PROCEDURES COMMITTEE

Tuesday 21 June 2005

Session 2

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PROCEDURES COMMITTEE
9th Meeting 2005, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
*Mark Ballard (Lothians) (Green)
Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Chris Ballance (South of Scotland) (Green)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Jonathan Elliott

LOCATION

Committee Room 5

Scottish Parliament

Procedures Committee

Tuesday 21 June 2005

[THE CONVENER *opened the meeting at 10:16*]

Sewel Convention Inquiry

The Convener (Iain Smith): Good morning, colleagues, and welcome to the Procedures Committee's ninth meeting in 2005, which is our last before the summer recess. No apologies have been received, so other members should turn up shortly. Let us make a start.

I draw members' attention to the paper that has been circulated this morning—we received it last night—in which Margaret Curran replies to my letter about issues that have arisen in our Sewel convention inquiry. The reply has been tabled for members' information.

Of the two other papers for agenda item 1, the first is a note on further policy issues and the second is on whether to rename Sewel motions, which is probably the most difficult issue that the committee has to deal with. As the minister's letter relates in part to the first paper, I suggest that we go through the first paper page by page to deal with any queries that arise and consider the various options. Do members have any queries about the first page, which gives the introduction and deals with terminology?

Before carrying on any further, let me just welcome Chris Ballance, who has joined us as an observer at this morning's meeting. The information that I hear through the grapevine is that he is likely to replace Mark Ballard as the Green party member on the committee, subject to the appropriate parliamentary approval. I welcome Chris Ballance to his minus-first meeting and I look forward to welcoming him to his first meeting in due course.

Are there any queries about page 2 of the paper?

Page 3 gives three options about who should submit the memorandum in the event that the Sewel motion is lodged by someone other than a minister. Option 1 is that the memorandum should always come from the member who submits the Sewel motion. Option 2 is that the memorandum should always come from the Executive. Option 3 is that there should be a memorandum both from the Executive and from any member who wishes to lodge a Sewel motion.

Do members need clarification on any of those three options? If not, let us pause to consider which of the options members think would be the most appropriate. It seems to me that option 3 provides the best way forward, as it is likely that the relevant committee and the Parliament would want to see the Executive's reasons for not lodging a Sewel motion as well as the member's reasons for doing so. I suggest that we should recommend option 3. Although the situation that it describes is unlikely to arise, we would be best to have option 3 in case it does.

Mr Bruce McFee (West of Scotland) (SNP): The most important thing to remember is that the situation that we are talking about is not normal and, at least under the present set-up, will arise very infrequently and occasionally. Of course, if there was a change either at Westminster or here, that could bring about a situation in which, for different reasons, more Sewel motions were lodged by members who were not members of the Executive.

Option 3 looks sensible and it is explained well in the paper. I believe that we should require a memorandum from the Executive whether or not the Executive proposes to lodge a Sewel motion. The important point is that the memorandum would bring the matter to the attention of the relevant committee. It would also explain the Executive's thinking about why the matter did, or did not, need to be Sewelled—if that is what we are to call the process. Given that currently most Sewel motions are lodged by the Executive, I do not envisage that, in the near future at least, memorandums would be required terribly frequently from non-Executive members.

Mark Ballard (Lothians) (Green): I agree with Bruce McFee. Our reason for suggesting the need for an early memorandum was to give committees and the Parliament the necessary advance warning. Option 3 would not only allow for that advance warning but provide a mechanism whereby the Executive could give its reasons for not lodging a Sewel motion on an issue. That would allow back benchers the opportunity to lay out in their own memorandum the arguments for using a Sewel motion. Option 3 would provide the desired early warning and it would allow for some flexibility. It seems the sensible option.

Karen Gillon (Clydesdale) (Lab): Under option 3, would a memorandum be required only if a back bencher had decided to lodge a Sewel motion?

The Convener: Yes.

Karen Gillon: So a memorandum would not be required for every bill at Westminster.

The Convener: I think so. Only in circumstances in which a member other than a member of the Executive wished to lodge a Sewel motion would that member need to submit a memorandum.

Jamie McGrigor is looking slightly puzzled.

Mr Jamie McGrigor (Highlands and Islands) (Con): I seek clarity. Are we talking about situations in which a back-bench member wants to lodge a Sewel motion on a Government bill?

The Convener: The bill could be a Government bill or a private member's bill that had Sewel implications. A back bencher might want to lodge a Sewel motion even if the Executive had decided not to pursue the issue via a Sewel motion.

Mr McGrigor: So we are talking about situations in which a member wants to lodge a Sewel motion but the Executive does not.

Karen Gillon: According to the paper, a back bencher could submit a memorandum even if the Executive had stated that it wanted to lodge a Sewel motion. One of the sentences in paragraph 19 begins:

"If the Executive was also intending to seek Sewel consent for the Bill".

The Convener: Yes, but in that case the normal processes would be followed.

Karen Gillon: So why would a back-bench member also want to submit a memorandum?

Mr McFee: If the Executive did not wish to Sewel an issue but a back-bench member thought that the matter should be Sewelled, the back bencher could lodge a Sewel motion.

Karen Gillon: I understand that, but I do not understand why another memorandum would be required in addition to the Executive's memorandum. I do not understand why the paper states:

"If the Executive was also intending to seek Sewel consent for the Bill … the memorandum would give the reasons for that, and include a draft of the motion."

Mark Ballard: That sentence should be read along with the next sentence, which deals with what would happen when the Executive had decided not to lodge a Sewel motion.

Karen Gillon: I understand the next sentence, but I do not understand that first sentence, which would require a memorandum to be submitted by a back bencher even if the Executive had decided to lodge a Sewel motion. That first sentence complicates things, because it suggests that that could happen.

Mr McGrigor: Is it possible that two different Sewel motions might be lodged?

The Convener: It might be the case that a back-bench member wanted to lodge a Sewel motion with different terms. Andrew Mylne will clarify the point.

Andrew Mylne (Clerk): The suggestion in option 3 is that the Executive would provide a memorandum every time a bill was introduced in Westminster that was capable of being subject to the Sewel process. In other words, the Executive would be required to submit a memorandum on every bill at Westminster that would impinge on the Scottish Parliament's responsibilities. The memorandum would give the Executive's reasons for lodging a Sewel motion or, if the Executive did not intend to lodge such a motion, it would give a description of the bill and say why the Executive had no plans to lodge a Sewel motion. In either case, the memorandum from the Executive would serve as advance notice to the Scottish Parliament about the direction in which the bill at Westminster was proceeding.

If the Executive had decided to lodge a Sewel motion, a single memorandum—as we have at the moment—would wrap up both those things in one. However, if another member proposed to lodge a Sewel motion, that member would need to submit their own separate memorandum. That would be the only circumstance in which there would be two memorandums. Does that clarify the matter?

Karen Gillon: It does not clarify what is said in the paper that is in front of me, which contains the explicit sentence:

"If the Executive was also intending to seek Sewel consent for the Bill … the memorandum would give the reasons for that, and include a draft of the motion."

That is where I am becoming confused.

Andrew Mylne: The word "also" does not mean in addition to another member intending—

Karen Gillon: That is where the word is. This is about—

The Convener: May I suggest that a simple way—

Karen Gillon: Hang on, convener. The issue is about when a member wants to lodge a Sewel motion and not about the Executive producing a memorandum for every Sewel motion. There is a separate process.

The Convener: I was going to suggest a simple redrafting. The issue would be clarified if the word "also" were removed from the sentence.

Mark Ballard: Will Andrew Mylne clarify that the normal situation is being described?

Andrew Mylne: Yes.

The Convener: The penultimate sentence of the paragraph states:

"If the Executive was also intending to seek Sewel consent for the Bill (the 'normal' situation), the memorandum would give the reasons for that … If it was not, the memorandum would say why not".

The word "also" is unnecessary and causes confusion.

Mr McFee: A point that Karen Gillon raised requires to be clarified. If a bill is introduced at Westminster that could impact on the Scottish Parliament's powers, will a memorandum be required whether or not the Executive intends to lodge a Sewel motion?

The Convener: Yes. That is what paragraph 19 of the paper proposes.

Karen Gillon: That is different; it is a brand-new proposal that we have not considered. The suggestion is that the Executive should produce a Sewel motion every time legislation is introduced at Westminster.

The Convener: No—a memorandum.

Karen Gillon: I meant a memorandum. We have not considered that suggestion until now and I want more time to consider it. The Executive would be asked to produce a memorandum on every Westminster bill that may have Sewel implications and to determine why powers are not being Sewelled.

Mr McGrigor: I agree.

Karen Gillon: I want time to consider the matter.

Mr McGrigor: It seems to me that a lot of time could be wasted if we agreed to that option.

Karen Gillon: You are sticking in the proposal by the back door, convener.

The Convener: Please do not say that—I am not sticking in anything by the back door. I cannot envisage many circumstances in which a bill that could be Sewelled would appear at Westminster and the Executive would not produce a memorandum—the process is meant to deal with that. However, it might need to be brought to the Scottish Parliament's attention that a private member's bill with Sewel implications had been introduced at Westminster and that its Sewel implications had not been properly considered there. The process might be useful and a good thing rather than something that has been brought in by the back door or that is a threat. According to the concordats, the Government should not deal with bills at Westminster that the Executive has not cleared for consideration through the Sewel process.

Mr McFee: It is unfair to say that we have not discussed the matter, as there has been a lot of discussion about how to introduce an early warning system into the procedure and how best to convey issues to committees. With respect to Karen Gillon, one way of addressing the issue might be by flagging up early the possibility that a Westminster bill sought to legislate on areas that the Scottish Parliament covers. Flagging up such possibilities early would result in early statements of intent from the Executive on the route that it proposed to follow. A number of witnesses addressed how we could introduce an early warning system so that none of the last-minute pressures on committees would arise and committees would not be expected to consider issues within truncated periods—that issue was widely discussed. I am not saying that there are no other ways of addressing the matter, but the proposal has been considered and presented to us as a method of addressing the problem.

The Convener: We are not at the draft report stage yet—we have a whole summer to think further about the matter—and nobody is being bounced into anything. However, it seems to me that option 3 is a sensible way forward for dealing with exceptional cases. Bills that cover devolved matters should not be introduced at Westminster without prior discussions with the Scottish Executive—amendments or private members' bills are different. A process through which the Executive can flag up whether it wishes to support a bill that covers devolved competencies would be useful.

10:30

Karen Gillon: We should try to get away from discussing a truncated or elongated process when there might not be a Sewel motion; I thought that we were trying to simplify, clarify and improve the process when there are Sewel motions. The proposal is to add a new process, which is fine if that is what we want to do, but we should discuss the matter.

The Convener: I am not clear that a new process would be added. If a bill is introduced at Westminster that covers issues that, under the Sewel convention, should not be dealt with without the Scottish Parliament's consent, there must be a mechanism so that that bill can be brought to the Scottish Parliament's attention.

Karen Gillon: Is there currently a mechanism that requires the Executive to produce a memorandum on a bill that it is not going to Sewel?

The Convener: But there are not—

Karen Gillon: We do not have such a process and therefore a new process would be introduced. I want time to consider, and to consult my colleagues about, whether that process is appropriate and proportionate.

The Convener: Nobody is preventing anyone from having time to consider the matter. As I said, we are not considering a draft report; we are considering an option to deal with exceptional circumstances that may or may not arise. Three options have been suggested and you are free to

propose that we should support one of the other options. I proposed that we should support option 3, as that option seemed to me to be the best way forward. It would deal with all the possible exceptional circumstances that could arise, including the introduction of a private member's bill at Westminster that covered devolved issues, which should be brought to the Parliament's attention by some means. Option 3 seems to me to be perfectly reasonable.

Karen Gillon: As I said, I want time to consult colleagues before I support any option.

The Convener: Nobody is preventing you from doing so, but do you have any comments to make on the three options that are contained in the paper?

Karen Gillon: I did not read into the paper what Bruce McFee brought to light, which was my mistake—I would be the first to admit that. Bruce McFee brought to light the fact that the proposal would be a change in the process. The process that has been proposed does not currently exist and I want to consult colleagues before I make a decision. That would be fair. I would be wrong to make a decision that is based on anything else.

The Convener: I am not suggesting that you should not consult your colleagues before we reach the draft report stage—I am trying to clarify whether you prefer one of the other options in the paper. Nobody will make a final decision about anything today—I am merely trying to clarify which of the three options is preferred. Do members prefer option 1, which would require a memorandum always to be from the member who proposes to lodge the Sewel motion; option 2, which would require the memorandum always to be from the Executive; or option 3, which is a hybrid option that would require a memorandum from the Executive and a memorandum to accompany any motion that is lodged by a back-bench member?

Mr McFee: I was trying to decide between options 2 and 3. If a member is going to suggest lodging a Sewel motion, they must have some basis for doing so, but I am mindful that that member will not have the same bureaucratic support that the Executive will automatically have and that it might be somewhat more difficult for them timeously to produce a memorandum. On balance, they should probably still have to be required to produce a memorandum and justify taking the route that they proposed.

On what Karen Gillon said, I went over the issue in question because I want it to be clear that the proposal is a departure from the current process. We have been told numerous times in the inquiry that committees need an early warning system. If we do not follow the route that has been proposed, it will be incumbent on members to produce an alternative in order to give committees an early warning. I am not saying that what has been proposed is the only way in which that can be done, but a major factor that has emerged from the inquiry is that things can sometimes creep up on committees and it can be difficult for them to set aside enough time to do the inquiry that they wish to do. Unless another formula is devised to progress matters, we will be in the same position as we are currently in. I am not saying that what has been proposed is the magic formula—there may be other ways of addressing the issue—but it is one of the first positive ways that I have seen of dealing with the problem.

Karen Gillon: I thought that at our most recent meeting we agreed to a procedure—to which a timetable was attached—that would allow us to do that. A memorandum would be lodged according to a timetable and the relevant committee would have a certain amount of time to consider it. I thought that we agreed to that at our last meeting. For me, all that is different about the proposals in the paper is that they deal with circumstances in which a member, rather than the Executive, wants to lodge a Sewel motion. I thought that at our last meeting we sorted out the process that the Executive would go through when it wanted to Sewel something and that we indicated how the current process could be improved, but perhaps we did not. To me, the paper deals with who is responsible for producing the memorandum that is attached to a Sewel motion in the situation in which a member, rather than the Executive, lodges that motion, which is similar to the issue of who is responsible for producing the supporting documents when a member's bill is introduced in the Scottish Parliament. I am confused because I thought that that was what we were discussing.

The Convener: That is precisely what we are discussing. There is nothing in the paper that changes what we have agreed on the process for dealing with the normal situation, in which the Executive produces a memorandum and a Sewel motion on legislation.

Karen Gillon: But the paper proposes a new process in that it suggests that, given that Westminster has said that it will not legislate on devolved competencies without the Scottish Parliament's consent, there will have to be a Sewel memorandum on every occasion on which legislative processes are under way at Westminster that may affect devolved responsibilities or bring new powers to the Executive. If that is what we are saying, that is fine, but I must be clear that that is what we are saying and I must consult my colleagues on the proposal, because it represents a change.

The Convener: You may prefer to go for one of the other options. For example, option 1 would do what you indicated originally.

Karen Gillon: I will not be bounced into making a decision. We have three options on which I will consult my colleagues; that is my responsibility.

The Convener: I am not asking—

Karen Gillon: You have said that we have the whole summer to consider the matter, so I do not think that there is a big problem.

The Convener: Will you please stop putting words into my mouth? I am not bouncing anyone into making a decision. I am trying to get an indication from members of whether they wish to follow a particular route. Finding out members' preferences makes it easier to prepare a draft report. That report will not be final—there will be at least two further opportunities for the committee to make a decision on the draft report and to agree to a final version of it. No one is being bounced into making a decision. However, it would be useful to have an indication from members whether they think that, when a Sewel motion is to be lodged by a back-bench member, rather than by the Executive, that member should be entirely responsible for producing the Sewel memorandum or that the Executive should have some responsibility for producing such a memorandum. I think that there has been a misunderstanding. We are talking about exceptional circumstances in which a bill has been introduced at Westminster—

Karen Gillon: We are not talking about exceptional circumstances. That is where the confusion arises.

The Convener: Will you please stop interrupting? I am trying to clarify what I think is the situation that option 3 is designed to address. It seeks to deal with the very rare circumstances in which a bill might be introduced—or an amendment to it lodged—at Westminster by a member of an Opposition party, which would mean that the normal concordat between the Executive and the Government would not be adhered to. We are talking about how the Scottish Parliament can address situations in which a bill that involves devolved competencies is considered at Westminster and how it can give the bill its consent or otherwise when the normal channels have not been followed. That is likely to happen only very rarely, but it could happen.

Mr McFee: My understanding is that paragraph 8 relates to the function of the memorandum per se—in other words, it relates both to memorandums that are lodged by a member rather than by the Executive and to memorandums that are lodged by the Executive. If that is a misunderstanding, I would be pleased to be told that now. My understanding is that we are addressing the function of the memorandum in all situations.

The Convener: No. We have agreed to a process for dealing with a memorandum in normal circumstances, but the paper seeks to consider how we can deal with situations in which a Sewel motion is lodged by someone other than the Executive.

Mr McFee: With respect, if that is the case, why do two of the three options make different suggestions for the Executive? The paper suggests two different possibilities for the Executive. One is that it should provide a memorandum in advance of lodging a Sewel motion and the other is that it should provide a memorandum regardless of whether it intends to lodge such a motion. In my view, the principle of the function of the memorandum, which is outlined in paragraph 8, is being addressed. I want to clarify with the paper's author that we are talking about the function of the memorandum full stop.

The Convener: To be honest, I am not entirely sure what you are getting at. The committee is in danger of creating considerable difficulties for itself in seeking to deal with what is likely to be an exceptional circumstance. We simply want to have standing orders that are robust in all circumstances, rather than ones that we must suspend in circumstances in which exceptions arise. I will let Andrew Mylne try to answer Bruce McFee's question.

Andrew Mylne: When I prepared the paper, my intention was to tease out some of the implications of the decisions that the committee has already taken. As the beginning of the paper sets out and as Bruce McFee has already said, there is a desire for an early warning system that gives information to the Parliament at an early stage. The existing system with the informal memorandum serves the purpose of explaining the reasoning for a Sewel motion that it is proposed will be lodged.

The paper sketches a number of circumstances that, as the convener said, may be relatively unusual—although they may be less unusual in some political situations—and in which it would be more difficult for that normal process to operate. As Bruce McFee says, I have drawn out two functions of the memorandum. The three options are simply different ways of squaring the circle in all the various circumstances that might arise. All three options have common ground in the circumstances that we are used to dealing with, in which the Government and the Executive are of a similar political persuasion and in which the Executive lodges the Sewel motion at the end of the process. In such circumstances, everything comes together neatly; there is no suggestion that a more complex process would need to pertain.

Option 3 would allow two separate memorandums to be produced. The Executive would give the early warning at the beginning of the process and the relevant member would provide a separate memorandum at a later stage. The other two options are as described in the paper. I do not know whether there is anything further to say on the part of the paper to which Bruce McFee referred.

Mr McFee: I want to explore the issue further so that my understanding is crystal clear. In a situation in which legislation has been introduced at Westminster that could have an impact on matters over which the Scottish Parliament has competence, if option 3 were adopted, would it be incumbent on the Executive to produce a memorandum in all circumstances, regardless of whether it intended to lodge a Sewel motion? My understanding is that that would be the case. In other words, option 3 covers all cases.

The Convener: That is right.

Mr McFee: I am happy with that, as it represents a step forward, but I just want to be clear that that is what option 3 does.

Karen Gillon: That is not what the convener is saying.

The Convener: It is what I am saying; please do not put words into my mouth.

Mr McFee: My understanding is that paragraph 10 relates to all matters that could be Sewelled. Option 3 would require the Executive to produce a memorandum, regardless of whether it intended to Sewel. In a situation in which a non-Executive member intended to lodge a Sewel motion, both the Executive and the member concerned would have to produce a memorandum. That was my understanding of what the paper says; I am not sure if it was everyone else's.

Mr McGrigor: Convener—

The Convener: Before we hear from Jamie McGrigor, I want to clarify that the proposals in the paper relate to all relevant bills at Westminster. A relevant bill is a bill that contains devolved issues.

Mr McGrigor: That is what my point is about. Option 3 refers to "a relevant Bill". Who would decide what was relevant?

The Convener: That would be determined on the basis of the content of the bill.

Mr McGrigor: There might be a great deal of argument about what was and what was not relevant.

The Convener: A relevant bill would be one that proposed to give additional powers to Scottish ministers or that dealt with a matter that fell within the devolved sphere.

Mr McGrigor: I know that that is what is meant by "a relevant Bill". I just wondered who would have the responsibility for deciding whether a bill was relevant. At what point would someone say, "This is relevant and that is not"?

10:45

The Convener: If we went for option 3, the Executive would have to make a judgment about whether bills tabled at Westminster were relevant. It would decide whether the bills contained any clauses that meant that they should be subject to the Sewel procedure. The convention is that Westminster should not pass bills on matters that are relevant in Scotland except with the Parliament's consent. I do not see a problem with that.

Mr McGrigor: If we went for option 3 and the Executive decided that the bill was relevant, it would have to produce a memorandum to say whether it was or was not Sewelling the bill. Is that right?

The Convener: Yes. That is what is being proposed in option 3.

Mr McGrigor: I have got it.

The Convener: It relates only to relevant bills, not all Westminster legislation.

Karen Gillon: So, in relation to the Female Genital Mutilation Act 2003, the Executive would still have been required to produce a memorandum to say why it was not Sewelling the bill, despite the fact that it was introducing separate legislation in Scotland.

The Convener: Yes, but that memorandum could have been one line, saying just that.

Karen Gillon: I am just asking whether I am correct, because, with all due respect, that is different from the circumstances that you outlined. I understood exactly what Bruce McFee was saying, but I was confused by what you said about private members' bills. The proposal is not just about private members' bills but about every legislative provision where a Sewel could be required but might not be required. Even when the Executive intends not to Sewel a bill and legislates in its own right, it will still be required to produce a Sewel memorandum.

The Convener: No. That is not correct.

Karen Gillon: Yes. It is correct.

The Convener: It is not correct. The option relates only to tabled bills that are relevant. If the Female Genital Mutilation Bill did not contain any clauses that were relevant to Scotland and did not cover devolved matters, there would have been no requirement for a Sewel memorandum. The

Executive would not be required to produce a memorandum to say that it had had discussions with Westminster on the issue. A memorandum would be produced only if a tabled bill contained issues that were relevant in that they related to devolved competencies.

Karen Gillon: Given that the UK Parliament cannot legislate without the consent of the Scottish Parliament, would a Sewel motion still be required?

The Convener: The UK Parliament can legislate. Under the memorandum of understanding between the Westminster Government and the Scottish Executive on devolved issues, it is unlikely that the Government would table a bill that covered devolved competencies without agreeing that first with the Executive. The bill would then be Sewelled. That is straightforward, normal procedure. If there were Governments of different parties in Scotland and at Westminster, the Westminster Government might determine that it would carry on regardless of whether it lacked the Executive's support. In that case, would it not be in the interests of the Scottish Parliament for the Executive to bring that to members' attention, to explain why it did not allow a Sewel and to give the Parliament an opportunity to express a view? That seems perfectly clear and reasonable to me.

There may be a private member's bill that covers devolved competencies. The memorandum of understanding says that the Westminster Government will not support such a bill without the agreement of the Scottish Executive. That is not to say that a bill might not attract support, particularly if it comes through the House of Lords. There might be circumstances in which a relevant bill is tabled at Westminster and has not been agreed to through the memorandum of understanding. Again, is it not reasonable that that be brought to the attention of the Scottish Parliament through a memorandum? I do not think that those things are unreasonable, but it is true that the circumstances would be exceptional.

Mr McGrigor: Could we use option 3 for a bill that started off as not being relevant but which an amendment made relevant for Sewel purposes?

The Convener: Yes.

Andrew Mylne: It might be helpful for members to look at the annex to the paper, which sets out provisionally the shape of standing orders that we might provide should the committee adopt option 3. The third bullet point sets out the circumstances in which an Executive memorandum would be required. That would apply to any relevant bill on introduction or to any bill that becomes a relevant bill by virtue of amendment in certain circumstances. There is detail, which can of course be tweaked and adjusted, about precisely when things would kick in, but the annex gives a general idea of how the procedure might work.

Mr McFee: The proviso is that no matter which method we adopt, if it is a case of a private member's bill being amended late, there will always be difficulties in scheduling.

The Convener: The proposal rules out things such as the 10-minute rule bills, which never get anywhere. Condition (b) in the third bullet point states that a bill has to have at least gone through a second reading and amending stage before a memorandum is required, although it could be produced earlier.

Mr McFee: The time strictures exist irrespective of which model we adopt.

The Convener: Yes. Option 3 seems to offer a reasonable way forward. Members will of course wish to consult their colleagues further, but I suggest that we consider option 3 in the light of the standing orders amendment, which perhaps makes it clearer, as the way forward. We are free to change our view when we come back to consider the draft report.

Karen Gillon: I am not signing up to anything at this point.

The Convener: Nobody is asking you to sign up to anything. I am just suggesting—

Mr McFee: We should consider and test option 3, because it offers a way forward.

The Convener: Do members agree to proceed on that basis? Nobody is committed to anything at this stage.

Members *indicated agreement*.

The Convener: Paragraph 21 is on further timing considerations. I draw to members' attention the letter from the Minister for Parliamentary Business, which we received only last night.

Mr McFee: Would you mind if we took two minutes to read the letter? It might be useful.

The Convener: By all means.

Do members have any comments on what the Executive has said as it affects the timing of memorandums?

Mr McFee: Whichever option we adopt, we need to consider the practicality of the timescale that has been set out. Some of the minister's remarks are justified, but I am not convinced that we could not do better. It might be difficult to produce a memorandum within a week of a bill being tabled at Westminster. However—again, this depends on the relationship between Scotland and Westminster—advance notification might be

provided and talks might have been going on in the background for some time beforehand. Given that we are attempting to write standing orders to cover all eventualities, there would have to be some leeway; I do not have a solution to that at the moment.

A second issue arises in relation to a lead committee's recommendation on how long should be set aside for a debate on a Sewel motion. It would be helpful if the committee could identify that. Frankly, there would be knowledge about the issues that would require a longer debate. We do not operate in a vacuum; business managers have an indication of issues that might be contentious and might require a debate rather than just a vote. Perhaps the lead committee could give such a recommendation in its formal report. I understand that that would involve additional timetabling problems and that, therefore, the recommendation might need to be more informal. However, I am not sure how we would set that out in the standing orders other than by saying that we would like the view of the lead committee to be taken into account. Of course, the Parliamentary Bureau can totally ignore the committee's recommendation in any case.

Mr McGrigor: The minister's letter says:

"The essential role of the committees is to scrutinise the substance of the proposals".

That is exactly the point. The committee will scrutinise the proposals and will know whether a lengthy debate is likely to be required. Therefore, rather than the Parliamentary Bureau deciding on its own whether there should be a debate, it is important that the committee should be able to make a recommendation. After all, the committee members will have looked into the matter and will know whether a debate is required. The importance of the timing—which is up to the Parliamentary Bureau—is secondary to the importance of what is discussed in the Parliament.

Karen Gillon: I think that the period of one week that we are talking about would be too late in relation to changing the business programme. However, our report should suggest that committee conveners should flag up to the Minister for Parliamentary Business as early as possible any issues in relation to which there should be a longer Sewel debate. That need not be included in the standing orders; it can be a practical recommendation and a matter of good practice.

I take the minister's point: it is unrealistic to expect the Executive to produce a memorandum in a week. We need to allow a longer period of time for that. It would be stupid to set a timescale that the Executive has told us it cannot meet. If we do so, we will get a deficient memorandum. I would rather get a good memorandum after two or three weeks than a half-hearted memorandum after one week. We also have to be mindful of the pressure that unrealistic timescales put on the staff who are employed by the Executive. It is not the minister who writes the memorandum, but members of the Scottish Executive's staff.

The Convener: I note your point—[*Interruption.*]

Karen Gillon: That noise is being caused by people's BlackBerrys.

The Convener: If colleagues have such a thing as a BlackBerry, they should switch it off.

I endorse the suggestion that one week is an unrealistic period. However, it would be helpful if the standing orders at least set a target that the memorandum should be produced before the second reading at Westminster, which would mean that there would normally be a two-week period, under Westminster's procedures. We could say either that the memorandum should be produced within two weeks or before the second reading, whichever members felt was more practical and realistic. Originally, it was intended that a Sewel motion would be agreed before the second reading, but the memorandum now says that the Sewel motion must be agreed before the final amending stage in the first house, which is a significantly longer period. Given that, usually, considerable discussion will take place between the Executive and the Government and that there ought to be clear reasons why the Executive has agreed to a Sewel motion before the bill is tabled at Westminster, I would have thought that it would be reasonable to say that, in normal circumstances, we should have the Sewel memorandum before the second reading at Westminster.

11:00

Mr McFee: In normal circumstances, we would expect to see the memorandum early on. We are told that the arrangement takes place almost entirely between the two Executives, which means that there is therefore every likelihood that the Scottish Executive would know about any major piece of legislation long before the Queen's speech and, indeed, would have formed a view on whether it intended to use the Sewel procedure in relation to that legislation.

However, there will be circumstances in which the timescale that we are talking about might be impossible to meet. Therefore, while we should state that, in most circumstances, there should be a reasonable expectation that we would receive the memorandum timeously, we should be wary about making it a requirement.

The Convener: Do members agree with the approach that has been outlined?

Members *indicated agreement.*

The Convener: We come to the section of the paper that deals with the selection of a motion for a debate. As this is a legislative process, it seems to me that that must be a matter for the Parliament as a whole to determine, even if the recommendation is not to agree to a Sewel motion. There does not need to be a debate, but I would have thought that the motion would have to be decided. I have in mind something almost like an affirmative procedure.

Mr McFee: If there were no motion, we would not be debating anything.

The Convener: That is very true. I am saying that a Sewel motion would have to be debated or at least decided by the Parliament. The motion would have to be lodged, but it would not necessarily have to be debated.

Mr McFee: Yes, some motions have not been debated. It comes down to common sense and good will among the business managers. Although some people might want to raise or hide a certain issue for various reasons, I think that we can all tell which issues are the big ones that require a bit more discussion. However, unless you are suggesting—and I am not—that we would then have some method whereby we would instruct the Parliamentary Bureau, we will simply have to leave it to the Parliamentary Bureau to exercise good judgment. I see no way round that, without taking away from the power of the Parliamentary Bureau.

The Convener: Obviously, an Executive Sewel motion that would have to be agreed to by the Parliament would have to be taken by the Parliament, but it might be that, if a member lodged a Sewel motion, the Parliamentary Bureau might think that the issue would not need to be considered because the motion would not need to be agreed to.

My feeling is that the only people who are in a position to make a decision on the legislative process that we are talking about are the members of the Parliament.

Mr McFee: With respect, I have to say that the Parliament decides the timetable.

The Convener: The issue is not about timetabling; it is about whether a Sewel motion that is lodged must be taken by the Parliament. As I said, if it were, it would not necessarily need to be debated. The Parliamentary Bureau need not select a member's motion, but Sewel motions might be a special category that would have to be considered, just as affirmative motions and so on have to be.

Mr McFee: Can you confirm that? Does not the decision of the Parliamentary Bureau relate to the timing—

The Convener: No. The bureau selects the business for debate and its decision is approved, or not, by the Parliament.

Mr McFee: I suppose that, in a back-door way, you could say that the Parliament decides—

Karen Gillon: The Parliament could amend the business motion to include the motion that had been lodged. Am I right in saying that there would be nothing to prevent the Parliament from lodging a motion to amend the business motion?

The Convener: I suppose that, technically, that is correct.

Andrew Mylne: In general terms, a great many motions that are lodged are never taken by the Parliament; they are merely printed in the *Business Bulletin*. However, in the standing orders, there are special categories of motions that must be taken at some point if they are lodged. We are simply discussing whether Sewel motions should be one such category.

Karen Gillon: It depends whether that would mean the process being used to make mischief if there were Governments of different parties in Westminster and Edinburgh. Such motions might become regular occurrences in that circumstance.

The Convener: I do not see that as a major problem, provided that the Parliament is not required to debate each Sewel motion.

If someone lodged a motion to make mischief but there was no debate, it would not do them much good. There would just be a vote. It strikes me that it would be rather strange to have a legislative process in which the bureau, and not the Parliament, decided whether the motion would be voted on. [*Interruption.*]

11:05

Meeting suspended.

11:07

On resuming—

The Convener: I apologise for that interruption, which was caused by a static problem with one of the microphones.

We were discussing whether all Sewel motions should be taken in the chamber, albeit that they may or may not be subject to debate.

Richard Baker (North East Scotland) (Lab): I apologise for having to leave the meeting early.

I am slightly sceptical about the matter and I require a bit more persuasion. Other motions that are lodged by members are not automatically debated. I do not understand why Sewel motions that are lodged by members should have a different status. My gut feeling is that, if such a motion is lodged on a substantive issue that is worthy of consideration, the bureau would find time for a debate on it—presumably, that would be negotiated by the bureau. I remain to be convinced about the proposal.

Mr McFee: Far be it from me to suggest that it should be made easier for members to Sewel matters in the Parliament, but the problem is that Sewel motions that were lodged by members would have a different status; Executive Sewel motions would be timetabled, but a back bencher or other member who wished to lodge a Sewel motion would not have the right to have a vote on it, let alone a debate. There would be an inconsistency in the legislative process, in that whether there was a vote on a particular motion would depend on who had lodged it.

A few things need to be balanced. I do not advocate that more items should be Sewelled than at present, but on reflection, and in the interest of equality of status, members should have the right to have the motion voted on, even if it is not debated.

Karen Gillon: I am not convinced that there should not be a debate. A motion would have to go through the process, regardless of who had lodged it. It would have to be debated and discussed at committee. If a Sewel motion went through that process, ultimately it would have to be decided on by the Parliament in the same way as any other motion. Logically, I think that I am going further than the proposal in the paper. A member's Sewel motion should not just be noted and voted on. It would have to go through the same process as any other Sewel motion, so if there is a requirement for a debate, there should be a debate in the chamber.

The Convener: My gut instinct is that a member's Sewel motion should be similar to an affirmative motion, in that it should require the approval of the Parliament.

Karen Gillon: Does the Parliament approve a Sewel proposal before it goes to a committee?

The Convener: No. The committee considers the proposal first. It can then make a report on it, although it does not have to do so.

Mr McFee: If a member lodged a Sewel motion, it would have to go to committee anyway, so it is illogical to say that there would be no vote at the end of the process.

The Convener: Have we come round to the view that Sewel motions—or whatever they will be called—should automatically be lodged but need not be subject to debate?

Karen Gillon: We need to clarify whether every Sewel motion that is lodged will have to go to committee.

Richard Baker: Yes. That is the key.

Karen Gillon: If we agree that every Sewel motion has to go to committee, regardless of who lodges it and its chance of success, we might significantly increase the workload of committees. It depends on the number of motions that are lodged by members.

The Convener: I am not sure that that would be the case.

Karen Gillon: Can we take out that part, given that we have enough time?

The Convener: We might increase committees' workloads, but in reality it will be unusual for Sewel motions to come from non-Executive sources.

Andrew Mylne: In the process that we outline in the paper, the formal scrutiny of a Sewel proposal is kicked off by a memorandum. The memorandum goes to the committee and it forms the focus of committee consideration. The motion would come later and it would be for the Parliament to consider in the chamber. The motion would not be considered by the committee, although we envisage that a draft motion would be included in the memorandum. The motion would be lodged at a later stage in the process and it would be taken in the chamber.

The question is simply whether the procedure, as the committee proposes to formalise it, will make it necessary for the Parliament to make a decision in the chamber on any motion that is lodged. It is not a question of the motion going to the committee; committee consideration of the memorandum will already have taken place. Does that clarify the matter?

Mr McGrigor: If a committee decided that a memorandum was not worth the paper that it was written on, would the thing be stopped at that point?

The Convener: The committee would issue a report. If no motion was lodged, the matter would not have to go to the chamber. If a motion was lodged, either by the Executive or by a member, it would have to go to the chamber and the Parliament would decide on it. That is my suggestion.

Andrew Mylne: The other point that we tried to take into account in drafting the paper is that at least some Sewel motions are on relatively minor

and uncontroversial matters. There needs to be enough flexibility to ensure that, although there is a process under which such matters are scrutinised, that process is not necessarily time consuming. It may be that committee consideration of such matters would be quite short, and it may be that everybody would be happy for the motion to be decided on in the chamber without a debate.

Karen Gillon: I would like some more information, during the summer, on what extra work the proposal might give committees. We are changing the system by allowing all members to lodge Sewel motions, and by doing that we might increase the number of motions.

As a matter of courtesy, the Parliament should have the ability to consider the committee's report, whether there is a debate in the chamber or just a vote.

Mr McFee: Am I right in saying that, under the present standing orders, any member can lodge a Sewel motion and the issue would go to committee?

11:15

The Convener: There is no provision in the standing orders for that.

Mr McFee: This is where the change in the memorandum becomes important.

The Convener: We are formalising an informal process. At present, when a motion goes to committee, the process is informal.

Mr McFee: How long is a piece of string? How many motions are we talking about? It would be a bit ironic if the committee, having been asked to consider the criticism that there are too many Sewel motions, ended up producing a report that proposed increasing the number. I do not think that that will happen, but you never know.

The Convener: To some extent, the number of Sewel motions is outwith our control because it depends on what happens at Westminster. We are trying to build in the exception. The normal route through the Executive-Government agreement will not change as a result of the change in our standing orders. Most of the debate is about the exceptional route, which may never occur.

Andrew Mylne: On committee scrutiny and the amount of work that will be involved, I have worked on the assumption in our preparatory work that it would be left very much up to committees—as with other items of business that are referred to them, such as petitions and statutory instruments—to decide how much work they wanted to do in a particular instance. In some cases, committees can decide quickly and easily that there is very little substance to the item, and that they will not spend a lot of time on it; in other cases, if they wish to do so, they can conduct a full inquiry, take evidence and produce large reports. It is simply a matter of those items being put in front of a committee and it being allowed to make those decisions. It is difficult to gauge in general terms how committees would go about exercising that discretion.

Karen Gillon: If we gave every Sewel motion the right to be debated in the chamber, I imagine that a committee would take that position fairly seriously. It is slightly different from dealing with a petition or an investigation. If we change the rules to say that every Sewel motion that is lodged must be decided on by the Parliament, I imagine that any committee to which such a motion is referred will take its inquiry seriously so that it can provide a report on which the Parliament can base its decision. We should be conscious that if we change the process at one end, there will be an effect on what happens at the other end.

The Convener: Andrew Mylne could draw up the draft report on the basis that the motions would be automatically determined by the Parliament. Once we have seen the draft report, we can decide whether we wish to accept that.

The final section concerns legislation without consent. What happens in the event of something happening outwith the norm is an exceptions issue. Are we content with what is proposed?

Mr McFee: What is proposed? In effect, there is no change, is there?

The Convener: The section just says that if something happened—if, for example, a Westminster bill was amended at the last possible stage—the Executive still has the responsibility to lodge a memorandum to alert the committee to that change. There is not much that the committee can do about it, but it may wish to propose to reverse the legislation.

The section just formalises the requirement. Are members content with that?

Mr McFee: I do not know whether we could be described as content with it, but in the absence of any other possibility—

The Convener: You are content with the proposal.

If there are no further comments on the outline of draft rules, which are there just for information at this stage, we move to the renaming of Sewel motions, which we discussed at our previous meeting. Three options are suggested: the first is the status quo, which, in the light of the way in which we have been referring to Sewel motions throughout today's debate, may be the only realistic one; the second is to refer to Sewel

motions as chapter numbers; and the third, which has some merit, is to call Sewel motions legislative consent motions. The third option seems to me to be a way forward.

Mr McGrigor: I cannot see any reason for changing the name.

Mr McFee: Neither can I. We could clarify it, and say that the motions are Sewel consent motions. That would be option 4. They are known as Sewel motions. Change the name if you want, but given that the inquiry came about because it was felt that Sewel motions were being overused, it would look bad if our method of addressing the problem and making it go away was no longer to call them Sewel motions. That would look ridiculous.

Karen Gillon: After our previous meeting, and our lengthy public discussion about the new processes and the changes that we are putting in place, the only part that was commented on by the press, which is so concerned about the use of Sewel motions, was the proposal to change the name. I found that somewhat bizarre. Clearly, the press is not prepared to look behind the substance of what we are suggesting and the changes that we are proposing. That sums up the debate.

I am drawn towards the term "legislative consent motions" because that is what they are. We are giving our consent for Westminster to legislate. The name is clear and simple, and people will know what it means. Lord Sewel himself said that we have moved away from the Sewel convention. We have added new things to it and we have given ministers new powers, which Sewel said that he did not want to be considered and which were not part of his proposal. We therefore no longer have the Sewel process as he proposed it. We have a new process and we should call it something new. We should make the name something that people in Scotland will understand. The motions are about giving our consent for legislation, which is why I support option 3.

Mark Ballard: I apologise for leaving the meeting, but I had bureau business that I could not get away from.

I agree with Karen Gillon. The term "Sewel motion" is parliamentary jargon and is inherently opaque. With the term "legislative consent", we would have a better chance of explaining to people what the motions are. We are coming up with new rules; we ought to mark that by giving the process a new name. If we used the term "chapter 9B", for example, that would make it certain that the motions would still be called Sewel motions. We have to come up with a more descriptive name. Legislative consent seems to say what the motion does.

The Convener: My inclination is for option 3, but there is no overall agreement on that. What the press decides to call Sewel motions is up to the press, but the Parliament should have a clearly defined term for them that is not based on somebody's name. That is my view on the matter, but we may have to agree to differ. We can make a proposal at the draft report stage and vote on it then.

Mr McFee: I want to register my dissent to the proposal to change the name. We cannot change what something is simply by changing its name, as I am sure that the Post Office would tell us.

The Convener: We are formalising a convention that was previously informal; we should, therefore, give it a formal name.

Karen Gillon: If all that we were doing was rebranding something, what would be the point of the committee? What would be the point of our report? We are not rebranding something; we are doing something different. There will be a new process, which, whether we like it or not, will have standing orders attached to it. If the memorandum is meaningless, why do we have it? If the standing orders are meaningless, why do we have them? We have changed what we are doing because the Parliament has demanded that we do that. If the committee is simply rebranding, we should hang our heads in shame.

Mr McFee: In essence, we are formalising the process by which the Parliament gives consent to Westminster to legislate on matters that are within the competence of the Scottish Parliament. That in no way changes what has been happening over the past five or six years. That is exactly what the original concept of the Sewel motion did, and it is exactly what will happen from now on. We should not kid ourselves. We are tidying up some of the issues around the Sewel convention. We are making the process more formal. I think that we are improving the process—I take that point—but the end result is exactly the same.

Mark Ballard: We are discussing how the Parliament gives legislative consent. Therefore, we will end up with a process that is about the Parliament giving legislative consent. The inquiry was not about whether the Parliament gives legislative consent; it was about what the process for that should be. This discussion is about whether the process is the same as the one that Lord Sewel envisaged back in 1998 or 1997, or whether it should offer a new way of doing the same thing. We should give the process a new name, because we now have a new way of doing the same thing. We should give it a name that clarifies the process.

Mr McGrigor: If a bridge with a single-track road is widened, we do not change the name of the bridge. I have never heard anything so ridiculous as to rename something just to make it more—

Mark Ballard: Jamie McGrigor has obviously never driven on the A1(M), which had its name changed the moment that it was given motorway status.

Mr McFee: It still takes people to the same place.

Mark Ballard: But it has a different name. It is now the A1(M).

The Convener: With respect—

Mr McGrigor: Everybody knows what a Sewel motion is.

Karen Gillon: No, they do not.

The Convener: They do not know what it is. That is part of the problem.

It is obvious that we will not reach consensus on the matter. The majority of members would like to see a name being introduced—technically, the process does not at present have a name. This is about putting something in standing orders, so that it can be referred to. I suggest that the process should have a name, and that that name should be "legislative consent motions".

Mr McGrigor: How boring.

The Convener: I think that that is the sensible way forward. That is not the view of all committee members, but it is the view of the majority of those who are present. That will go into our draft report, which will present an opportunity for members to propose alternatives.

Parliamentary Time

11:27

The Convener: Let us move on to agenda item 3. I am sorry—it is item 2. Heavens—we have only dealt with one item so far. Item 2 is on our next major inquiry. If you thought that our Sewel convention inquiry was fun, you will find this one even more exciting: a review of the parliamentary timetable. Paper PR/S2/05/9/3 was drawn up following our discussions at our recent away day. I seek agreement on the proposals in the paper, particularly on whether to send a call for evidence directly to any of the organisations that are listed or, indeed, to any others.

Essentially, we decided at the away day that, on research and advisers, we should work in-house. We need to consider whether we wish to consult MSPs, by a questionnaire or otherwise, either at this stage or at some future stage. Finally, members should indicate what visits we might wish to undertake, so that we can submit the appropriate bid.

Karen Gillon: I accept that the list of proposed witnesses in the paper is a "starting point", but it is a small starting point—a very short list of the usual suspects. The Scottish Council for Voluntary Organisations and the Scottish Civic Forum are mentioned, but many more people and organisations are affected by the timetable for legislation and the parliamentary week. We need to go much wider.

The Convener: I should clarify that the list of organisations in paragraph 3 of the paper is not intended to be a list of witnesses to present oral evidence; it is intended to be a list of organisations that will be sent individual requests for evidence, rather than being expected simply to respond to the general call for evidence.

Karen Gillon: I know that, but why the SCVO and not the Scottish Trades Union Congress, for example? Why the Scottish Civic Forum and not the Confederation of British Industry?

The Convener: The list is not meant to be comprehensive; it is a "starting point". If members wish to add other organisations that could be sent individual requests for evidence, I ask them to make their suggestions now or to pass on the organisations' names to the clerks. Karen Gillon has wisely suggested the STUC and the CBI.

Karen Gillon: And the Federation of Small Businesses.

The Convener: Are there any other suggestions of organisations that might benefit from being sent specific requests?

Mr McFee: I am not sure that it would be helpful for us to sit here and go through all the organisations. I was not at the away day, so I was not privy to the earlier discussions—I am perhaps happy about that. If members think that we should write to particular organisations, they can make suggestions to the clerk. We will not get an exhaustive list, but I would not want us to take evidence—particularly oral evidence—for the sake of taking evidence; we should not do so just to be seen to be balanced or to satisfy some other agenda.

We need to be practical in the evidence that we take. Some organisations may think that the Parliament should be sitting for much longer. Others—I can think of one or two along the lines that Karen Gillon suggested—might like us to reduce our number of meetings to about one a year. There will be different views, but our inquiry must concentrate on how we manage our business, as opposed to whether organisations think that there should be a Scottish Parliament or what its powers should be.

11:30

Mark Ballard: I wonder whether we need an initial call for evidence from MSPs, the Presiding Officer and the parliamentary authorities. We could then come up with proposals on which to consult more widely and ask for responses from groups such as the Convention of Scottish Local Authorities, the SCVO and the Scottish Civic Forum. Looking at the draft call for evidence before us, I am not sure what the FSB, for example, would do with it. The paper contains open questions on how we manage our time, but I think that it would be better to come up with specific proposals on which to consult such organisations, following discussion with MSPs and the parliamentary authorities.

The Convener: In this inquiry, I envisage having a first phase, in which we will consider the information that we have received from the various bodies from which we seek evidence, followed by a more focused consultation on some draft proposals. I do not think that those two things are mutually exclusive. I do not think that we should have a closed start to the inquiry; we should allow anyone who wishes to make comments to do so. That will bring us a wide range of ideas and suggestions and perhaps some fresh thinking on the matter, which might not come from within the Parliament.

Karen Gillon: I will probably contradict myself now, having just given a list of further organisations to consult. There is a danger that, if we write to some people but not others, we might miss out people whose opinions should be considered. We must be careful about why and on what basis we are consulting people, as well as why we are not directly asking other organisations to give evidence. We must either have a clear rationale as to whom we are asking and why, or we should not ask any organisation specifically and instead issue a general call for evidence.

I am not sure whether we should adopt the first of those two options. I do not know why some groups should be asked rather than others. If we start asking some groups questions, we have to be clear about why we are consulting those groups in particular. We must also be clear about what it is we are asking them. I am relaxed about the idea of a general call for evidence. I am not sure about asking specific organisations or about the suggestion to ask people with expertise. We have had bad experiences with that in the past.

Mr McGrigor: We should bear in mind the hoo-hah that we had over the timing of question time. The television and radio media felt that they had not been properly consulted on the matter. If we are discussing matters of parliamentary time, I think that it would at least be worth finding out the media's views—although I am not saying that we should necessarily be influenced by them. The media are, after all, responsible for putting us out to a bigger audience, so it is important that their views be taken on board in such an inquiry.

The Convener: I disagree with the notion that we did not consult the broadcast media about the timing of question time. We might not have agreed with them, but we did consult them.

Mr McFee: They did not agree among themselves.

The Convener: You are right: some parts of the broadcast media had some views and other parts had other views.

Mr McGrigor: There are also the parliamentary media services.

The Convener: At this stage, the question is whether we want simply to put out a general call for evidence or whether, additionally, we should specify certain organisations and individuals who may have a particular interest. Mark Ballard is suggesting that, in addition to the general call for evidence, we concentrate on the parliamentary authorities rather than wider organisations. That might be the best way forward at this stage; other organisations, including the broadcast media and the written media, will be covered under the general call for evidence. We should write specifically to the parliamentary authorities and to the parties represented in the Parliament at this stage. Do members agree with that suggestion?

Members *indicated agreement*.

The Convener: There is a suggestion in paragraph 4 of the paper that we should invite the

views of the people who were members of the consultative steering group. At this stage, should we treat those people as members of the general public?

Members *indicated agreement*.

Mr McGrigor: Who were the members of the consultative steering group?

Karen Gillon: They were not from your party or Bruce McFee's.

Mr McFee: That is why we cannot remember; we were not on the group.

Karen Gillon: The members of the group were obviously good people; we should consult them.

The Convener: We have agreed on the general call for evidence. Do members want to comment on the draft call for evidence in annex A to the paper?

Karen Gillon: It is sufficiently broad—

The Convener: If members are content with the draft call—

Karen Gillon: Must we stipulate that submissions should not exceed six pages of A4? Could we ask respondents to make their points more succinctly and condense their comments to four pages? We might end up with a heck of a lot of evidence if we get six pages from everyone.

Mr McFee: The font size might be 26, of course.

Karen Gillon: If someone had a visual impairment, we would take due account of that, but four pages of standard size 12 Times Roman font—or whatever it is called—should be sufficient.

Mark Ballard: Double-sided or single-sided paper?

Karen Gillon: Double-sided paper. Two pages altogether.

The Convener: Does that include graphs? I take the point. We can stipulate that submissions should not exceed four pages.

Mr McFee: I did not think that there was a requirement to produce six pages.

The Convener: No, the suggestion was for the maximum length of submissions.

Are members content with paragraphs 6 to 9?

Members *indicated agreement*.

Mark Ballard: On paragraph 10, the consultation should take the form of a general call for ideas, rather than a questionnaire to members.

The Convener: I agree. Does the committee agree that we should not draw up a questionnaire for members until we have specific points on which to consult them? Members will have an opportunity to put their views in response to our general call for evidence and we might consult them later through a questionnaire on specific options.

Members *indicated agreement*.

The Convener: No doubt members of the media will be most interested in paragraph 11, on proposed visits to other Parliaments. The information in annexes B and C includes comparative data on other Parliaments and it is suggested that two members and a clerk visit three Parliaments. If we go to Helsinki, we have the option of taking the boat to Tallinn, so we could visit two Parliaments almost for the price of one. Do members have preferences about the visit that they would like to undertake?

Karen Gillon: Five Parliaments are listed in annex C. Two times five equals 10, but this committee has only seven members.

The Convener: It is not proposed that we visit all five Parliaments. For example, we have a choice between Helsinki and Oslo, so annex C shows the comparative costs. The intention is to go to the Catalan Parliament, either Brussels or Strasbourg and either Helsinki or Oslo.

Mr McFee: We can debate where to go, but if we decide to go to Oslo, should we take direct flights from Scotland? The Ryanair flight from Prestwick goes to a place just outside Oslo. I hate the idea that we must always connect through London or Manchester.

The Convener: The fares shown are indicative.

Mr McFee: The Ryanair flights are a lot cheaper than £643.80.

The Convener: The figures are indicative and are for illustrative purposes only. The intention is to source the cheapest and most direct flights wherever possible. I propose that we choose, as our three preferred options, Catalonia, Strasbourg and Helsinki.

Mr McGrigor: What happened to Queensland?

The Convener: The suggestion for a visit to the European Parliament was that we might wish to compare committee weeks and plenary weeks.

Mr McFee: The European Parliament sits only for a week every month. It is not fully operational.

The Convener: There is a specific issue about plenary sittings. People may prefer to go to Brussels.

Mr McFee: We just need to watch the timing. That is all that I am saying.

Mr McGrigor: It sits one week every month, I think.

Mr McFee: Yes.

The Convener: Plenary and committee are completely different processes in the European Parliament.

Mr McGrigor: No one from this Parliament has ever been to Strasbourg, as far as I am aware.

The Convener: Do members agree to those three destinations?

Members *indicated agreement*.

The Convener: The other question is about the timing for the visits. I would have thought that it was preferable to do them as part of the first phase of the report, before we get specific proposals.

Karen Gillon: Before November, I think.

The Convener: October or November is probably the right time to go.

Mr McGrigor: Does Finland not get sort of iced up?

Mr McFee: That happens to be a part of the world that I know pretty well. The 100-minute journey ends at the end of October, when the fast boats stop because of the ice, which tends to rip the fibreglass out of the hull.

Karen Gillon: Bags I not go to Helsinki.

The Convener: Do members have particular preferences for which visits they would like to make? We cannot all go to Catalonia, I am afraid.

Mr McGrigor: We are not all going to each one, then.

The Convener: The intention is that two of us should go on each visit.

Mr McGrigor: So we would get one visit each.

The Convener: Essentially, yes. Are members content with that proposal? We can agree the details later. We have to make a bid to the Conveners Group for support, so we will not have a decision until September.

Mr McGrigor: Do you want our preferences now?

The Convener: You can indicate your preference to the clerk at some point.

Karen Gillon: With a justification on no more than four pages of A4.

The Convener: Do members agree to that course of action?

Members *indicated agreement*.

Public Petitions (Admissibility and Closure)

11:43

The Convener: Item 3 concerns remaining issues on the admissibility and closure of public petitions. There have been further discussions with the clerk and the convener of the Public Petitions Committee about the discussions that we had at our previous meeting. I am generally content with the overall approach that we made, but Mr McMahon was keen to retain the requested new criterion of admissibility to deal with repeat petitions. Do members have any views on the issue?

Karen Gillon: I support the Public Petitions Committee in that view.

Mr McFee: The fourth paragraph on the last page of the letter from Michael McMahon refers to paragraph 25 of a paper that was circulated previously but which, unfortunately, I do not have with me. Michael McMahon states:

"However, I am not of the view that there is a need to state explicitly any specific reason for closing a petition."

My view is that there should be a requirement to state explicitly the reason for closing a petition, given that in effect—and I understand our reason for doing this—we are taking away the requirement for the Public Petitions Committee to examine every petition that comes before it. In some cases, that would be done for good reasons, because repeat petitioners slow the process down for everybody else. However, if a committee is to be allowed to close a petition simply because the petition is on an issue that has continually appeared on its agenda, it is right that the committee should say why it has closed the petition. That is only reasonable. If the reason is that the petition is the 23rd such petition to appear on the agenda, so be it. However, we should not depart too far from the principle that was adopted at the outset, which is that the Public Petitions Committee should hear every petition. If we close a petition, we should say why we have done so. That is not a particularly onerous task.

I am reasonably relaxed about which way the committee should go on the other issues. However, when the Parliament takes an action to restrict somebody's right to do something, it should explain why it has done so.

The Convener: Do members agree with the reasonable point that Bruce McFee has made? Do they also agree that we should introduce the requested rule change? The new criteria will be slightly tighter than those that were originally requested.

Members *indicated agreement*.

The Convener: The report also raises a couple of additional minor issues. Are members content with the recommendations on petitions in other languages? The recommendations will mean that the whole petition need not be translated if it becomes apparent early on that the petition is not competent.

Mr McFee: Am I right in thinking—I read that part of the paper only once, so I am not sure—that the concern about the current wording on petitions in languages other than English is not so much that it entails translation costs but that it requires the Public Petitions Committee to consider every such petition, whereas the committee will not be required to consider every petition that is made in English? Was that the thrust of the argument?

The Convener: Yes.

The other recommendation is that we should clarify that the Public Petitions Committee does not need to produce a report on every petition. That simply reflects current practice.

Are members content with those two recommendations?

Members *indicated agreement*.

Crown Appointees

11:47

The Convener: Agenda item 4 is about the reappointment of Crown appointees and related issues. The Scottish Parliamentary Corporate Body requested that we consider how the Parliament handles Crown appointments—which, essentially, are made on a recommendation of the Parliament—when it is recommended that the existing office-holder continues for a second term in office or, exceptionally, for a third. Are members content with the recommendations in the report? It all seems fairly straightforward. Do members have any questions?

Mr McFee: The paper asks us only to take a preliminary view anyway.

Karen Gillon: I would like further information on the circumstances in which it is envisaged that people would be reappointed for a third term. The paper states:

"re-appointment for a third term is competent only if, by reason of special circumstances, such re-appointment is desirable in the public interest".

What does that mean?

The Convener: The question is whether standing orders could define special circumstances. That would not necessarily be appropriate. If the legislation that set up the post does not define what special circumstances are, why should we do so in standing orders?

Mr McFee: The recommendation in paragraph 33(c) invites members to

"indicate whether they wish to take oral evidence".

The issue that Karen Gillon has raised could be covered in oral evidence—assuming that we decide to take oral evidence.

The Convener: I was going to come on to that in a moment.

Mr McFee: Of course, our preliminary view could change after evidence has been led.

The Convener: Absolutely. Do members have any other comments on the reappointment of Crown appointees before we take evidence?

Mark Ballard: Out of interest, are there issues other than the removal of Crown appointees on which statutory provision requires the agreement of a certain number of members? Is that true of anything else in the Scottish Parliament? I was surprised to see that such motions must be agreed to by two thirds of the total number of MSPs.

The Convener: That applies to particular posts, such as that of the Scottish information

commissioner. The provisions are there to protect those appointees' independence and to prevent political interference. That is why there is such a high threshold. I am not sure whether any other appointees are covered by that.

Andrew Mylne: There are a number of statutory provisions, as well as provisions in standing orders that are not backed up by statutory provisions, where a specific threshold is required, rather than just a simple majority—either an absolute majority or a higher threshold of the sort that is described in the paper. However, the default position for most decisions that are taken by the Parliament is a simple majority.

Karen Gillon: The provisions are designed to prevent a party with a majority in the Parliament from controlling who holds all the relevant posts.

The Convener: Those issues will be clarified when we consider the matter in more detail at subsequent meetings.

Are members content with the proposal on the directions given to the Scottish public services ombudsman on her annual report? There are a couple of options. For example, directions could come from the Scottish Parliamentary Corporate Body or from a parliamentary committee. Are members content that we take evidence on those options?

Mr McFee: As I said earlier, we are taking a preliminary view, presumably subject to what comes up in the oral evidence. I am not quite sure what that preliminary view does, but I presume that we will take a decision to hear some evidence and have a short inquiry, which will firm up—or otherwise—members' views. I do not think that it is necessarily helpful to deliberate on what our preliminary view is, however.

The Convener: Recommendation (c) is for members to

"indicate whether they wish to take oral evidence during this inquiry and, if so, from whom."

I would have thought that it would be appropriate to take oral evidence from the SPCB, which is responsible for such matters. The question would then be whether we wish to take evidence from one or other of the commissioners and from the Scottish public services ombudsman in relation to her annual report. However, it might be inappropriate to take evidence from commissioners on the issue of reappointment, given that they are the people who would be reappointed.

Karen Gillon: It is sensible to take evidence from the ombudsman in relation to her report and the practicalities for her and her office, but it would be totally inappropriate to take evidence from the commissioners, given that we are talking about their terms of employment. We must consider the matter in an impartial way.

The Convener: Do any members feel that we should be taking evidence from anyone else on the reappointments issue?

Mr McFee: I am not sure how we get extra evidence on that. I understand Karen Gillon's point, but I am not sure about what the other options would be. There are potential vested interests to consider.

The Convener: There might be some similar postings at Westminster. It could be useful to find out how the situation has been handled in other jurisdictions.

Mr McFee: What about ex-Crown appointees?

The Convener: We do not have any yet in Scotland.

Mr McFee: Or from anywhere.

Mark Ballard: We could try out the removal procedures.

The Convener: It might be worth checking whether there are any similar provisions relating to the equivalent appointments in the other jurisdiction. That could be sought in written or, perhaps, oral evidence. Are members content with that?

Members *indicated agreement.*

Items in Private

11:53

The Convener: Do members agree that we adopt our standard practice and consider our draft reports on the Sewel convention and on public petitions in private? That would be in accordance with the normal procedure of the committee.

Karen Gillon: I believe that we should consider draft reports in private. However, given the fact that we have already had our discussion on the matter in public and everybody knows what we are going to do, I wonder what the point would be of doing that on this occasion. However, if you think that taking those items in private would be in the interests of the committee, I can be persuaded. We have had all our discussion in public and the *Official Report* is there for the reading.

Mr McGrigor: Are you talking about our draft report on the Sewel convention?

Karen Gillon: I am talking about our reports both on the Sewel convention and on petitions. We have just had our discussion in public, and the papers on the matter are all public. I have noted my concerns about doing it this way in the past. There is some difficulty in then having a private discussion on a report, but we are where we are.

The Convener: We will still have to make some decisions on the draft report. The principle of having the discussion in private is that the report remains a private report and cannot be subject to the press, for example, saying that the committee has determined X when we have not made a decision on the matter. It is about protecting the report, so that only the final version is published. That is the main reason for dealing with the matter in private.

Mr McFee: I am relaxed about the matter. As Karen Gillon says, the main arguments are out there, so it does not make a blind bit of difference.

Mr McGrigor: I agree. I do not see the point in keeping the discussion private, but it is up to the convener.

The Convener: It is up to the committee. If it were up to me, I would not have to bring the matter to the committee.

Karen Gillon: This raises some issues. In the past, committees that I have been on have taken in private all the decisions on how a report would be framed. However, it will be impossible for you to mount a leak inquiry should the *Sunday Herald* or any other newspaper decide to run a story on the Sunday ahead of the report's publication on the Monday, as nobody could say anything other than that the newspaper got the information from the *Official Report*. Discussing the report in private will not prevent publication ahead of the report, but I understand the point that you are making and, perhaps for the sanctity of the process, I think that we should meet in private.

Mark Ballard: There are two issues. One is to have items in private so that we can have the discussions in private. The second is to have items in private so that we can clarify that the report accurately mirrors our discussions and we do not have debates like the one that I seem to have been spared most of about the interpretation of particular paragraphs.

Karen Gillon: You can read it.

Mark Ballard: I will do. I look forward to doing so.

I can see the validity of having a discussion in private if it means that we can clarify that what we all agree on matches what is set down in draft standing order proposals.

The Convener: That is the primary purpose of discussing the report in private. We can agree that the report that is before is and is published is what we think it is.

Mr McFee: I cannot envisage anybody storming the barricades to get into the great discussion—I think that it would be a big yawn for many people.

The Convener: I am sure that it would be. Can we agree to take the items in private?

Members *indicated agreement*.

The Convener: That concludes today's business.

As I said at the start of the meeting, this is likely to be Mark Ballard's last meeting as a member of the Procedures Committee. I am sure that committee members wish to put on record their appreciation of his contribution to the committee over the past two years and wish him every success wherever he moves on to.

Mark Ballard: It is the Finance Committee.

The Convener: That concludes the meeting. I wish everyone a long and restful recess. We meet again on 13 September.

Meeting closed at 11:58.

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