

PROCEDURES COMMITTEE

Tuesday 23 May 2006

Session 2

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PROCEDURES COMMITTEE

9th Meeting 2006, Session 2

CONVENER

*Donald Gorrie (Central Scotland) (LD)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Robin Harper (Lothians) (Green)

*Alex Johnstone (North East Scotland) (Con)

Mr Bruce McFee (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Murdo Fraser (Mid Scotland and Fife) (Con)

Patrick Harvie (Glasgow) (Green)

Tricia Marwick (Mid Scotland and Fife) (SNP)

Irene Oldfather (Cunninghame South) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Christine Grahame (South of Scotland) (SNP)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Jonathan Elliott

LOCATION

Committee Room 6

Scottish Parliament

Procedures Committee

Tuesday 23 May 2006

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

Scottish Government (Correspondence)

The Convener (Donald Gorrie): We are sitting comfortably and we have the right pieces of paper, so I welcome everyone to the ninth meeting in 2006 of the Procedures Committee. Robin Harper has again sent his apologies; he is doing something else and cannot be here for agenda item 1.

Under agenda item 2, we will deal with correspondence from Christine Grahame, who is here this morning. She is not a member of the committee but, like any non-member, she may participate in our discussions.

We have discussed this issue quite extensively and the paper that the clerks have produced covers it reasonably well. I have some sympathy with Christine Grahame's view that the public do not distinguish adequately between the Scottish Parliament and the Scottish Executive. If Christine Grahame has constructive ideas on how to sort that out, I would be happy to listen to them. However, today we have come down to the specific issue of whether questions should be addressed to an individual minister or to ministers collectively, which is the current practice.

I invite members to comment on the correspondence so far, after which I will ask Christine Grahame to join in. Does anyone have anything to add to our previous discussion?

Alex Johnstone (North East Scotland) (Con): Like you, convener, I have considerable sympathy with some of Christine Grahame's views. It pains me that, when we meet the public, we still have to explain the difference between the Scottish Executive and the Scottish Parliament. However, I have tended to take the view that it is up to us—the Opposition parties in particular—to educate the people whenever possible.

Sometimes it becomes monotonous to hear every oral question begin with the words

"To ask the Scottish Executive",

although I am surprised that some members still occasionally forget to say it.

However, despite my sympathy, the paper from the clerks has rounded up the issue. There is little that I would desire to change.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): There is nothing that I want to add to the contribution that I made at our previous meeting.

The Convener: Christine Grahame was not a spectator at the contest at our previous meeting. We had a considerable discussion. Christine, would you like to elaborate on your second letter or to make any further points?

Christine Grahame (South of Scotland) (SNP): I want to make it plain that the issue is not party political. No matter who was in power after the next election, I would still be pursuing it.

It is very strange that other Governments are called Governments but we are called by what I have described as an administrative term. That causes confusion among the public, and I am obliged to the convener for agreeing with me on that.

As members can see in my letter, I have conceded that the Scotland Act 1998 constrains what can be done. I thank the clerks for their analysis and I thank the convener for sending it to me. As I say in my letter, paragraph 7 of that analysis says that "Scottish Executive" and "Scottish Ministers" are statutory terms and are synonymous.

It makes sense to pursue the issue. When one asks a question, one could say, "To ask the Minister for Health and Community Care", or, "To ask the Minister for Communities", rather than saying, "To ask the Scottish Executive". That would help the chamber office and others to know which minister the question was directed towards, because a question can sometimes cut across portfolios.

Another issue that is not covered in my letter but which crossed my mind yesterday relates to public petitions. I am not sure of the standing orders as they relate to petitions, but I have sought direction from the Public Petitions Committee and have been told that petitions have to use the term "Scottish Executive" because of the Scotland Act 1998. However, that may be challengeable. In motions, we can use the term "Scottish Government", so it would be useful if we could also use "Scottish Government" in petitions, instead of "Scottish Executive".

I am trying to stretch the possibilities within the constraints of the Scotland Act 1998, and I am doing so for reasons of transparency and accountability, which are principles of this Parliament. If we want the Parliament to be transparent and accountable, the words that we use are terribly important. That is why I want the term "Scottish Government" to be used.

I accept Alex Johnstone's point that it is up to other parties to use the term, and I do. However,

that is not really what I am getting at. I want us to use terms appropriately in standing orders and in our procedures. I think that it would be possible, within the terms of the Scotland Act 1998, to ask a question directly of a minister, and I wonder whether the committee would be prepared to find out whether that is the case. I also wonder whether we could use the term "Scottish Government" in petitions. That would not be obligatory; if someone wanted to use the term "Scottish Executive", as is done in motions, that would be all right.

The Convener: Thank you.

I will take your points in reverse order. It might be reasonable to ask the clerk to clarify with the Public Petitions Committee whether it has any view on the matter.

Karen Gillon (Clydesdale) (Lab): We should determine first whether we want to enter into the debate. I am content with where things are and with the note that we have received from the clerk, so I propose that we pursue the matter no further and that we close it today.

The Convener: Okay. That is a proposition.

As no one wishes to propose that we should do the contrary and pursue the matter further, the committee's view seems to be that we have dealt with the matter fully in the exchange of correspondence. We have heard what Christine Grahame had to say; she might want to pursue some of her points by another route.

Christine Grahame: You have read my mind, convener.

The Convener: I think that we have given the issue a good airing. I thank Christine Grahame for her attendance and interest.

Parliamentary Time

10:26

The Convener: The next agenda item is the review of parliamentary time, on which we have a paper. The issue is wide ranging and interlocks with other points, so it is difficult to focus precisely. However, we are getting another paper at our next meeting.

Andrew Mylne (Clerk): Yes. It will be on the various types of business that fill the time available, including Executive and non-Executive debates, committee debates and so on.

The Convener: Yes. That paper will be about the way in which we use the time, whereas today we are considering the time itself. We could go through the paper bit by bit, or concentrate on the questions that are asked at the end, or perhaps we should have a general discussion around the aspects that are presented in the paper.

We will start with the summary of questions for consideration and we can spread out from there. The first question, which is about the recognised parliamentary year, proposes that there could be an annual debate on particular areas of work. In standing orders, or somewhere, it says that the First Minister is supposed to make an annual statement, but that rule has rather fallen into disuse. We might think that it would be useful to get back to having such a statement.

Karen Gillon: My recollection is that the First Minister makes a statement on the first Tuesday of the new term in September, which sets out his legislative programme for the coming year.

Alex Johnstone: That has been followed by a two-day debate in the past couple of years.

The Convener: So we think that that point is reasonably covered at the moment.

Karen Gillon: Yes. That is my recollection.

The Convener: Right. So we accept that the parliamentary year starts on 1 September or thereabouts.

Andrew Mylne: As a defined term, the parliamentary year runs from May to May because of the timing of the elections. There is a rule that provides for the First Minister to make a legislative statement at around that time of the year. However, existing practice is rather different; the statements have mostly been made in September and they are done as a general programming issue rather than under the existing rule.

Alex Johnstone: The practice in a normal year has been to have such a debate in September, first thing after the summer recess, but I was trying

to remember whether that happened in the election year or whether the debate took place in May, just after the election.

10:30

Andrew Mylne: It took place in May in the election year.

Karen Gillon: It must have been in June, after we had elected a First Minister.

Andrew Mylne: It might have been in June, yes.

Alex Johnstone: It took place before the summer recess in the election year.

Karen Gillon: My slight concern about trying to put anything further in the standing orders or in any prescription about the parliamentary year is that I would like to encourage the Executive to get away from the view that legislation must be completed within a parliamentary year. We have a parliamentary session and our procedure is not like Westminster's, whereby legislation has to be completed within a Queen's speech year. Legislation can be carried over the summer—as will happen with the Bankruptcy and Diligence etc (Scotland) Bill—and can be taken into the next year's planning as well. I would be keen for us not to put anything too tight in our rules that would encourage the Executive to move away from the good practice that it is beginning to adopt.

Alex Johnstone: I take that point. I agree that, when a bill has been in preparation for a long time, carrying it over from one parliamentary year into the next should not be a problem. However, I would be concerned if the summer recess were to intervene between two major stages of a bill—for instance, if we were to have stage 2 in the spring and leave stage 3 until the autumn. That would be too big a stretch and minds could have ceased to be focused on the issues by the time that we reached stage 3.

The Convener: At present, the rules allow that. As I understand it, stage 2 of the Planning etc (Scotland) Bill will begin in June. We will go through about a quarter of the bill and then resume the debate in September. Is that worse than holding back the whole of stage 2 until after the recess?

Alex Johnstone: I do not think that that is a problem in relation to specific issues. My main concern is about a situation in which stage 2 has been completed and stage 3 has been deferred to a much later date.

The Convener: So, there is no great enthusiasm for doing anything too specific about the division into parliamentary years.

Members *indicated agreement.*

The Convener: Let us move on. Do we accept the present pattern of recesses? Does anyone wish to propose longer or shorter recesses, or recesses at different times?

Alex Johnstone: The pattern of recesses falls into the group of issues that we have to consider that can be loosely headed as family-friendly issues. In our report, we will have to compromise on one or two aspects of what have been described in the past as the family-friendly aspects of the Parliament. For that reason, we should not change what there is no good reason for changing. I think that we should retain the current pattern of recesses.

Cathie Craigie *indicated agreement.*

The Convener: There is no point in changing things for the sake of changing them.

Let us move on to the parliamentary week. There is some overlap between the next few questions on the paper. Do members have a view about closing down soon after 5 o'clock other than for members' business debates? There is a school of thought that most members are still around on Wednesday evenings, so we could continue for longer on Wednesdays. I have heard colleagues say that, although others disagree. Does the committee have a view on that?

Karen Gillon: I am not convinced that we have run out of parliamentary time. If I was convinced of that, I would probably support an extension of the parliamentary week. However, when I am still faced with anodyne debates I am not convinced that we have run out of parliamentary time.

The Convener: I think that we will pursue that issue next time. Andrew Mylne is doing some research on how parliamentary time is allocated. We could explore whether we spend too many hours debating Executive motions and such things. We could follow up Karen Gillon's point. Is there any zeal for having a more flexible end to the day?

Alex Johnstone: I thought about how flexibility might best be achieved and I came up with one or two ideas, which I have written on the back of this paper. Nevertheless, I am inclined to agree with Karen Gillon that, to all intents and purposes, we probably need to consider how constructively we use the time that we have. There is something to be said for allowing flexibility, especially in relation to stage 3 debates. However, to maximise use of the flexibility that we have or the flexibility that we may create, we should keep the notion of a 5 o'clock decision time as part of our normal routine. That is an important part of defending the right to be flexible when flexibility is necessary.

Karen Gillon: For some time, I have been thinking about how we handle legislation. What

concerns me most about that—especially at stage 1—is the fact that the committee report becomes a subject of debate among the members of the committee. I have now taken the position that I will not put myself forward for a stage 1 debate on a committee report on a bill if I have been a member of that committee. If we are serious about involving members in legislation, we should ensure that they get involved before stage 3, when it is far too late. We will never sort out stage 3 if that is when every member comes in with all their worries, woes and concerns.

I think that we should have an extended stage 1 debate, so that members are forced to debate the issues around a bill at that stage. In a stage 1 debate at the moment, if there are four slots and four members of the lead committee, the members of the committee will speak and that will be that—nobody else will participate. The committee will then begin stage 2 and other members with a very specific interest will get involved at that stage. At stage 3, we all wake up to what is happening and panic because we do not have enough time to debate the issues at stage 3. It is about members being more disciplined and interacting with the bill at stage 1.

We will have a stage 1 debate on the Bankruptcy and Diligence etc (Scotland) Bill tomorrow. There are huge issues around the bill, but the debate will probably involve, by and large, only members of the Enterprise and Culture Committee. The debate about the big issues in the bill should be had before we move to stage 2, but we will have quite a contracted stage 1 debate among members of that committee.

The Convener: The clerk can take account of that point. I could not agree more with what you say. There are two aspects to the issue. The first is the time that is allocated for the Parliament to debate a stage 1 report. The second—going back to a point that Karen Gillon raised on an earlier occasion—is the idea that members should have an informal seminar or whatever to teach them about the bill. I am interested in the subject of the Bankruptcy and Diligence etc (Scotland) Bill, but I have not read all the documents. That reflects badly on me, but we are all like that. If there had been a seminar on the bill last week, I could have focused on the parts that interested me and could speak more intelligently about it.

Alex Johnstone: Karen Gillon's points are well made, but they reflect, to some extent, the problems of the Executive parties. Because of the allocation of ministers and the committee responsibilities of the Labour Party, there is a tendency for the Labour members who speak in a stage 1 debate to be members of the lead committee. By contrast, the Conservative party may be given two, three or four slots in the debate

and have only one member who is on the lead committee; therefore, we have slightly more flexibility. If there is a subject in which I am interested but on which I am not up to speed, I will sit through the stage 1 debate to learn something—perhaps because I am boring in that way.

The Convener: That is a helpful point but, according to Karen Gillon, the stage 1 debate is slightly too late. There should be some mechanism for getting us up to speed, so that you could participate in the stage 1 debate; that would be better. We will examine the whole legislative process as part of the use of parliamentary time.

Question 4 is about the sitting pattern on Wednesdays and Thursdays. There is a lot of good stuff in the paper, but a particularly good point is the suggestion, in paragraph 54, that if we met in the chamber all day on Wednesday and on Thursday morning, Thursday afternoon could be used for committees that had been deposed from Wednesday morning. That might fit in with the idea of the vote on Wednesday's business being taken first thing on Thursday. Some of us saw something similar happening in Oslo, where votes are taken first thing in the morning. That seems to be a passable area to look at.

Karen Gillon: What would be the benefit of voting first thing on a Thursday morning, given that we have already decided not to have a flexible decision time?

The Convener: If there were no decision time on Wednesday, it would mean that, if debates went on longer on Wednesday evening, people would not feel constrained by the fact that there was going to be a vote at some point later on and they would not have to stay in the chamber.

Karen Gillon: I thought that, in relation to question 3, we had decided that we were relatively content with having decision time at 5 o'clock.

The Convener: There is an issue about our being too constrained by time. Having decision time first thing on a Thursday morning would mean that everything would not have to grind to a halt by 5 o'clock on a Wednesday.

Cathie Craigie: I do not think that there is any real advantage to be gained from moving decision time. We must bear in mind not only the needs of members, but the way in which members of the public interact with the Parliament. It seems that that can happen on a Monday, if someone's MSP is here on that day, a Wednesday afternoon and all day Thursday. Members generally want to be about when constituents come through. If members are required to be in a committee, that can be difficult. Most parties have a rota for dealing with the fact that members require to be out of the chamber and the situation would be

completely different if we were talking about committees rather than the chamber. I do not see that there would be any advantage in our juggling the arrangements.

Certainly, there are times when a committee can run on longer than it was supposed to, especially when it is dealing with legislation, but that does not happen too often in the committees that I am involved with.

Karen Gillon: Is there anything to preclude our having all the votes at 5 o'clock on a Thursday?

Alex Johnstone: It would take a long time. In addition, votes are often taken on a Wednesday on business motions that relate to Thursday's business.

Karen Gillon: But a vote on a business motion can be taken at any time. It could be taken at the start of business on a Wednesday.

Cathie Craigie: Are you suggesting that there be only one decision time a week?

Karen Gillon: We could vote on a Thursday night.

Alex Johnstone: I still think that the paper makes a good case for the idea that votes should be held as soon as possible after debates have taken place. There is an urgency to the situation and an honesty to that approach. Although we cannot have divisions after every debate, deferring decisions from one day to the next takes us into a grey area.

Karen Gillon: I am not minded to extend the Wednesday evening session, so I am quite relaxed about decision time being held at 5 o'clock. If votes on Wednesday debates are to be taken the next day, it would make far more sense for them all to be taken at once than it would to have a vote on a Thursday morning and a vote on a Thursday night.

10:45

The Convener: If the main chamber activity stopped at lunch time on a Thursday, people who were not involved in committees on a Thursday afternoon would be able to work at some of their other parliamentary activities, which might be a bonus from their point of view.

Karen Gillon: I understand your point and that, if they were not members of a committee that met on a Thursday afternoon, members from North East Scotland or the Highlands and Islands, for example, would be able to get home. There is some merit in giving that further consideration, especially as, if we had a proviso that committees should finish at 5 o'clock on a Thursday, members would not have to be here any later than they have to be at present.

Cathie Craigie: I do not think that committees would take too kindly to being told exactly how long their meeting could last. It would be difficult to say that all committee meetings had to finish at 5 o'clock. I am not quite sure whether there is anything in the standing orders that relates to the timing of committee meetings. The committee in which I participate on a Wednesday usually meets at around 9.15 and can be finished by 12.30. If Parliament met in the chamber on Thursday mornings, that would mean that, allowing time for lunch, it might be half past 2 before a committee meeting could start. That would not give us an awful lot of time, if there were a proviso that we had to be finished by 5 o'clock.

I take the point that it would be good if we could avoid the need for certain members to have to stay an extra night in Edinburgh after business on Thursdays. However, we must also bear in mind the interests of those whose constituencies are closer to the Parliament. Thursday night, for us, is usually a night on which we meet constituency organisations. If I did not know that I would finish at 5 o'clock or 6 o'clock on a Thursday, it would be difficult for me to give a commitment to attend an organisation's meeting.

Given that we are staying with the same amount of parliamentary time, the suggested changes are the equivalent of simply rearranging the deckchairs. People have become used to the times that Parliament meets in the chamber on Wednesdays and Thursdays. People from community groups who gave evidence welcomed the interaction that they could have with MSPs on Wednesday evenings. If we start interfering with business on a Wednesday, the cross-party groups and other people who come to brief us on various issues would not be able to get that access.

Karen Gillon: Surely it would not be beyond the wit of the Parliament to timetable for Thursday afternoons those committees that do not tend to have long meetings or to overrun, such as this one and the Standards and Public Appointments Committee. Committees that tend to have longer meetings could fill up the slots that would be vacated on Tuesday mornings.

We cannot go through this whole inquiry and not make changes. If we do not make any changes, the committee will look absolutely stupid.

Cathie Craigie: Perhaps we were stupid when we started the inquiry. There has been no appetite for a change to our meeting times. People have shown no appetite for sitting longer on a Wednesday evening.

Karen Gillon: That is a new idea, which I have not explored with people. Thinking about it, there are benefits to considering the idea further. If we are serious about being as family friendly as

possible, that approach has to apply as widely as possible. I am thinking of, for example, members from the Highlands and Islands.

If we move committee meetings about and allow committees that do not have long meetings to meet on a Thursday afternoon, we may give some people greater flexibility and allow them to get home on a Thursday night. We might not be able to pursue the idea further, but it is worthy of consideration.

Richard Baker (North East Scotland) (Lab): I agree that the idea is worthy of consideration. I am keen on the idea of moving decision time away from Thursday evenings in order to allow members to return to their constituencies. To be honest, what worries me is that people might try to avoid certain committees not because of their subject areas but because they do not want to attend committee meetings on a Thursday. We need to think about those motivations. Also, there might then be pressure on members in that, if it was possible for them to get away on Thursday, they might feel that they need to do that. Frankly, that is how I would feel.

However, I have a slight feeling that we are putting the cart before the horse. Surely the key decisions involve debate timings and the length of speeches. We need to consider what extra time, if any, is required within the current set-up for debates. I tend to agree with Karen Gillon that the problem is the allocation of debating time rather than how parliamentary time is structured. There are some issues for which different lengths for debates could make an impact. I believe that we should first consider those decisions and then see whether there is a knock-on effect on decision time.

The Convener: To be fair to the clerks, they started in the way that Richard Baker has suggested, but the committee felt at its previous meeting that it wanted to consider the bigger picture.

Richard Baker: I realise that. Perhaps the clerks were right the first time round.

The Convener: Richard Barker has made a valid point: all those matters are interrelated. We should park the idea for the moment as one that will be worth considering in the light of further discussions.

Alex Johnstone: I should add that I made a suggestion about changing the structure of the parliamentary week that the clerk included in the paper. My radical suggestion is that the full Parliament should perhaps meet in the chamber three afternoons a week with committees meeting in the morning. If further consideration is to be given to the structure of the parliamentary week, we should seek members' views on that suggestion.

Richard Baker: That suggestion would give some flexibility for debates on Tuesday and Wednesday—it is an excellent idea.

The Convener: For the moment, we will park the issue about meetings of the Parliament on Wednesdays and Thursdays and come back to it later.

As regards the overall pattern of meetings, do we want more flexibility so that we do some things in the spring and other things in the autumn? One possible issue is that there is not much legislation around at the beginning of a four-year session, so we tend to spend a lot of time then in rather footling debates and end up having to sprint at the end of the four years in a race to pass hundreds of bills in the final few weeks. Does anyone have views on whether we should have a different system for different times of the year?

Alex Johnstone: From an organisational point of view, it is always good to know when I need to be here and when I am available to be somewhere else. I tell my staff who fill my diary that they should schedule my constituency business starting from 9 o'clock on Monday morning and finishing at 4.30 on Friday and that they should work inwards from those times but leave as big a gap as possible for me to be here. We must be prepared to consider flexibility wherever necessary although, from a personal point of view, I find it very useful to be able to predict years in advance where I need to be on a particular day.

The Convener: Yes—we all find predictability important. Do members know of colleagues who have any great desire to vary the overall pattern of meetings?

Members indicated disagreement.

The Convener: For the moment, in that case, we will not pursue that issue.

The next question is whether committees should be able to meet at the same time as Parliament. One option is to stick to the present rule, which is that committees may not do that.

Andrew Mylne: That is correct, apart from private bill committees, for which special dispensation was made recently.

The Convener: Option 1 is the status quo. Option 2 is to open the floodgates so that any committee can meet at any time. Option 3 is that, in special circumstances in which a committee was under particular pressure to interview more witnesses or whatever, we could allow a committee to have a second meeting during the week at the same time as a meeting of Parliament. Does anyone have any views on the three options?

Alex Johnstone: I am interested in the arrangements for private bill committees. The

paper mentions the amendment to the rules that gave private bill committees the right to meet during chamber time. Will the clerk fill that out slightly and tell us exactly what the restrictions are?

Andrew Mylne: The change was made as a result of a Procedures Committee report earlier in this session. I need to find the relevant rule.

Karen Gillon: A private bill committee cannot meet when there is a meeting of the Committee of the Whole Parliament at stage 2, or during stage 3 consideration of a bill in Parliament.

Andrew Mylne: Yes. From memory, one of the restrictions is that a private bill committee cannot meet when Parliament is considering an amending stage of a bill. The committee also needs to seek the approval of the Parliamentary Bureau, if possible. The restrictions are designed to prevent such meetings from causing particular problems.

Alex Johnstone: What crossed my mind as I read the paper was that I am not averse to allowing other committees to meet during chamber time on the same basis.

The Convener: Do you mean not as a general rule, but in particular circumstances?

Alex Johnstone: Yes.

The Convener: I would be happy with that.

Karen Gillon: I agree, as long as safeguards are in place.

The Convener: The next question in the paper is about decision time, but we debated that earlier. Have members picked out any points from the paper that were not covered in the questions? Does the clerk wish to draw to our attention any issues that we have not discussed adequately?

Andrew Mylne: I do not think so.

The Convener: The discussion has been helpful and has allowed us to make progress in our overall look at the subject. At our next meeting, we will discuss the use of time in debates, which is a key issue. We will also discuss the timetable for legislation, to which Karen Gillon referred.

Alex Johnstone: When will we consider the timings and arrangements for stage 3 debates?

Andrew Mylne: We will try to cover that in the papers for the next meeting.

The Convener: So we will cover legislative time as well as debating time.

Andrew Mylne: On the basis of the view that the committee took at the previous meeting, I tried to approach the various issues in order, from the widest down to the narrowest. At this meeting, we have considered when Parliament should meet.

The idea is to consider at the next meeting for which categories of business Parliament should use that time and then to return to the issue of speaking times in debates. We will cover stage 3 debates next time.

Karen Gillon: So, regardless of how the week looks, there will be three Parliamentary meetings a week, although we need to consider whether we will meet on three afternoons or for a full day and a half day.

Andrew Mylne: Yes.

The Convener: I am still trying to pursue with the Minister for Parliamentary Business the point that the committee raised about separating final stage 3 debates from the debates on amendments at stage 3. We are trying to have that put into effect.

Karen Gillon: I seek clarification on that. We discussed stage 3 debates at our previous meeting, but that is not the issue that I believed we were going to pursue with the minister; I thought that we were to pursue the suggestion of having stage 3 debates over two days, in order to provide more time for discussing amendments, rather than pursue the suggestion that we separate the stage 3 debate from the debate to pass the bill. That has already happened with the Interests of Members of the Scottish Parliament Bill. I understood that we were trying to pursue with the minister the possibility of having stage 3 debates over two days to extend debating of amendments. I would welcome clarification, if that is not the case. There may well be two issues, but the issue that I was keen to pursue with the minister was the question of whether we could have a longer time for debate on contentious amendments, so that everybody who wanted to talk about them could talk about them for a sensible period of time.

11:00

The Convener: I accept that that is the objective. What I mentioned was one way of achieving that objective by allowing a longer time for debate.

Alex Johnstone: I am certainly keen on keeping open the idea of separating the stage 3 debate from the motion that the bill be passed. That might be the key to solving the timetabling problems for amendments.

The Convener: I shall try to ensure that both those points of view are stressed in any conversations with the minister.

Members' Bills

11:01

The Convener: The next item is about members in charge of members' bills. We got laboriously through the matter, apart from the final issue of who can substitute for an independent member who is promoting a bill when a committee is considering that bill. Option A in the paper is that, if there is an independents group, as there is at the moment, that group would be allowed to nominate a substitute, as party political groups do. Option B is that, if there is a single member who is not part of an independents group, that person could nominate a substitute. The question is whether the Parliamentary Bureau should nominate the substitute in such circumstances. It would not happen often, but that seems to be a reasonable proposition. Option C is that there should be no substitute.

Do members have any views on the three options? Options A and B are not contrary to each other, as they concern how to deal with substitutions by a group of independents and by an individual independent member.

Karen Gillon: I am drawn to option B, but I am not convinced by its wording. My option B would be that the bureau would nominate an individual who would not upset the balance between Opposition and Government parties. I am not convinced that the bureau would have to nominate a substitute from one of the smaller parties, but the nomination should not upset the balance between Government and Opposition.

Alex Johnstone: Perhaps what we are looking for is someone who gives a freer hand, but on the assumption that a responsible course would be taken. That would simply defer responsibility to the bureau.

The Convener: Where there is a recognised group of independents, would anyone object to its members nominating a substitute? Is that okay or are there difficulties with that?

Karen Gillon: I have some difficulties with that, because independent members are initially placed on committees not as members of a group but as individuals. They may subsequently form a group, but they do not sit on committees as members of a group, so why should that group retain the right to nominate an individual? Given the number of circumstances in which such a substitution is likely to take place, which would be very few indeed, I would be keen to see a rule that applied to all independents, irrespective of whether they were members of a group of independents. Their membership of such a group could change from one week to the next, or they might leave the

group of independents half way through consideration of the bill.

My view is that for a member who is not a member of a group, a political party should be able to nominate a substitute and the Parliamentary Bureau should nominate that person if that did not upset the balance between Government and Opposition parties. I do not know whether a rule could be drawn up for that.

Andrew Mylne: The difficulty with that suggestion, in drafting terms, might be that if we specify in a rule a reference to Government and Opposition, I think we would need to be clear about what that means and how it would be applied to each bill that came along. Members' bills, almost by definition, are not necessarily party political, but they must be cross party to some extent before they get to committee. That is my concern about the practicalities of that suggestion.

Alex Johnstone: Of course, the member could change their mind during the process.

Cathie Craigie: If the member was an independent, they might well do.

The Convener: If the power was given, as Karen Gillon suggests, to the bureau and if there was a recognised group of independents, they would have a representative on the bureau who would presumably argue the case for whoever they felt should be the substitute. Likewise, on upsetting balances, the Opposition groups are represented on the bureau, although if push comes to shove and the Executive parties vote together, they have a majority vote. Presumably, if the Opposition representatives on the bureau felt that a choice was not fair, they could make a stushie about it.

Richard Baker: Surely a rule could be drafted that would refer to the Executive parties in another way. For example, if the member was not a member of an Executive party, a substitute should not be. Would that not be possible?

Karen Gillon: The member would not be independent if he or she were a member of an Executive party. That would be the case unless an independent member was the difference between a majority and a minority and became a member, as an individual, of an Executive Administration and held the balance of power in that Administration. God forbid—it is bad enough for you lot.

Alex Johnstone: Is the solution simply not to give guidance at all? If we are to have substitutes, should we not defer the right to appoint a substitute to the bureau? If there was anything to be put in the rule over and above that, it should be a simple remark relating to the bureau having to have regard to the previous balance of the committee.

Karen Gillon: Yes—having regard to the party balance of the committee is good.

Alex Johnstone: It should perhaps have regard to the previous balance of the committee.

Andrew Mylne: I think that the rules already refer to the bureau's requirement to have regard to the balance of the political parties in Parliament in constituting committees, which comes from the Scotland Act 1998. We need to bear it in mind that the circumstance under consideration is one in which the member is debarred from a committee for the agenda item and therefore the member being substituted is someone who would not normally feature in the balance between the Executive and Opposition parties that represent the bureau in the first place, so that balance—

Karen Gillon: But they do reflect the balance on the committee because the person who is there, in every single case, still enables the Executive parties to have a majority on the committee because the place was given up by one of the Opposition parties. The Executive parties do not give up a place for an independent member. There is no committee in this Parliament that does not have an Executive majority.

Alex Johnstone: So I have noticed, Karen.

Cathie Craigie: That's democracy for you.

Karen Gillon: So the independent member would not be a member of the Executive parties. I think that we are making this unnecessarily complicated for the very simple circumstances—in fact, the very extreme circumstances—in which the issue would arise. I think that we should decide what we are going to do and report that whenever the rule is used in the future, it should be reviewed by the Procedures Committee to ensure that it is not being abused by the bureau. The bureau should be allowed to substitute, taking into account the previous balance of a committee. If the rule was abused, Parliament would take that into account. I would hope that the Procedures Committee of the time would make the necessary changes to standing orders to ensure that future abuses could not take place.

The Convener: We agreed previously that if the member in charge of the bill is a member of a political party, that party has the right to nominate a substitute.

Karen Gillon: The party would already have a substitute, who would sit on the committee for the time the bill was being discussed. We are not changing the rules, because that already happens. We are saying that, in every circumstance, a member in charge of a bill who is a member of the committee dealing with that bill is not allowed to sit on the committee during its consideration of the bill. Either that member's substitute would

participate or the committee would be one member down.

The Convener: In the case of a member who is not a member of a party, the bureau should nominate a substitute, bearing in mind the balance in Parliament and on committee.

Members: Yes.

Karen Gillon: When the guidance is reviewed, it should reflect that and we should say in our report that in future the Procedures Committee should continue to monitor the process to ensure that it is not subject to abuse by any bureau in the future.

Alex Johnstone: I remain confident that the bureau would not dare to abuse the process.

The Convener: Is that agreed?

Members *indicated agreement.*

Consolidation Bills

11:11

The Convener: Our next item is on consolidation bill procedure. Perhaps we had better go through paper PR/S2/06/9/6. I refer members to paragraph 25, which reflects the Executive's evidence and states:

"The Executive, however, saw no value in having a debate at either Stage, given the very limited nature of a Consolidation Bill."

I am concerned about that. There should be the opportunity to debate consolidation bills. It may be that if a bill is very technical no one will want to debate it anyway. However, to say that Parliament cannot debate something is not the way forward. We should be clear that a consolidation bill should be purely a consolidation bill; the Executive should not take the opportunity to sneak additional provisions into it.

Alex Johnstone: I agree. Although such bills should generally not require to be debated, we should debate whether a bill—to borrow a phrase from advertising—does what it says on the tin, which is worthy of debate in itself.

The Convener: That is right. I am sure that the modern draftsmen will try conscientiously to reproduce what the ancient draftsmen produced, but there might be different views on whether they have done so correctly. We should have the opportunity to have a debate.

Karen Gillon: I am generally reluctant to pass legislation without having had the opportunity to debate it in Parliament.

The Convener: The clerk has drawn to my attention paragraph 28, in which he states politely that the committee

"may wish to give the Executive a further opportunity to comment on this issue, including to expand on its reasons for resisting all possibility of debate."

We could just say that we think that the Executive is wrong.

Karen Gillon: Unless the Executive can be brought round to our point of view, we will just protract the discussion. Is it likely to come round to our point of view?

The Convener: Have you any insight into the thought processes of the Executive on this, Andrew?

Andrew Mylne: I do not have a major insight. I tried to suggest in the paper that some of the issues are technical and that it might be more sensible for parliamentary officials to take forward the discussions with Executive officials and others to try to resolve them and ensure that members are happy.

Karen Gillon: If the proposals do not have to be signed off today, by all means have those informal discussions before the next meeting. I am sure that we will have informal political discussions, too.

11:15

The Convener: Do committee members authorise the clerk to take a robust line on the committee's behalf?

Members indicated agreement.

The Convener: Good.

I picked one aspect. Do members have other points about consolidation bills? The clerks have suggested—although not in the paper—that we should consider inviting the Subordinate Legislation Committee and the Scottish Law Commission to comment. Would that be in writing?

Andrew Mylne: That is up to the committee.

Karen Gillon: Have those people not already commented?

Andrew Mylne: The evidence that we have received is outlined in the paper. We have heard from a member of a committee that considered a consolidation bill, from Mr Iain Jamieson and from the Executive. Those are the only parties who have commented.

The Convener: I presume that we would get an okay from the Law Commission, because I understand that it generates many consolidation proposals. In addition to pursuing discussions at official level, is it acceptable for the clerks to invite written comment on our proposals from the Subordinate Legislation Committee and the Law Commission?

Members indicated agreement.

The Convener: Thank you. Do members have other points on consolidation bills?

Karen Gillon: I am not convinced that a similar cut-off time is needed. There is merit in having a different cut-off time, but a cut-off time of September is not justified. I suggest a cut-off time of the end of December. If a bill is simple and technical, it should not require masses of debate time.

Cathie Craigie: What point did you just make?

Karen Gillon: The paper describes the argument for having the same cut-off time for introduction as applies to members' bills.

The Convener: The issue is how near to the next election the bill procedure can be started.

Karen Gillon: Yes.

Alex Johnstone: I like a nice early cut-off point—we should deal with consolidation bills early in a session when not a lot else is happening.

The Convener: That is a good point.

Cathie Craigie: The point applies to a previous discussion. I imagine that we will see a few consolidation bills in the next session. Perhaps a suggestion could be made to draftspeople, if they are already working on bills.

Karen Gillon: In Andrew Mylne's informal discussions with Executive officials, he can make them aware of the view about a cut-off date of September.

The Convener: If that is proposed positively, people should be queueing to introduce consolidation bills in the months after the next election. That is a useful point, which I missed. Paragraph 36 of the paper says that the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill Committee felt that it was under pressure and committees should not be put under such pressure.

The next agenda item is a draft report on motions and decisions, which we will discuss in private, as agreed at our previous meeting.

11:19

Meeting continued in private until 11:27.

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