why it is using a Sewel motion.

Cathie Craigie: As I stated on the record that Lord Sewel said that he did not have a clue, and as Mark Ballard continued that theme, it is important to state exactly what Lord Sewel said, because I would not want to be disrespectful. He said:

> "To be honest, when we considered the issue, we did not have the faintest idea of how often the motions would be used. We were looking into a darkened room, towards something that did not exist. We helped to establish the procedure, but you have given it reality."—[*Official Report*, *Procedures Committee*, 1 March 2005; c 836.]

I just wanted to confirm what Lord Sewel said on the record. Those points reflect Karen Gillon's comment that the Scottish Parliament has made the procedure happen, and it is now up to us to establish a procedure that fits with reality and with the work that is required.

Mr McFee: The writ is in the post.

The Convener: In answer to a written question that was asked after the November Queen's speech, the Executive suggested that about a dozen bills would need Sewel motions in a six-month period. We all knew that that would be a busy period, but for the coming 18 months only four bills are suggested for Sewel motions, at least two of which are retreads of bills that were in the previous Queen's speech. There is no regular pattern of what might or might not turn up in Sewel motions.

Richard Baker (North East Scotland) (Lab): I agree that the issue is not about frequency, but about the appropriateness of bills for Sewel motions. On the issue of whether substantive matters are suitable for Sewel motions, the Executive has guidelines on whether it can use a Sewel motion, and committees can review whether the Executive has made the right decision under its guidelines. In our evidence taking, we established that there are times when it could be appropriate to use a Sewel motion to legislate on substantive cross-border issues. I am not in favour of a separate procedure for that, but I am in favour of the right amount of time being allocated for the Parliament to debate the matter, on the recommendation of the relevant committee. That is the key issue—it is not about creating a whole new process, but about saying that there must be

the right amount of time for parliamentary scrutiny. That issue should come out at some point in our report.

The Convener: The general conclusion is that we do not want to give a list of broad criteria.

We now move on to the section of the paper on the nature of parliamentary scrutiny, which we will go through page by page. Are there any comments on the initial part, which is about the wording of the motions? We are probably agreed that we want the motions to be slightly more specific, so that they say what the consent is for, rather than simply that we give consent for the United Kingdom Parliament to legislate on an issue.

As there are no comments, we will go on to paragraphs 17 and 18, which contain issues that Mark Ballard wishes to highlight. The third bullet point in paragraph 17 is about the monitoring, if any, that the Parliament should conduct. Paragraph 18 is about what happens if Westminster does something that is outwith the terms of an agreed motion.

Karen Gillon: I am slightly confused on the issue, because there is nothing to preclude a committee of the Parliament from monitoring a bill on which a Sewel motion has been passed as it goes through the Westminster Parliament, if that committee thinks that that is important. We do not need to set down a rule or process for that. If a committee wants to monitor a bill as it goes through Westminster, there is nothing to prevent it from doing so; indeed, it should do so if it thinks that the issue is important.

The Convener: That is a fair point. We could basically just say that in our report.

Mark Ballard: The issue is that it does not appear to have been the practice for committees to carry out monitoring, so we should raise the matter in our report to encourage committees to do so. As I mentioned, the Justice 2 Committee's evidence was that there is no formalised process for the Executive to introduce subsequent Sewel motions, even though the Executive has said that it would do so in cases in which there is a substantial amendment of a Westminster bill that takes it beyond the permission that has been granted through the Sewel motion. We need to consider the interaction between the Executive and the Parliament at the monitoring stage and the monitoring role that the Executive carries out at present with a view to introducing further Sewel motions.

The Convener: The problem is that, if we put a specific rule on that in standing orders, we might get into the ridiculous situation in which the Executive had to keep lodging amended Sewel motions—or section 10 motions or Gillon motions or whatever—every time the bill went through a committee.

Karen Gillon: Not Gillon motions.

The Convener: For example, if an Opposition amendment was carried in the House of Lords but the Government intended to reverse it, would we need a Sewel motion to say yes or no to that amendment, which would probably not see the light of day at the end of the process? We should make it clear that an amended Sewel motion must be possible, but that the process does not have to be used until it is clear that the bill is to be amended in a way that is outwith the scope of the original Sewel motion. For practical reasons, we cannot be too prescriptive.

Mark Ballard: I agree, but if we are to create a clear and transparent process, we must be clear about when subsequent Sewel motions are to be used. I agree that it would be inappropriate to have a subsequent Sewel motion every time an Opposition amendment was passed, but we need to clarify when it would be appropriate for such motions to kick in. If the committees are to carry out more monitoring, we must consider whether there is a role for them to suggest to the Executive that a subsequent Sewel motion is appropriate. We need a system that is flexible—along the lines that the convener described—but robust and transparent, so that we match the more robust and transparent process that is to be put in place at the start of the Sewel motion process.

Mr McFee: Any member can lodge a Sewel motion. If a committee was monitoring a bill's progress at Westminster and felt that it was desirable to lodge a further Sewel motion, surely a member of the committee would be the appropriate person to do that. I am trying to think the issue through logically. If we are saying that the committees should, if they so desire, take a greater monitoring role, it would be a logical extension to say that, if a committee felt that another Sewel motion was required, a member of that committee should lodge the motion.

The final bullet point in paragraph 17 contains the more important issue of the second chance to consider a UK bill in its final form and the enactment procedure. Perhaps you want to discuss that issue separately, convener.

The Convener: I do.

Mr McFee: Right. The issue is far more substantive and may contain the remedy to the issues that Mark Ballard raised.

Karen Gillon: I agree with Bruce McFee that we are in danger of making the process unduly complicated and difficult for ourselves. I have no reason to believe that an Executive of any colour or make-up would not lodge another Sewel motion

if the terms of a Westminster bill went outwith the terms that had been agreed through the previous Sewel. It would be difficult to know what to prescribe in a rule. If a committee was monitoring the progress of the bill that had been Sewelled, we probably would not want to preclude its convener or another member from lodging another Sewel, although we could do so. However, there is nothing currently to prevent an Opposition party member from lodging a Sewel motion if they think that there has been a substantial change. It is difficult to know how to write all those things into a rule and, in any case, such a rule could prohibit people from doing what we want them to be able to do.

Mr McFee: Let us take the example of Westminster deciding to paint all lamp posts red and, halfway through the process, deciding instead to paint them blue. A motion lodged by a member of a committee that had been monitoring what was happening could un-Sewel the process. Is that correct?

Karen Gillon: The consent of the Parliament could be withdrawn.

Mr McFee: I want to test the parameters. If a bill changed so drastically that the process could, in effect, be un-Sewelled, Mark Ballard does not have a point. If, however, that cannot be done, he does have a point.

The Convener: The Parliament will have given fairly specific consent—we are suggesting that such consent should be much more specific. If the bill is amended so that it is no longer within the scope of that consent, either the consent falls automatically—because we have not given consent for what is being suggested—or an amended Sewel is required to provide consent. I am not sure that consent can be withdrawn. If we have given permission for Westminster to legislate on the colour of lamp posts, we have given permission for Westminster to legislate on the colour of lamp posts.

Mr McFee: What if Westminster expanded the bill to cover—

Karen Gillon: Postboxes?

The Convener: That would be outwith our consent. We would not have given consent for that.

Mr McFee: We would need to be careful about designating what we were giving consent for. The potential for things to be added on is great. If something is added on, there needs to be a process whereby the bill is brought back to the attention of the Parliament, whether through ministers or a committee, so that further consent can be given, particularly if we are dealing with a substantive matter.

Karen Gillon: That would have to happen under the current process.

Mr McFee: It is a question of where we draw the line about what we consider substantive.

The Convener: The Sewel convention is that Westminster will legislate in devolved areas only with the consent of the Scottish Parliament. We say what we are consenting to. If Westminster then amends a bill outwith what we have consented to, there will be a further Sewel motion. We can make that clearer in the report, but I am not sure how we can make it clearer in the standing orders in a way that prevents Sewels from bouncing back and forth between the Parliament and Westminster at different stages, which we want to avoid.

Mark Ballard: I cannot remember the words of Lord Sewel that Cathie Craigie quoted—I think that he said that he was uncertain about the implications. If we were more specific, focused and political about the consent that we gave, I would not be surprised if that led to more occasions on which subsequent consent had to be given.

The Convener: You might be correct, but I am not sure that there is much evidence of Westminster having amended legislation outwith the consent that the Scottish Parliament has given.

11:30

Karen Gillon: Could we have a line in the report that says that the committee's view is that, if Westminster legislates outwith the scope of the specific consent that has been given, another motion would have to be lodged? That is stating the obvious, but perhaps it gives Mark Ballard the comfort that he requires.

Andrew Mylne: Under the current convention, it is certainly true that the Government is committed to legislate or support legislation only within the parameters of the consent that has been given and to lodge a further Sewel motion if the legislation is amended beyond that consent. Consent is given in the form of a resolution, which is why the wording of the Sewel motion is important—it sets the parameters within which consent exists. The Executive's view—if I am representing it fairly—is that it has been unusual for legislation subsequently to be amended beyond the scope of the initial consent.

The point of this part of the paper was simply to point out the implications of adopting a practice of making the terms of the Sewel motions more specific. The implication of setting tighter parameters is likely to be that there will be more circumstances in which the question arises

whether an amendment takes the bill beyond the scope of the consent and whether the issue has to come back to the Parliament. That gets us into the questions how and how much we need to monitor Sewels and what time is available to secure further consent. The paper is simply making clear the implications of a tendency in that direction.

Mark Ballard: I return to the procedural points that we discussed in relation to the content of Sewel memorandums. I would be interested to know how what we discussed in relation to that part of the paper relates to individual MSPs and committees lodging Sewel motions and to Bruce McFee's point about motions to un-Sewel or un-Gillon what was previously Sewelled or Gilloned.

Karen Gillon: The requirement for a memorandum to accompany the motion would apply to anyone who wanted to lodge such a motion. If a committee wanted to introduce a committee bill, it would have to fulfil the requirements in the same way as the Executive or individual members have to when they introduce a bill. I assume that the same applies to Sewel motions.

The Convener: I was looking at Andrew Mylne because I seek guidance on un-Sewelling. There are rules in the standing orders about debating the same issue more than once, I think. Could a motion that had been passed recently be annulled?

Andrew Mylne: My understanding is that it is always possible for the Parliament to take a fresh decision. The Parliament makes decisions by means of resolution. If the Parliament passes a resolution saying one thing, it is perfectly entitled, legally and procedurally speaking, to come along at a later date and pass a fresh resolution taking a different view. Any resolution that has an effect out there in the world—in this instance, the effect is to give Westminster a degree of consent to legislate—can be reversed or altered at any time by a further resolution. In other words, consent applies only as long as the resolution has not been superseded. A further resolution could be the result of a motion lodged by any member.

Mr McFee: In those circumstances, there is likely to have been a change to what was proposed in the Westminster bill.

Andrew Mylne: Yes.

The Convener: As always, it would be a matter for the bureau to say to the Parliament whether such a motion would be taken for debate. The bureau would have to have the power to prevent a party that had lost a debate on a Sewel motion from lodging a motion to annul every week. The bureau would have to take that decision and the Parliament would have to agree to it through a business motion.

Mr McFee: It is unlikely that that would happen. This debate is in the context of substantial changes being made to a bill.

The Convener: Yes. Okay. I think that members are agreed on the way forward in relation to that part of the paper.

The final bullet point in paragraph 17 and paragraph 18 deal with what happens at the end of the process and whether there is scope for consideration of the bill as passed but before royal assent.

Mr McFee: I think that some form of enactment procedure is needed, although that would require Westminster to change what it does. It would be useful if the bills included a clause that said that they would not be enacted in Scotland until they had achieved the approval of the Scottish Parliament. That clearly requires something different to happen at Westminster—whether it would happen is another issue. The date of enactment of a bill is not always the date on which royal assent is given.

Andrew Mylne: For clarification, enactment and royal assent are the same thing. I think that you are referring to the date of commencement.

Mr McFee: I beg your pardon. I meant a commencement procedure after enactment. I believe that the commencement date can be set for a considerable time after royal assent has been given, although I do not know how often that happens—perhaps Andrew Mylne knows, having been at Westminster. Nonetheless, it should be possible for it to happen, although it would require co-operation at Westminster. That might be a provision in a Sewel motion.

Richard Baker: Realistically, we cannot place restrictions on the Westminster process through a report of the committee and I would not support changing the enactment procedures. Commencement orders are already used in some instances, when that is most appropriate, and the present procedures are perfectly adequate.

Rather than setting up a new procedure, we could flag up to committees and the Executive the chance for dialogue at the point of the legislation being passed, so that committees have time to reflect on the legislation and ministers have time to inform the committees officially of what has been agreed at Westminster. If there were any major difficulties, the Parliament would be able to review the situation and make an alternative decision. That facility exists at the moment and perhaps we should suggest in our report that that dialogue should take place. I do not see the need for a separate procedure; in evidence, that did not come across as something that was necessary, desirable or practical.

Karen Gillon: Forgive me for breaking the happy consensus that has emerged. If we put in place a process that flags up an early warning, ensures clear committee scrutiny, requires the specific consent of the Parliament and requires further consent of the Parliament if an amendment takes the bill outside the scope of the initial consent, what the hell is the point of a further process?

Mark Ballard: Say that again.

Karen Gillon: If the process requires a Sewel motion to set out a specific reason to legislate and the parameters under which to legislate, as well as saying that, if Westminster goes outwith those parameters, another Sewel motion will have to be lodged and Westminster will have to get the consent of the Scottish Parliament on any amendment, the Parliament will have, in effect, given consent to the bill as passed. Therefore, what would be the point of having a different commencement date in Scotland? The Scottish Parliament will have given its consent throughout the process.

Mr McFee: If all those requirements had been met, as you say—

Karen Gillon: The bill would not be passed if they had not been. We would have established a process, under our standing orders, which stated that that had to happen.

Mr McFee: That is true as long as the scrutiny of the bill is adequate. However, we could end up with something different if the scrutiny is poor.

Karen Gillon: That would be a matter for us, though; it would be our responsibility.

Mark Ballard: Is stage 3 the final amending stage of a Westminster bill?

Mr McFee: A bill could be amended at that stage and we would not be able to do anything about it.

The Convener: We need a lesson on the byzantine ways of the Westminster legislative process.

Andrew Mylne: There is no stage called stage 3 at Westminster, but each house has a sequence of amending stages. Under normal circumstances, a bill cannot be sent for royal assent until it has been agreed by both houses. That may lead to what is called the ping-pong process, whereby amendments that are made by the second house are considered by the first house and, if the first house does not agree to them, the bill goes back to the second house and so forth until there is agreement. The only exception to that is when the Parliament Acts are invoked, which is exceptional.

Mr McFee: There could easily be circumstances in which we would have no time to comment on amendments that were made to a bill at Westminster. There was a recent case in which a bill ping-ponged between the houses and amendments were lodged on the back of fag packets every two minutes. We could not possibly keep up with such a process. Amendments of which we have had no notification might be passed—

Mark Ballard: At midnight.

Mr McFee: Yes, or at quarter past 3 in the morning or whatever. I am not saying that that happens all the time, but it is possible.

Karen Gillon: If that happened, we would introduce legislation in Scotland to repeal the legislation to which we had not given consent.

Mr McFee: We could do that, but the issue is how quickly that could be done.

Mark Ballard: We are talking about a situation in which the consent has been exceeded but it is not possible for the Executive, a committee or a member to lodge a subsequent Sewel motion. That situation is logically incompatible with the process that Karen Gillon described, because she said that there would always be a chance to consider a subsequent Sewel motion if the consent was exceeded as a result of an amendment at Westminster.

The Convener: There is nothing that we can do to prevent Westminster from accepting an amendment to which we have not consented at the last minute of the last stage of a bill. That would not happen often, but it might happen. However, it would not take away the Scottish Parliament's right to reverse the decision through its own legislation. That is the key point that we must bear in mind. There has been no example of a bill that has been Sewelled being amended at the last stage in a way that was outwith the Scottish Parliament's consent. There have been 60-odd Sewel motions, but I do not think that that has happened, although if anyone has an example of it, please let me know.

Mr McGrigor: I do not think that there has been an example. Are you talking about the final stage of a bill?

The Convener: If, at the final stage, Westminster passes a bill with a final amendment to which we did not consent, we cannot do anything about that. The reality is that Westminster can legislate without our consent.

Mr McGrigor: It is pretty unusual for amendments to be passed at the final stage, anyway.

Karen Gillon: The Sewel process is between a Government and an Executive. To make a party-political point, the only party at Westminster that

has proposed changes to a bill that would take it outwith the scope of the Scottish Parliament's consent was the Scottish National Party.

Mr McFee: That was for good reasons.

Karen Gillon: That is the only example of that happening. There are no examples of the Government, after a dialogue with the Executive, trying to legislate outwith the scope of the Scottish Parliament's consent. Given that the current Government has a majority of 66—or whatever it is—it is extremely unlikely that, after a consultation in which it has agreed not to legislate outwith the Scottish Parliament's consent, it would allow an amendment that would have that effect at the final stage. However, if the Opposition parties and rebels on the Government side decided to amend a bill in a way that went against the Scottish Parliament's consent, it would be for the Parliament to take steps to revoke the legislation as it applied in Scotland. The process is simple, but we are trying to make it unduly complicated because of something that might or might not happen if there was a Government with no overall majority.

Cathie Craigie: The suggested process would be only a paper trail and would simply take up more of the Parliament's time. Given that we are already asking the people who are responsible for timetabling business in the Parliament to offer more time for debate, it seems pointless to make a further request that would take up more of the Parliament's time and which would be unnecessary, given that safeguards are already in place.

Mr McFee: I made my suggestion because I want to avoid a situation in which the Parliament is in effect simply signing something off. Practically speaking, what I suggested would require another Parliament to change its procedures, which is probably not on, even with Karen Gillon's happy-clappy majority. However, it is useful to consider what is within our control.

11:45

The Convener: Once the bill has passed the final stage at Westminster, nothing can happen. The only thing that could happen is that the Queen might decide not to give the bill royal assent, but that is very unlikely.

We could require the Scottish Executive to draw the Parliament's attention to the fact that a UK bill that went outwith the scope of the consent had been passed. That would mean that someone was directly responsible for making the Parliament aware when such a bill was passed, which might be the best way forward.

Karen Gillon: That is fair enough.

The Convener: The Parliament could then decide what to do.

Cathie Craigie: Do ministers not have to do that just now?

The Convener: I am talking about something slightly different.

Karen Gillon: Ministers could not bring forward another Sewel motion; it would be too late.

The Convener: However, they could inform the Parliament of the situation and the Parliament could then decide whether it was happy with it or not. If it was not happy, it could instruct the Executive to introduce a bill to amend the act.

Mark Ballard: That emphasises the point that Richard Baker made about the need for close monitoring and feedback systems between committees and Westminster so that we can avoid such situations.

The Convener: I do not think that we can legislate for how that is done. In some cases, we are giving relatively minor consent to relatively technical issues—we do not need to worry too much about those. If we are dealing with a major bill, the relevant committee might want to monitor what was happening more closely and it would ask the clerks to put in place the appropriate system.

Mr McFee: Most of the issue boils down to the fact that we have to consider what we can do ourselves. Through the Sewel convention, we are already asking someone else to look after our interests, so we should not be surprised when our interests are not their first consideration. There might be a lesson in that.

The outcome depends on the level of scrutiny. Although we are saying that the committees can carry out that scrutiny, there is still a gap, although I do not have an instant solution. A few committees might say that they are absolutely snowed under with work and do not have the time or resources to carry out the necessary scrutiny. Perhaps the issue is not within the scope of our report—if committees are asked to carry out further scrutiny, the question of committee resources will have to be addressed.

The Convener: The current practice is that the Executive and UK Government officials monitor what is happening with the bills. We can recommend that the Executive should alert the relevant committee to any significant changes that are made to a bill outwith the consent given by the Scottish Parliament. The Executive has a responsibility to do that and it is answerable to the Parliament if it fails to do so. That is the kind of practical assistance that is required.

We move on to paragraphs 19 to 22. The practice is that the Sewel convention operates

between the Governments rather than between the Parliaments. We can recommend that the process should be more transparent, but I am not sure that we can do much about what happens at Westminster. There might be some merit in giving Westminster formal notice of our consent, because that might give the procedure more prominence at Westminster. The members of the Westminster committee that was considering the bill would then be aware that we had given consent—they would be aware of what we had given our consent to and they would know where they could get documents on our debates, for example.

Cathie Craigie: The minister indicated that she would consider that, albeit that there is a different minister in post now at Westminster. However, we should encourage the Executive to consider the matter.

The Convener: The suggestion in the second bullet point of paragraph 22 that the Presiding Officer formally advise the Speaker and the Lord Chancellor of the Sewel consent might be the way for the convention formally to become part of the parliamentary process at Westminster.

Mr McFee: I agree.

The first bullet point in paragraph 22 refers to

"Giving committees a direct input into decisions about when Sewel motions merit Chamber debate – and for how long."

I am not sure how we can do that, if we are saying that the bureau should determine such matters. Perhaps there is a mechanism; perhaps committees should express a view anyway on the kind of debate that they are looking for and when they hope that the debate will take place. I am not sure how committees can have a direct input if we are just saying that chamber debates are a matter for the bureau, albeit that the bureau would take on board any advice that it was given. Perhaps committees should be encouraged to give advice or recommendations on when they hope Sewel motions will be debated in the chamber.

Karen Gillon: Consensus has broken out again. If a committee—the bureau—is responsible for determining the timetable of the Parliament, we have to allow it to do its work, but I hope that it would do so on the basis of the best advice. Committees should make their opinions known to the bureau because, if the bureau knows that further debate is required on a particular issue or that there are controversial issues that require more explanation in the chamber, that will help it in considering the timetable; it will have a better steer about when a longer debate is appropriate. Committees can also point out if their report is unanimous and there is no dissent. Given that the bureau can allow more time at stage 3 to debate issues of particular concern, it should be able to do the same for Sewels.

The Convener: That comes back to the issue of committees reporting in good time so that the bureau is aware of the extent of controversy or the need for debate. Committees can indicate in their reports matters that require substantive debate in the chamber; such matters can be dealt with if committees report sufficiently in advance of when Sewel motions are timetabled. The process will not work if there is a half-hour debate on a major transport issue when the relevant committee has taken 15 hours of evidence in the two days running up to the debate. I am sure that Bruce McFee is aware of circumstances in which that has happened. There is a timetabling issue for committees as well as for the chamber.

Mark Ballard: Would it be possible or appropriate to write to the new minister at the Scotland Office to say that we would be grateful if he would consider flagging up Westminster bills that were subject to Sewel motions? In addition, the second bullet point of paragraph 22 refers to

"communicating the terms of Sewel resolutions".

Would it be possible for the Presiding Officer also to communicate committee reports?

The Convener: Probably not.

Mr McFee: Presumably that is why we argue for the Sewel motion memorandum to be more specific. I think that, if the committee report was handed to Westminster, it would hit the nearest rubbish bin. There is no prospect of anyone reading it.

Karen Gillon: That would not be environmentally friendly, because it would be an awful waste of paper. Perhaps the Presiding Officer's letter could indicate that a committee report is available and can be obtained from the Parliament's website. I think that it would be appropriate for you, convener, to write to the new minister when our report is concluded, sending him a copy, welcoming the dialogue that we had with the previous minister and suggesting that further dialogue would be a useful way of continuing the process.

The Convener: I am happy to do that.

Karen Gillon: You can invite him to lunch.

The Convener: Are there any other comments on paragraphs 19 to 22? If not, we will move on.

On paragraphs 23 to 27, we have pretty much agreed that, provided that any proposed changes to devolved competence are made clear in the memorandum and the motion, we are content. However, the points made in paragraph 27 are important. We should not assume that increased powers for the Parliament should just be nodded through. If they do not come with the right financial settlement, they might not be a good thing.

On paragraphs 28 and 29, we agree that we wish to adopt a new terminology for Sewels, but we do not know what that is yet.

Mr McFee: Do we agree? You lot invented the convention; you should know what it means.

Cathie Craigie: We in this Parliament know what the Sewel convention means, but someone logging on to the Scottish Parliament website would have difficulty understanding exactly what it means. We require a convention between both Parliaments and it should have a name that members of the public understand.

Mr McFee: What are you suggesting?

Cathie Craigie: I do not know; I do not have a suggestion.

The Convener: We are considering a new chapter or sub-chapter of the standing orders, which will have a title of some sort, although that would probably be a bit long to use in this context. The easiest thing would be to refer to the procedure by the name of that chapter, rather than by the name of a former minister in a former place.

Karen Gillon: He is still in the same place.

Mark Ballard: The reality is that, unless we come up with a snappy title, people will still refer to Sewels, rather than rule 11.4.2(c) motions or whatever. We should try to come up with a snappy title because, unless we find an alternative, the term "Sewel" will stick. I do not think that people will use the procedural term relating to the chapter heading, because the term "Sewel" has entered the political lexicon.

Karen Gillon: Take it out.

The Convener: We do not have to refer to the procedure as a Sewel and it does not have to be referred to as such in motions or memorandums. Eventually, it will drift out of the system.

Mr McGrigor: I do not see the point of changing the name. I do not see why the motions should not be called Sewel motions. It is always difficult to change a name; it is also unlucky to do so.

Karen Gillon: To be fair, according to Lord Sewel, what we are talking about is not the Sewel convention. The process that he suggested did not apply to the transfer of ministerial powers or to major policy areas. He has said that we have moved away from what he intended. It would therefore be appropriate for us to find another title to encompass the new process that the Parliament will come up with and vote on in due course. We can call it whatever we like, but, at the end of the day, we will have changed the process.

Mr McFee: You should go back and read Lord Sewel's evidence. He was talking about what had been expanded into, such as the transfer of powers to ministers. He then referred back to his idea, which is what we are talking about now. He was saying that the expansion into other areas was not strictly what he intended by the Sewel convention.

Karen Gillon: But we have agreed that we will maintain the expansion into those areas.

Mr McFee: We might wish to call that process something else. I remember from my days on Renfrew District Council that, when the council had a huge problem with empty houses, it decided to call them operational turnover voids, but the folk on the street still called them empty houses. There is a problem, perceived or otherwise, about the frequency of use of Sewel motions. It seems strange that we are going to deal with the perception simply by changing the name. Unless we can come up with something that is reasonable and slightly shorter than the Gettysburg address to describe what is going on, we should keep the term "Sewel", rather than changing it and using some other euphemism.

12:00

The Convener: I am not suggesting that we change the name; I am suggesting that we drop it.

Mr McFee: I assume that we would have to refer to the process as something. Would it be the process that dare not speak its name?

The Convener: It would be a motion under the relevant standing order. The problem is that the public perception—or, perhaps, the media perception—of Sewel motions does not reflect what they are. We need to get away from that perception because we are trying to create a transparent procedure that states clearly what it does, which is not what people currently think Sewel motions do.

Mr McFee: As the Royal Mail—or Consignia—will tell you, it is not possible to get away from perception by changing a name.

The Convener: I accept that point.

Cathie Craigie: For Bruce McFee to suggest that the folk in the street are talking about what we call the Sewel convention—

Mr McFee: I did not.

Cathie Craigie: You were trying to link the two. I do not know about other members' constituents, but not one of mine has come to my surgery to raise concerns about the Sewel convention. The debate has been among politicians and, in the media, among political commentators. We need an understandable name for the procedure, as the Parliament is supposed to be open and democratic and to involve the people of Scotland as much as possible. People who were looking for

something on the Parliament's website would not immediately click a button for the Sewel convention, because it is not clear what is meant by that.

Lord Sewel said that the convention had been passed on to the Parliament to operate. Over the past six years, we have operated it successfully, and it is now time for the Parliament to identify properly what is meant by the procedure. I do not have a name for it and I hope that we do not refer to it by a particular standing order number. The convention is about co-ordinating legislation between the Scottish Parliament and Westminster, so we must find a way of saying that in very few words. The title does not need to be long.

Mr McGrigor: The reason why Lord Sewel said that the convention had been passed on to the Parliament is that he does not want his name to be linked with a procedure that he described as real confusion. We simply need to clarify what Sewel motions are used for. If we want something extra to deal with the modification of ministers' powers, we should call it something else, not a Sewel motion.

The Convener: I do not want us to spend all day talking about terminology. We do not have to make a decision today anyway.

Mr McGrigor: It is one of the issues that arose in the evidence.

Mr McFee: You should read the paragraph before the comment of Lord Sewel's in the summary of evidence. It asks:

"Should a different process be used to signify the Parliament's consent to the modification of powers of Scottish Ministers"?

Lord Sewel was objecting to the use of Sewel motions for that purpose.

Mr McGrigor: Yes, exactly. What is your answer to that?

Cathie Craigie: We have agreed that we should not do that.

The Convener: Let us move on.

Mr McFee: What is the recommendation on terminology, convener?

The Convener: The recommendation is that we will think about it. We do not need to make any commitment.

If there are no issues that committee members feel have not yet been covered in the note on procedural issues or the note on policy issues, we will move on. I thank committee members for their contributions to the discussion, which has been useful. We got further with it than I expected us to, which should be good news for us when we discuss our work programme under agenda item 3.

There is one other issue. Paper PR/S2/05/8/4 is an outline of some points made by Professor Robert Hazell. We might want to add something to our report on the matter of encouraging the United Kingdom Government and the Scottish Executive to produce what we might call a pre-Sewel or a draft Sewel, by which I mean an indication that there is a draft bill that might require a Sewel motion.

Cathie Craigie: We have already dealt with that issue.

The Convener: I see that there is no desire in the committee to pursue that point.

Public Petitions (Admissibility)

12:05

The Convener: Members have before them a paper from the clerk, PR/S2/05/8/6, that addresses the issues that were raised by the convener and the clerk of the Public Petitions Committee at our previous meeting, regarding the admissibility of petitions. It contains a suggested way forward that is not exactly in line with what the Public Petitions Committee seeks, but which I hope will provide a route that satisfies the wishes of petitioners and of the Public Petitions Committee. I ask Andrew Mylne to summarise briefly the conclusions in the paper.

Andrew Mylne: The paper suggests separating out the two issues that the Public Petitions Committee is concerned about. One is the issue of what I have described as vexatious petitioners, which is shorthand for people who basically will not take no for an answer and who resubmit a petition or come back with another petition that is similar to one that has already been considered. The other, wider issue relates to subjects that the Public Petitions Committee feels have been considered in sufficient detail for the time being and to which it does not want to devote further parliamentary time for a certain period.

In the interests of securing an appropriate degree of clarity and of ensuring that the admissibility criteria are used correctly, the suggestion is that the first of those issues could be dealt with by a new admissibility rule and that the second could be dealt with by clarifying the Public Petitions Committee's ability to close petitions at any stage in the process, so that it can make a decision on the record not to give further time, or ask another committee to give further time, to a subject matter that has been considered in depth.

Mr McFee: Having read over the *Official Report* of our last meeting, I think that, frankly, our discussion went round in circles. The Public Petitions Committee seemed to want new rules to be put in place so that somebody else could say that a petition need not go on the agenda. However, I think that it would be fundamentally wrong to establish those rules.

I accept that there have been vexatious petitions and that it is right for the committee to be able to say that it will not consider them further. That is perfectly fair. However, that could be done simply by allowing the committee to close petitions at any stage, which would be the best route to follow.

I am somewhat concerned about the issues relating to the example that is given in paragraph 21 of the paper. The Public Petitions Committee's suggestion is that, once a petition on the subject of the closure of rural schools, for example, was considered and closed, no more petitions on that subject would be considered for a year after that date. However, as our paper points out, the first petition might be concerned with a closure in the Borders and a subsequent one might be concerned with a closure in Aberdeenshire or the Highlands. I would have difficulty with a rule that said that the subsequent petition would be inadmissible, because the circumstances surrounding the particular closures are bound to be different in each place. The decision about whether to consider the petition must be for the committee to make.

I suggest that the Public Petitions Committee's concerns might be addressed simply by giving the committee the power to close a petition at any point.

The Convener: Andrew Mylne's paper is suggesting roughly what you want while addressing the issue of the vexatious petitioners.

Mr McFee: I remember arguing that point two weeks ago and being disagreed with.

The Convener: We are trying to reach a solution that does what you want to do but also takes account of what the Public Petitions Committee thinks it needs in a way that makes some sense. It has been suggested that we ensure that there are certain rules on admissibility that will allow the clerks to say whether a petition is inadmissible. If somebody disputes the clerk's ruling, the petition will go to the committee for consideration, even if it is a clear repeat of a similar petition. There is no harm in having a rule that states that someone cannot resubmit a petition if it has already been dealt with.

We have been given the example of a petition about an Aberdeenshire school closure being lodged after a petition about a Borders school closure has been closed. That would not be the same petition, but the committee would have the power to say that it had considered the issue of rural school closures—or that the Education Committee had done so—and decided that, because it could not do anything about the issue, it was going to close the petition. It would be the decision of the committee whether to do that.

Mr McFee: I still have some concern about how the committee can say—

The Convener: It is up to the committee to make the decision. We are giving the committee the power to make that decision; we are not saying that it has to make that decision. It is up to the committee to decide.

Mr McFee: But it is a change in the rules. Just now, the committee would be required to consider the petition; that is the difference.

The Convener: The committee will still have to consider the petition. It will have to consider whether it accepts that there are grounds for closing the petition without giving it further consideration.

Mr McFee: I have no problem with the issue of vexatious petitions. I am sure that we all agree that the committee should be able to take such petitions out of the system. However, I am concerned that we could hit a situation in which the issue of rural school closures in the Borders has been considered by the committee and a further petition on the subject comes in from the Highlands or Aberdeenshire. There might well be great differences in the reasons for school closures in those areas and in the cases that are put forward. At the moment, the committee would be required to go through the process of listening to those reasons and cases; however, this proposal would enable it not to go through that process. It is that extension of the rule into areas other than vexatious petitions that I have concerns about.

Karen Gillon: I was a member of the Education, Culture and Sport Committee for four years, and rural school closures was the most common issue to be raised with the committee. However, the committee could not change the decision of a local authority; it could only ask the Convention of Scottish Local Authorities or the Executive to produce guidance, and it could consider whether that guidance had been followed in the closure of rural schools. The problem was that, every time a rural school was put forward for closure, a petition came to the Scottish Parliament. There could be 11 or 12 petitions to deal with at the same time under the same process, and the conclusion was the same for them all—that the guidance existed and should be followed.

In effect, the proposal is saying that it is unnecessary for the Public Petitions Committee to refer a petition to the Education Committee to get the same decision as the Education Committee made the week before on the same issue, although in a different area. If the Education Committee had made a decision that there was a process and guidance that people should follow, the Public Petitions Committee could refer the petitioners to that information. That would save a subject committee dealing with essentially the same petition, to which it would give essentially the same answer, except concerning a different area of Scotland.

Mr McFee: What if the issue concerned health boards?

Karen Gillon: That is different.

Mark Ballard: I take Karen Gillon's point on board, and I support the proposed changes to rules 15.5 and 15.6, so that the Public Petitions Committee "shall decide what action to take" on a petition and will then have an option (d) to close a petition for the reasons that Karen outlined. That would give the Public Petitions Committee the power to deal with vexatious petitions and petitions that were simply retreads from different people who might be unaware of the previous petitions.

I am much more sceptical about the proposal on admissibility. I do not like the idea that a petition that might have been admissible last month would not be admissible now. I suggest that we keep the rules on admissibility as they are now but make it clear that the Public Petitions Committee, not the clerk to the committee, will decide on such things. We can give the committee the power to close a petition in relation to which discussion would be of no practical benefit once it has been asked to consider it. That would do it.

I propose that we keep what is suggested in paragraph 25 of the paper, which would give the committee the power to decide what action to take on a petition, rather than require it merely to consider it. One such action could be to close the petition at that point. I would like to give the committee that power of closure, but I am much more reluctant to go into the issue of admissibility.

12:15

The Convener: I think that you have strayed beyond the subject that Bruce McFee was discussing. Before we come back to your points, I shall invite Jamie McGrigor to comment.

Mr McGrigor: I think that most of what I was going to say has already been covered. The school issue was quite a good example, but if a petition is in all appearances similar, could there be some way of putting the onus on the new petitioner to show why their petition is different?

The Convener: I think that the clerks would do that.

Mr McGrigor: Is that done now?

The Convener: They would encourage the petitioners to show in the supporting evidence to the petition why it should be considered differently to any previous petition. I think that the clerks would do that as part of their work, although I do not think that we could write that into standing orders.

Andrew Mylne: The convener is correct.

Karen Gillon: I disagree with Mark Ballard in that I think that there are vexatious petitioners. We have to face up to the reality that there are serial petitioners who, if they do not get the answer that they want after a long and lengthy investigation,

just bring the petition back again. Essentially, they clog up the system. Even if it is to save just one bit of paperwork, we should have a rule that says that, in such circumstances, the petition is inadmissible.

Mr McFee: If there is a rule that says that a petition is not admissible and the petitioner says, "I don't accept that," the dispute will have to go to the committee anyway, so why do we not simply give the committee the ability to say, "Sorry," and to close the petition?

The Convener: Part of the issue is that we must tidy up the admissibility rules. In effect, the clerks make the decisions and indicate which petitions go to the committee, but that is not what the current rules say. We want a single set of rules for everything when it comes to admissibility. I personally think that it is helpful to have it written into standing orders that a petition is not admissible if the same petition has already been closed. That sends a clear signal to—

Mr McGrigor: What does "the same petition" mean?

The Convener: Let us not get into what is ultimately a matter for the Public Petitions Committee to determine when it considers a dispute. It would be helpful for members of the public to know that in standing orders there is a rule that is quite clear and which says that you cannot keep submitting the same petition time and time again. People should not be able to keep repeating the same petition.

It is up to the Public Petitions Committee to handle a dispute. If Mr X says, "This is not the same petition; it's a different petition," it is up to the committee, not the clerks, to determine whether it is the same petition.

Mr McFee: If I may, I would like to give a quick example to show why I think that it might be easier for the Public Petitions Committee just to deal with such petitions. Suppose, for example, that something has changed in the meantime—something, perhaps, that the committee, or even the Parliament, would like to deal with, but the clerk turns round and says to the petitioner, "We believe that the petition is not admissible."

The Convener: The petitioner would then say, "I disagree with you, and this is why." The onus is on the petitioner to show why, and the committee makes the decision.

Karen Gillon: Given the make-up of the Public Petitions Committee, I think that there must be a genuine problem if the committee has come to us. I would find it unusual if that group of people were to come to a consensus, but they appear to have done so on this point. That suggests to me that there is a genuine problem. The members of that committee are quite a diverse group of people with a diverse range of interests, and their coming to a consensus suggests to me that they have a very real problem. Our report does not go as far as they wanted us to go, but it goes some way towards it. For that reason, I support the report that the clerk has written and I suggest that we contact the Public Petitions Committee, ask for its views and come back to the matter at a future date. If folk want to take bits out of the report, however, we will have to deal with that.

Mr McFee: I accept that there is a problem. No one is disputing that. Indeed, if there had been no problem, I certainly would not have been expecting to consider the matter in such detail just now.

However, we have to quantify the problem and determine the best way of resolving it. There is also some dispute about that. If, as the report suggests, the convener wishes to speak to the Public Petitions Committee and get a view from that committee's convener, we should seek views from him on both proposals in the paper. I suspect that, if he wants more, he will choose the proposal that will give him more. In any case, let us put the question to him.

The Convener: I am happy to ask the convener of the Public Petitions Committee whether he would consider having a power adequate to his needs immediately to close a vexatious resubmission or repeat petition. I suspect that I know what his answer will be, because we asked him that very question at our last meeting. Of course, that is no reason not to ask him the question again.

Are members content that I write to the convener of the Public Petitions Committee to say that the committee is considering two proposals? Under the first proposal, the rules on admissibility would be tightened up to ensure that the Public Petitions Committee would have to decide on a petition's admissibility only in cases of dispute, and an additional criterion would be introduced to cover vexatious resubmissions. On the other hand, that additional criterion could be dealt with through the new power of closure that is also being proposed.

Mark Ballard: Is there any consensus on the new power of closure?

The Convener: The suggestion is that we write to the convener of the Public Petitions Committee and ask whether the committee wishes to have such a power. No one has indicated that they are against giving the committee that power.

Mark Ballard: I wonder whether it is worth indicating to the convener of the Public Petitions Committee that there is consensus on one new power but not on the other.

The Convener: I think that he will have access to the *Official Report* of this discussion, so he should be well aware of what the committee is considering.

Mr McFee: I want to clarify what the dispute is. Members probably agree that the powers to close a petition immediately would do the job; the question is whether there should be a stage before that happens.

The Convener: There is also a question about whether there needs to be a power to close petitions. The consensus is that no such clear and defined power exists at the moment. However, the proposal is that such a power should include the right for the Public Petitions Committee to close a petition immediately, without having to refer it on or investigate it first. I do not think that there is any concern about the principle.

Mr McFee: But the question is whether there is another stage before that decision is made.

The Convener: Yes. We are seeking views from the Public Petitions Committee on the question whether repeat petitions should be dealt with at administrative level and referred to the committee only in cases of dispute. Is the committee content to do that?

Members *indicated agreement*.

Work Programme

12:23

The Convener: Item 3 on the agenda is consideration of the committee's forward work programme. We have ticked the boxes for most of the major inquiries that we highlighted at the start of this year. The only inquiry that is outstanding is on the parliamentary timetable, which might or might not take up a considerable amount of time. Do members wish to conduct an inquiry into the parliamentary week and time in the chamber? Given that the issue has arisen in most of our other inquiries, it certainly needs to be addressed.

Mr McFee: Can I clarify—

The Convener: I should point out that I do not want to go into the inquiry in any detail.

Mr McFee: Will it involve looking at the amount of time that Parliament sits?

The Convener: Well, the title

"review of the Parliamentary week and time in the Chamber"

implies that that issue will form part of it.

Mr McFee: I just wanted to clarify that this is not just a question of trying to cut the cake in a different way.

The Convener: I suggest that we do not try to define exactly what we will look at in this meeting, but that we just agree in principle that we want to look at the proposed inquiry. I propose that we have a private session at a committee away day to discuss the remit. We need to have a discussion about that because, without a clear remit, the inquiry could go in all sorts of different directions.

Karen Gillon: Is this all within the terms of the Parliament's family-friendly policies?

Mr McFee: I do not think that it could get much more family friendly than meeting for one and a half days a week.

Karen Gillon: That is all right if one does not have a constituency, Bruce.

The Convener: With respect, I do not want to have that debate today. I would rather that we had it later, so that the committee can publish a formal remit for the inquiry.

Mr McFee: I want to be clear about a point in the work plan paper. It talks about

"the proportion of the normal sitting week"

for chamber business and implies that the inquiry should consider only the hours that the Parliament currently sits.

The Convener: I am not ruling anything in or out at this stage; I am trying to avoid having a detailed discussion today about what the remit of the inquiry will be so that we can have a full and proper discussion of the remit later.

Mr McFee: Sure—and I am just trying to find out what we are being asked to agree to.

The Convener: I am asking you to agree whether we should have a major inquiry into the parliamentary week and time in the chamber, without specifying whether anything is in or out at this stage. The committee needs to have a full discussion of the remit in an away-day setting to thrash out exactly what issues we want to include in a call for evidence. That will give us enough time to have a proper discussion.

Mr McFee: That is fine, but the wording in the paper was somewhat different to what has been said. However, I shall take the inclusive meaning of that wording.

The Convener: Paragraph 11(a) refers to

"a review of the Parliamentary week and time in the Chamber",

and those words do not rule anything in or out at this stage.

Do members agree to start the inquiry at some point in the autumn? I recommend that we look at having a short committee meeting on 21 June if business requires, but with an earlier start time of 9.30, and that then we break into an away day by 10.30 at the latest to discuss the remit of the inquiry.

Mr McGrigor: Will we go somewhere for the away day?

The Convener: No; we will have to have it here or hereabouts—perhaps next door. We will not have time to go very far because members—including me—have committee commitments in the afternoon. The only other option would be to have the away day on a separate day—on 28 June—but that is not feasible for most members, who already have other commitments in their diaries.

The idea is that we use the existing time slot. If we have to have a committee meeting to sign anything off, we will have a brief meeting beforehand. We can decide at our next meeting in two weeks whether that will be necessary. Then we will break into a couple of hours of away day to discuss the remit for the inquiry. Are members content with all that?

Members *indicated agreement*.

The Convener: I tell Jamie McGrigor that I was referring to a date on which we are already meeting so there will be no additional time commitment, apart from possibly having an earlier start, which we will agree at our next meeting.

Do members wish to proceed on any of the smaller inquiries at this stage? Were any of them particularly urgent?

Andrew Mylne: None is particularly urgent; we will deal with them as and when.

The Convener: I thank members for their attendance and constructive contributions and I look forward to seeing them in two weeks.

Meeting closed at 12:28.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Tuesday 31 May 2005

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron