PROCEDURES COMMITTEE

Tuesday 24 January 2006

Session 2

£5.00

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

CONTENTS

Tuesday 24 January 2006

PROCEDURES COMMITTEE
2nd Meeting 2006, Session 2

CONVENER

*Donald Gorrie (Central Scotland) (LD)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
Chris Ballance (South of Scotland) (Green)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Mr Bruce McFee (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Murdo Fraser (Mid Scotland and Fife) (Con)
Robin Harper (Lothians) (Green)
Tricia Marwick (Mid Scotland and Fife) (SNP)
Irene Oldfather (Cunninghame South) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Patrick Harvie (Glasgow) (Green)
Margo MacDonald (Lothians) (Ind)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Jane McEwan

ASSISTANT CLERK

Jonathan Elliott

LOCATION

Committee Room 6

Scottish Parliament

Procedures Committee

Tuesday 24 January 2006

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

The Convener (Donald Gorrie): As our non-committee colleagues are not here yet, I suggest that we change the order in which we take items on the agenda.

First, however, I point out that members have received a piece of paper that describes changes to the committee's support structure. Andrew Mylne will have a month off because his wife is having a baby. He will be replaced temporarily by Jennifer Smart, who is the clerk to the Standards and Public Appointments Committee. Jane McEwan is moving on to the very important position of senior private secretary in the Presiding Officer's office, giving us a friend at court. We thank Jane for her contribution to the committee's work and wish her good luck in her new position. She will be replaced by Mary Dinsdale, who is here today.

Members may have been expecting to interview somebody from the Scottish Parliamentary Corporate Body. That hope emerged at our previous meeting. We have conveyed our concerns in writing and orally to the SPCB, but we have not yet received an official reply as to whether it will give us oral or written evidence. We will pursue that, and I hope that we can bring issues on Crown appointments to a close at the next meeting.

Mr Bruce McFee (West of Scotland) (SNP): Did we not ask for oral evidence? My reading of the minutes of the last meeting is that the committee did not think that those matters could be resolved by exchanging bits of paper. An invitation to appear, as opposed to an invitation to engage in correspondence, is on offer.

The Convener: That is correct. Although it is open to the SPCB to say, "Sorry, we do not want to appear before the committee, but here is our view," it has definitely been invited to appear. I took the opportunity to speak informally to a member of the SPCB and an official to explain what we are on about, so they are slightly clearer about that.

Is it agreed to move to item 2 while we wait for our colleagues?

Members *indicated agreement*.

Motions and Decisions (Proposed Changes to Standing Orders)

10:21

The Convener: Item 2 is about motions and decisions. The clerk has written a note that outlines some tidying up of minor aspects of standing orders. If we agree that there should be changes to standing orders, he will produce a more formal document that sets out the proposed changes and the reasons for them. At the moment, we are just agreeing to the idea behind the proposed changes.

Let us go through the clerk's note bit by bit. The first item is on the admissibility of motions.

Mr McFee: I am sorry to interrupt, but will you clarify what you are asking us to do? Are you asking us to approve the actual changes, or the concept of the changes? Is there another stage in between?

The Convener: Once we have agreed the concept of the changes—that was the correct phrase to use—a formal report will be produced. At the moment, we are agreeing—or not—that the clerk can pursue the half dozen or so suggestions in the paper.

The clerk to either a committee or the Parliament may refuse to accept a motion if he or she does not think that it is within the rules. In practice, any dispute is taken to the Presiding Officer, but it seems reasonably sensible to insert into standing orders that the Presiding Officer should determine any dispute about the admissibility of a motion. The same applies to amendments—obviously, amendments to a motion cannot hang around if the motion has been ruled inadmissible.

There seems to be no rule at all about outstanding motions. However, the practice is that every six weeks or so the Parliamentary Bureau deletes them. It seems reasonable to have a rule that covers that action properly so that the decision is not taken on a whim of the bureau.

Mr McFee: I am not convinced that practice is to remove outstanding motions after six weeks. A cursory glance at the list of current motions would prove my point. Within my parliamentary group it has been the practice for business managers to say from time to time that a certain motion has been around for a while and that, unless anyone minds, it will be cleared up. I do not recognise the six-week rule.

The Convener: Perhaps a bit of research is necessary.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I thought that a flurry of signatures on a motion that has been around for five and a half weeks could give it life again. Obviously, other members around the table are not entirely sure what the practice is, and it would be useful to find that out. However, I understood that if members signed a motion at that late stage, it could come to life again.

Andrew Mylne (Clerk): My understanding is that the majority of motions that are more than six weeks old are cleared off the list. However, the bureau has discretion. The system is ad hoc. It does not have a formal foundation, and exceptions—albeit a relatively small number—are made, particularly when a motion has a large number of supporters, which is taken into account. The system is flexible and what is suggested in the paper would not reduce the bureau's flexibility; it would simply give a foundation to what the bureau already does.

The Convener: We certainly do not want to risk knocking on the head live but elderly motions if they are still exciting a bit of interest.

Mr McFee: I wonder about the rationale of a couple of the proposed changes, particularly if we concede that the current system works reasonably well. It is in nobody's interest for old motions to lie around for ever and a day, but I do not think that that happens in practice.

Frankly, I wonder whether we need to make changes. If we were to introduce unnecessary guidelines, that might put pressure on the bureau to make certain moves. Are we proposing to ask the bureau to decide whether a motion is topical? That is suggested in paragraph 15. The other suggestion is a wee bit more prescriptive, in that it says that motions should be cleared after six weeks. I do not see the need to change the system if it works now.

Alex Johnstone (North East Scotland) (Con): My only comment is that I can see the need to clean up the list of motions regularly because motions can disappear—or we can sometimes disappear under a drift of motions. The group that might have an interest in guaranteeing that its motions lie on the list for more than six weeks are single party representatives, who might have to wait more than six weeks for time to become available for a members' business debate on their motion. Consequently, there must be a loophole so that a motion lodged by one of those members can survive until time can be allocated to debate it.

The Convener: That is a good point. Do we want to ask the clerk to provide us with a fully factual account of what happens? Would that be very difficult, Andrew?

Andrew Mylne: The paper in front of members is based on my understanding of the current situation, which I have discussed with colleagues who deal with the procedures regularly. The paper reflects the current situation.

I emphasise that all that is suggested in the paper is that the bureau be provided with a power that it may use. The suggested wording is along the lines that the Parliamentary Bureau "may remove" older motions from the list. There would be no obligation to do so on the bureau, and no expectation that all motions that are six weeks old would be removed automatically.

The paper describes the system as it operates at present—the bureau has discretion, and it is suggested that it should be given formal authority for the exercise of that discretion. However, if the committee prefers not to pursue that option, it is perfectly possible to rest with the current informal system.

The Convener: I was going to suggest that after we have considered the suggestions, we should, as a courtesy, indicate to the bureau that we are pursuing them, because they would impact on the bureau. If we write to the bureau to that effect and say that the issues have been raised, we could find out its view. We do not need to accept that view, but when the matter returns to us for further consideration, we would already know the bureau's view and could reach a conclusion. Is that all right?

Members *indicated agreement*.

The Convener: The subject of the removal of outstanding amendments goes with the removal of outstanding motions.

Next in the paper is the pre-emption of amendments. At the moment, the Presiding Officer deals with pre-emption of amendments, but the clerk thought that there was merit in specifying the matter in standing orders, as that would give him the power to do so.

10:30

Mr McFee: Is the pre-emption not created when an amendment is agreed to that says, "Alter that motion after word 4," and the next amendment, which says, "Alter that motion after word 10," falls automatically, because word 10 is no longer in the motion? That is, in effect, the existing pre-emption rule. The proposed change seems to introduce different criteria for dealing with conflicting amendments. Let us suppose that a motion says, "Let us paint all the postboxes red", and that one amendment to the motion is to paint them blue and another is to paint them green. If the amendment to paint them blue was agreed to,

could the amendment to paint them green not be debated?

The Convener: The practice is that it could not be voted on.

Mr McFee: In my example, the vote might mean only that people preferred blue to red. We are moving away from a rule under which an amendment falls to one that refers to

"conflict between the two amendments."

There is a difference between inconsistency and conflict.

Richard Baker (North East Scotland) (Lab): I read paragraph 21 of the paper as applying to amendments that would make the motion nonsensical. I do not think that the changes would impinge on possible political decisions.

Mr McFee: What are we trying to stop that is not stopped already?

The Convener: We are trying to put into standing orders what we think happens already, which is determined by the Presiding Officer rather than in accordance with standing orders.

Mr McFee: Paragraph 22 states:

"Rule 9.10.11 already provides a basis for the pre-emption of amendments to Bills ("An amendment at any Stage which would be inconsistent with a decision already taken at the same Stage shall not be taken")."

Richard Baker: In which case, we are not proposing doing anything different with motions than already happens with bills. The suggestion is perfectly good and we should proceed with it.

Mr McFee: Is it simply a way of tightening up the wording?

Richard Baker: Is it not just to introduce consistency between the procedure for amendments to bills and the procedure for amendments to motions? I do not think that there is anything sinister in it.

Mr McFee: The last sentence in paragraph 22 states:

"'An amendment which would be inconsistent with a decision already taken in relation to the same motion shall not be taken.'"

Let us say that we had two or three amendments. If the first amendment were successful, we could not vote on the other amendments. At present, they could be voted on. Going back to the question of the colour of the pillar boxes, let us say that the first amendment was to paint them blue. We are saying that because another amendment to paint them green, for which a majority might vote, was inconsistent with painting them blue, we could not vote on it.

The Convener: But the people who wanted the postboxes to be painted green would have to decide how to vote accordingly.

Mr McFee: How would they do that? If the choices were between red and blue, how would someone who wanted green express that unless they could get an amendment in favour of green heard?

The Convener: They would vote against other people's amendments.

Mr McFee: So they would vote for the motion.

The Convener: No. The vote on the motion comes last.

Mr McFee: But the amendment would be taken against the motion. The amendment is to the motion.

The Convener: People would vote either for or against the amendment. I would have thought that if one's party's amendment came third or fourth in the batting order and that party's members were keen on it, they would vote against the other amendments and in favour of their party's.

Alex Johnstone: The colour of postboxes is not a devolved matter. [*Laughter.*]

I do not want to be too light-hearted because there is a serious point: it might be argued that the Parliament has already made decisions that are contradictory and nonsensical. The discussion demonstrates that there is a certain amount of confusion and a requirement to look properly at pre-emption and the order in which motions and amendments are taken. Perhaps we should take this valuable opportunity to look slightly more closely at the issue, so that whatever we finally decide to put in the paper reflects the simplest possible explanation of what we are talking about.

Andrew Mylne: The purpose of this part of the paper is, as the convener said, to underpin formally a practice that already exists, but Bruce McFee is right to say that the wording that is used to express any such rule is important, and the intention was certainly not to impose a narrower definition of pre-emption than operates at present. Whether there is something in the rules or not, a judgment has to be made as to what the limits of pre-emption are. There will be some perfectly clear-cut cases, and Bruce McFee gave an example of such a case. If a section of wording in a motion has already been removed, an amendment relating to that wording simply cannot be meaningfully applied. The other example given was of a case in which there are alternative changes to the same wording in the motion, and in such cases it becomes more of an exercise of judgment as to whether there is a pre-emption or not.

The intention of the paper was not to alter the parameters of pre-emption, but simply to provide a formal basis for it. It may be worth looking more carefully at the exact wording that is used, and we can do that if the principle of the change is endorsed. If the committee would like, I can draft a further paper on the criteria that are currently applied when it is being decided whether something is a pre-emption or not.

The Convener: We obviously need to consider the issue further.

Mr McFee: I am not against considering it in principle; I just wonder whether we need to do so at all.

The Convener: The thrust of the paper is that there are a number of things that happen by use and wont that should happen according to standing orders. I agree with that, but you have raised some legitimate points of detail.

Mr McFee: We shall see what comes back.

The Convener: That is right.

We turn to the withdrawal of motions and amendments. The concept is that standing orders should allow a member, if they wish, to withdraw a motion after they have lodged it but before the debate takes place. At the moment, a member can officially abandon their motion or amendment only during the debate. There may be occasions when two party groups agree a compromise position and want to withdraw a motion or amendment and lodge a new one. It seems quite sensible that members should, if they want to, be able to withdraw a motion or amendment before the debate starts.

Mr McFee: Again, that sounds wonderful in principle. At present, an amendment can be withdrawn with the permission of the Parliament. Let us imagine a situation in which there are a number of competing amendments, of which only one, representing a specific viewpoint, is selected for debate. A member—or party—may decide that they do not want to continue with that amendment, but it might be that the amendment represented the viewpoint of more than one group. Under the new rule that is proposed, that motion or amendment could be withdrawn without other people being able to say, "No, we want to debate it."

Richard Baker: Then Parliament would not agree that it should be withdrawn.

Mr McFee: Aha! But the proposed change would allow them to withdraw it.

Alex Johnstone: An amendment cannot be withdrawn until it has been moved.

Mr McFee: The proposal is that it could be withdrawn before the debate.

Alex Johnstone: The situation exists in microcosm, as experienced during stage 2 and at stage 3. The usual practice is that, if a member sees an amendment in the name of another member and feels that there is a danger of its being withdrawn, they can put their name to it, which gives them the right to move it. For example, it would be perfectly possible for Bruce McFee to move an amendment in my name in the chamber if he wished to do so.

Mr McFee: Yes, but paragraph 23 of the paper says that the rules

"are silent on whether motions or amendments may be withdrawn earlier—that is, after they are lodged but before they are called by the Presiding Officer".

If we make the proposed changes, that would give a member the right to withdraw his or her amendment without asking anybody. That is the point that I am making. Members would not be able to do what Alex Johnstone has described.

Cathie Craigie: Is that what has happened in practice for the past six years?

Andrew Mylne: There is no rule about the withdrawal of motions and amendments before they are taken, but the practice is that members have been permitted to withdraw them unilaterally. All that we are suggesting is that that be given a foundation in the rules. We are not suggesting a change of practice. If members wished to consider a change of practice, that would be a bigger issue.

The Convener: To take account of Bruce McFee's point, any change could include the provision that, if the Presiding Officer thinks that the withdrawal prejudices any other member, he could then select a different amendment or ensure that no member loses their rights because of the withdrawal.

Mr McFee: I want to consider the issue further.

The Convener: Okay. That applies to a few of the suggested changes.

The final suggestion is merely a technical point on the voting threshold. If the rules are read in legalistic terms, every decision would have to go to a vote. However, the practice is that, when the Presiding Officer asks whether members agree with X and we say "Yes", we do not have a vote. The suggested change is to alter not the system, but the wording of the rules. At present, the rules could, if adopted by some cantankerous individual in a pedantic way, be used to force us to vote on everything.

Alex Johnstone: All you have to do is shout "No".

Mr McFee: I do not take that meaning from the rule. It states:

"Any decision of the Parliament shall be taken by a simple majority unless otherwise expressly stated in any enactment or in these Rules."

If the Presiding Officer puts a question to which not a single member says "No" and 100 shout "Yes", there is clearly a majority. The rules go on to define what a simple majority is. If 99 people shout "Yes", nobody shouts "No" and one member says nothing, it is assumed that all members have taken that decision and have, in effect, voted for it. Members have to shout "No" if they want to abstain.

Andrew Mylne: That is not correct. Paragraph 2 of the rule, which is quoted in the paper, defines "simple majority" in terms of members voting, which is normally done through the electronic system or by a roll-call vote. Just saying "Yes" or not saying anything could not be counted as voting.

Mr McFee: In that case, a lot of motions must have been agreed to by the Parliament that we believe have not been voted on by members.

Andrew Mylne: Yes. A large proportion of decisions are taken without division. That has always been the practice.

Mr McFee: But we agreed to the motions.

Andrew Mylne: Yes.

Mr McFee: They were agreed to without division because there was no division as nobody was opposed to them.

The Convener: The proposition in paragraph 27 is merely that we add the words "if taken by division". There is no harm in that and it would prevent people from subverting the rules.

Richard Baker: It seems sensible to me.

Mr McFee: I really wonder why we need some of the proposed changes. I understand what they are trying to do, but—

The Convener: If a procedure is not in standing orders and is done by habit, the habit could change, so it is better to have it in standing orders. That is the thrust of the proposals.

Mr McFee: Can I seek clarification? If a decision can be taken by mechanisms other than division, is it laid out how the majority is determined for all the other mechanisms?

The Convener: The mechanism that you described to us does not necessitate a division.

Mr McFee: I beg your pardon, but I was asking a different question. In paragraph 27, the suggested amendment to the rule states:

"Any decision of the Parliament shall, if taken by division, require a simple majority unless otherwise expressly stated in any enactment".

So, if a vote is determined in any other way than by a division—

10:45

The Convener: With respect, you have spent some time explaining to us that a lot of decisions are not made by division. If the Presiding Officer asks, "Is everyone in favour of X?" and members say "Yes" and nobody says "No", that is a decision of the Parliament that does not necessitate a division, as nobody has called for one.

Mr McFee: So, that is the only circumstance in which there would not be a division, if the proposed amendment to the standing orders was agreed to. There would be no other circumstances in which there would not be a division, or in which there would be some other method of determining a decision. If we are prescriptive on this point, we will have to ensure that there is no other mechanism in the rules.

Alex Johnstone: If the purpose of the report, as stated in paragraph 30 of the clerk's paper, is to formalise existing practice, I suggest that we have the report drafted and, when we consider it, we can agree that what we are doing is formalising existing practice. If there is any doubt about any part of the report, we will have the opportunity to discuss that in detail at that point.

Mr McFee: I would assume that we would do that anyway. Will the report be distributed to business managers or for some other comment outwith the committee?

The Convener: It is proposed that the matter will go to the Parliamentary Bureau as a courtesy. We will ask whether it has views on any of the issues. Those will come back to the committee with a formal report from the clerk. Is that okay?

Members *indicated agreement*.

Parliamentary Time

10:47

The Convener: I am sorry that Margo MacDonald and Patrick Harvie have been kept waiting. We thought that we could sneak in an item, but we did not allow sufficient time.

Margo MacDonald (Lothians) (Ind): I can feel my life ebbing away, convener.

Patrick Harvie (Glasgow) (Green): It has given us a fascinating insight.

Margo MacDonald: In the absence of objections, I will tell you what the Parliamentary Bureau will say: "Over to you."

The Convener: We are grateful to you for coming. A number of members signed up for the second of our sessions, but several who were hoping to come today cannot. We look forward to hearing what you have to say. We can either deal with you as a double act or we can have ladies going first—if that is allowed nowadays. If Margo has her innings first, Patrick will be allowed to intervene if he wants; then, when Margo has finished her innings, Patrick will have his innings and Margo can comment on that. Is that acceptable?

Margo MacDonald: Let us do something radical—let him go first.

The Convener: Okay. Patrick, I ask for your thoughts on any issues. We will make notes and question you as we go along, if we want clarification. Margo is also allowed to chip in and cover all the issues that you want to cover. You will be aware of the focus of the committee's inquiry, but it is open season for good suggestions on any subject.

Patrick Harvie: Thank you. I did not expect such a formal session. If I am limited to a few general points—

The Convener: No, you are not limited at all.

Patrick Harvie: Well, I may limit myself to a few general points. I am sure that you have already considered some issues, which other members will have raised, to do with the pressure of time and the speed with which legislation is pushed through, in terms of both the speaking time that is available at stage 3—an issue that Donald Gorrie has raised on several occasions—and the delay between the different stages.

As a new MSP, in the first few months after the 2003 election, I found myself thrown in at the deep end with the Antisocial Behaviour etc (Scotland) Bill. Cathie Craigie will remember that, as she was on the same committee as me. I understood the bill process to a degree only by the time I came out of the other end of it. I am hopeful that I will be returned in the next parliamentary session, and that I will not have to go through that learning curve again. For newly elected members, however, it is important that their contributions to committees' scrutiny take place at a reasonable speed that allows them to come to terms with the process, as well as the content of the legislation.

Regarding human rights scrutiny of legislation, the Scottish Parliament can pass legislation only if it is compliant with human rights law. If it is not human rights compliant, it can be struck down by the courts. That places on us a responsibility to ensure that we get it right first time, rather than allow situations to develop where a court may need to take action.

Mistakes can be made, as nearly happened with the Family Law (Scotland) Bill recently. Regardless of what members feel are the rights and wrongs of the argument on the waiting period for divorce, amendments were agreed to that affected the separation time only for marital divorce. The same did not apply to the separation time for civil partnership. If the bill had been passed in that form, it would not have been compliant with human rights legislation. At stage 3, the Executive moved amendments to return the separation periods to their original levels. It also had to lodge amendments to increase the civil partnership dissolution time, so that if the first argument was lost there was a second chance to ensure that the bill was compliant with human rights legislation. That is the type of detail that could be missed. I am glad that the Executive picked up on it on that occasion, but rattling through legislation at such a fast rate means that there is a risk that such issues might be missed.

Members receive next to no independent advice on human rights law compliance. The Presiding Officer's office ticks a box to tell us that he regards a piece of legislation as compliant with human rights law. MSPs are not, however, given the grey areas surrounding the issues, let alone the arguments for one side or the other. Although the Executive's policy memorandum brings human rights issues to our attention, the detailed arguments as to why one issue outweighs another are not available.

MSPs are ultimately responsible for the standing of the Parliament. We will take significant blame if legislation is passed and then struck down by the courts. It is not unreasonable to argue that that could happen if we receive no independent advice on human rights issues surrounding legislation. The timescales matter in their own right when dotting the i's and crossing the t's. Human rights compliance has two aspects—timescales and independent advice.

The Convener: Two helpful points have been made. If you were in charge of the mechanisms, would you slow down the stage 2 process in committee to ensure that more time was devoted to considering the issues?

Patrick Harvie: There is a case for slowing the process down. There is also a case for ensuring that legislative texts are clearer and in plain language. When members lodge an amendment, it would be reasonable to require them also to lodge a plain English translation of the amendment. That would help MSPs and people in the many non-governmental organisations, businesses and so on who track our work and take an interest in what we are doing. I am thinking in particular of amendments to complex bills that, in turn, seek to amend many other pieces of legislation. Before an amendment is discussed, its intention should be made clear.

Mr McFee: I think—

Margo MacDonald: I am sorry, but do we not get help from the chamber desk when we are lodging an amendment or submitting anything else that is to be reproduced in written form for use in the Parliament?

Patrick Harvie: Yes, but—

Mr McFee: I want to open up the debate a little. We have heard much about the points that Patrick Harvie raised on the rushed nature of the stage 3 process. I think that the points he raises are universally agreed.

I return to the issue of legislation being human rights compliant. The Justice 1 Committee is looking at the matter as part of its scrutiny of the Scottish Commissioner for Human Rights Bill. It is trying to find evidence of the Parliament passing legislation that is not human rights compliant. As yet, the only example we have been given is the Family Law (Scotland) Bill, which was not human rights compliant on introduction because it did not take account of the Civil Partnership Bill that was introduced while the Family Law (Scotland) Bill was being drafted. As soon as members started to draft stage 2 amendments, they became aware of the human rights implications that resulted from omissions in the bill.

My recollection is that there has been only one human rights finding against the Executive, which resulted from the political decision not to end slopping out. The evidence seems to show that instead of the Executive inadvertently breaching human rights, the opposite is the case.

Perhaps we are concentrating on the wrong line of argument. There is value in what you said about rushing the stage 3 process, Patrick, but the road that you suggest could lead to a dead end. Similarly, if we required a plain English translation of each amendment, we might also need to require a plain English translation of each bill.

Margo MacDonald: Excuse me, convener, but surely that is what the explanatory notes are for.

While I was the convener of the Subordinate Legislation Committee, we quite often spotted wee human rights loopholes in subordinate legislation. The situation may be different nowadays; we are a few years down the road and the Executive is more used to constructing legislation. Patrick Harvie raised a particular instance. Certain of our colleagues are more clued up; they are better at running the human rights Geiger counter over the legislation that comes in front of us.

Patrick Harvie: I raised the issue because of the concern that nothing should be allowed to happen that could result in the Parliament passing legislation that is not human rights compliant and so could be struck down. For example, if someone brought a human rights case against the dispersal order provisions in the Antisocial Behaviour etc (Scotland) Act 2004, it would be up to the court to determine whether the provisions were human rights compliant—it might find that they were. Ultimately, the fact that the determination is one for the court should not deter the Parliament from trying to ensure that it has put in place the most robust procedures. We want to avoid challenges.

The issue has consistently been raised over the past couple of years by the external members of the cross-party group on human rights, of which I am the convener. Many of the organisations, campaign groups and lawyers to whom we have spoken have raised concerns that the Parliament is not scrutinising legislation with enough enthusiasm with regard to human rights compliance. It has been suggested that that is either because it is convenient to avoid the arguments, or because MSPs do not have access to impartial advice. We have access to the Executive position on the bills it introduces, and to the Presiding Officer's yes or no response to the question on compliance—the answer has always been yes. Of course, the Presiding Officer gives the position on the bill as it is introduced, and not as it is shaped during stages 2 and 3.

11:00

Cathie Craigie: You suggest that an independent adviser should be appointed. Who would that independent adviser advise: the committee as it takes a bill through its various stages, or the Parliament as a whole?

Patrick Harvie: When a committee determined that a piece of legislation that it had to deal with raised human rights issues, it could appoint an external adviser. Another way would be to have a parliamentary unit that is dedicated to giving all

MSPs independent legal opinion on legislation. I am not saying that I know which is the appropriate solution; all I am doing is flagging up the issue and expressing concern on behalf of the members of the cross-party group that MSPs do not have sufficient information about the human rights issues in the legislation that they pass. There have been some near misses, and people are concerned that we should avoid being hit at some point in the future.

Margo MacDonald: But that is MSPs' responsibility.

Cathie Craigie: Is it not fair to say that, during the past six years, we have relied on the Presiding Officer's office for that, and we have accepted the decision of the Presiding Officer that a bill is compliant—

Patrick Harvie: That is an expression of a view on the bill as it is introduced, but not as it is shaped during stage 2.

Mr McFee: I am on the Justice 1 Committee, which considered the Family Law (Scotland) Bill, and we had Professor Kenneth Norrie, who is clued-up on human rights matters. Even after the bill was introduced, he advised of several situations where he believed that the bill was not compliant with, or could contravene, human rights legislation. That was discussed in the committee, and there were exchanges between the committee and the Executive. The Executive took a different view from that of Professor Norrie, and a decision was reached on the balance that was talked about earlier.

Part of the argument about having a commissioner is whether human rights should be considered by a small body of people who are experts on human rights, or whether they should be everyone's responsibility and not considered as a separate issue. I understand that those are two different ways of looking at the issue; I tend to go with the second one.

I understand what you are saying and where you are coming from, but we could be running up a cul-de-sac on this issue. I am not sure how we could do what you think we should be doing. I do not know whether there is an answer.

Perhaps what is important is the output, and whether the system is failing at the moment. I do not say that the system cannot be improved—obviously it can—but I am not sure that it is failing to the extent that we have to take the action you suggest, or that what you recommend would do anything to help with the issue of parliamentary time. From what we have heard so far, we are fairly unanimous that we have heard about lots of things that could take up more parliamentary time, but none that would free up the space for what you are asking.

Margo MacDonald: Is it not a matter of judgment, convener? After someone has been here for a wee while, they can work out the legislation that might be tricky, that might break new ground, that could be open to challenge in the courts, and all the rest of it. That is the point at which they might decide that they need an expert opinion or opinions—the Executive has expert opinion too, and it might be different from yours. It is a matter of judgment. We pass some legislation about which we do not need all that much tutoring.

The responsibility lies with MSPs. Just as we should consider new legislation and amendments from the perspective of equality, we should consider them from the perspective of human rights. We should be aware of their resource implications and of their impact on other legislation. That is just part of our job. That is what we get paid all this money for.

The Convener: Patrick Harvie made the point that amendments should be accompanied by a plain language interpretation. At present, they are not. Bills have explanatory notes—they might not be written entirely in plain language, but that is the intention. Patrick Harvie's idea is an interesting proposition. He suggests that any amendment of substance, whether it is lodged by the Government or by a member, should have attached to it a wee spiel that would be circulated along with the amendment.

Patrick Harvie: It need only be a couple of paragraphs. In many cases, the change that an amendment would make to a bill can be explained easily. Often, an idea starts out as a couple of paragraphs of text, which are then translated into an amendment; I do not see why we should lose that explanatory text. I have taken part in a lot of stage 2 discussions and a great deal of time is taken simply to ensure that everyone has the same understanding of what an amendment means. We have to reach that point before we can debate the amendment and decide whether we agree with it.

Alex Johnstone: In my experience, the debate on an amendment often focuses on what the amendment means or how it would be interpreted. Patrick Harvie suggests that, before the debate, there should be a definitive written explanation of how the amendment would affect the bill, but that is probably pointless. At worst, it could be misleading and might misdirect the debate. For example, how often has the Executive dismissed an Opposition amendment on the grounds that it would not have its intended effect?

The Convener: I cannot speak for Patrick Harvie, but as I understand it he thinks that the member who lodges an amendment should attach to it a wee spiel that gives his or her view on the amendment's objective. Whether the amendment

would achieve that objective is, as Alex Johnstone says, a matter of opinion. A lot of the lobbying groups that send in amendments for consideration by MSPs do exactly what Patrick Harvie suggests and explain what they are driving at. I would have thought that it would be helpful to know the thinking on the amendment, because what it is about is not always clear from the wording.

Mr McFee: Many of those organisations are pretty good at giving explanations of what they mean. Some members take up the suggested amendments almost verbatim and slap them into the *Business Bulletin*.

At stage 2, members explain what their amendments are about. That is what stage 2 is for. I do not accept that we can agree the meaning of an amendment in advance. The Family Law (Scotland) Bill is a classic example. Some people argued that changing the period for uncontested no-fault divorce to 12 months would strengthen marriage, but others said that it would weaken marriage. In that example, it was clear that the amendment would reduce the period to 12 months, but we could not agree about its meaning.

Patrick Harvie: I am not proposing that someone should write a paragraph of justification saying, for example, "My amendment will strengthen marriage." My suggestion is that they should produce a statement that says, "My amendment changes the separation time from X to Y in the case of marital divorce or civil partnership dissolution." Members know how it feels to wade through hundreds of detailed amendments. I experience joy when I see an amendment that is accompanied by a well-written briefing that simply says, "This amendment does this, that and the other to the bill. It changes this time period or that threshold—"

Mr McFee: In the view of the author.

Cathie Craigie: That is the author's opinion, rather than fact.

Patrick Harvie: Opinions can be debated. If I lodge an amendment to delete a subsection, I should be able to explain in simple terms—before getting into arguments about right or wrong—what the subsection would do if it remained in the bill and what the effect of deleting it would be.

Mr McFee: You mean that you should be able to explain your intent.

Patrick Harvie: Yes.

Mr McFee: And only your intent.

Patrick Harvie: That is exactly what the Executive does when it introduces bills.

Margo MacDonald: You would have to make your case in front of the committee. You could submit your uncontested case, showing your intention, on a piece of paper. However, when the amendment came to be debated, it would not matter what language it was written in, you would still have to defend it if people did not agree with your intention or with your vision of how it would pan out. I appreciate what Patrick Harvie is saying; he is making a point about making arguments in plain English. I hate to tell him this, but legislation has never been about plain English; it has been about precise, nit-picking English. Live with it.

The Convener: Do you argue that stage 2 debates should be more spaced out or that there should be more time before stage 3 for constructing amendments? Should we have a longer debate at stage 3?

Patrick Harvie: There is a case for giving more time to all stages, including stage 1. The committee of which I have been a member since 2003 has been pretty legislation heavy. We have gone from one bill to another. On none of those bills did we have enough time at stage 1 to consider all aspects properly. A bill will contain issues in which members are particularly interested, and some issues will be subject to controversy, media attention and widespread debate. However, other aspects do not get that level of attention, and there have been areas in all the bills on which I have worked that were not given enough thought at stage 1.

The timescales for stage 2 have often involved fitting in extra committee meetings as and when we can to ensure that we get through the amendments that have been lodged. Increasing the gap between stage 2 and stage 3 would allow us to identify and iron out the details that need to be picked up at stage 3.

The Convener: In your experience, do committees accept two types of timetable at the suggestion of the Executive? Should committees ask for more time more often?

Patrick Harvie: It would be helpful if committees made clear the time that they think a piece of legislation deserves. It is almost like haggling over the price—there might be some flexibility. Ultimately, however, a committee knows how much work is involved and how much it has on its plate above and beyond the scrutiny of a particular bill. Some committees would, on occasion, like to pursue their own inquiries on priorities that they have identified, rather than merely respond to Executive legislation all the time.

Mr McFee: Committees can do that at the moment; they can decide their own priorities and what inquiries they want to hold. Apart from a number of exceptional cases, I have not found much difficulty with the timetabling of stage 1. When the Justice 1 Committee looked at the Emergency Workers (Scotland) Bill, we saw two

sheets of A4 and thought to ourselves, "This should take a fortnight", but it actually took a heck of a time. However, I do not know how that could have been timetabled when we first saw the bill. Only when we got into the discussion did we think, "Jeez—this is a lot bigger than we thought." If committees do not have the guts to tell the bureau that they need more time—that would be the ultimate result—and they are rushing their work to the extent that they are not being diligent, they should insist on more time.

11:15

Margo MacDonald: Does that not back up Patrick Harvie's suggestion that more time should be given to stage 1 proceedings?

Mr McFee: When a bill is published, allocated to a committee and timetabled, it might not be apparent that additional time will be needed. Even the committee that was to consider the bill might have agreed that the bill would not take a heck of a lot of time but found when it got into the bill that more time was needed. At that stage, the remedy is that the committee must look for more time. How do we foresee the unforeseen? With the best will in the world, we will never get that right all the time.

Margo MacDonald: We will not get it right all the time. Once again, judgment is involved.

Mr McFee: Of course.

Margo MacDonald: If the debate at stage 1 is longer and better, so that people understand the issues—

Mr McFee: I am sorry—are we talking about the stage 1 debate in the chamber or about stage 1 in committee?

Margo MacDonald: I am talking about the stage 1 debate.

Patrick Harvie: I was talking about stage 1 scrutiny.

Mr McFee: Aye—I thought that you were.

Margo MacDonald: Sorry.

Mr McFee: I agree that we should know by the stage 1 debate how much time should be allocated and whether more time is needed. However, Patrick Harvie was talking about scrutiny.

Patrick Harvie: I was talking about the time that is allowed for a committee's inquiry at stage 1—time for getting into the nuts and bolts of the issues behind a bill and producing a report to Parliament on whether the general principles should be agreed to.

As Bruce McFee says, if a timetable has been set but the committee decides that not enough time has been allocated, the committee should have the confidence to say no and to ask Parliament for more time. I started by observing that, in my two and a half years as a member of a committee that has been very focused on legislation, I have found in general that timescales are not long enough to allow attention to be given to all parts of a bill. That concerns the general way in which the workload is habitually dealt with in Parliament, in my limited experience.

Mr McFee: My experience is limited, too. When the committee of which you are a member did not have enough time, were approaches made for additional time at stage 1?

Patrick Harvie: Not that I remember.

Mr McFee: Perhaps that is part of the problem. You are the first person to have talked about stage 1—that is largely because a remedy exists for that problem, although we could kick over how good that remedy is.

Cathie Craigie: This is the first time that the committee has heard of a problem at stage 1 and I am surprised that the issue has been raised. Often, committees start scrutiny of a bill before it is published. They get out there and inform themselves of the issues. The committee of which Patrick Harvie and I are members went out and about around the country to discuss antisocial behaviour months before the Antisocial Behaviour etc (Scotland) Bill was introduced, so committee members were clued up.

Procedures Committee members sit round the table and hear that some people want more time for stage 1 scrutiny; that other people want more time for longer speeches in stage 1 debates; that people want a longer time between stage 1 and stage 2; and that we should have even longer at stage 3. Where would we find the extra time in the parliamentary week to meet all those requests?

Patrick Harvie: In Jack McConnell's phrase, we could "do less, better".

The number of hours for which we sit could be increased, or we could use the time more cautiously and slow down the legislative process a little. I would be comfortable with increasing the number of hours for which we sit, but perhaps that option is less favoured by other members—I do not know.

Margo MacDonald: The answer is to have meetings on Mondays.

Mr McFee: That is a logical conclusion.

Patrick Harvie: I would be comfortable with that.

Cathie Craigie: But you mentioned doing less, better.

Patrick Harvie: I am sorry—that was a slightly tongue-in-cheek remark.

Cathie Craigie: The committee is conducting a serious inquiry.

Patrick Harvie: I understand that.

Cathie Craigie: What would you do less of?

Patrick Harvie: I mentioned the Antisocial Behaviour etc (Scotland) Bill.

Cathie Craigie: You can choose what you want to choose, but the majority of the Executive legislation that the committees have dealt with has been introduced because the proposals in that legislation are the priority not only of the Executive, but of the people of Scotland. The coalition parties have brought together their manifestos.

Patrick Harvie: In all seriousness, there is only one real answer that I can give. I repeat: I feel that it would be acceptable for the Parliament to spend more time sitting.

Mr McFee: Do you mean that there should be more sitting days or more working hours in the sitting days?

Patrick Harvie: I do not want to suggest that the Parliament's hours should become the same as those in some antique Westminster model so that people with families cannot take part in our proceedings.

Mr McFee: You assume that those people live within commuting distance of Edinburgh. A person who lives in Orkney might want to be away for only two days and therefore might want to be in the Parliament on Wednesdays and Thursdays until half past 10 at night, but a person who lives in Edinburgh might think that working from 9 o'clock until 5 o'clock for five days is family friendly. Such hours would not be family friendly to a person who lives 200 miles away. We have had to balance the arguments. We have heard the arguments about the Parliament being family friendly, but whether it is family friendly depends on where a person bides.

Patrick Harvie: It does.

Margo MacDonald: The phrase "family-friendly Parliament" is referred to in English as an oxymoron.

Alex Johnstone: That is true.

The Convener: I understood your argument about stage 1 of the legislative process to be that, although there is a lot of consultation about issues that are seen to be major, committees often do not pay enough attention to parts of bills that are perhaps not overtly controversial, and that we could land ourselves with a few banana skins as a result of neglecting less picturesque parts of bills. Is that what you were aiming at?

Patrick Harvie: Yes. Even some aspects of the Antisocial Behaviour etc (Scotland) Bill that were controversial were simply overshadowed by other contentious issues. We did not spend very much time questioning witnesses on issues to do with lower-level vandalism, graffiti, noise and so on, or on electronic tagging and parenting orders. I am not suggesting that the committee did not work hard—it did. We questioned every witness closely, but some issues simply overshadowed other issues. If time had been allocated to considering the content of the bill on a more strictly proportional basis, we would not have gone into the detail that we needed to go into on those issues that we questioned witnesses about.

Mr McFee: Do people not get the evidence that they ask for? That is certainly my experience. Witnesses come along to say their piece on subjects and members end up going down particular routes with their questions, but we get the evidence that we ask for. Sometimes it is a question of knowing which witnesses to ask for.

Patrick Harvie: My point is that we need enough time to ask for all the evidence that we want.

Margo MacDonald: With all due respect, ensuring that there is enough time is part of the responsibility of the committee's convener, who will be assisted and guided by the clerks. Whether all the necessary information has been extracted from witnesses must be worked out. I do not have a clue about which committee or convener is being discussed, so there is nothing personal in what I am saying—I am talking about structural and operational matters. However, a certain responsibility also falls on the committee members. If they feel that the convener has missed something, they should wait until the witnesses have departed and say, "Excuse me, convener, you made a mess of that. Could you not do better next time?"

The Convener: I call Cathie Craigie.

Cathie Craigie: Thank you, former deputy convener of the Communities Committee.

I am a member of the Communities Committee—indeed, three members who are sitting round the table took part in the consideration of the Antisocial Behaviour etc (Scotland) Bill—and I do not recall any committee members complaining that we did not have enough time to question witnesses. I do not know what the convener thinks, but I do not accept the picture that Patrick Harvie has painted of our scrutiny of the bill. There were differences of

opinion about various aspects of the bill, and committee members and the press ran with their own agendas on it. Obviously, there was a bit of cherry picking and several aspects received much more publicity than they might have deserved.

I do not have any questions for Patrick Harvie, but I feel that I must provide some balance and say that I was satisfied that the committee prepared itself very well for considering that bill. Regardless of what committee they might be on, members must prepare themselves before they take on the responsibility for scrutinising legislation. Members of the Communities Committee have done so very capably.

Margo MacDonald: But that raises another question. You said that members were very good at scrutinising the bill. Hmm—

Cathie Craigie: I am sorry, Margo, but—

Margo MacDonald: I agreed with you until you said that the committee was very good at scrutinising the bill. I do not know whether it was or not.

Cathie Craigie: You were not at the table at the time.

Margo MacDonald: That is right.

Cathie Craigie: However—the committee has previously discussed the general issue—members of the Communities Committee prepared themselves not only by reading up on the subject matter, but by going round different parts of Scotland. Indeed, Patrick Harvie and I visited some weird and wonderful places at least four to six months before the bill was introduced. Taking such an approach means that when a bill is eventually introduced, members have an idea of what will face them when they read the explanatory notes.

Patrick Harvie: The only thing that I can bring to this discussion is that, when I became an MSP, I honestly found the experience rather bizarre and surreal. When the bill was introduced and we all had a chance to see what was in it, I was shocked to find that, although we had time to go into detail on some of the issues that I had concerns about—I realise that I was prioritising, but then all members were prioritising the issues that they felt needed to be addressed—we were leaving other issues relatively untouched. I think that that was a weakness in the process.

Cathie Craigie: Patrick Harvie made a good point in his introductory remarks when he spoke about his feelings on becoming an MSP and almost immediately becoming involved in the consideration of legislation. Perhaps there should be training for new members and refresher courses for existing members, although I realise that that is probably a matter for the next session of Parliament. I do not know whether such training already exists, but—

Margo MacDonald: I am sorry, convener, but there is a difference between induction and training. Induction courses are a good idea, but given that the first thing that new members do is sign up for the money—by which I mean all the money, not apprentice wages—perhaps they should do some forward planning before they get here.

Cathie Craigie: Fair point.

Mr McFee: Induction sounds okay, but I think that training sounds a bit robotic. It suggests that MSPs will be told, "This is how you'll think on that point."

11:30

Margo MacDonald: Some things would be very handy for new members and could take away a lot of the mystique. When members have half an hour, I will explain how Willie Ross gave me an induction into reading a bill—it was the most terrifying experience of my political life.

Mr McFee: I am aware that we have not yet heard Margo MacDonald's ideas, but I have one final point to make.

I take Patrick Harvie's experience at face value. However, perhaps we all want further debate on issues that we find controversial, but not necessarily on proposals that we are happy to agree with. Do we all share that failing?

Patrick Harvie: Perhaps we have that failing sometimes, but on the occasion to which I referred, we had significant debate on the issues that I was particularly concerned about and wanted to prioritise.

Mr McFee: You were doing your job.

Patrick Harvie: My concern at the end of the process was that substantial areas of the bill had barely been looked at.

Margo MacDonald: If you are really concerned that an area has not been touched on, you can raise the issue so that it is on the record. At least notice would then have been given that we might have to return to the issue; you cannot do everything yourself.

Patrick Harvie: That point was made, but if more time had been available for questioning witnesses—rather than three or four witness panels appearing on the same morning—there would have been enough time to examine all parts of the bill rather than the discussion being foreclosed.

Margo MacDonald: In certain respects, this comes halfway towards what I was going to say

when I said that the answer is Monday. Cathie Craigie asked where we could find more time. We knew—Cathie Craigie knew better than the rest of us, because she had seen the situation on the ground—that there would be considerable press interest in that bill, along with misinterpretation of intention and all the rest of it. Therefore, it might have been sensible to have had flexibility and it might be sensible to build flexibility into our proceedings as a matter of course, so that such a bill can be subjected to more scrutiny. A committee should not be put under pressure to meet a date. There is no blueprint; it is a question of judgment.

Even allowing for our individual bias and different interests, there are bills—such as the one that dealt with clause 2 or section 28—that we know will cause a stushie. We knew that antisocial behaviour orders and the idea of dispersing people just for being somewhere would cause a stushie. I do not know whether legislation is needed on the length of jail sentences for example, but if it is we know that that will cause a stushie.

We should give ourselves time and have sufficient flexibility in our procedures. We could use Mondays. We always read that members do things in their constituencies on Mondays. However, I live in the Lothians so I do constituency work every day. Alasdair Morrison represents a constituency that is—I was going to say that it is on the edge of darkness, but of course I do not mean that. He represents a far-away constituency, so he cannot do constituency work in the same way even as folk who live on the other side of the central belt.

Monday should be seen as a day that can be utilised in all sorts of ways, depending on what the priority is.

The Convener: You both seem to be saying that the time pressure is on committees rather than the Parliament. As well as expanding the overall time, there is the issue of the balance between committee time and Parliament time.

Margo MacDonald: I am not saying that the time pressure is always on committees. My point is that there can be pressure on committees and that we can usually anticipate when certain committees will be under extra pressure because they are handling certain bills and therefore need extra time. On other occasions, there could be pressure on time in the Parliament to ensure that everyone gets their tuppenceworth said and on the record.

Patrick Harvie: I go along with that. At no time over the past couple of years have I noticed members crying out for more issues to be squeezed into the parliamentary debating time.

Margo MacDonald: Really?

Patrick Harvie: Hear me out. On a fair number of occasions, people have said that we are holding debates that we have held every year since 1999 and have questioned whether those debates have been necessary. I feel that enough time has been available to do what we need to do in the chamber, as well as some of the stuff that it is just nice to do. From my perspective, the pressure is on committees.

The Convener: Margo—were you suggesting that committees that are under pressure could use Mondays, and that the whole Parliament could also do so if it felt under pressure?

Margo MacDonald: Yes. I would treat Monday as a flexible day that could be used for whatever needs to be done.

Cathie Craigie: In my experience, committees use Mondays in that way anyway.

Margo MacDonald: Do you mean when the committees go out and about?

Cathie Craigie: Yes. We have used Mondays and Tuesday mornings for that.

Margo MacDonald: Committees will usually sit down and thump away at work.

Cathie Craigie: Committees have been under pressure. Perhaps we could ask the clerks to do some work on when committees have used Mondays and Tuesdays. As I said, my experience is that we have used that time.

The Convener: The people on railway bill committees often—

Richard Baker: Yes. Private bill committees take evidence on Mondays—that is when their official meetings have been. I suppose that the debate is about the extent to which we can push that practice further. I am happy with the current balance, but there might be some more debate about that.

Mr McFee: I would like to take the discussion forward a wee bit. Richard Baker is right. Committees can meet on Mondays if they want to, but many committee members are reluctant to do so, which is a matter for those committee members. Apart from that, as far as the use of time in the chamber is concerned, the only matter that has been raised is the sometimes farcical stage 3 debates, when amendments are voted on without debate. Should we be concerned about that?

Margo MacDonald: That will sometimes happen, anyway.

Mr McFee: Some changes have been introduced that have helped to ameliorate the

situation, but not to resolve it entirely. I think that most of us would agree that the Procedures Committee came up with a reasonable solution, which solved some of the problems but perhaps did not go all the way. On whether there are any other issues in respect of the use of chamber time, I wonder what we would squeeze in and what we would squeeze out. The view has been expressed that there are a lot of motherhood and apple pie debates in which the Executive secures a debate on a motion that says, for instance, "Aren't we doing terribly well on education?" and the Opposition lodges an amendment that says, "No, you're no."

Margo MacDonald: That sort of debate can be very good for the soul. We call it blue-sky thinking on our optimistic, positive side of the chamber. I would always make room in the parliamentary timetable for such debates.

Patrick Harvie: There is something to be said for that, but we should note that such debates are not being squeezed out too much at the moment. There are a number of such debates on the Parliament's agenda.

Margo MacDonald: We should not just look at the width; we should look at the quality. If we hold a motherhood and apple pie sort of debate, as Mr McFee would have it—or a blue-sky thinking sort of debate, as I would have it—

Mr McFee: I was just making a proposition; I wanted to gauge your reaction.

Margo MacDonald: When we have those debates, I would not like Parliament to d'Hondt the speaking times, because we are not talking about the sort of debate that makes Executive policy, but about debates in which we examine all the angles without the pressure of having to vote on the Executive's programme. I would like to depend much more on the Presiding Officers to decide who brings matters to the table during such debates. Scott Barrie would be called to speak on issues to do with children's safety and so on, for example.

Speaking time is allocated differently in such debates. We had a debate last week that started to come to life and could have gone on for much longer to good effect. It was educational, and people in the gallery saw that we were addressing the issues that they talk about outside Parliament. That is good for Parliament and it is a good way of connecting with the people who send us here. For them to mean something, debates must be not just relevant, but more natural. We should not just apply d'Hondt to them and have three and a half SNP members speak because four Labour members will speak, which is nonsense in those debates.

Alex Johnstone: Would you take that view if it meant that Bruce McFee and I got more time than you and Patrick Harvie got?

Margo MacDonald: Yes—if the debate was about coos and things.

Alex Johnstone: Oh no—I have been pigeon-holed.

Margo MacDonald: You know a lot more about those things than I do. In such a debate, I would sit and listen to what you had to say. Believe it or not, I often go to debates just to sit and listen, although I might ask a question because I genuinely want an answer.

Alex Johnstone: Are you saying that, in an ideal world, you would like everybody to have their say?

Margo MacDonald: Yes, although I accept that we compromise and make the best fist in an unequal world.

Alex Johnstone: Do we make the best fist of it? Could we do better?

Margo MacDonald: We could. I understand why party discipline comes into it when the Executive's programme is under debate and it is a matter of seeing through the Executive's programme, but when we are having an exploratory and wide-ranging debate that is educational and informative and which is supposed to advance our thinking on a topic, I would apply different rules for the amount of time that members are allocated. That is what happens at Westminster—it is quite good at some things. It has been exercising power for 1,000 years, so it knows a thing or two. If members want to speak in a debate at Westminster, they send a wee note to the speaker, who will have a good idea of their constituency or specialist interests; those members are more likely to be called. Front-bench members will be called first and a privy councillor may well be called, but members are called far up the speaking order if they have a known track record in the subject under debate. That is a good way to handle that sort of debate.

Mr McFee: Donald Gorrie is considering that answer. Are you talking about debates that do not necessarily have a division at the end of them?

Margo MacDonald: Yes.

Mr McFee: Are they just subject debates?

Margo MacDonald: Yes.

Mr McFee: Are they almost like member's business debates?

Margo MacDonald: Yes.

Mr McFee: They are not necessarily debates in which everyone agrees.

Margo MacDonald: Members do not have to agree with each other.

Mr McFee: Such agreement is one of the expectations of a members' business debate. Your idea is similar to members' business debates, but there could be an exchange of views in the kind of debate that you are talking about.

Margo MacDonald: Yes.

The Convener: An increasing number of debates on topics are not accompanied by motions or votes, and that seems to be working quite well.

Margo MacDonald: Those debates work a bit better, but the d'Hondt principle sometimes strangles them. Two or three people in a party or grouping might have something to offer—the fact that they sit in the same grouping does not mean that they have exactly the same views. In a debate without votes, we could hear from them all.

Mr McFee: Conversely, there may be times when we are scrambling around looking for members to speak because there are 3.5 slots to fill.

Margo MacDonald: That happens all the time, does it not? It never happens to the independents, though.

Mr Bruce McFee: Good point. That is why you have all the time.

The Convener: Do you have any views on members' business debates or how members could have their ideas debated better than is the case at the moment?

Margo MacDonald: I might like the whips and party managers and I might even think that they do a good job, but by leaving the matter in their gift, we take power away from the back benches and we narrow the range of debate. I would prefer the names-in-a-hat system for members' business debates.

11:45

The Convener: Another problem is that motions need to be emasculated so that they do not say anything significant in order that they can get on the members' business debate schedule.

Margo MacDonald: I obviously regret that there is no vote at the end of members' business debates. However, although they should not upset the apple cart, it might shed a little light in dark corners if we could debate controversial issues.

Mr McFee: On the unwritten rule that members' debates should be about issues on which there is a fair consensus—

Margo MacDonald: It is more than unwritten—look in the new rules.

Mr McFee: I was being nice about it. Is there a case for reviewing that rule?

Margo MacDonald: If I agree, folk will ask whether all we do with our time is review things.

Mr McFee: Is there a case for chopping away that requirement?

Margo MacDonald: We should put the members' names and what they want to debate into the hat. The knowledge that we have only qualified privilege might cause some concentration. As we are in a political arena, members would be aware of the political impact of what they wanted to debate. The system would self-regulate.

The Convener: Are you concerned that, if the Presiding Officer paid no attention to party numbers in deciding who should speak, he might think that it was not relevant to choose any member from a party, in which case that party would not get a shot at all?

Margo MacDonald: No. The Presiding Officer will have a list of names. If he or she does not recognise members as being particularly expert or gifted in the subject at hand, the other members who are on the list and who are expert or gifted will be called. There would be no great difficulty in that. Not every debate would be the same, but I am happy for some debates to be like that.

If the committee feels that the names-in-the-hat system is too much of a gamble, we could consider how the debates had worked out when there was four weeks or so to go at the end of every term. If all the members' debates had been for Tory or Lib-Dem members, a bit of balancing could be done. We could say that that was not fair and arbitrarily hand out debates to the other parties. Party members know better than I do how the current system works.

Mr McFee: We could argue that that is, in effect, what happens with questions.

Margo MacDonald: I would make that a names-in-the-hat system, too.

Mr McFee: It is.

Margo MacDonald: I am thinking of First Minister's question time, which has become a ritual that nobody bothers about. I bother about it, because it disconnects Parliament even further from the people who sent us here. It is extremely boring and it does not go anywhere. Once again, I would go for a system that is much more akin to the Westminster system, which works better.

Mr McFee: But the Westminster system has rituals, too.

Margo MacDonald: Of course it has, but it is shedding some of them.

Mr McFee: I mean with the party leaders.

Margo MacDonald: If the purpose of First Minister's question time is to call him to account, it is reasonable that he should be called to account by the leaders of the other groups or parties. However, the way in which the party leaders come into the exchange is highly artificial. At the start, the leader of one of the Opposition parties gets the chance to ask four questions, rat-tat-tat-tat, the last of which is always a variation of, "Why doesn't the First Minister go and jump off a cliff?" to which the First Minister replies, "Because I'm not going to, so there"—at much greater length, of course. That is meant to be a criticism not of the party leaders, but of the convention that we have established.

Mr McFee: Is there a case for lengthening question time? Part of the reason why question time—perhaps we should call it answer time instead—is boring is to do with some of the themed questions in the afternoon. I know that the matter has been considered before and that the committee said that it did not want to do so again for a century.

Margo MacDonald: Cathie Craigie is dying in front of our eyes.

Mr McFee: That is because she will get the job.

Is there a case for having a longer First Minister's question time, making it a bit more spontaneous than the stuff that is in the *Business Bulletin* and getting the leaders of the Opposition to split up their questions?

Margo MacDonald: We need to decide what First Minister's question time is. Is it an opportunity for the Executive to make statements or an opportunity for the Opposition to play politics?

Mr McFee: It should be an opportunity for MSPs to hold the Executive to account.

Margo MacDonald: Ah—that is altogether different.

Mr McFee: Not only Opposition MSPs should have that chance.

Margo MacDonald: No. I do not think that members want to hear me rehearse my argument. I would change the format of questions, especially questions to the First Minister, because—like it or lump it—that is the event that receives attention from the press. Many people in Scotland think that is all that Parliament is about.

Mr McFee: Sure.

Margo MacDonald: I do not think that the present version of FMQs conveys a terrific impression of the Parliament.

The Convener: Are there any other issues that you would like to put to us?

Margo MacDonald: The notice that is given of business is inadequate. Priorities change and we must have the ability to change with them.

The committee paper states that

"The inquiry does not start with an assumption that more Chamber time is needed",

but I think that sometimes that is the case and I would like us to be more flexible in our use of chamber time.

Alex Johnstone: When would you add the additional chamber time?

Margo MacDonald: On Monday and after 5 o'clock. I think that the business of going home in time for tea is not an awfully grown-up way to run a Parliament. All that an Opposition has available to it is time, so if one does as we do and says that proceedings must stop at 5 o'clock every night, one diminishes the quality of the opposition to the Executive. The Executive knows that all it needs to do is get to 5 o'clock and it is home free. By the time everyone comes back the next day, the press will have interpreted what happened and the Executive's spin doctors will have been sent out to play. If an issue is not resolved to everyone's satisfaction, we must have the facility to argue later than we do. I realise that that proposal will make me extremely unpopular.

Alex Johnstone: Are you suggesting that we should add an extra 60 or 90 minutes at the end of a Parliament sitting day?

Margo MacDonald: Probably. I would like Parliament to be able to do something like that.

Alex Johnstone: We have done that occasionally for stage 3 consideration of a bill—perhaps we could do it more often.

Margo MacDonald: That is right. And we should not be afraid of doing it. We seem to have decided that a Parliament that is family friendly is one that packs up at 5 o'clock. I do not agree with that.

Mr McFee: I am interested in what you say because if we want more time for debates it is logical that we must find it. If it were decided that we should make it possible for proceedings to continue, would you want the speaking time of members still to be strictly controlled? If a member is speaking in the middle of a debate and his or her time is suddenly cut to three minutes, as often happens—

Margo MacDonald: Tell me about it—three minutes for an opus magnum.

Mr McFee: If you have a lot to say and are a wee bit expert on a subject, your chances of saying it all in three minutes are slim.

Margo MacDonald: I do not know how anyone could filibuster in our chamber, although that is a perfectly legitimate tactic in any debate.

Mr McFee: Would you keep the rule on speaking times?

Margo MacDonald: We should be able to vary speaking times. That is possible at the moment: standing orders can be suspended or a motion can be moved to allow more time.

Mr McFee: I am not sure about that. If the Presiding Officer said, "You've got four minutes, McFee," and I felt that I needed six, I do not think I could suspend standing orders to get them.

Margo MacDonald: I think you could if you really wanted to, although I would not want anyone to have to challenge a ruling from the Presiding Officer in that way.

Mr McFee: That does not happen, so I wonder how we can allow speakers more time.

The Convener: Standing orders do not animadvert on the length of speeches.

Margo MacDonald: No—length of speeches is decided by the Presiding Officer. However, we have conventions. I do not want to bore the committee, but early in the life of the Parliament I asked about precedents and was told that we did not really have any.

Alex Johnstone: I want to ask about Margo's priorities. A minute ago, we were talking about how debates might be extended—albeit not by much—to create additional time for speakers. What should the priorities be for that additional time? I will offer two alternatives. Would you prefer the time that is allocated to individual speakers to be extended, or would you prefer the time for individual speakers to remain at four or six minutes and give everybody who wants to speak the opportunity to do so?

Margo MacDonald: Before a debate takes place, it will be known what sort of debate it will be—whether it will be long or short, and whether it will be important or just mechanical. However, we seem to consider all debates in exactly the same way. Some debates are more important than others and, in the more important debates, I want individual speakers to be given more time so that there can be an exchange of views. If someone is making a good speech and raising good points, I do not want them to have to decline an intervention by saying, "I'm sorry, I can't, because I don't have time. I've only got four minutes." If a debate is important enough, speakers should be able to exchange views.

I am not sure whether more time should be allowed for a reply from the Executive or whomever, but more members should be allowed to take part in debates and they should have more time if the debate merits it.

The Scottish Parliament will hold debates on nuclear power. How many MSPs would say, if they were being absolutely honest, that they had firm opinions about our future energy requirements? I do not think that many of us have fixed opinions, but we want to discuss the issue and to learn. In the course of a debate, we should have enough elbow room to ask questions and receive answers.

The Convener: Are there other issues that you wish to raise?

Margo MacDonald: If I were to raise all the issues that I want to raise, I think the committee would want a holiday. The important issues are flexibility in the use of Mondays; a revamp of question time; and, depending on the type of debate, a different way of deciding how many members should be allowed to speak, how long they should be allowed to speak for, and whether the d'Hondt principle should be applied.

12:00

Trust and professionalism come in because those are the sorts of things that can be decided at the Parliamentary Bureau. However, individual members should also take an interest in such matters and should be willing to submit to the Parliamentary Bureau notes making a plea for such-and-such a debate. I cannot remember that happening, however. The Parliamentary Bureau is supposed to operate in the interests of the whole Parliament, not just the members of the Parliamentary Bureau. That is one area in which we are remiss, although my fellow members will hate me for saying it, in case it causes longer meetings and more work.

The same thing goes for the Scottish Parliamentary Corporate Body. How many of us know what the SPCB gets up to until it has got up to it?

Alex Johnstone: I will direct a question to Margo Macdonald, but Patrick Harvie might also want to comment. Would it be fair to say that you are telling us that you want there to be more parliamentary time, if necessary?

Margo MacDonald: If it is necessary, there should be more time. One of the suggested questions in the committee's papers asks whether the sitting pattern should be affected by the different demands that are made at various points in the four-year session. My answer to that is that it should. Our procedures should mirror the various phases that we go through.

Patrick Harvie: It would be better to have more parliamentary time than to rush legislation through. However, that is only one of the options. Slowing things down is the other. I am comfortable with both.

The Convener: Thank you for your interesting and constructive suggestions. We will see what other colleagues tell us in a fortnight's time. If you have any arrières-pensées, you may put them on paper—in English—and send them in.

Margo MacDonald: Can I ask why Karen Gillon did not come into the room until our question-and-answer session was over?

Mr McFee: She's no daft.

Karen Gillon (Clydesdale) (Lab): I was representing my constituents at a conference on corporate culpable homicide.

Margo MacDonald: Are you winning that one?

Karen Gillon: I hope so.

United Kingdom Subordinate Legislation (Amendment of Acts of the Scottish Parliament)

12:02

The Convener: Item 3 concerns a letter from the convener of the Subordinate Legislation Committee, which draws to our attention an issue that that committee thinks is a matter of some concern with regard to our relations with Westminster. The letter asks whether we considered this matter when inquiring into the Sewel convention. The answer is that we did not—that is a factual answer.

The Subordinate Legislation Committee is pursuing the matter and is doing some research. I suggest that we write back to the Subordinate Legislation Committee to give the factual position and to invite that committee to contact us when it has pursued the matter further, whereupon we could take up the issue seriously.

Mr McFee: I do not disagree with that. We did not touch on this subject when we considered Sewel motions: we merely considered the generality and noted that there is a power for the Westminster Parliament to amend acts of the Scottish Parliament if it so wishes. I agree that the Subordinate Legislation Committee should be encouraged to investigate the matter. We will await with bated breath the outcome of its investigation.

The Convener: Is that agreed?

Members *indicated agreement.*

Scottish Parliamentary Standards Commissioner (Reappointment)

12:04

The Convener: At the beginning of the meeting, I failed dismally to say that Chris Ballance had sent his apologies; he is ill.

Our next meeting will be on 8 February. We will meet on a Wednesday rather than a Tuesday to accommodate people who will be with us for that meeting.

Mr McFee: That will clash with a meeting of the Justice 1 Committee.

I would like clarification from the convener. When you were talking about the agenda for the meeting on 8 February, you said that we did not yet know whether someone from the SPCB was going to be here—I understand why. I have a concern, however, so I seek the convener's guidance. The minutes of the SPCB from some time ago indicate that it intended to interview the standards commissioner before Christmas as part of an administrative reappointment process. I understand that that interview did not take place and has been rescheduled for some time in the next few weeks. I am concerned that we are using that procedure before the Procedures Committee reports to Parliament. I seek your guidance about what potential inquiries or actions would be taken in such a situation. It is strange that the procedure is being enacted when the committee is still considering it.

The Convener: Strictly speaking, our main consideration did not include the Scottish parliamentary standards commissioner but, because he was somewhat relevant, we tried to bring him into the discussion. The main thrust of the inquiry was about the other commissioners. That does not answer your question fully.

Mr McFee: Given that the inquiry considered the issue, and that it was suggested that the inquiry should consider it, it seems that there is a grey area around the administrative process for reappointment of commissioners.

My concern is fundamental. We have disagreements about how we should go with this; I accept that, and I accept that I am in a minority at the moment. However, it would concern me if the reappointment was being progressed by the SPCB before Parliament had made a decision. The committee has not yet come to a conclusion and Parliament has not had the chance to debate the matter. I might be entirely wrong, but it seems that the SPCB is already part of the way through the process. I do not know whether it is the convener's role to inquire about that, or what the exact procedure should be, but it seems to me that there is a potential problem.

The Convener: Do we have any information about that?

Andrew Mylne: What the convener said a moment ago was correct. The committee's inquiry was directed at the people who are appointed by the Crown—the standards commissioner is not in that category. The most that is being proposed is some relatively minor changes to the rules that relate to the standards commissioner, which would address one or two minor points. The issue of the reappointment or otherwise of the standards commissioner is a matter for the SPCB. That SPCB is working to a timetable that is determined by when that commissioner's first term of appointment comes to an end, which is before the terms of office of any of the Crown appointees come to an end. At the moment, it is entirely up to the SPCB to progress the matter as it sees fit. It would thereafter be up to Parliament to express a view on any motion that was lodged by the SPCB. It would also be for Parliament to consider separately any report to the committee. At some point, those things will have to be brought together, but the SPCB is operating to a separate timetable.

Mr McFee: I accept that, but I am concerned because we were asked to consider the matter and—without going into what the report says—it seems that it is not clear whether the SPCB has the power to go through the reappointment process with the standards commissioner. Why on earth is the issue on our agenda if the SPCB has the power to go through an administrative process of holding a non-competitive process that is not open?

I understand that we are considering the issue because it is not clear whether that is the process that could be followed for either Crown appointments or for the standards commissioner's post. It is strange that the Procedures Committee and Parliament are being asked for their views on whether the process can be adopted at the same time as the process is being adopted.

The Convener: As I understand it, the Procedures Committee invited itself to consider the matter. The inquiry was about Crown appointments but, in order to be tidy and to do everything in a similar way, it was suggested that we should also consider the Scottish parliamentary standards commissioner and whether the rules could be brought into line with changes that we made to other rules. However, as the clerk says, the SPCB is correctly carrying on under the current rules because it has a timetable to which it has to deliver either a reappointment or a new commissioner. I do not think that the SPCB is doing anything wrong. We can certainly get

clarification about the SPCB's position on that point.

Mr McFee: Okay.

Cathie Craigie: To return to the meeting on 8 February, I have already recorded my apologies because I have a Communities Committee meeting on that morning.

The Convener: Yes. I am sorry about the clash, but we thought it was a good idea to give the members a different time in the week to come in and make their points.

Meeting closed at 12:11.

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:

Monday 6 February 2006

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