PROCEDURES COMMITTEE

Wednesday 8 February 2006

Session 2

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PROCEDURES COMMITTEE
3rd 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:

Susan Deacon (Edinburgh East and Musselburgh (Lab)
Murdo Fraser (Mid Scotland and Fife) (Con)
Paul Grice (Clerk and Chief Executive, Scottish Parliament)
Tracey Hawe (Scottish Parliament Directorate of Clerking and Reporting)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott MSP (Scottish Parliamentary Corporate Body)
Murray Tosh (West of Scotland) (Con)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Jonathan Elliott

LOCATION

Committee Room 6

Scottish Parliament

Procedures Committee

Wednesday 8 February 2006

[THE CONVENER *opened the meeting at 10:17*]

Parliamentary Time

The Convener (Donald Gorrie): We are now quorate. I thank the members of the Scottish Parliament who will attend committee today, especially those who have arrived so far. Of the other members who were to attend, we have received apologies from Cathie Craigie. We will welcome—when they all come—Susan Deacon, Carolyn Leckie, Pauline McNeill, Cathy Peattie, Mike Rumbles and Murray Tosh, all of whom are attending the committee as individuals. The views that they will express are therefore their own.

I invited Murray Tosh because he was convener of the Procedures Committee in the first session of Parliament; his viewpoint is therefore useful. Obviously, he is not speaking officially on behalf of the management team or in his capacity as Deputy Presiding Officer.

I suggest that each member should set out their main areas of concern, after which we will move to a discussion. I urge my fellow committee members to listen to our visiting colleagues—we want not to listen to each other but to our visitors. Committee members should ask questions, but should resist making long responses to the suggestions that visiting members will make. That debate is for another day; we want as much as possible of the available time today to be given over to our visitors.

I propose that we take the visiting members in alphabetical order; Susan Deacon is therefore the striker—she is on first.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): Thank you. It is nice to return to the committee as a visitor; in a former life, I sat on the other side of the table. Indeed, some of the thoughts that I will share with the committee this morning have been, in part, informed and shaped by work that the committee did in the first session of Parliament. I will return to that in a moment.

The initiative that the Procedures Committee has taken is excellent. Opportunities such as this, particularly when it comes to the operations of this institution, are valuable. We do not spend nearly enough time on discussions such as this. Although we all have good intentions to sit in on other committee meetings and to respond to requests to complete questionnaires or whatever, the world in which we live does not always allow that. Discussions such as this allow people who are particularly interested in a topic to engage much more effectively, so I am grateful for this excellent opportunity.

I have a great many thoughts and opinions on the use of parliamentary time, but I will try to go briefly through some of my key concerns. The review is all about time, and any discussion about time in the chamber always leads to the question whether we need more time. I believe fundamentally that, whether in the chamber or in other aspects of our work or lives, the first thing we should always address is whether we are making the best use of our time. I say unequivocally that we are not doing that in the chamber. For long periods, the chamber is very poorly attended; we have to address that before we can say that we need more time. We need to think about how to make effective use of our time.

I do not have time to do justice to the issue of chamber attendance and engagement and to unpack it, but I want to highlight a few areas. We need to do more in the chamber in response to members' interests and concerns, and we need to allocate time to what really matters and to issues on which we should be taking decisions. Let me be specific. Ministerial statements are a good example: more often than not—Murray Tosh will know better than I, speaking as he does from the vantage point of being a Deputy Presiding Officer—ministerial statements are greatly oversubscribed. We rush through them, with members continually being pressed: "Don't give preambles; ask a question." At the end, the Presiding Officer gives the requisite apology to members who were not called and, at the end of the ministerial statement, the chamber empties.

I remember one occasion—I apologise if my recollection is wrong—when Andy Kerr was speaking about the Kerr report. It was a major announcement on Executive policy and many members wanted to ask questions, but only a very small proportion of them managed to do so. When that item of business closed, the chamber emptied, with a few members from each party staying for the next debate, which was on a fairly anodyne subject. I am not going to suggest an answer to that problem, but I do suggest that such a scenario is plain daft and that we need to do something about it.

Flexibility is important because we cannot create rules that will govern every eventuality. Not every issue will attract the interest that the Kerr report did, but a balance must be struck so that we can be more flexible. We must look ahead to see what items are likely to generate a great deal of members' interest and thereafter allocate time

appropriately. We also need to create more flexibility for the Presiding Officers to respond on the day to the amount of interest in a topic.

It is also important that we give time to what really matters. The convener is probably the resident authority on, or at least the continuous champion of, review of our legislative procedures, particularly our stage 3 debates, so I will not even attempt to compete with him. However, I would like to flag up some of the key problems, although I will not offer solutions. I apologise if members think that I am stating the obvious, but I have not read all the Procedures Committee's *Official Reports* and minutes.

I do not want to revisit what may be painful for us all, but perhaps one of the best—or worst—examples of the daft things that go on in the chamber is the debacle over the Licensing (Scotland) Bill. We cannot just move quietly on and say that we will do it better next time, although there have obviously been efforts on all sides to ensure that stage 3 debates are better in the future. It is important to acknowledge that.

Leaving to one side some of the substantive issues around the Licensing (Scotland) Bill for the moment, I want to flag up one particular issue. A number of manuscript amendments were lodged to the bill on the day of the stage 3 debate; I would like to quote the words of whichever Deputy Presiding Officer was in the chair at the time. I am told that it was the man who is sitting on my right; he will, no doubt, correct me if I am wrong. In the middle of a debate on late-lodged amendments that proposed policy changes that had not been properly discussed and tested through all the months of consultation, debate and committee consideration that had gone before, the DPO said:

"Given that 12—now 13—members want to speak in the debate on group 5, I cannot call all of them. I shall call one member from each party who has pressed their request-to-speak button. I warn them that they will get a very tight two minutes."—[*Official Report*, 16 November 2005, c 20697.]

I am not criticising the DPO—and not just because he is sitting beside me—but, for goodness' sake, we must find a better way than that. I note in passing that there is another issue buried in that comment. It presupposes that there are always party positions on such issues. I was one of the eight members who were not called to speak, and I wanted to speak against my party's position on that occasion. However, that is beside the point.

Later in the debate, a similar comment was made by the DPO:

"Of the 13 members who wish to speak, I intend to call five … I shall give them one minute each."—[*Official Report*, 16 November 2005, 20699.]

We cannot agree points of law on the basis of a few minutes' deliberation. I know that that is precisely the kind of thing that the committee is considering, but I take the rare opportunity that I have as a member of this institution to share my concerns about that. It is of particular concern in a unicameral system—in which there is no revising chamber—that we consider what we put on the statute book.

There is also an issue about party management and effective management of chamber business. Everybody accepts the need for a system to manage business and to structure who contributes to debates and so on, but such a system should also allow involvement and spontaneity. I cannot do justice to the matter now, but I point out that it was studiously debated by the previous Procedures Committee.

I have brought along that committee's report, "The Founding Principles of the Scottish Parliament: the application of Access and Participation, Equal Opportunities, Accountability and Power Sharing in the work of the Parliament"—which I am sure all committee members have read thoroughly. Murray Tosh will correct me if I am wrong, but I think that one of the four volumes of evidence that went with that report touched on the delicate matter of what the parties do here. If I recall correctly—I have not re-read the report in the past 24 hours—there was an agreement across the parties in the previous Procedures Committee that more flexibility had to be allowed to enable members to contribute to debates even if they had not put their name on parties' speaking lists in advance. A bundle of issues relating to that need to be addressed, but the overarching point to make is that the chamber experience needs to be positive and productive both for members and for those who listen in. Certain things can be done to achieve that objective, if there is the will to do them.

In a similar vein, I flag up a matter that I do not know whether the committee has considered. It is something of which I have become increasingly aware during my almost seven years in this institution. There are few opportunities—procedurally, there are almost no opportunities—for members to come together across the parties to raise issues of general concern or interest. At one end, there is the Executive debate or Opposition time, which is clearly organised along party lines. There are sometimes nice subject debates, which had their genesis in the previous Procedures Committee's report. Some of those debates work better than others, but I am pleased that we have them. Then, at the other end of the spectrum, there is the members' business debate. Could not there be a mechanism in between those kinds of debate whereby two or three members from different parties who share an interest or a view on an issue could have that issue debated?

10:30

There are some big issues for which such a system might be appropriate—the war in Iraq strikes me as being an obvious example—but there are also much less contentious issues for which it might work. There are geographic issues and other issues that are of shared concern, but which do not fall neatly within party lines and so cannot be allotted to party time and which are bigger and wider and merit more than a members' debate in 40 minutes at the end of the day.

It will come as no surprise to the convener that I have a range of other views; those were just a few of them. I end by saying this: I have already mentioned the previous Procedures Committee's report. The world has moved on since then and all of us who were involved with producing that report accept that if we had our time over again we would probably do it a bit differently and try for a snappier report.

That ties in with my opening remarks about the use of time; the longer Parliament goes on, the more I detect a snakes-and-ladders approach to things. In other words, we get so far on with a discussion or our thinking, then a committee convener changes, committee membership changes, a minister changes or whatever, and we go way down the snake and back to the beginning again. Across the board, we are not using our time as we might if we got a bit better at taking the work that others have done and, by all means, kicking it on to the next stage.

I know that this committee and its various memberships through the current session have done that with certain aspects of the work that was done in the previous Procedures Committee's CSG inquiry report. I hope that I can be so bold as to suggest that some of the other conclusions and evidence that were offered up during that inquiry would be germane to the work that the current committee is doing. I sincerely hope that that is being considered. Thank you for taking the time to listen to some of my thoughts.

The Convener: Thank you. If other points that you wish to make do not emerge during the next hour, feel free to put them on paper or to whisper them in people's ears and we will get them into the system.

Next, alphabetically, is Mike Rumbles. The floor is yours.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Thank you, convener, particularly for your welcome and your opening comment that we are here to represent ourselves. Of course, I always express my own views, as I will do today.

The remit for the inquiry says that the Parliament's

"sitting pattern has reflected a number of key principles, including balancing the importance of committee and Chamber business, and operating within normal "9-to-5" working hours (to enable members to combine Parliamentary duties with family and other commitments)."

I do not think that this is a family-friendly Parliament. That might come as a surprise, especially to the 80 per cent of members who can get home of an evening. I notice Alex Johnstone nodding his head; I am pleased that there are two members from the north-east on the Procedures Committee. Parliament is awful as far as being family-friendly is concerned, so I am not very happy with all the remarks that we hear about a family-friendly Parliament.

It is not family friendly because of the distances that are involved in getting here. I find that we are kicking our heels on Wednesday evenings and although we can fill the time in by going to receptions and meeting people, lobbyists and organisations, we should be here doing our job. We are away from our families for that time, which is not satisfactory. That applies to 20 per cent of the members of the Scottish Parliament, so I am surprised that that voice has not been heard more loudly.

I have another plea. If the committee recommends that business in the chamber be moved about, please do not move it to a Tuesday. Some of us would have to leave at 3 o'clock in the morning to get here, which would be ridiculous. The current situation in which we have committee work on a Tuesday and Wednesday morning with chamber business on a Wednesday afternoon and Thursday is right. The remit says that the committee is not necessarily looking for more time but if it is, I urge the committee to consider Wednesday evening, so that Parliament is far more family-friendly to MSPs.

On speaking time, I appreciate that we have moved from average speaking times of four minutes to six minutes, but I would like that to go further to seven minutes because a lot of us like to take interventions and to intervene on other speakers. That is part of the cut and thrust of debate in the Scottish Parliament and it makes debate more effective than it is when members just get up and give speeches. Perhaps we should try something new.

Why not keep speeches to six minutes, plus one minute for interventions? That would encourage members to give way to interventions. It would be fine if speeches were kept to six minutes. However, we should think about changing the system to encourage greater to-ing and fro-ing in debates. I do not like hearing MSPs in the chamber saying that they do not have time to take an intervention because they only have six minutes. That does not add to the quality of debate.

I am not going to say anything more on the stage 3 situation. Susan Deacon spoke on that and it is imperative that the process be reformed. We cannot have bodged jobs, but that is what we are getting with stage 3. We all know that the procedure is not fit for purpose.

The Convener: I welcome Murray Tosh in the light of his past dignities.

Murray Tosh (West of Scotland) (Con): Thank you for those warm words of welcome.

To say that we have a famine of members wanting to speak in debates is not correct—we never have famines. I accept that last week we suspended early one morning, but that was the first time in ages that has happened. There are no debates in which we are desperately short of speakers to fill the available time, but there are occasions when we are desperately pressured for time. Some issues that have been raised are worth pursuing.

In the past month, I have presided over two ministerial statements. One was by the Minister for Tourism, Culture and Sport for which an hour was allocated and in which everyone who wished to speak was called. That was a good experience. Several weeks later, there was a statement on forestry for which half an hour was allocated. Seven members who legitimately wanted to speak on forestry were not called because there was not enough time. That was a deeply disappointing and frustrating experience. I am not speaking officially as a DPO, but obviously my comments are informed by what I see.

There is a tendency not to allocate enough time for ministerial statements, which is a pity because ministerial statements tend to draw better than average attendance in the chamber. There is a real problem with chamber attendance and interest in that few members attend the chamber unless they are speaking in a debate. Quite a few members are reluctant to attend except when they are to speak themselves. Most members who are speaking in any given debate accept that they should be there for opening speeches. Attendance during the closing speeches, however, is not always what it should be.

Attendance at question time, other than at First Minister's questions, is very poor. Members turn up just to ask a question and then leave. There does not seem to be any interest in feeding off the questions and asking supplementaries. I know the committee has spent a large amount of its time in this session considering how to improve the performance of question time. I do not know why members have little interest in questions. I am not suggesting anything that the committee has not looked at already.

Members' business is another area in which enthusiasm has flagged. We are required only rarely to extend the time for it. There does not seem to be any pressure to take part in it.

Attendance in the chamber is much thinner than it was in the first session and in mainstream debates the level of intervention is now less than it used to be. I agree with Mike Rumbles on members not taking interventions in six-minute speeches. The standard speech in the first parliament was four minutes, during which members nearly always took interventions; some were even happy to take two interventions. Now members regularly say, "Sorry—I've only got six minutes." I am not sure whether extending the allocated time will work. Just as when members moved effortlessly from four minutes to six minutes, if we moved to seven minutes, it would not be long before we heard members apologising because they only had seven minutes. I do not have an answer to that problem. Unless a member is delivering an opening or closing speech—both of which I think are under-resourced; closing speeches probably more so—they can say quite a lot in six minutes.

Some members are exceedingly good at varying their delivery when they are told that they have four, six or 10 minutes. They just get into the subject and make the points that they want to make and they use the time that they are given well. Other members perhaps spend too much time either on an elaborate introduction or on closing with a series of quotations. Their speeches are truncated because I have to press what I still think of as the red button—the button in the new chamber set-up is not red—to bring them to a close. If members were better able to balance their speeches, they would get more mileage from their six minutes.

I accept that members who make the opening speeches for their parties find it difficult to lay out their party's positions on complex issues in six minutes, and that it is impossible to do a good closing speech in just five or six minutes. We pay a price for that. A noticeable feature of the round of closing speeches is that members tend to make what are, in effect, their own speeches and do not necessarily reflect on what has been said in the debate or pick up points that have been made. Ministers are better at doing that. Of course, they are briefed and it is more their job to do that. That said, all members who close should pick up on what has been said in the debate and respond to points that have been raised. We tend not to be very good at that, but the reason is partly time pressures.

I turn to bill processes. The real horror story was the Charities and Trustee Investment (Scotland) Bill. Following the stage 3 debate, the convener of this committee drew attention to the lack of time that had been allocated to members other than

those who spoke to amendments and responded to debate on their amendments, which was calculated to be 19 minutes, virtually all of which was found as a result of the Presiding Officers' squeezing of the subsequent debate on the motion to pass the bill. If we had had to adhere to the timetable for that debate, only three or four minutes would have been available for such contributions.

That information was a great shock to the Parliamentary Bureau, the Minister for Parliamentary Business and the parliamentary officials who did the calculations. Although that case was an extreme one, as Susan Deacon has pointed out, there were obvious time constraints on the stage 3 debate on the Licensing (Scotland) Bill. That said, we have never got it quite as badly wrong as we did on the stage 3 debate on the Charities and Trustee Investment (Scotland) Bill.

The example of the Licensing (Scotland) Bill shows that there is pressure to allow members to speak, which is not responded to. By contrast, plenty of time was made for last week's stage 3 debate on the Human Tissue (Scotland) Bill. We do not have a problem with most stage 3 debates, although now and again we hit a shortage of time for a stage 3 debate.

I agree that it is pretty rough justice for a Presiding Officer to call members and tell them that they have only two minutes, but we do that to include as many members as possible. I agree that not every member speaks from a party-political point of view. The Presiding Officers' job tends to be to manage the time and to get in as many members as possible.

The importance of everyone who wants to speak in a debate being able to do so is a matter for debate. My view is that we need to have full and flexible debates on amendments, including probing amendments and those that are lodged to make party-political points, grab newspaper space and so on, which people are perhaps less concerned about. If we do not resource those debates, the opportunity for a member to create doubt in other members' minds about an aspect of the bill proposal or to persuade Parliament—or even the minister—that something in the bill needs reconsideration, is lost.

However good a job we think that we have done, it defies human logic to think that we can get everything right on every bill, but we have never in seven years used the reconsideration procedures that are available to us when we think that there has been a problem with a bill. A good example of that is the issue of off-licence opening hours in the Licensing (Scotland) Bill. Given that many members had difficulty with the provisions, what reason was there for forcing through a decision and reaching a solution that no one really wanted in the first place? That said, the law of unintended consequences came into play and opening hours ended up being restricted further instead of being made more flexible.

10:45

Has the reconsideration procedure not been used because there is a sense of machismo that means that the first minister who agrees to use the procedure will be seen as a failure? Would using that procedure be a mark of failure? It should not be. When a bill has been thoroughly considered, has consumed hours of committee time and has involved many authoritative people in Scotland giving massive amounts of evidence, which the civil service and ministers have considered at length, use of the reconsideration procedure should be seen as a mark of wisdom. If two or three matters arise at the end of a bill's progress that we think should be considered further, it would be appropriate to refer the relevant sections back to committee for further consideration. That might take another month, but that would show strength rather than be a sign of weakness.

We need more flexibility. Extra plenary time might not be needed in many weeks—the week's business is often perfectly manageable within the available time—but it would sometimes be better to have had more time so that more members could speak after statements, and we might sometimes do better with stage 3 debates. We should consider our ability to expand the time that is available; procedures allow meetings to close later, but we are reluctant to use that facility and it is done only in exceptional circumstances.

Mike Rumbles made a point about using Wednesday evenings as a safety valve. Apart from that, I would not change the shape of the parliamentary week. The split between committee work and plenary work is sound, but we should make more use of the capacity to expand business into Wednesday evenings when we are under pressure.

The Convener: I will cheat by kicking off with the first question.

On Saturday, I enjoyed myself at Murrayfield, which I rarely do. Clocks are now used in rugby games on the same principle as they are used in basketball games—the clock will not progress if a chap is injured or whatever. Could a system be used in the Parliament in which the clock does not progress if there is an intervention? Could Presiding Officers use the concept that is behind injury time or time out so that interventions are encouraged without basic speech times increasing beyond six minutes, for example?

Murray Tosh: Such a system could be used, but things would have to be done manually. I do

not know whether the software that we have would be equal to such a task. The clerk would need the presence of mind to stop the clock.

The difficulty with the suggestion is that it would make managing debates impossible. Management is possible if members have, for example, six minutes to speak and intervention times are absorbed within those six minutes. We work not just towards 5 o'clock, but towards when closing speeches must start. In a typical afternoon, we will have perhaps just over an hour of open debate time to play with and already members will not be called. If unpredictable amounts of time start to be allocated, more members will be squeezed out of debates, which would make managing debates a much less predictable and more ill-tempered affair than it generally is.

Mike Rumbles: In my opening statement, I did not argue that we should go from having six minutes to having seven minutes for each speech per se—I argued for encouraging interventions. The point that the convener made is, in effect, the same point as I made. I understand what Murray Tosh has said about practicalities, but my suggestion was that Presiding Officers should not only acknowledge that they can give members who take interventions an extra minute but make that acknowledgement public, so that what will happen is known about and expected and interventions are encouraged.

I take Murray Tosh's point. Time is finite—it is not infinite—and he will not be able to let as many members speak if the suggestion is adopted. However, parliamentarians should make a judgment. If we want to encourage better-quality debates and more interventions, members must be made aware that the Presiding Officer will grant an extra 60 seconds. That is important.

The Convener: We will have to think about that.

Mr Bruce McFee (West of Scotland) (SNP): I will pick up that point. The debates are artificial. The rigid timetabling of debates and of speakers' time prevents the free flow of many debates. However, the problem with Mike Rumbles's suggestion is that if somebody has an extra minute, where is that taken from? At the moment, there is an insistence on rigidly timetabling debates and speakers and on having decision time at 5 o'clock. Either we have a rigid timetable, or we have a much more free-flowing arrangement. What would such an arrangement look like? What would we do if extra time needed to be given in a debate before general questions or First Minister's question time? I am glad that I am asking the questions.

Susan Deacon: I do not have an answer, but I will share a thought. I note that in the Procedures Committee report to which I referred, one of the 140-odd recommendations was to provide a mechanism, through the intranet or whatever, for members to indicate in advance their interest in a debate.

One problem is that it is difficult to know how interested members are in a debate until it is upon us. I recall that the Procedures Committee kept returning to the conclusion that much more advance notice is required of potential topics. The matter affects not only members but engagement by external organisations.

I accept the point about the difficulty of having flexibility on the day—or at least about the knock-on consequences of having more flexibility. However, if we are being honest, people are often dragooned into speaking in debates to fill time. Better advance planning of parliamentary business could reduce the time for the debates in which people are dragooned into speaking and allow a little more time for debates that have a high level of member interest—members might not put their name down to speak but they might say that they will attend the debate or intervene. Perhaps something could be done on that.

Murray Tosh: I do not know what answer I can give Bruce McFee. If a debate starts at 2.35 and finishes at 5, if the political parties have their opening and closing slots and if we want to fit as many people into the open debate as possible, we must ration time. From doing that for several years, it has become clear that unless we are prepared at times to be brutal, some people will take all the time that is available. Most people recognise the signs and wind down just after six minutes but, if the threat to cut off people's sound were not made, some people would talk on and on.

We either operate in that way or make debates open ended and say, "Right—let's have a debate. We'll finish and take decision time when the debate is complete." That would not worry me. If I am doing members' business, I am in the chamber until 6 o'clock anyway. Provided that my colleagues were around to share the chairing, continuing until 7 or 8 o'clock would not faze me. However, I wonder whether members in general would be prepared to support such flexibility, with its knock-on implications for the other things that they do on a Wednesday evening. I am not sure what proportion now go home on a Wednesday evening—that might be interesting information—but if we take it for granted that the majority of members are here on a Wednesday evening, they are doing other things, which are not all just a question of filling time. Some of them may be filling time, but many people value other activities and might resist such flexibility. We might also find that the Executive business managers would not be happy with a non-fixed decision time, because

that could create issues with the attendance of members at the appointed hour.

Mike Rumbles: I suggest a compromise. Rather than a fixed decision time at 5 o'clock, I see no problem with a fixed decision time that is between 5 o'clock and 5.30. I return to my previous request that we encourage interventions and proper debate rather than have speech after speech without an intervention. Allowing some members an extra minute to speak would not encroach into a day's business by more than 30 minutes. Everybody would know that decision time would be not at 5 o'clock, but between 5 and 5.30. Sometimes, decision time does not start until 5 past or even 10 past 5, so why not have an envelope? That would be a compromise between having certainty and the flexibility to encourage proper debate.

One issue that has not been raised so far is to do with speeches. I speak for myself, as a humble back bencher. I often find the scheduling of debates annoying. It is ridiculous that we often have several debates in a day. The mornings and afternoons can be divvied up into different debates that parties have introduced. I understand entirely the right of parties to debate issues that they want to debate—that is up to them—but the parties can decide what to debate only within the rules of the Parliament and those rules should be changed.

To return to Murray Tosh's point about non-attendance. Why should I attend a debate in which I know members will not be able to engage? On many occasions, I have heard Murray Tosh or one of the other Presiding Officers say almost straight after the front-bench speeches that we are now coming to the closing speeches. Sometimes only one back bencher makes a speech. That is ridiculous—it brings the Parliament into disrepute and frustrates back benchers. It is a real problem. We should not tell parties what they have to debate, but they should have to conduct debates within parameters that are good for Parliament and for proper debate. My suggestion would be one way of addressing that.

The Convener: Some of the foreign Parliaments that we have visited or exchanged information with store up voting until a certain time, which is worth considering. Some of them also give a lot more warning of the topics that are to be debated, which is a suggestion that other members have made. Those issues are on our agenda as possibilities.

Alex Johnstone (North East Scotland) (Con): I want to take up points that were made by two members. Susan Deacon talked about a kind of debate that she believes we do not have in Parliament in which there is greater opportunity for members to build on cross-party issues. Murray Tosh made a suggestion that I have heard from other sources, which was that members' business has lost its sparkle. Should we consider how members' business is used, with the aim of releasing it from its shackles and making it a more flexible, exciting and important part of the Parliament's business?

Susan Deacon: The short answer is yes; that has to happen. If a procedure is patently not working well, it is incumbent on all members at least to ask questions about how it might work better, as the Procedures Committee is doing. I have two suggestions, which, as we have all said, are just personal opinions. First, we need more opportunities for collective initiatives through which two, three or four members come together on an issue. That idea has been proposed before but has not been taken up.

My second suggestion may go against conventional wisdom once again, but I wonder why the rules place such an emphasis on members' business motions having to address constituency issues. My point is not that constituency issues are not important—many good bona fide constituency issues have been raised, some of which had a wider national resonance. The rules on that were revisited recently, but debates can be very localised. People take one look and say, "That's in Argyll so it doesn't affect me," or "That's in Fife so it doesn't affect me." Substantial issues such as transport or wind farms would have wider national resonance, but members are shoehorned into discussing local issues and everybody just leaves. Members' business could definitely be improved.

11:00

All members should stress the time pressures that they are under. People have a mental image of the empty chamber during members' business and—because of the press coverage over the years—they think, "Ach, that's just them. They're not doing anything." Lots of us feel terribly guilty walking out the door knowing that we are leaving an empty chamber behind. However, we also know about our other time pressures.

At Scottish Parliamentary Corporate Body question time last week, I managed to ask a question by the skin of my teeth. I asked whether the SPCB might consider amassing, and making publicly available, information on the range of work that MSPs do. That could be a counterweight to the forensic examination of our bus ticket and paper clip costs; it could give a backdrop to discussions on these issues. I am not talking about gathering awful collections of forms filled with details, because we do not need that; I am talking about getting a wider picture of the range of work that MSPs do and of how that work varies depending on where the MSP lives and on whether the MSP is a regional member or a constituency member.

Those of us who live within travelling distance of the Parliament often have constituency commitments midweek. I have surgeries on a Wednesday night. Obviously, such things can be shifted, but the point I am making is that everybody's week is different and depends on a host of different factors. To my knowledge, nobody has ever systematically assembled a picture of what the life and work of MSPs are really like. The committee may want to think about that a little.

Mike Rumbles: Susan said that the shape of everyone's week is different. She says, "Oh well, I don't just go home, I have a surgery on a Wednesday evening." Well, I would love to have a surgery on a Wednesday evening. Everybody's life and work programme are different, and the Parliament is not family friendly for people in the north and north-east.

I was attracted to what Susan said about making members' business more open and not linking it to constituencies. However, as a back bencher, I am aware that members' business is the one time that is whip free. A reason for that is the absence of a vote, but another reason is that the debates relate to constituency interests. I can foresee a problem: if the constituency link is removed, the party machines will move in. We should avoid that.

The Convener: The party machines already decide who gets to have a members' business debate.

Mike Rumbles: Indeed, but the party machines will have an even greater influence if we move away from the constituency link.

Murray Tosh: I will add my tuppence worth. If the committee intends to pursue changing the criteria used to select motions for members' business, it should take evidence from business managers. Members might find that they look at things from a different perspective.

Susan spoke about the narrow focus of debates, and sometimes that applies. However, last week we had a debate on childhood obesity. That is not restricted to any area; it is an important issue that affects the whole country. At the debate, there were 10 members in the chamber at the start and eight members in the chamber by the end. Although childhood obesity is a significant issue, it had clearly not caught the interest of the great majority of members—including many members who have participated in debates on, for example, free school meals and some of the other issues that are germane to that topic.

I wonder whether there is a specific difficulty on Thursdays because that is when members leave the Parliament, whether to go home or to go on to other events or functions. There may be something to be said for trying a sustained experiment of holding members' business debates on Thursday lunch times. One of the downsides of that—apart from the impact on staff, which I presume could be adjusted for—is that visitor services would lose the opportunity to bring people on to the floor of the chamber over Thursday lunch times during the debate. Conversely, people could watch the debate from the public gallery at that time, which would be a different part of the experience. The committee might want to consider the few members' business debates that we have held at lunch time and recommend that we run a pilot that the bureau could go along with. You would need to raise the matter with the bureau.

The Convener: Has there been any discussion of giving over a Thursday every two months or so to members' business debates, in addition to possibly using lunch times?

Murray Tosh: You are referring to the recommendation that the previous Procedures Committee made in its session 1 report, that members should get time in what is sometimes referred to as Executive time.

The Convener: Yes.

Murray Tosh: I do not recall any discussion of that. In general, although the Minister for Parliamentary Business is pretty flexible about topics for debate and accommodating the wishes of other business managers, she regards that time as Executive time and would probably want a very good case to be made for releasing it. Occasionally, an extra hour and a half is found on top of committee time for a Procedures Committee report, for example, or for a ministerial statement on an important topic. Occasionally, the Executive will slot in a debate on an issue that Opposition parties argue should be debated. However, there is generally more Executive business than there is time available to the Executive. You will have to push the Executive on that again and see what its reaction is.

Chris Ballance (South of Scotland) (Green): My question was related to that, and much of what I wanted to know has been covered already.

I cannot resist commenting on Murray Tosh's remark that it is impossible—on occasions, on a complex issue—for a party to lay out its position in six minutes. The party of which I am a member is almost never allowed more than four minutes, and that is sometimes cut down to three minutes, so I find the remark interesting.

First, if we opt for cross-party members' business debates, I presume that we will have to enable cross-party motions to be lodged, some of which may not be chosen for members' business debates. I am interested to know whether the panel thinks that that is a good idea.

Secondly, if we have cross-party members' business debates, where will the time for them

come from? Will it come out of the general allocation for members' business debates? Will it come out of general parliamentary time, to be "paid for" by the Executive and non-Executive parties?

Thirdly, we have touched on the possibility of holding members' business debates over Thursday lunch times. Would it be worth considering holding members' business debates at different times? For example, they could be held at the start of the day. That would avoid the undignified spectacle of all members leaving the chamber after decision time, leaving only seven members present for a debate that will be of prime concern to 20 or 30 people in the public gallery.

Murray Tosh: I will start with your point about time for speeches. If the Greens lodged an amendment, they would get the same six minutes as other members get. If the only Green member to speak did so in the open debate and only four minutes was available—as would be the case on a split Thursday morning, for example, when there are two debates—it would be difficult for them to get much substantive said, I agree. However, that issue affects not only the Greens; it affects every member who is asked to speak for four minutes.

On the whole, I dislike debates in which speeches are reduced to four minutes. The bureau has left it to parties and allowed the Conveners Group to allocate the time for committee business as appropriate. You will have to take on the bureau to get that changed if you think that that is a priority.

What was your second point, Chris?

Chris Ballance: Do you think that cross-party motions would be a good idea? Presumably if we have cross-party members' debates, we should also have a system of cross-party motions.

Murray Tosh: I am not sure what you mean by that. One of the criteria for selecting members' business debates is that the motion has attracted cross-party support. In order to get that, members have to express their views on issues in such a way as not to preclude members from supporting them. Some motions are clearly tailored to be signable only by members of a certain political disposition, but members who want to generate support for their motion will generally frame it in such a way as to maximise cross-party support.

Chris Ballance: At the moment, a motion can be lodged only in the name of one member. If we were considering a form of members' debate along the lines that Susan Deacon suggested, presumably we would have to change the standing orders so that a motion could be lodged in the name of a group of members. Do you have an opinion on that?

Murray Tosh: No. I am sure that it would be possible. However, given that all the members who support a motion are welcome to speak in the debate in support of it and get due recognition from the person leading the debate, I am not sure whether it would have any material impact. Perhaps Susan Deacon has some idea of how what you suggest would involve more people.

Susan Deacon: Although we have now veered into a discussion about motions, my initial point was not specific to motions but was a wider point about subject debates and the extent to which general chamber time is organised along clear party lines. We all need to be clear about what we want to achieve from debates in the chamber and then work back from that to find the mechanisms and rules to facilitate it. I am not sure that we have clarified what those overarching objectives are. I am certainly not going to attempt to do that today as I have not been immersed in thinking about the issue as coherently as you have all been in recent months and years.

Questions of detail such as, "If we do X, where do we find the time?" are perfectly legitimate. However, I do not think that in this environment we can ever design a timetable or rulebook, although we can reach agreement about shared aspirations on how we want the Parliament to work and what we want it to achieve. It would take a smaller number of people in a different environment to produce worked examples of what would enable that to happen.

I suppose that I am ducking the question, but only because it would be inappropriate to say what procedural or rule change should be made. Rather, the overarching objective, which is in line with the founding principles and expectations of the Parliament, should be to find more mechanisms to foster support for and encourage cross-party initiatives. I am sure that there are a range of ways in which that could be done.

Mike Rumbles: I am not clear what the purpose of a cross-party motion is. As far as I can see, we have cross-party motions now. When somebody lodges a motion, it does not matter that it is in the name of a particular MSP; if members of more than one party support it, it is clearly a cross-party motion. I do not see what changing that structure is meant to achieve. I am puzzled.

11:15

Karen Gillon (Clydesdale) (Lab): Murray Tosh made an interesting point about members' business. One of the issues that struck me was the lack of notice that we get about the subject of members' business debates. Notification comes quite late, by which time members might already have something else in their diaries. I am

interested in whether the members who are here think that there would be benefit in receiving greater notice of the subject of members' business. The issue to be discussed will not necessarily be pertinent to the particular day on which the debate is to be held, so members could be given time to research the subject.

Members have talked about the splitting of debating time. Personally, I think that that is a bad idea. I would be interested to hear whether you think that there should be rules to prevent that from happening, so that there would be a minimum time for a debate, which would allow a debate, rather than a party-political rant. That applies to everybody, including the Executive.

Finally, always being the last speaker, I have never found that we have needed 90 minutes for a Procedures Committee debate.

Murray Tosh: You always rise to the challenge with an astonishing level of commitment. The difficulty with preventing the splitting of debates is how that can be framed and applied. There have been some very short debates that have slotted in issues that needed to be addressed. There can be no political calculation about maximising any party's advantage in dividing time for committee business, but time for committee business is regularly divided. For example, sometimes something from the Procedures Committee or the Standards and Public Appointments Committee comes up that requires parliamentary approval, in which case a time slot must be found. There is no way that a whole afternoon would be allocated to a procedures debate that could be completed in an hour. We might want to reduce the time in that case and to do something else with the balance of time. Similarly, there are 10 or 15-minute debates on what used to be called Sewel motions and are now called something much more complicated.

Karen Gillon: Legislative consent motions.

Murray Tosh: Excellent—I knew that somebody would know what they are called. We often have mini-debates at the tail-end of the day on Scottish statutory instruments, although not as often as we used to. There is a fair bit of flexibility there. How you would keep that flexibility but ban the Opposition parties from dividing up the time I do not know.

I think that the Parliamentary Bureau has agreed that this has been resolved and can be published: it has agreed to a reallocation of business time, which will now mean allocating half-slots to most, if not all, of the Opposition parties, because of the change in party sizes. The Greens have two mornings under the new disposition, but the socialists and the independents have only one and a half slots each. The Conservatives have four and a half and the Scottish National Party has six and a half. There will therefore be more half-slots than there were before. I do not think that you can criticise the intention behind that, because it is to try to allocate the time fairly among the political groupings. There is no bad intention there; it is just that it is very difficult to manage the time.

To return to what Susan Deacon was saying earlier, much of the overarching purpose of the Parliament is to deliver an Executive programme; to provide an opportunity for the Executive to set out its policies and intentions and to take on board the reactions to them; and to expose the Executive's ideas to debate. That is our principal purpose for being here, and that is why ministers will be reluctant to be persuaded that we should sweep away the fixed decision time and radically alter the balance of time allocation. You need to move by persuasion and consensus.

The call for far more notice to be given is quite right—there should be more notice of everything. The people in the Executive staff who plan its forward programme know much further ahead than is ever made public when things are likely to get slotted in. Party business managers can often get advance notice of when their slot is likely to come. Committee dates are known in advance. Information is usually given when it is specifically requested.

We could generally identify topics for debate earlier, subject to the understanding that, when it comes to Executive time, ministers might change their minds about the level of priority that they attach to certain subjects.

Notice of the subject for members' business could be given earlier. It is usually given only a couple of weeks in advance. One of the scenarios that we have very often is that members are scrambling around at the last minute to find a suitable topic. Alex Johnstone was a business manager so he will know that when a slot comes up and a business manager looks at the *Business Bulletin* to see what would fit the criteria, it is not always easy. It is perhaps easier for the Labour group because it has 50 members, but there might not be a range of motions from the smaller groupings. Sometimes a motion is selected for debate within days of its appearing in the *Business Bulletin* and getting the necessary signatures. We might argue that we should approach the process in a much less mechanistic way, but business managers, for good reasons, are dedicated to the d'Hondt allocation because it guarantees that they get their fare share over the piece. Fair shares are an important part of our approach to the matter.

Mike Rumbles: I am dismayed to hear Murray Tosh announce that the business managers have been at it again and have allocated half-slots. I suppose that that will be brought to the Parliament and that we will be able to have our say on the matter in the chamber.

In response to Karen Gillon's question, Murray Tosh said that it is difficult to ensure that half-slots are not allocated, that back benchers are not squeezed out and that there is a proper debate, but those things are easily done. We do not have to think within a mindset that says that we must allocate so much time for this and so much time for that. Why cannot we have a rule that says that, in each debate, the time that the Presiding Officers allocate to front-bench speakers must be the same as the time that is allocated to back-bench speakers? Under such a rule, debates could be elongated or shortened, but there would be a proportionate approach to each debate.

Susan Deacon: I strongly echo Murray Tosh's point that the issue of lead times does not apply only to members' business debates. I always find it helpful if we consider such issues with reference to actual cases. A good example of the consequences of poor lead times is the recent Executive debate that ended up being on the employability framework but initially featured in the *Business Bulletin* as being on skills and training. Skills and training are issues that interest a lot of people and various members from different parties were geared up to take part in the debate and express their ideas. However, 24 hours before the debate, a motion appeared on the employability framework. That is also important, but it interests a different selection of members. The point was made in the chamber during the debate. Frankly, it ended up being a guddle because there was no clarity or common understanding in advance about what the debate was about.

I do not regard that as an implied or actual criticism of the Executive. I just think that it is symptomatic of the way in which we operate. However, it is not beyond the wit of man or woman to find ways of militating against that situation, particularly when we are in terrain where there are no particular considerations to do with deadlines or topicality. We just need a bit of clarity of thinking and planning in advance. I hope that it is useful to share that example.

Karen Gillon's reference to Procedures Committee debates reminded me of another issue, which I do not think anyone has mentioned today, although I know many people have talked about it informally. It is the question of how many debates are now, by default, attended only by members of the relevant committee. That does not apply only to committee debates. The parties assume that if the debate is on skills and training, it will be members of the Enterprise and Culture Committee who are in the chamber, and invariably it is.

The same applies to debates on legislation. Stage 1 debates have almost become an extension of the committee, with detailed speeches about the particular issues and concerns that individual committee members had in committee. I do not detract from the validity of their views and concerns, but there is an opportunity for other members and for the wider Parliament to go back to what stage 1 ought to be about, which is the basic principles of the legislation. Obviously, there are exceptions, but we have all been aware of the trend. I honestly do not know how rules can be created that will stop that happening. That is why I am reluctant to respond to questions by saying, "This is how the rules should change." However, if general principles are established, behaviour at every level can be changed—including how parties plan and manage debates—to create a higher-quality experience for everybody in the chamber.

Alex Johnstone: I think that Susan Deacon is talking about a problem that exists largely in the Labour Party. As a Conservative, given that we have only one member on each committee, it is hardly likely that we will flood a debate with committee members.

Susan Deacon: I think that I have been utterly non-partisan all morning, but I do not think that this is a problem that exists solely in the Labour Party. Factually—I think that this would stand up to analysis—it happens across the piece. As far as I can see, the same is true for the Conservative party. It is for the party spokesperson and/or the party committee member to debate an issue while everybody else flees the chamber. Of course these things manifest themselves differently in different parties and depend on different party cultures and party sizes. It happens in general. It is only the members who are made to run on issues in committee who then appear in the chamber for debates on those subjects. This is an issue of general concern.

The Convener: Members should bear it in mind that we aim to finish reasonably soon.

Richard Baker (North East Scotland) (Lab): I would like to discuss the wider issues. There have been calls at previous meetings to make extra time for chamber business, including using Mondays occasionally. That will probably not curry wide support. I get the impression from what you have all said that the emphasis should be on using the current chamber business time more wisely and with greater flexibility. Susan Deacon made a key point about the better identification of the subjects in which interest would be greater if more notice were given and members could discuss the subjects in which they had most interest. At that stage, the bureau should prioritise those subjects and give them more debating time. For example, if there were more interest in a members' business debate than in an Executive debate—although, as Murray Tosh said, there are issues with that—the members' business debate could be prioritised in the timetable.

Murray Tosh: That is a fair summation. In the first parliamentary session, the idea of using Mondays was discussed a lot. Given his long Westminster experience, Sir David Steel regularly expressed the view privately—and publicly—that members should do constituency work at the end of the week and that Monday should be a working parliamentary day. He constantly suggested that committees work on Mondays. That idea never flew; committees would not do it. We now have an established working pattern in which committees work twice as hard as anyone ever envisaged—it was always seen that they would work fortnightly, but instead the majority of committees, and certainly the big policy ones, meet weekly. They go through an enormous amount of work in the available day and a half. That gets nearly all members to Parliament.

We have not discussed the suggestion that we alternate committee and plenary work on a week-by-week basis. That would be very difficult to follow, and some members would simply not appear some weeks or could come for their committee only in certain weeks. We could lose the extent to which this is a community in which members are on campus for the three days that we interact with one another and with the people who come here specifically to interact with us. Within that envelope, we have as much flexibility as we want. However, we are here for the three days and we should divide them between committee time and plenary time.

Given what we are saying about members being absent from the chamber and the difficulty in changing that, it may be worth looking again at the argument for not having coincident committee and chamber meetings. There is not much point in saying that we have to preserve the primacy of chamber work if members are not there anyway. The danger might be that committees that are already stretched to the limit might become more heavily overloaded if committees can freely meet on a Wednesday afternoon and Thursday. Perhaps there is some scope for committees being free to get on with dealing with bills when something entirely different is being discussed in the chamber. For example, in a parliamentary justice debate, the same three members will be on the Conservative bench every time, and nobody else will participate. If it is a rural debate, it will be another set of three members, but it will be the same three members—of whom Alex Johnstone is one and a half. So, while a justice debate was going on, could the Education Committee be dealing with a bill that it would not otherwise have time to cope with? I am not saying that that is what should happen. It is just a thought in response to the paper that was circulated in advance of the meeting, and it might be time to consider the issue again.

11:30

Alex Johnstone: I would like to ask Murray Tosh a specific question. During our visit to Norway, we spoke at some length to the chief executive of the Norwegian Parliament, who has gone through a number of the experiences that we are discussing. One of the things that he has done during his tenure is to work towards removing some of the restrictions on debates—removing limits on speaking times and allowing more people to speak in debates. He told us that relaxing some of those regulations did not increase the length of the debate significantly but simply resulted in a more relaxed attitude being taken to who became involved. Is there any scope for the Scottish Parliament to be more relaxed without suffering dramatic increases in the amount of time that debates take?

Murray Tosh: Conceptually, it has to be possible. I am aware that there are time-limited debates in the House of Commons, and the same issues arise there with members complaining that they have only 10 minutes and speakers starting to get twitchy when other members go beyond their time allocations. Not every debate in the Commons is time limited, but some are. If you have good, detailed examples from other countries of how that can work, let us consider them. I am just a bit wary of some of the implications of such changes and I would like to see how that has been done in Norway.

Reference was made to votes being stored up until a certain time, for example. If you take away the discipline of the vote at the end of the day, you may reduce the attendance and participation of members if there is nothing to wait on for and they have other things to do. On the other hand, it may be that if you free up the arrangements, people will find the natural level at which they wish to speak. I am not trying to mock what Mike Rumbles said, but I believe that, even if the time limit is lifted to seven minutes, eight minutes or 10 minutes, whoever is in the chair will still have to try to make members stick to those limits. I do not know what would happen if the time limits were abolished altogether, but it might be worth trying. It would certainly make my life a lot easier; I sometimes find it difficult to consider any of the strategic issues, because all that I am focusing on is the end of six minutes and how on earth I can get member X, who is in full flood, to sit down and leave enough room for member Y.

A more flexible approach would not dismay me at all, but there might be all sorts of management issues, including implications to which members do not give much thought. For example, if we debate until 8 o'clock in the evening, there are implications for staff who work in the building, such as the official reporters; all those people have the

right to a decent working environment as well and knowing roughly when they get to go home is not an unimportant part of someone's work experience.

The Convener: One illustration of the pressure of work on members is that three members who had hoped to attend this meeting—Carolyn Leckie, Pauline McNeill and Cathy Peattie—have been kept away by other commitments. We are grateful to the members who have attended. Does anyone have any final dying words on a matter that they feel has not had adequate attention? Are there any last thoughts?

Susan Deacon: I would like to share one thought that has not featured this morning. If we as individuals are to be effective, and if the Parliament as an institution is to be effective and respected, that requires activities of quality in a range of areas. We have talked about constituency activity and parliamentary time, but members also engage in conferences, events and a whole range of other activities in Scottish public life. Our overarching objective must be to ensure that everything that we do, individually and collectively, adds value to our outputs and to our reputation. I want to factor in that wider sense of what we all recognise as the reality of what we do and what we need to do, and I sincerely wish the committee well in its endeavour to help us to do it more effectively.

The Convener: I thank all the witnesses for their contributions, which will be mulled over and put in the general Christmas pudding, and I am sure that some nuggets will come out.

11:35

Meeting suspended.

11:39

On resuming—

Crown Appointees

The Convener: I welcome to the meeting John Scott, who will speak on behalf of the Scottish Parliamentary Corporate Body. He is supported by Paul Grice and Huw Williams.

I draw members' attention to a letter that we have just received from Tommy Sheridan, expressing some views on the issue, and to correspondence between me, on the committee's behalf, and the Presiding Officer, on the SPCB's behalf, on the question whether any assessment can be made of the quality of the performance of officials who seek reappointment.

John Scott will read a statement on behalf of the SPCB, after which we will fire in with questions.

John Scott MSP (Scottish Parliamentary Corporate Body): Good morning. On behalf of the SPCB, I thank the committee for inviting me to give evidence. As you are probably aware, I have only recently taken over SPCB portfolio responsibility for commissioners.

The committee has made a lot of progress in finding a suitable mechanism for considering office-holders for reappointment. The SPCB is grateful for that work and concurs with the committee's view that a competitive reappointment process is not appropriate in the circumstances. We think that a non-competitive administrative procedure would be the most appropriate mechanism. It might aid the committee's consideration of the matter if I set out what the SPCB proposes to do if the committee recommends that option for parliamentary approval.

We suggest that the process of considering office-holders for reappointment should be based on an interview that will be overseen by an independent external assessor. The interview must be meaningful, challenging and fair to ensure that the office-holder is reappointed on merit. Office-holders would be thoroughly questioned on how they had discharged their functions, with due regard to their independence. After all, we must remember that in exercising their functions they are not under the direction or control of the Parliament or the Executive.

The assessment would take account of the annual reports that each office-holder is required under legislation to lay before Parliament and which provide details of the office-holder's activities. If a committee considered it appropriate to invite the office-holder to give evidence in support of the annual report, that evidence, which would be contained in the *Official Report,* would

be available to the reappointment panel. As a result, to facilitate the gathering of evidence, we encourage committees, where appropriate, to consider inviting office-holders to give evidence.

On the question of who would be best placed to undertake such interviews and nominate an individual to the Parliament for reappointment, we consider that the final say in that respect is a matter for Parliament. However, we think that advising the Parliament on any nomination should be a parliamentary body's function and we feel that the SPCB is best placed to undertake the role with the assistance of an independent assessor. That will ensure that the process is rigorous, but fair, and that any such appointment should command the confidence of the Parliament and the public.

Why do we think that the SPCB should take on that role? As you are probably aware, the SPCB has statutory responsibilities in relation to office-holders, including setting their terms and conditions of employment and scrutinising their budget bids. Moreover, the Finance Committee's recent report on stage 2 of the 2006-07 budget process recommended that the SPCB be given a more defined role in approving each office-holder's budget. Overall, we consider that we are best placed to consider the ability and suitability of an office-holder to undertake a second term in office.

I am happy to take questions. I will do my best to answer them, but if I am unable to do so, I hope that the committee will not be upset if I seek the assistance of Paul Grice and Huw Williams.

The Convener: The main thrust of the correspondence between George Reid and me related to the committee's desire—with, I think, one exception—not to have an open competition for an office-bearer's second stint. On the other hand, we did not want to raise any suspicions of a shoo-in. We simply want a system that will allow a rigorous evaluation of how well the person in question has done. We acknowledge that, as that person is independent, the circumstances are different from those that pertain to the assessment of an ordinary employee of an organisation, because that independence must be genuinely maintained. However, we have proposed that the SPCB should receive some outside advice on how well the person has done. How would your proposals meet our objective of having a rigorous appraisal of how well the person has done?

11:45

John Scott: There is a rigorous set of proposals, and several safeguards would be in place. First, there would be an interview, which we would want to be overseen by an external assessor. We would also want the assessment process to take account of the annual reports that had been laid before Parliament. As I said, we would encourage parliamentary committees to scrutinise and question officials on the reports that they lay before Parliament.

As you said, it is important to remember that the officials are independent of Parliament; therefore, we are talking about an administrative procedure rather than evaluation of their work as commissioners. They are not statutorily open to challenge by us: that is the role that they enjoy in their appointment.

We all receive scrutiny—and, perhaps, judgment—of these officials daily in our postbags. Members receive caseloads, and commissioners and officials are sometimes referred to. The public sit in judgment; we sit in judgment or, at any rate, assessment; and so do the press. There is continuous evaluation of the commissioners while they are in office.

Alex Johnstone: I have two questions, the first of which takes us back a step. It is a very open question, almost a preamble. In the past week, I have twice been surprised by comments on this subject—first, in the chamber, when Alex Neil commented on it; secondly, in conversation with a member of the Standards and Public Appointments Committee who referred to the process as "automatic reappointment". I have not heard that phrase being used in this committee or in the evidence. Would John Scott or anybody else like to comment on the fact that that phrase has been used in the chamber and in private conversation? Can what we are talking about be described in that way?

John Scott: I am happy to discuss that with you. The process is not one of automatic reappointment; that is not a fair comment. However, the statute allows for the reappointment of officials and that is an obvious thing to do, given the term of their office, if they have conducted themselves satisfactorily while in office in the view of the Parliament and the public. That is where we are at in that regard. Perhaps Paul Grice can expand on that.

Paul Grice (Clerk and Chief Executive, Scottish Parliament): I endorse what John Scott has said. The word "automatic" has not featured anywhere in the corporate body's consideration. We accept that this is difficult. We went away and had a long, hard look at the process, respecting the fact that the committee has been wrestling with this difficult conundrum.

The officials in question are created to be independent, yet you want to have an idea of how they have performed before you give them another stint. We understand that and we share the same objectives. The difficulty that we keep coming up

against is the fact that, every time we get round to performance appraisal, we hit up against that independence. How does one conduct such an appraisal? John Scott made some good points about that.

We have recently had to reconsider the appointment of the Scottish parliamentary standards commissioner because of the length of the appointment. As an outside observer, I assure you that the oversight of the independent assessor has been very strong and influential in the designing and putting of questions. I have seen the lines of questioning to be put, and there is nothing automatic about the appointment. There are a lot of testing questions.

Another of the issues that we have wrestled with is the fact that the Parliament has the power to remove an office-holder. The committee may want to reflect on the fact that the Parliament has chosen not to remove an office-holder—that must be weighed in the balance. The Parliament has that power, but has chosen not to exercise it. That needs to be factored into the equation.

John Scott made an important point on committees. There is evidence that some committees have scrutinised and questioned officials on their reports. Committees and the Parliament are in a strong position because most, if not all, office-holders are obliged to submit annual reports. That is an existing piece of machinery.

The Scottish Parliamentary Corporate Body felt that in building up a body of evidence over the duration of the office-holder's tenure, someone who came in at the end would probably struggle to demonstrate due process. The corporate body is trying to advise on a system in which the body of evidence will be built up over the three, four and five years. An annual evidence-taking session by a committee would be a very influential and important part of the process.

The key point is that the corporate body does not regard the process as automatic. If it becomes automatic, it becomes meaningless and contrary to what we are trying to achieve. We recognise the conundrum at the heart of the issue, which is difficult to resolve.

Alex Johnstone: The committee is concerned to ensure that any process that we enter into is fair and as transparent as it possibly can be. That is why I, and others, have taken the view that the process must take into account an independent assessment of the incumbent's performance. Our suggestion of an independent assessor appears to have been knocked back on the grounds that the SPCB feels that it is best qualified to make such judgments. Can you offer us a reassurance about the optimal level of transparency in that process? Will others outside the SPCB understand the decision-making process?

John Scott: We are going round and round the same subject. We believe that there is a lack of understanding or perhaps we are agreeing on the same thing. As Paul Grice said, an independent adviser is involved; Bernard Kingston is helping us with the reappointment of the standards commissioner.

Alex Johnstone: We accept that an independent adviser is involved in conducting the exercise. My concern is to ensure that there is an independent element in the performance assessment of a candidate during the first period of his or her incumbency.

John Scott: That is the conundrum to which Paul Grice referred. We cannot evaluate candidates' performance as such. It is not for the SPCB or the Parliament to sit in judgment on them because, under statute, we have given them the power to be independent.

Karen Gillon: No, you have given them a job description and criteria. Anyone can be assessed as to whether they have met the criteria for their job and that is all we are asking for. You are right to say that parliamentarians have had experience of every commissioner, either through individual casework or through their own experience. Members' views of the commissioners are shaded by that experience. That is why the committee, while supporting a non-competitive selection process, was very clear that the postholders' performance should be assessed independently by a management consultant. That is what we are asking for, although you claim that it would not be possible. In other lines of work, people are independently assessed. We cannot understand why the task is regarded as being difficult.

John Scott: Perhaps Paul Grice might respond more eloquently than I would.

Paul Grice: I do not agree with Karen Gillon's suggestion. If the Scottish Parliamentary Corporate Body is involved in the process, it will ensure that anything that is recommended is made to work. However, I would like to indicate a genuine misgiving. We understand what you say. In my job, I am involved in doing a lot of assessments; I myself am assessed. I am part of an organisation in which people are accountable to me and I am accountable to the Presiding Officer and the SPCB.

The difficulty is that Parliament has created commissioners as individuals. Of course, commissioners will be assessed on certain elements of their job description, such as those that relate to the governance of the organisation and financial management. However, in trying to imagine exactly how that process would work, the

SPCB has met with some difficulty. For example, if we got some management consultants in, what would they actually do? Would they assess a commissioner's decision making? The SPCB—or any panel that you might recommend—would have the ability to consider the commissioner's financial stewardship and to read any comments that had been made by the committees. However, in terms of the commissioners' performance, what would be looked at? For example, the fundamental job of the Scottish information commissioner is to make decisions in relation to freedom of information requests. We struggled with how an independent person would assess that role.

We accept that the process has to be meaningful and pointed. However, the SPCB found it difficult to imagine exactly what an independent assessor or a management consultant would do that was meaningful, conformed to due process and respected the independent nature of the commissioner. We are not saying that that would be impossible to do; we are saying that we struggled with it. I think that it is honest to report those misgivings to the committee. In essence, we struggled to see how that would work.

Karen Gillon: I fail to see why this is so difficult. I was responsible for taking the Commissioner for Children and Young People (Scotland) Bill through the Parliament. The children's commissioner has a clear remit, against which I think that she could be independently assessed. She would be assessed not on the decisions that she makes—because she does not have individual cases to deal with—but on the work that she does. For example, she could be assessed on whether she had sought to engage with young people and promote their views and aspirations to the Parliament and to Scotland. That is her remit and what she would be assessed against.

Similarly, the standards commissioner would be assessed on the basis of whether he was doing his job independently and doing what he is supposed to do. He would not be assessed on the basis of the decisions that he makes because, ultimately, those decisions are taken by the Scottish Parliament's Standards and Public Appointments Committee rather than by the standards commissioner.

I cannot see why that concept is difficult for the SPCB to understand. Right now, I am being persuaded to move with Bruce McFee because I would want there to be an element of independent assessment in the process. If that cannot be done, I would have to move towards backing an open competitive selection process. I am not comfortable with leaving a group of parliamentarians—whose judgment will be skewed because of their personal experiences—to make the decisions in isolation without an independent assessment that would enable all members to see how the process has been conducted.

John Scott: We are here to try to help you reach a view and are certainly not trying to impose our view on the Procedures Committee. There would be no benefit in that. However, it is a fundamental point that, as the commissioners are independent Crown appointees and are not subject to any functional direction or control by the Parliament or the Executive, it would not be appropriate to consider formal performance measures. That is the difficulty. Similarly, external management consultants would have no real power, in statute, to evaluate the commissioners.

Karen Gillon: On what basis would somebody not be reappointed? From what you have read out, it is clear that the reappointment process would be automatic because you cannot make an assessment based on an evaluation of the job against the criteria.

John Scott: If you go back to what I said—

12:00

Karen Gillon: Hang on two seconds. You said that the Parliament has not chosen to remove somebody from office. That is true. However, members might have decided that although an office-holder's performance has not been significantly bad enough to remove them from office, it has not been significantly good enough to reappoint them. That is a different benchmark.

We would have to prove that office-holders had done something that merited their removal from office. Not to reappoint somebody is a lower benchmark; it is about how they have done their job. I am slightly concerned that you seem to suggest that you will not be able to evaluate office-holders independently and neither will anybody else, so they will just have to be reappointed—unless they interfere with money.

John Scott: Since you are simplifying, it is my understanding that that is the position that we have created in the Parliament. That is the best advice that I have had from my officials on the matter, unless they want to tell me differently. We have created commissioners and officials and given them absolute powers. Of course, the office-holders are subject to judicial review; they are also subject to annual reports, on which they can be questioned by parliamentary committees or by Parliament itself.

The Convener: Karen Gillon was drawing a distinction between assessing whether an office-holder had fulfilled the job description and criticising individual decisions. We cannot criticise individual decisions, whatever we may think of them, because that would impair an office-holder's

independence. Is it possible to have a system in which an office-holder would be assessed against the job description rather than on their individual decisions? That seems to be a possible way forward.

Paul Grice: I can sense your frustration and I apologise, because we genuinely want to help the committee. To some extent, the only way of finding out what is possible is to go ahead and do it: hire some people and see whether they can assess office-holders' performance. That might be important. If the committee thinks that that is the way ahead, we will defer to it. Whatever the committee decides, the corporate body—if it is to be part of the process, and that is a matter for the committee as well—will do its absolute best to make the process meaningful. Perhaps the only way of finding out whether it can be done is to invite somebody in to make a meaningful assessment of an office-holder's performance.

I take Karen Gillon's point about the objectives being set out in legislation; she knows much more than most about the children's commissioner. Some commissioners' offices—for example the commissioners for standards and FOI—are very heavily casework based. Nonetheless, we could try bringing in independent assessors to see whether that would work. However, we would have to think through what status such assessors would have. What would happen if they made criticisms? Would they be able to recommend a straight, "Yes, you should reappoint" or, "No, you shouldn't reappoint"? If they were to make a commentary on an office-holder's performance, what status would it have?

I do not want to waste the committee's time if it is not persuaded by the corporate body's concerns, even though they are genuine. We thought about inviting independent assessors in, and we do not think that that should not be done, but we genuinely felt that it would be difficult. We did not want to go ahead thinking that independent assessors were a great idea, only to be confronted by the difficult prospect of making it work. Ultimately, perhaps the only way of testing the proposal is to go ahead and do it; if it works, great, and if it does not work, perhaps we will have to revisit it. That is perhaps where we have to leave it.

I assure the committee that if it wants independent assessors to be brought in and it wants the corporate body to be part of the process, we will go into it with the intention of making it work to the best of our ability. However, we genuinely feel that bringing in independent assessors would raise issues that would be difficult to navigate. If we commissioned an independent assessment, we would have to be clear about what it was for and what its boundaries were. We would have to be sure that we did not cross the line that the Parliament has drawn in creating these unique office-holders. They are not like other public officials; they are not even like non-departmental public body appointees, who are accountable to a minister. They have been given independence by Parliament. That is the point that we struggle with when we try to imagine what the process would look like in practice. We are expressing concerns about having an independent assessment rather than saying that it could not or should not be done.

The Convener: We recognise and welcome your constructive attitude to a matter on which we perhaps have different opinions.

Karen Gillon: I accept that the office-holders are independent, but they are not above accountability. They use and distribute large sums of public money, so they are accountable for their work. Any independent assessment would be an aid to whichever committee carried out the interview and the reappointment.

The independent assessment would operate in the same way as such procedures operate in other walks of life. It would provide information to the committee, but ultimately the SPCB or another committee of the Parliament would have to recommend to the Parliament whether somebody be reappointed. The Parliament has to make that decision, but it should be based on some level of independent assessment of how the office-holder has done their job. The assessment should be based not on the decisions that they make, but on how they do their job. If we do not have such an independent assessment we could—rightly or wrongly—be accused of making a decision based on the decisions that an office-holder has made rather than on how they have done their job. We would give ourselves protection by ensuring that there was an independent element to the assessment. That would prevent us from being left open to accusations that we voted against the office-holder because we did not like a certain decision that they had made.

Paul Grice: Karen Gillon describes the independent assessment as an aid to the decision-making process. My judgment is that the corporate body would probably find that description easier to work with, because the independent assessment would be part of a wider process. If that is what is intended, that is perhaps the description to pursue as it would give the corporate body more comfort. If the independent assessment is a report that may or may not be influential and which is part of a wider process, that may be helpful. The corporate body is sincere in wanting to get the views of committees annually—that would be telling—and to make its own judgment of the person's governance and

stewardship. As you said, a significant amount of money is involved—that is not unimportant. If the process has several elements, that might get round some of the difficulties that the corporate body has had over an independent appraisal. I offer those thoughts after having listened to Karen Gillon describe the role of the appraisal.

Mr McFee: I thought that this idea was nonsense from the first day that it was mooted. I now detect, with all due respect, an attempt to dance on the head of a pin on the issue. The correspondence from the corporate body, which since November 2004 has had more than a year in which to consider how the process could take place and to form a view on it, reveals that the elements of independent assessment that Mr Grice suggests would be acceptable were ruled out previously.

I take us back to the evidence that was given by Mr Scott. He said that it is not the role of the corporate body to evaluate the work of the sole candidate who would come before it. Mr Grice has said that there will be no formal performance measure and that individuals would not be open to challenge. He suggests that the potential for performance appraisal would clash with their independence. What would a commissioner need to do to fail the interview?

John Scott: Ultimately, this is a matter for the Procedures Committee and for the Parliament. Following incidents or following the submission of the commissioner's annual report, if it were the will of the Parliament that the commissioner had been found to be unsatisfactory, a motion could be placed in front of the Parliament and the commissioner could be dismissed.

Mr McFee: I am sorry, Mr Scott, but that was not the question. I have the right to do that now without the SPCB interviewing any individual. I am asking what the individual commissioner would have to do to fail the interview with the SPCB.

John Scott: You are asking about a what-if scenario. I do not have the imagination to conjure up what the scenario might be. The officials in question are independent Crown appointees and they have very much been given free rein by the Parliament.

Mr McFee: The point is quite difficult. What if someone had absconded with half the money that they were allocated?

John Scott: That would obviously matter, as Karen Gillon said at the outset. Of course a governance issue or dishonesty would matter. However, on the question of evaluating performance and determining whether decisions have been reached reasonably and satisfactorily, under the legislation that created the posts, those decisions are a matter for the appointees' judgment.

Mr McFee: With all due respect, are you saying that if you were reinterviewing an individual with a view to putting his or her name forward for a job for the next five years, you would not evaluate in any way, shape or form their work, methods and process—not their decisions, as Karen Gillon was correct to say—and whether the public were getting value for money from that individual? Do you contend that you would play no part in that? If that were the case, why would you interview such an individual?

Paul Grice: If we have changed tack, I assure you that it is because we are genuinely trying to respond to the committee's concerns.

Mr McFee: I accept that.

Paul Grice: I entirely accept your principled position. I will offer some comfort. Governance and value for money should be evaluated annually and the Finance Committee has reached the view that that process should be stronger and more pointed. That would not wait for a reappointment interview; a track record would exist. The track record might be that a person had not used the money wisely.

You mentioned process. It is easier to evaluate the processes that have been followed, so we would have something to go on. I would expect very poor performance to have been identified and dealt with long before the reappointment process takes place.

Our thinking has been influenced by the framing of the structure for the forthcoming reappointment interview for the Scottish parliamentary standards commissioner. I do not want to say in public what the questions will be, but many of them involve trying to understand how the commissioner intends to perform their role in future. Like John Scott, I cannot speculate on what might be a fail answer, but if somebody failed to give convincing answers about how they would perform their role—if they could not articulate good plans and policies—much of the interview would be about how they would tackle X, Y and Z if they were reappointed for another three, four or five years.

That is why the link back to what committees might have said over the piece will be highly relevant. For example, the question might be asked, "Committee X last year expressed some concerns about this and that in your annual report; what would you do to tackle that if you were reappointed?" If—at one extreme—the answer were, "I don't care," the nomination panel would have grave misgivings, which it would have the opportunity to put to Parliament.

I will pick up another point that you or other members made about the transparency of the process. I accept that there are issues, but the corporate body envisages a report to Parliament—

more than a one-line nomination—that it is hoped would give the Parliament some information on the basis of the process, which would at least help parliamentarians who were left with the ultimate decision to judge. If a selection panel had grave or minor misgivings, it could put those to Parliament, which it is hoped would make the process more transparent.

Mr McFee: You gave the extreme example of somebody saying that they did not give a stuff. I suspect that most commissioners could come up with a line that was better and that would get them past the SPCB.

We return to how somebody could fail the interview, because what the other answers described to me is a shoo-in in all but name. We are told that the process is to be meaningful and fair, but it will involve no competition, so what is your yardstick? Against what will you measure the guy's or lady's plans?

Paul Grice: Although I genuinely accept your points on competition, I return to the point that the track record of performance will be important. An appointee who has been in post for three, four or five years will have a track record and will have established a yardstick. The annual report process is important because it gives us some input against which to measure performance. The annual accounts process, which the Finance Committee envisages as being more rigorous, will provide a track record and to some extent a yardstick. All those examples give us something against which to measure a commissioner's performance.

12:15

The question was hypothetical so it was difficult to give an answer, but you are right—I do not suppose that a commissioner, having applied for reappointment, would come along and give a daft answer at interview. We have to rely on whoever makes up the selection panel to ask searching questions and to use their judgment as to whether they are satisfied with what they hear. They will have a lot of evidence to draw on, perhaps specific examples, patterns or challenges that they see ahead for the commissioner. From what I know of the parliamentarians with whom I have worked, they can be quite sceptical naturally and I would hope and expect that they would take some convincing. If they were not convinced, I would expect them not to recommend reappointment.

John Scott: The guidance on UK and Scottish public appointments of commissioners provides that, where legislation allows for a second term, good practice is for that to be done on an administrative basis, provided that the commissioner's performance is satisfactory. We believe that we as parliamentarians are best placed to evaluate performance over the commissioner's term of office. If we were to ask a management consultant to come in at the end of a term of office, prior to a reappointment process taking place, they would look at a snapshot.

We genuinely believe that the Parliament is the best place to carry out such reviews simply because these are independent Crown appointments and we, as elected members, are independent too. I am sure that the Procedures Committee works in a non-party way, as does the corporate body, to evaluate what has been done and, hopefully, assess that it has been done in the best interests of the Parliament and has carried out the job for which the appointment was made.

Mr McFee: I noted the use of the words "performance" and "evaluate", which are absent from the proposal that has been put before us. I leave that on the wall.

You have already said in the correspondence that you would have no objection to some form of assessor, external or otherwise, sitting in on the interview. What would they assess?

John Scott: One assumes that they would have to assess the commissioner's annual reports in the same way that we would. They would have to assess the same things that we would assess—that is the bottom line. I do not have a list of questions that we would ask in front of me. We do not necessarily want to put into the public domain questions that we might ask candidates who come before us for reappointment—you can understand the obvious reasons for not doing that. However, perhaps Paul Grice will give you an idea of the sort of things that we might ask.

Mr McFee: Just before Mr Grice speaks, I say to John Scott that I have a difficulty with his answer. The correspondence from the Presiding Officer says that nobody in Scotland can do the job, but I think that that is in some dispute. It says that the external assessor should not be involved in assessing the candidate's work, but you are now telling us that the assessor could assess the reports, which are clearly about the candidate's work. Which one is it? Will the assessor who the SPCB rightly thinks should sit in on the interview assess the candidate by going through the parliamentary reports of their work, or not?

Paul Grice: On one level, it is a matter for the committee to decide on the role of the assessor. At present, only parliamentarians can sit on the panels that make recommendations on nominations. Assessors cannot be part of that. However, that can be changed by the standing orders and that is entirely a matter for the committee.

The only experience we can go on is that with which we are currently engaged under the existing procedure, whereby the independent assessor is not part of the assessment panel, so it is not proper for them formally to assess performance. We have found it to be of great value that they bring an enormous amount of experience of appointment processes. Of course, they are there to make sure that the process is fair and proper, whether it is competitive or non-competitive. Secondly, they are helpful in the framing of questions and getting them right so that they are meaningful. So they have a meaningful role.

If the committee wanted to make an assessor part of a panel, they would be able to perform a different role. Currently, standing orders do not cater for making that initial appointment. There is an issue to do with taking a consistent approach and accepting the committee's view, with which the corporate body agrees, that the reappointment process should be non-competitive. Essentially, the independent assessors are there to assess the process, but it is our experience of the current assessor that, in doing so, they have been very influential in helping to ensure that the questions are pertinent, relevant and properly ordered and help the committee to extract the right information. That is what lies behind our previous comments.

Mr McFee: So, essentially, they assess the process.

Paul Grice: Yes.

Mr McFee: Okay. How will you determine whether you are going to interview a commissioner or one of these individuals or Crown appointees who is finishing their term of office? Will every person who is coming to the end of their first term of office be reinterviewed with a view to reappointment, if they so desire?

John Scott: As I said earlier, that is the current guidance on best practice. Where the legislation allows for a reappointment, that would be normal good practice, provided that their performance has been satisfactory.

Mr McFee: So the only person who could determine whether they got a reappointment interview would be the person who holds the post.

John Scott: Well, no. If he or she indicated to us that they wanted to stand for a second term of office, we would invite them for a reappointment interview and the reappointment process using an independent adviser would kick in.

Mr McFee: Let me repeat my question: is it the case that the only person who would determine whether that individual was to go through the reappointment interview would be the person who holds the post, by virtue of the fact that they would have to say whether they were interested?

John Scott: If their performance had been satisfactory and there was no good reason for not—

Mr McFee: Right. So if their performance—

The Convener: With due respect, I cannot really see what you are getting at. If the person is not reapplying for the job, why would we set up a whole appointment process?

Mr McFee: I am coming to that bit.

The Convener: You are pursuing a non-issue.

Mr McFee: Mr Scott just said that if their performance was adequate—

John Scott: Satisfactory.

Mr McFee: Who makes that judgment and when?

John Scott: As I said earlier, the evaluation process is on-going. The appointees submit annual reports and are subject to the scrutiny of the public, the press and us as parliamentarians in the work that we carry out on a daily basis. We all have a picture in our own minds about whether they have conducted themselves satisfactorily.

Mr McFee: I beg your pardon. Do you mean that if the view of, presumably, the SPCB and its individual members is that the person has not performed satisfactorily, they will not be interviewed?

John Scott: If the person sought to be reappointed but the corporate body's view was that they had not conducted their tenure of office satisfactorily, they would be interviewed but they might or might not be reappointed.

Mr McFee: But they would still be interviewed.

John Scott: I would think so, yes.

Paul Grice: Logically, the short answer would be yes, if the person is eligible for reappointment and they apply, and the Parliament has not chosen to terminate their office. I do not think that the corporate body would set some sort of prequalification. If the incumbent is interested in applying, they are entitled to do so and I would expect the interview panel to grant them an interview.

Mr McFee: So the only way in which a person would not be interviewed would be if they said that they did not want to be reappointed.

Paul Grice: Yes, or if Parliament had decided in the interim to terminate their appointment, which it has the power to do.

Mr McFee: Do you envisage that the MSPs who sit on the corporate body will have some form of scoring mechanism, which is normal in other appointment processes?

Paul Grice: Yes, that is likely. Again, I do not want to say too much ahead of measures that are to be introduced shortly, but I expect that the independent assessor will bring expertise on that. I would expect there to be some kind of scoring system for the questions that are framed for any panel. That would be the case for the corporate body or another panel or a panel that featured the corporate body. There will be some sort of objective assessment, although I do not know whether that will involve numbers. I expect the independent assessor to bring expertise on that to the process, from their experience of similar, if not identical, appointment processes elsewhere.

Mr McFee: Has any consideration been given to whether the process provides equal opportunity? How does it sit with equal opportunities?

Paul Grice: I do not want to reopen what is a quite proper and principled debate about whether we should have competition so, if we assume that the procedure will be non-competitive, equal opportunities will be about following due process and fairness of process. I expect the independent assessor to ensure that the process is fair and that only questions that are relevant to the job are asked, which is a fundamental part of equal opportunities in recruitment. That is how I expect equal opportunities to be delivered in the process.

John Scott: When such officials take on the responsibilities, for some at any rate, it is part of their conditions of office that they will not be able to have similar employment when they leave office. As it is regarded in the UK as best practice that they should be reappointed subject to a satisfactory re-evaluation, we must also consider their rights under equal opportunities and almost their human rights.

The Convener: To revert to the previous discussion with Karen Gillon, am I right in thinking that grounds for not reappointing might be that the person had been seen to have neglected a substantial section of their remit; that they took unduly long to make decisions; that their office did not answer letters and was chaotic; or that they were severely criticised by Audit Scotland? Am I right that there would be grounds, quite separate from individual decisions, on which the SPCB could decide that a person was not delivering?

John Scott: Very much so. We would consider such issues as part of the evaluation process for reappointment.

Paul Grice: That almost takes us back to the consideration of annual reports, which one would expect to deal with such issues. I take Karen Gillon's point entirely that there is a difference between the use of the power to remove and general unhappiness. If a committee had, over time, taken evidence and had misgivings, it might put them on the record. If there was no improvement over a period, I would expect a reappointment panel that had such evidence before it to ask searching questions. If the panel was not satisfied that the situation had been or would be turned round, one would expect the panel to reflect carefully on that before it recommended reappointment.

The Convener: I thank the witnesses, who have dealt with a tricky issue with great honesty. We will try to deal with it with equal honesty when we consider it in due course.

Consolidation Bills

12:30

The Convener: I welcome Murdo Fraser and Tracey Hawe and thank them for attending the meeting. I apologise for keeping them waiting for so long, but they will have noticed that our discussions have been open ended. It is difficult to forecast how long such discussions will last.

Murdo Fraser was the convener of the Parliament's only consolidation committee so far—the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill Committee—and Tracey Hawe was the committee clerk. She has written a helpful but difficult paper on the subject. The subject is technical.

We will not make any epic decisions today, but we would like guidance from the witnesses' experience as to whether we should consider changing the standing orders. As far as we know, there is no immediate prospect of a consolidation bill being introduced, so time is not a critical factor, but we should consider matters and reach sensible conclusions. I invite Murdo Fraser and Tracey Hawe to tell the committee how the process worked and what issues we should address.

Murdo Fraser (Mid Scotland and Fife) (Con): Thank you for inviting us to give evidence. I know that committee members have been greatly looking forward to the session; indeed, Karen Gillon told me yesterday how much she was looking forward to having a robust exchange of views on the technical aspects of consolidation bills. We will try to ease the process as best we can.

I am grateful to Tracey Hawe for preparing a detailed paper on consolidation bills, which I invite her to speak to. I may add a few comments after she has done so. We will then be happy to answer members' questions.

Tracey Hawe (Scottish Parliament Directorate of Clerking and Reporting): As the convener rightly said, the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill Committee was the first consolidation committee to be set up. We had very little precedent on which to draw in deciding what the committee's role should be at stage 1 and what factors it should take into account in reaching its conclusions. Therefore, we thought that it would be appropriate to feed our views on the process back to the Procedures Committee in a paper and to let the Procedures Committee reflect on our experiences and consider what changes to the standing orders might be needed.

I want to draw the committee's attention to four issues in particular that are mentioned in the paper. First, there is the role of consolidation committees at stage 1. There is not a great deal of information in the standing orders about the work that consolidation committees should undertake at that stage. Fleshing out the standing orders a bit might therefore be useful.

Secondly, there is the question whether there should be room for limited debate in the chamber at stages 1 and 3. Our committee rejected five of the 29 recommendations for change that the Scottish Law Commission made, and members thought that there were times when small but valid debates could be had on certain points.

Thirdly, the rules on the admissibility of amendments are not particularly helpful. There is a conflict between the general rules and the rules that relate to consolidation bills.

Fourthly, a cut-off point has been introduced for members' bills in any given session. Given the complexity of consolidation bills, we wondered whether a similar cut-off date for their introduction in any given session might be considered.

I am happy to answer members' questions.

Murdo Fraser: One challenge that we faced in dealing with a consolidation bill was the lack of available guidance in the standing orders. We ended up looking at the Westminster model for guidance. Paragraph 13 of Tracey Hawe's paper mentions the work of the Westminster Joint Committee on Consolidation etc Bills in 1983. That committee's work gave us useful guidance.

A difficult question that took up a fair bit of debating time in our consolidation committee was what test would determine whether the recommendations of the Scottish Law Commission would lead to satisfactory consolidation. We were not only consolidating the law, which it is fairly simple to do; the Law Commission had also proposed a number of improvements to reform the law and bring it up to date and we had to consider whether to incorporate those proposals.

I appreciate that this is all very technical so it is probably easier if I give the committee an example. It is now standard drafting practice that all measurements in bills are metric rather than imperial. In the 16th century, they used feet, yards, leagues, furlongs and whatever else, and a strict consolidation would simply repeat those measurements in the new bill. However, the Law Commission's recommendation was to convert such measurements to metric, and we felt that that was perfectly sensible. Of course, a strict correlation does not necessarily exist: 100yd does not exactly equal 100m. However, the committee decided that we should just call 100yd 100m, because translating 100yd into 97 point whatever

metres would have been nonsense. We had to have a bit of flexibility.

However, we felt that other recommendations of the Law Commission went too far. For example, it recommended that if there were ministerial powers to promote subordinate legislation, that subordinate legislation should be consolidated at the same level—that is, the instruments should all be affirmative or all be negative. We felt that that was a step too far, because the originating statutes all had different levels of subordinate legislation. However, if the Procedures Committee has the energy, it might want to look into that in more detail in future and it might want to decide whether it was appropriate to give a future consolidation committee a bit more guidance than we had.

The Convener: I can see that rewriting existing laws in a more modern fashion—using metres, for example—is fine. However, the issue of making improvements is more difficult. One man's improvement is another lady's disimprovement.

Is the Law Commission the source of consolidation bills, or might some minister get enthusiastic about consolidating, say, window repair bills?

Tracey Hawe: The Law Commission does a lot of the drafting and consideration of the law that will go into such bills. Our bill was introduced and led through the parliamentary process by the Lord Advocate. A committee's decision about a Law Commission recommendation—for example, about whether the recommendation was necessary to produce satisfactory consolidation—would be a matter of degree. Our committee was clear that anything involving a substantial change in Executive policy should be part of a programme bill rather than a consolidation bill.

The Convener: From your experience, do you feel that we should have a brief parliamentary debate at stage 1 and stage 3, rather than just pushing a bill through on the nod?

Murdo Fraser: When grey areas appeared in views of what was good consolidation and what was not, we felt that there was scope for a very brief stage 1 debate. However, there is always a risk that members will stray into areas of policy. The stage 3 debate on our bill dealt with very technical legal issues, but I remember that Dennis Canavan—who has a particular interest in fisheries—stood up and started to make political points. He was perfectly entitled to do that, but that was not the purpose of the stage 3 debate. It was not what a consolidation bill is for. If there were to be a stage 1 debate, we would have to be very careful about what kind of speeches and points were deemed appropriate.

The Convener: Is it legitimate for a committee to lodge interesting new amendments at stage 2, as happens with ordinary bills, or are committees tightly limited by what the Law Commission has said?

Tracey Hawe: The admissibility criteria are much more limited than they are in respect of a general bill. However, a committee could make amendments if, for example, it thought that a provision had not been consolidated neatly or accurately. In the case of the Freshwater Fisheries (Consolidation) (Scotland) Bill, committee members did not introduce any amendments because we had detailed discussions with the Executive and it undertook to introduce amendments to meet our concerns.

The Convener: Your paper, together with your clarification of it, have given us a good basis on which to consider the matter. What is the best way forward? Should we ask the clerks to produce a report in response to the paper?

Andrew Mylne (Clerk): The former adviser to the Freshwater Fisheries (Consolidation) (Scotland) Bill Committee was unable to attend today, but he plans to produce a further paper on some points of detail. The next step will be for the committee to hear what he has to say.

The Convener: Okay. We will do that. Will that be at the next meeting?

Andrew Mylne: Yes.

The Convener: I thank our witnesses and apologise again for their long wait. We have a fairly clear-cut issue before us and we will address it.

Before we go into private session for agenda item 4 on Crown appointments, I indicate that we have received a letter from the convener of the Conveners Group on the subject of annual reports. I am sure that we do not want to have a long discussion about that. Should we ask the clerk to report to the committee? I was at the meeting of the Conveners Group when the matter was discussed and there were three points of view. The majority view was that annual reports are a waste of time and that nobody reads them. Some statistics were produced to show that 3.5 people in Scotland have read a committee annual report. Some people argued that they are a waste of effort and that we should not have them. Another point of view was that we should continue to produce them with a standardised layout. The third point of view was that committees should publish annual reports only if they want to and that they could be published in a different way. Do members have any comments?

Karen Gillon: Does the Conveners Group need an instant response?

The Convener: No.

Karen Gillon: Can we return to the matter at the next meeting when we have had time to consider it?

The Convener: Yes. The item was included in the agenda to air the issue. Members might spend five minutes in the bath—or wherever they do their thinking—thinking about annual reports.

12:43

Meeting continued in private until 13:08.

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