The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 29 May 2014

Session 4

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
8th Meeting 2014, Session 4

CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Margaret McDougall (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Cameron Buchanan (Lothian) (Con)
*Cara Hilton (Dunfermline) (Lab)
*Richard Lyle (Central Scotland) (SNP)
*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)
Magnus Gardham (Scottish Parliamentary Journalists Association)
Rob Gibson (Caithness, Sutherland and Ross) (SNP)
Ann Henderson (Scottish Trades Union Congress)
Stewart Maxwell (West Scotland) (SNP)
Professor Colin T Reid (University of Dundee)

CLERK TO THE COMMITTEE

Gillian Baxendine
Alison Walker

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 29 May 2014

[The Convener *opened the meeting at 09:30*]

Legislative Procedures

The Convener (Stewart Stevenson): I welcome members to the eighth meeting in 2014 of the Standards, Procedures and Public Appointments Committee. I remind everyone to switch off their mobile phones, as they affect the broadcasting system. During the meeting, some committee members—not just George Adam—and clerks may consult tablets, as our committee papers are provided in digital format. I remind members that we expect the technology to be used for that purpose alone.

Our first item of business is to take evidence in the committee's inquiry into procedures for considering legislation. I welcome three old parliamentary lags—I hope that they will not mind my describing them as that: Malcolm Chisholm; Rob Gibson, who is convener of the Rural Affairs, Climate Change and Environment Committee; and Stewart Maxwell, who is convener of the Education and Culture Committee. We invited them to the meeting because we think that, among them, they have substantial experience of the legislative process, and we very much welcome their input.

We will go straight to questions. At the end of our session, which will last for no more than an hour, if the witnesses want to draw to our attention matters that we have not covered in our questioning, I will allow them a brief period of time in which to make supplementary comments.

Cara Hilton (Dunfermline) (Lab): Good morning, panel. I begin by asking about the legislative process as it is. Currently, it has three stages. In principle, is that model the right one or are changes needed?

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I am happy to kick off. Good morning, everybody.

I think that that is the correct approach. Our committee is broadly happy with the three-stage process, but we are concerned about its restrictive nature and the quality of scrutiny, particularly at stages 2 and 3. I will say more about that.

Stewart Maxwell (West Scotland) (SNP): I agree with that. Our committee is certainly not unhappy with the model in principle, but it has some criticisms of how certain parts of the structure work, particularly at stages 2 and 3. I am sure that we will get into that.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I will probably say something similar. I should start by saying that I am speaking only for myself. I am a member of the Finance Committee, but I am not speaking for it, and I am not speaking for my party, in case anybody takes what I say differently.

I think that the three-stage approach is right. Stage 1 was a distinctive feature of the Scottish Parliament when it started; there was not a stage 1 at Westminster at that time. Stages 2 and 3 replicate the Westminster processes, certainly in their outward form. In summary, I am happy with stage 1, although I may make some points about it later. The Finance Committee has made the point that it is sometimes not long enough for its purposes, but in general I think that it has been highly successful during the years of the Scottish Parliament. Like my colleagues, I have some comments and concerns about stages 2 and 3, but basically I am comfortable with the three-part process.

I was interested in the suggestion from the Law Society of Scotland, I think, and possibly other legal witnesses about splitting stage 3 so that there is a separate final debate. I had never thought of that before. That was a new idea to me, and I was partly attracted to it. Perhaps I am getting into the detail too soon, but that idea is possibly worth considering.

The Convener: We expect to hear and will very much welcome comments on some of the new ideas that are floating around. It would also be useful if you could think of any snags that might come from new ideas. I suspect that any change in this complex process will have both positives and negatives, and it would probably be useful to get opinions on those as we proceed.

Margaret McDougall (West Scotland) (Lab): Good morning, panel. To what extent does the legislative process encourage engagement by interested parties? Is it open and transparent?

Malcolm Chisholm: I have praised the stage 1 process, which I think was a great advance on what was normal at Westminster at the time. That has given people a chance to comment on bills at the earliest opportunity. I am sure that it might be argued that a broader range of people could be invited to comment, as it is sometimes said that it is the usual suspects who comment, but we normally get a lot of written submissions at stage 1 of a bill's consideration, and several if not many of the organisations concerned are called to give oral evidence. I do not have many criticisms of that process.

There has been an interesting development at Westminster. Since 1999, we have been a driver of change there and, for some bills at Westminster, there is now a process of pre-legislative scrutiny. Some people say that that puts Westminster ahead of us because, as you know, here it is the Government that consults at the pre-legislative stage. That gives stakeholders an opportunity to participate, but committees are not formally involved at that stage. If I am correct, one of your predecessor committees looked at the issue and suggested that, if committees were to be involved in pre-legislative inquiries, that would compromise their scrutiny role at stage 1. I can see the merits of that argument.

Basically, I am pretty content with the level of involvement and consultation at stage 1, but several stakeholders have drawn attention to the fact that they feel that they do not always have enough time to comment on and respond to amendments that are made at stages 2 and 3. That is one area in which it would be better if those outside the Parliament had longer to respond. Quite often, significant changes are made to bills at stage 2 in particular, but also at stage 3. A bit more time for stakeholders to respond would be good, and I think it might be good for MSPs as well.

Stewart Maxwell: For the most part, I agree with that. I think that stage 1 works fairly well, aside from the obvious criticism that some people make about the usual stakeholders being involved. Sometimes that is true, but the system works fairly well.

The only additional point that I would make is that, although it is not pre-legislative scrutiny, it is open to committees to look into an area of work in advance, knowing that a bill is coming up. I will give an example. The Education and Culture Committee knew that the Children and Young People (Scotland) Bill was coming, and we held an inquiry in advance of that that looked into many of the effects on looked-after children that the bill was to address. We did a lot of pre-legislative work in the area, so when the bill came to us the committee was much better prepared for stage 1 and then stage 2 amendments. It is open to committees to undertake such work, as long as they have advance notice—they usually do—that a bill is on its way. It is possible for committees to do something like pre-legislative scrutiny, although I would not call it that. That worked very well with the Children and Young People (Scotland) Bill.

I agree that the ability of outside organisations and, in particular, individuals to get involved in any meaningful way at stages 2 and 3 is quite restricted. I agree with Malcolm Chisholm that we must seriously consider the timescales that are involved at those stages. However, it is possible to stop at stage 2 to take further evidence. With both the Children and Young People (Scotland) Bill and the Post-16 Education (Scotland) Bill, the Education and Culture Committee stopped and took further evidence at stage 2 because new sections of those bills were to be added following stage 1. As we could not examine them at stage 1, we took the opportunity to examine them in advance of stage 2. There is some flexibility in the system that makes it possible to do that, although it is necessary to work with the relevant minister and others to expand the time that is available. That is possible—the Education and Culture Committee has done it—but I think that we still have some way to go in improving that part of the process.

Rob Gibson: I think that the fundamental problem is that the Government decides on a particular line of action and looks at an end point. Therefore, from the point of view of timing—as we suggest in our submission—everything is fitted into the process by working back from stage 3 to stage 1.

In our consideration of the Aquaculture and Fisheries (Scotland) Bill in 2012-13, members of the Rural Affairs, Climate Change and Environment Committee were able to visit people who were directly affected by the proposals in relation to rivers and fish farms. That improved the quality of their written evidence and, subsequently, their oral evidence at the committee. Giving committees time to prepare for stage 1 was one of the best innovations of the Scottish Parliament, but it has to be respected and time made available to do that. The Rural Affairs, Climate Change and Environment Committee was also designated as a lead committee for the Long Leases (Scotland) Bill, which had fallen previously because of the end of a session. Stage 1 had been conducted previously, but we had to conduct it again. You may not have thought about designation, but it would have been much more sensible to have the bill dealt with by a sub-committee of the committee that dealt with the original bill.

Malcolm Chisholm: I am not here to represent the Finance Committee, but I have already mentioned its feeling that stage 1 sometimes needs to be longer in order to deal with the financial memorandum properly. The other example that I ought to give from the Finance Committee relates to the Children and Young People (Scotland) Bill, which Stewart Maxwell dealt with. You will remember that changes that had been made to the bill at stage 2 had financial implications and the Finance Committee ended up dealing with the financial memorandum on the same day as stage 3. That is obviously a problem. That is another example of a problem that arises because there is not enough time for stage 2 or, in that case, stage 3.

The Convener: I will pick up on Rob Gibson's reference to the Long Leases (Scotland) Bill and how we might have leveraged the previous stage 1 process better when we reconsidered the bill in the current session. I direct my question to Malcolm Chisholm. I understand that at Westminster, in general terms, bills are allocated to a committee that is established for the purpose of dealing with the bill, whereas here our general practice is for a bill to go to a subject committee. Given that you have experienced both approaches, how do they compare? What are their relative advantages and disadvantages?

Malcolm Chisholm: I am slightly hesitant now when I speak about Westminster, because it has changed a lot over the last 15 years, since I came here, but I do not think that it has changed in that regard. A fundamental difference between the committee systems of this Parliament and that Parliament is that at Westminster a standing committee is created to deal with a bill, whereas here a committee—for example, the Education and Culture Committee—does everything: inquiries, legislation and so on.

I think that, in principle, our system is better, because it means that the people who deal with legislation in a subject area are also experts in that area because they deal with the issues week in, week out. In principle, it is a better system, but it creates some time pressures. We may come on to that, but I have concerns that, sometimes, the time that is taken on legislation at stage 2 may not be as great as would be optimal. There are some downsides, but in general I think that it is better in principle to have the same committee dealing with legislation and inquiries on a subject.

Cameron Buchanan (Lothian) (Con): I will pick up on what Mr Gibson said. You said that the Government says that it wants a bill and we work backwards from there. Is that right? It says that it will introduce a bill in October or November, and we work backwards to get to stages 1, 2 and 3. Is that what you meant?

Rob Gibson: No. The Government looks at an end point when it thinks the bill is required to be passed—let us say that it is June 2014. The Government will have introduced it some time earlier, perhaps in the middle of the parliamentary year, because it is thinking about the end point, and it crams in the stages to fit its timetable for the end point. That can restrict the time that we have for the major part of the committee inquiry stage—stage 1—which is the only time when we can look at the real potential of amendments that might be made and so on. There is time for that at stage 1, but there could be more.

The timeframe needs to be more flexible because, as Malcolm Chisholm said, we end up with situations in which a financial memorandum is dealt with on the same day as stage 3. We really need more time at the earlier stages. No doubt we will come on to discuss the middle bit in more detail.

09:45

Stewart Maxwell: Just to clarify so that there is no misunderstanding, I note that, in the example that was referred to, there was a supplementary financial memorandum. The financial memorandum was dealt with at the start of the process by the Finance Committee and subsequently by the Education and Culture Committee, but a change to the bill meant that a supplementary financial memorandum had to be produced. That was quite correct within the rules, but I think that we can agree that there was insufficient time for the Finance Committee to consider the supplementary financial memorandum in advance of stage 3. A stage 2 change created the requirement for a supplementary financial memorandum but, because of the relative proximity of the end of stage 2 and stage 3, there was not enough time for the Finance Committee to address that properly and report back to the Education and Culture Committee or even the Parliament.

The Convener: I will come in on that before I go back to Margaret McDougall, who has some other points on the issue. I think that it is correct to say that the current rules do not require Parliament to approve an updated financial memorandum—only the original one has to be approved. This is perhaps leading members to the answer but, if there is a material change—to use a weasel word—to a financial memorandum, do you think that it should be subject to parliamentary approval?

Malcolm Chisholm: That seems reasonable.

Stewart Maxwell: I agree. The fact is that, under the rules of the Parliament, the supplementary memorandum had to be produced because of the change that took place at stage 2.

The Convener: But the rules did not require it to be agreed.

Stewart Maxwell: They did not, but my point is that, as the Parliament has identified in its rules the necessity for a supplementary financial memorandum to be produced, the logical extension is that the Parliament should have something to say about that—it should not just be produced and then ignored.

The Convener: I just wanted to get that on the record. It is a rather obvious point, I think.

Margaret McDougall: I want to follow up on engagement. I think that all the witnesses agreed that we hear from the "usual suspects" when we

consult on bills. Can anything else be done to encourage more engagement with the public, for example, on bills?

Malcolm Chisholm: We should always try to do more, because wide participation is one of the founding ideals or principles of the Parliament. However, I would not totally go along with the point about the "usual suspects"—I think that I was referring to the fact that that is what people say.

If we consider who responds to bills, we see that it is pretty impressive. I even looked at who had made written submissions to this inquiry, and I found that it was quite a broad range of people and organisations. Obviously, we should always aim to do more. I suppose that, if more could be done to reach individual members of the public, most of whom are not aware of consultations on bills, that would be desirable. Generally, however, we could not say that we get a narrow range of views on bills—we get a pretty broad range of views. It would be desirable to do more, but I do not think that we should beat ourselves up too much about it.

Rob Gibson: Some bills attract an awful lot more public comment than others. We can see from the record exactly why that is. Because of lobbying and scrutiny by trade bodies and other such bodies, there is quite a wide discussion among people who are likely to be affected by a bill. As Malcolm Chisholm says, the problem is with the general public having an interest and being able to follow the process. It is quite difficult for us, even with the resources that we have, to reach as many people as might wish to take part. However, an awful lot of the people who need to take part do get involved.

My committee tries to vary the witnesses that we call and get as wide a range as possible but, inevitably, because of the trade bodies, as I called them, we are bound to have some representatives who appear time and again.

Stewart Maxwell: I agree. The phrase "the usual suspects" sounds like a criticism, but many organisations have built real expertise in their contributions to the Parliament, and that is helpful and an advantage to committees.

Committees can try a variety of innovative techniques to reach out to other groups, depending on the proposed legislation that is being considered. The Education and Culture Committee has tried to take that approach, particularly with the Children and Young People (Scotland) Bill. In taking evidence on that bill, we wrestled with the fact that we were dealing with a group of young people who were particularly vulnerable. We did not want them to experience what we are experiencing—to be put in front of a committee in a formal setting. Rather than deal in that way with subjects that are quite sensitive—they may have related to very personal problems—we went out and met the young people informally in Who Cares? Scotland's offices in Glasgow and we had informal, off-the-record sessions in the Parliament. We asked them to decide how they wanted to tell us about the issues, and they ended up doing that in a variety of ways including a short play. Eventually—slowly, but surely—we came to a point at which they gave us much more formal evidence, although it was not quite in the usual committee format. Committees can take other approaches, but we sometimes forget that we have that flexibility.

Margaret McDougall: Thank you.

The Convener: We have been talking about Government bills but there are four other types of bills: members' bills, committee bills, private bills and hybrid bills, which previously used to deal only with transport and works matters. I wonder whether, before we move on, there are any facets of those other bills that we should take account of, particularly in relation to committee bills where the committee is both the bill's sponsor and the committee that considers the bill. Are there any issues that you want to comment on in that regard?

Malcolm Chisholm: The main disappointment is that there have been so few committee bills, given that the opportunity exists here but not in Westminster. I do not know how many there have been, but it is a pretty small number. It is quite difficult to comment on the process because we have so few examples of how it works in practice.

As far as I can see, private bills are not significantly different from how they are dealt with at Westminster. In principle, members' bills work in the same way as public bills, so it is committee bills that are the big challenge for us.

Stewart Maxwell: I do not disagree. Whether by design or by accident, I have not experienced a committee bill, so I cannot really comment either. They are perhaps an unused resource, but it can be quite difficult for a committee to come to the conclusion that it wants to introduce a bill, given that it will then have to go through quite a lengthy process. Perhaps the difficulty is the length of time that it would take to reach agreement about a matter on which the committee wanted to introduce a bill that would then perhaps be quite difficult to proceed with.

I have more experience of members' bills, given that I introduced one in the second session. The process works pretty well overall. There is always a pressure on resources and time. The then non-Executive bills unit, which I used, had a lot of competing demands on its time, which sometimes made things quite difficult.

As an individual member, you are caught in the currents of Government intention. Therefore, if the Government decides to support your policy, that policy can be absorbed into a Government bill, which is what happened in my case. That is not a bad thing because the issue gets all the resources that a Government can throw at it. However, if the Government resists a bill, it can be very difficult for an individual member to make progress with the level of support available.

With those caveats, I believe that the members' bill process works pretty well. It has been used by a lot of members to advance quite a lot of issues, but whether those have resulted in enacted legislation is perhaps a slightly different story.

Rob Gibson: I agree. My experience of private bills relates to the Edinburgh Tram (Line One) Bill, which was considered by the Edinburgh Tram (Line One) Committee. At that time, we had to use our judicial powers to deal with a stage that has now been removed from the process. Given the number of MSPs that there are, that led to problems because it resulted in extra workload on top of our regular workload. In some cases, members were already sitting on two committees. The bill made for a very time-consuming process. Some private bills are more complicated than others, so we face those issues when they come along.

I have no experience of committee bills. On members' bills, the one that stands out memorably was Mike Pringles's Environmental Levy on Plastic Bags (Scotland) Bill, which was handled in a very fair fashion. It provided us with an awful lot of information, which helped us when we came to deal with the Single Use Carrier Bags Charge (Scotland) Regulations 2014 introduced by the Government.

Richard Lyle (Central Scotland) (SNP): Good morning, gentlemen. Can we expand our discussion on stages 1, 2 and 3? The Rural Affairs, Climate Change and Environment Committee submission states that

"In terms of engagement, generally Stage 1 works well"

but—as Rob Gibson has already said—that

"Stages 2 and 3 are not very transparent or accessible for anyone outside the Parliament and consideration as to how best to address that, whilst keeping the process fit for purpose, is necessary."

The Education and Culture Committee submission stated that, in the case of the Children and Young People (Scotland) Bill, it had "insufficient time" due to the number of amendments that were lodged at stages 2 and 3. Also, the gap between stages was not long enough. The submission stated that the gap "constrained" the committee but that, later, the Parliament acknowledged the issue and the gap between the stages was extended.

I know that you have all already stated your opinion about some of the stages, but can you suggest any changes that are required with regard to stages 1, 2 and 3 and also with regard to the time that is allowed between stages?

Rob Gibson: As we suggested, it is very hard at stage 2 to pin down the number of amendments that there might be. In reality, in some cases, there are an awful lot of amendments and the whole process at stage 2 can become a shortened tick list of getting through things without the time and the scrutiny that is required for a large number of amendments.

It obviously takes longer to deal with a large number of amendments than it does to deal with just one or two amendments, but I do not think that the timetable is scheduled to allow the process to happen properly. I certainly do not think that having a very short time between the end of stage 2 and the start of stage 3 is very helpful to a process in which inevitably—as we have seen over the years—there are amendments at stage 3 and the stage 3 debate is curtailed into two-minute speeches. That does not allow for proper scrutiny of any major changes that have taken place, which have often not been researched by the committee that has looked at the bill as a whole. I have been involved in bills where such changes have taken place and they can have unintended consequences. It is a very good idea to allow us more time to scrutinise those changes before stage 3.

To answer your question, I think that we need very careful tick-tack to work out how long stage 2 should be in order to understand the impact of the amendments. We also need more space between stage 2 and stage 3 if there are likely to be further amendments at that point.

Stewart Maxwell: I will take the Children and Young People (Scotland) Bill as an example, as it was the one that we referred to in our submission.

One problem is that there are competing pressures between the Government's attempt to get progress in legislation, which I understand—irrespective of which Government it is, it wants its legislation to progress at a reasonable speed—and the ability of members, first, to undertake proper scrutiny and, secondly, to absorb any changes, particularly if there are a lot of amendments to a bill, and decide what impact those changes have on their desire to submit further amendments for stage 3.

That is what happened with the Children and Young People (Scotland) Bill—the Post-16 Education (Scotland) Bill was possibly similar, as similar numbers of amendments were involved.

The problem is that any Government looks at the process on the basis of what the minimum gap is that it has to meet. Under standing orders, there is a space that has to happen between stages 2 and 3. The Government says, "It is X days, so we want stage 3 to happen as soon as possible."

I understand why Governments want to do that but in some cases—the Children and Young People (Scotland) Bill is a good example—that left individual members on the relevant committee with some difficulty because they had to absorb what had taken place at stage 2 and then get amendments in for the following week. That was an extremely quick timescale for them to do that. Given the size of the bill, the areas that we were discussing and the fact that additional large changes were made as part of stage 2, that created some difficulties.

If members of a committee find that difficult, other members of the Parliament who are not involved closely in the process find it even more difficult and people outside the Parliament find it almost impossible.

There is a problem with the fact that the pressure to get the legislation through quickly is creating too short a space between stages 2 and 3. There has to be a bit more room for manoeuvre at that point. That is the case with most bills—not all of them, because some bills are pretty straightforward and there is not really any problem there.

To be fair to all members—Opposition party members even more than members of the governing party—we have to ensure that they have the time to absorb the changes and decide what they want to do at stage 3. That would create a fairer and more rounded process.

10:00

Malcolm Chisholm: There are two issues here. One is the gap between the stages and the related gap between the lodging of amendments and the debating of amendments. In general, those gaps could be broadened. There will be cases in which a Government has to get legislation through quickly but, in the majority of bills, it would not alter things fundamentally if they took two or three months longer. The issue of gaps, therefore, should be quite easy to make progress on.

The other issue, which is equally important, is how much time is allowed for stages 2 and 3. This is perhaps not the right time to discuss that in detail, but I will summarise my views.

Throughout the years of the Parliament, I have been concerned about the fact that stage 2 is potentially too fast here. It is, perhaps, a downside of the unitary committee, which I have praised in general. Because committees have massive agendas and have lots of issues and inquiries to deal with, as well as legislation, there is a stark contrast between the amount of time that the Scottish Parliament spends on stage 2 and the amount of time that Westminster spends on the equivalent stage there.

I stress that I am not asking us to go to the Westminster system. However, when I first went to Westminster, in 1992, the first bill that I dealt with was a bankruptcy bill, when I sat on the special committee that dealt with the bill. We sat from half past 10 in the morning to 1 o'clock, we resumed again at half past 4, and on occasion we were there at half past 4 in the morning. People would stand up and make hour-long speeches on one or two lines of the bill. I am not asking us to go to that system, but you can see why I am contrasting it with our system.

I think that some slight changes to stage 2 would improve the process. Two issues are worth considering. The first is easier to deal with than the second. I notice a difference in the behaviour of committee conveners with regard to what they allow at stage 2. I will not name which committees I am talking about, but I have quite recently been forbidden from intervening on a minister during stage 2. However, it seems to me that such interventions are absolutely fundamental to stage 2. A member gets one chance to speak about their amendments, which is fair enough, but, when the minister is summing up, there is a need for members to be able to ask them to clarify a point. Some committee conveners allow that and some do not. Some clarification on that process would help, because I think that the give and take between members and ministers is fundamental to the scrutiny of bills. I think that that would be easy to sort out. It may be that some conveners do not understand what the rules are, but I have certainly had different accounts from different conveners about that.

The other thing that is worth thinking about would extend the process. At Westminster, there is always a debate on each clause of the bill. You might think that that is over-egging it, but the advantage concerns the fact that one of the main reasons for having a committee deal with the bill is not to amend the bill but to probe it and to ensure that what is intended in the bill is expressed in its wording. Having a debate on each clause means that members can ask questions about them without having to lodge an amendment. It took me some time to get used to that up here, and I would find myself suddenly realising that we could not discuss a section if there was no amendment on it.

The Convener: I am slightly uncertain about this point, and I might have to take advice on it,

but I believe that at stage 2 we have to agree each section formally.

Malcolm Chisholm: That is true, but we cannot have a debate on it, can we?

The Convener: I am not sure that that is forbidden. I think that it might simply reflect our practice rather than our rules.

The clerk informs me that it is certainly not our practice. Malcolm Chisholm raises an interesting point; it might simply be a matter of practice rather than our rules.

Malcolm Chisholm: I think that there are some interesting issues around stage 2 that could be addressed without going to the other extreme as represented by Westminster—to be fair, I do not know whether Westminster still does that.

Again, I am not praising what I saw at Westminster: the interesting thing about the standing committees there is that, although they would have all-night meetings and meet day after day, nothing would ever change as a result of a standing committee, because the members were picked by the whips. If the bill was on minimum pricing for alcohol, for example, I would not be put on that committee, because I do not take the party line on that issue. There are no rebellions at stage 2 at Westminster. I say that in case you think that I am praising that system as a model one.

There is probably most agreement that we need to improve stage 3. For me, the simple point is that, apart from the gaps that we need, we need longer for stage 3. We have tailored our behaviour at stage 3 to the time that is available, so we are all used to making two-minute speeches then. Other members do not get to speak at all. If the debate overruns, a particular group of amendments will not even be discussed and voted on. I think that there is a head of steam for having a longer stage 3.

The Convener: I took the Climate Change (Scotland) Bill through the Parliament and looked at the stage 3 debate afterwards. The back benchers spoke in two-minute segments, but I spoke for over four hours.

Malcolm Chisholm: When did you speak for over four hours?

The Convener: At stage 3 of the Climate Change (Scotland) Bill.

Malcolm Chisholm: I see what you mean—that was when you were the minister.

The Convener: There was a very large number of amendments, and cumulatively I spoke for over four hours at stage 3.

Malcolm Chisholm: That is my other general point. I think that ministers here have an easier time than ministers at Westminster have. If there are many interventions on what the minister says at stage 2 in a committee, the minister will have to know the subject pretty well. There can potentially be interventions on ministers at stage 3, but there tend not to be. Obviously, a lot of my experience of Scottish Parliament committees is as a minister. I think that ministers here do not get such a hard time because of how things are set up.

The Convener: I want to put on the record a formal point that has been brought to my attention in relation to the passing of a section. Rule 9.7.6 of the standing orders requires every section and schedule to be agreed to at stage 2. "Guidance on Public Bills" says:

> "Before the question is put, the convener may give members the opportunity to raise any issues relevant to the section or schedule that have not been adequately discussed during consideration of amendments to it."

Therefore, what we have specifically permits such an approach, but I think that we are all sharing the experience that we do not know of any instances in which that has ever happened. That is an interesting little issue. I am very glad that that point has been made, because it is quite an interesting one for us to think about.

Rob Gibson: I draw members' attention to the submission from the Rural Affairs, Climate Change and Environment Committee regarding stage 3.

Paragraph 3 on page 4 of that submission refers to amendments to the Agricultural Holdings (Scotland) Bill in 2003. Last-minute amendments were lodged, and there was very little scrutiny. The circumstances were such that it ended up in a case that reached the Supreme Court, and we were required to undertake correcting legislation.

That is a warning that the necessary work that the Government and the Opposition have to do at stage 3 can reach a very difficult stage and can cost in many ways. I will not go into the full details of that case, but the absence of a proper debate about the amendment that was lodged at the last minute for very good reasons led to a lot of angst and worse in the country, and the correcting legislation will cost millions of pounds to sort things out.

Stewart Maxwell: I did not mention stage 3 earlier, as I did not realise that we were getting into it. I certainly agree that change is required. From the day that I joined the Parliament, I always thought that stage 3 was slightly odd, and I will use an example to show why.

Stage 3 of the Licensing (Scotland) Bill in 2005 was not the Parliament's finest hour. There were many points of order, even at the start. There were manuscript amendments that the Presiding Officer refused, as other members had lodged manuscript amendments that had been allowed. I tried to

lodge one. If those amendments had been lodged originally, I would have lodged an amendment, but that was forbidden, of course, because I did not do so in time. That was not the best example of how a stage 3 process could be carried out.

One of the fundamental problems with that bill has happened during some others, albeit a minority, but it is important. There were important points of principle and a lot of members had extremely serious points to make about that particular bit of legislation, but there were time constraints on members. I was one of the members affected. I was called to speak on some amendments at the end of a particular section, and I was told that I had one minute to speak and it would be helpful if I could keep it to 30 seconds. It is just impossible for any member to do that, particularly when it is such an important and serious issue.

We seem to forget that stage 3 is the final opportunity for members to comment on a piece of legislation. It is their very last chance. Most members are not involved in the process at stage 1 or stage 2. Stage 3 is when they get their first opportunity to be involved in a bill. As members of Parliament, we have a responsibility and duty to take that particular role very seriously. The time constraints on stage 3 proceedings are detrimental to the democratic analysis of a bill.

It would not happen very often but, when we come up against something that is controversial or difficult to deal with, we should not have the time constraints at stage 3 that we do have. We could put in estimates about how long it will take and I understand why we want to manage the time that is available, but if 20 members want to speak on an amendment, if it is their final opportunity to do that, and if they have a point to make, a principle to stand up for or a constituent to represent, they should have that opportunity.

I am rereading our submission and I am thinking now that we should not have said that "full and unlimited scrutiny" should be allowed. Full scrutiny is one thing, but perhaps it should not be unlimited, although there should not be the time limits on members at stage 3 that there are. If that means that we do not finish when we intend to at 5, 5.30 or 6, that is just tough. Members will just have to accept that, on those particular occasions, we will have to carry on and do the work that we are here to do. I feel quite strongly that there is not sufficient time at stage 3 and that all members should get the opportunity to speak if they so wish.

The Convener: We are now two thirds of the way through the evidence session. A number of members have still to contribute, so let us all try to keep things concise and sharp.

Malcolm Chisholm: I just have two more points about stage 3. As a great supporter of family-friendly hours, I would rather not extend proceedings if that could be avoided. Stage 3s used to be taken over two days or more, and for big bills we could even take a week for stage 3. I do not think that that is a problem.

I want to go back briefly to the idea from the Law Society, which was new to me and, I think, to some other legal figures. Splitting stage 3 would create more time, but I note that there is also an issue about mistakes being made at that stage. Particularly in the previous parliamentary session, when we had a minority Government and votes were being won or lost by one vote, I used to be terrified that we would pass the opposite of what we had intended or contradictory amendments. Somebody might press the wrong button, or they might be out having a cup of coffee and not get back into the chamber in time. I think that this is in the Law Society briefing, but one advantage of splitting stage 3 would be that if something in the bill was absolutely contradictory or if there was some other reason why the legislation had been left completely flawed, there would be a final chance to fix it at the final stage of stage 3. If that happened perhaps a week later, somebody might have spotted the flaw, and there would be a kind of backstop.

There have been discussions about whether we need a second chamber and so on. We do not need a second chamber, but there might just be something that we can do to provide extra protection and ensure that we are not making some fundamental mistakes in our legislation.

It is remarkable that so few mistakes have been made in the well over 100 bills that have been passed, but it can happen. Rob Gibson gave an example, and the approach that I have just mentioned might be one way of dealing with that.

The Convener: For the record, there is a provision that allows stage 3 to be reopened. It has been used before, but it is very restricted in its scope.

Does Richard Lyle have a further point?

Richard Lyle: I had a couple, convener, but for the sake of time I will just ask Stewart Maxwell to clarify an issue.

Mr Maxwell, you are basically saying that with a controversial bill such as the one that your committee scrutinised, the time for consideration should be extended. For bills that are not controversial, could we shorten the time allotted, or leave it the same? A simple yes or no answer will suffice.

Stewart Maxwell: The answer to that is yes.

The Convener: That is fine.

Stewart Maxwell: Convener, I just want to make a quick point that it is relatively rare for time to be extended. Indeed, there have been only a handful of examples of that over the years. Given that most bills pretty much carry on as they do under the current timetable, I do not think that it would be that difficult for us to manage those occasions when time is extended.

Richard Lyle: Thank you.

10:15

Fiona McLeod (Strathkelvin and Bearsden) (SNP): On the issue of the documents that support and accompany a bill on its introduction, the panel members might have read Professor Reid's submission, which refers to accompanying documents and the Rural Affairs, Climate Change and Environment Committee's comments about sustainable development memorandums. However, I want to widen the question by asking the panel about financial memorandums, which I think are worth looking at. Are any changes required for the supporting documents or the rules around them?

Rob Gibson: In my view, policy memoranda ought to identify environmental, economic and social impacts but not in a tick-box way. Given that we are trying to underline the cross-cutting nature of climate change and so on, the fact is that, nationally, every one of our committees is a climate change committee. If we are dealing with environmental matters, the policy memoranda for each bill should respect such impacts as well as the economic and social impacts. We would like policy memoranda to be expanded and made more explicit in that regard, because that kind of thinking in the Government would help make better laws.

We have found financial memoranda to be the weakest element. We realise that it is difficult to estimate accurately the costs of certain bills, and we have already heard about the need for supplementary memoranda. However, it has not helped the scrutiny of bills at stage 1 to have vague figures, and we ask that in its report the committee ask for more robustness in financial memoranda.

The Convener: Should we require policy statements to be made for amendments at stages 2 and 3?

Rob Gibson: That might well be important. I cannot say whether that, in general, would be essential, but it might well be preferable if major changes were proposed to a bill. I have not seen a bill that has had such major changes, but there might have been such bills on the education side of things.

Stewart Maxwell: I do not think that policy statements are necessary for amendments for stages 2 and 3. In most cases, the amendments are pretty straightforward and we understand what is being proposed. A small explanatory note could be helpful on occasion, but only for any major or pretty complex change that might be proposed. Other than that, I do not think that policy statements would be necessary.

Malcolm Chisholm: I will be brief because I have previously commented on financial memorandums, but I agree with Rob Gibson that they must be more robust. We have certainly criticised several financial memorandums. The other thing is to ensure that, as I have already pointed out, there is time for them.

The Convener: Do you have any other questions, Fiona?

Fiona McLeod: I think that that covers it, convener.

The Convener: Right.

George Adam (Paisley) (SNP): I was going to ask how effective the panel thinks stages 2 and 3 are, but you have already spoken at length about that. I want to explore the stage 3 process a bit more. Stewart Maxwell has already mentioned the Licensing (Scotland) Act 2005; I was at the other end of things as a councillor on the licensing board that had to deal with the mess that came from that. Having had experience of stage 3, I can imagine that the way in which it was dealt with could have helped matters.

One idea that I have heard is that it might be better to split stage 3. After the consideration of amendments at stage 3, we have a debate that seems tacked on at the end and which, in my limited experience, is a complete waste of time—I see no value in it. Can any of the more experienced members tell me whether I am missing something here? Could that debate go somewhere else where it would have more value? We limit such debates to the five o'clock cut-off time. Would it be better to go on later than that and have a proper debate, or would it be better to have that debate prior to stage 3?

Stewart Maxwell: I do not think that the debate should happen prior to the amendment stage. This issue is kind of horses for courses, because it all depends on the bill. I know what Mr Adam is talking about. Sometimes the debate feels a bit formulaic. Most members have written their speech beforehand; they go in for stage 3, and immediately afterwards they stand up and give their speech.

I see the advantage of and attractiveness in sometimes splitting the debate off to give pause for thought, but some stage 3 debates are much

more relevant, fiery and interesting because we have just gone through the stage 3 process. It can be useful and something of an advantage to go straight into the debate after we discuss the bill at stage 3, because if we waited 24 hours or a week to have the debate, it would, in a sense, be last week's news. People would feel that it was last week's bill and that as the bill had been passed, much of the heat would have gone out of the arguments. If we left the debate for another week, it might be even more formulaic than it sometimes is at the moment.

George Adam: I understand your point, but speeches in the debate are sometimes cut to four minutes because of a lack of time. How can members make their fiery arguments in four minutes?

Stewart Maxwell: As I have said, we should be much more flexible about time at stage 3, and I do not think that we should have very rigid cut-off times in the stage 3 process or the following debate. We should be more flexible about that to give members the opportunity to speak. I understand Malcolm Chisholm's earlier point about family-friendly hours, and I would not want to drive a coach and horses through that, because it would be wrong to do so. However, on the limited number of—in fact, very rare—occasions that we are talking about, we should expand the time, even if that means finishing at 6 o'clock, 7 o'clock or even 8 o'clock.

Malcolm Chisholm: As I have said, I do not have very strong views on this matter, but I think that there are certain advantages in splitting the stage 3 process, not least that it would create more time. We all agree that we want more time; the question is how we get it. If we are talking about a big bill, there is no reason why we should not take three afternoons to debate it. Some of you will remember that when I did the Planning etc (Scotland) Bill, the stage 3 process took a day and a half; it might even have been two full days. I certainly know that it took the whole of Thursday and either half or the whole of Wednesday, which would equate to at least three afternoons under the current arrangements. For a big and important bill such as the Children and Young People (Scotland) Bill, that would not be too much time.

Given that one of the fundamental things, if not the most fundamental thing, that a Parliament does is pass laws, we should in general be prepared to spend a bit more time on that. I am not downgrading or being disrespectful to any of the debates that we have, but we could probably do without some of them in the interests of a piece of legislation. Generally, we ought to elevate the centrality of legislation.

Rob Gibson: I have nothing to add.

The Convener: Do we deal with amendments in an effective way, particularly at stage 2? Just to articulate one of my personal hobbyhorses, I wonder whether the way in which we progress the voting of amendments is appropriate. We vote on amendments as we meet them in the bill instead of where they appear in the debate, but that meant that, at stage 2 of the Land Reform (Scotland) Bill, an amendment of mine was debated in June and voted on at the end of October. Although it was in a group on something at the beginning of the bill and was therefore in the first of 18 stage 2 debates, the amendment had its effect only at the end of the bill. Do you have any views on that? Do I see Malcolm catching my eye?

Malcolm Chisholm: I have no strong views on that. Your suggestion sounds reasonable in making it easier for members to know what they are voting on, which is obviously a good thing, but there are downsides to it. For example, it would mean that we could not look at a section in its totality, because we would have already dealt with some of it beforehand. As I am not aware that anybody else apart from you, convener, has raised this issue, I would want to hear the pros and cons of your suggestion. It is worth exploring, but I feel that there are downsides to it and that I probably have not quite articulated all of them.

Stewart Maxwell: On balance, convener, I do not support your suggestion, but I would want to take further time to consider it. The problem with doing as you suggest is that we would be jumping around in a bill, which I think would make things even more complicated and less transparent than the current process. The procedure for stage 2 amendments is efficient, but perhaps not transparent.

The Convener: It is efficient, but is it effective?

Stewart Maxwell: It is effective in what it is trying to do, although I feel sympathy for members of the public who wander in accidentally during a stage 2 and find it almost impossible to understand what on earth is going on. In general, however, the process is probably pretty effective and efficient.

On balance, I think that the way that we do it—debating the amendments and then voting on them—is probably the best way, but I am always open to discussion on these things. I might be speaking as a convener here, but I am very clear about the process that we are going through and the way in which we deal with it. As a convener, I know when I have dealt with a bit and can move on. If we started to jump about, I might feel less comfortable. That might be my personal view.

Rob Gibson: Convener, your example is an extreme one. We should look at the norm and see whether there is any problem there. I suspect that,

although outsiders might not understand the process, the people who are involved do. It is the same with points of law, which are perhaps abstruse to the layperson. There has been an opportunity to scrutinise things properly because there has been no restriction on people asking questions and debating amendments at stage 2.

Cameron Buchanan: As a relatively new member, I still fail to understand why we have the stage 3 debate after stage 3. After stage 3, everybody disappears from the chamber. What does the panel think about that? Surely we should debate the bill and then the amendments. I do not understand why the process is reversed and why we have the debate after everything is done.

Malcolm Chisholm: We already have a stage 1 debate, so I suppose that we have a debate at the beginning and a debate at the end.

Part of the answer to many of these questions is that this Parliament is modelled on Westminster more than some of us are aware or would like to think. Our stage 3 is very similar to what happens at Westminster. It seems right to have a final debate, particularly with controversial bills.

The other interesting thing is that if you were to examine the more than 200 bills that have been passed—I said earlier that it was more than 100—you would see that we agree about legislation to a remarkable extent. We need a final debate to allow members to express their differing views about a piece of legislation. It would be a bit awkward to have that debate before the bill was in its final form; after all, that is what we have to vote on, and we would be debating the bill as it was at stage 2.

The Convener: Are you going to ask about committees, Cameron?

Cameron Buchanan: Yes. I was going to ask about committees that are not lead committees such as the Delegated Powers and Law Reform Committee. Do you think that they are effective?

Malcolm Chisholm: I think that the Finance Committee is very effective. [*Laughter*.]

Cameron Buchanan: I did not say the Finance Committee.

Malcolm Chisholm: I used to be on the Delegated Powers and Law Reform Committee, but I have not been on it recently. I read its comments, and it seems to do its work thoroughly.

Stewart Maxwell: I was a substitute on the Finance Committee a couple of times but I was a member of the Subordinate Legislation Committee, which is now the Delegated—what is its name again?

The Convener: The Delegated Powers and Law Reform Committee.

Stewart Maxwell: Yes, that one. I was on the Subordinate Legislation Committee for four years. The members of that committee take their job very seriously, and they do a good job of providing technical evidence to subject committees. It is up to the members of the subject committees, though, to take that work seriously, read the papers properly and understand what is going on in the Finance Committee, the Delegated Powers and Law Reform Committee and so on. Maybe that is the issue here. If you have experience of being on one of those committees, you will have a good understanding of the work that they do, what they are trying to achieve and the information that they provide. If you have never been on one of those committees, that information might seem a bit esoteric. Perhaps the job for individual members is to be more proactive in understanding the work of those committees.

The Convener: Are there any final points that we have not covered?

Rob Gibson: No. All I will say is that I am happy with the Delegated Powers and Law Reform Committee because its convener is a member of the committee I convene, so he can keep us right if there is anything that we do not understand. Otherwise, I am happy with what I have said.

The Convener: As there are no final comments, I thank the witnesses very much for their evidence. The conversation has been interesting and illuminating, and I think that we have all learned a few things. You have nicely teed up the next panel, who will represent the external view and from whom I expect to hear some rather different things.

10:30

Meeting suspended.

10:33

On resuming—

The Convener: I welcome the second panel of witnesses: Ann Henderson is assistant secretary of the Scottish Trades Union Congress, Magnus Gardham is here representing not his employer but the Scottish Parliamentary Journalists Association, and Professor Colin T Reid is from the school of law at the University of Dundee.

I know that you all heard a little bit of the previous part of the meeting, which was quite internally focused because parliamentarians were giving evidence. We hope that you will give us some useful insights into how the world sees us, and how we might improve that perception and our approaches.

We will go straight to questions. At the end, we will give you the opportunity to draw to our attention any point that you think we have not covered in questions. I am particularly grateful to Magnus Gardham, for whom I know Thursdays are a particularly busy day. We will finish no later than 11.30, and earlier if that is appropriate. Cara Hilton will ask the first question.

Cara Hilton: Good morning, panel. The legislative process in the Scottish Parliament has three stages. In principle, is that model the right one, or are changes needed?

Professor Colin T Reid (University of Dundee): The general pattern is about right. The idea of having a general discussion of principles and policies, and of where a bill is going, is very good, particularly given the very open stage 1 process, which offers people opportunities to contribute. Parliament moves on to more technical and detailed consideration at stages 2 and 3, and it is appropriate that those elements be more streamlined and, to some extent, more internally focused.

I have had a quick look through the written submissions that the committee has received. There are general themes coming through—for example, that the streamlining of stages 2 and 3 means that things end up being squeezed so much that people do not feel that they have the chance to engage if significant changes are made to a bill. The basic idea is sound, however.

Magnus Gardham (Scottish Parliamentary Journalists Association): As journalists who cover Holyrood, we do not really have a view on whether the three-stage process is good, bad, appropriate or inappropriate, or whether it could be improved. However, stage 3 certainly throws up issues with regard to how the workings of Parliament are covered, as Professor Reid has mentioned. We might come to those later on.

Ann Henderson (Scottish Trades Union Congress): From the STUC's point of view, the general three-stage framework is clear. We would like to comment later on how condensed stage 3 can become and how difficult it can be to engage with that part of the process.

There are some interesting issues with regard to publication of draft bills prior to their being formally introduced. That has sometimes allowed engagement and has enabled people to pick up on some of the difficulties, more than has having the bill introduced formally first.

With public bills, we try as much as we can to participate in Scottish Government consultations prior to the bill's being drafted. I see that the submission from the Minister for Parliamentary Business suggests that increased parliamentary attention should be paid to consultation prior to a bill's introduction. We would be interested in that. Apart from anything else, it might remove some of the duplication and allow the STUC to discuss issues with parliamentarians earlier in the process.

Margaret McDougall: To what extent does the legislative process encourage engagement from interested parties? Is it open and transparent enough?

Ann Henderson: My previous answer touched on that. The STUC represents a significant number of sectors, through trade unions that represent workers geographically and industrially right across Scotland. It is therefore important that there be time in the process to allow us to consult our membership before we give evidence to committee. That is the case for a number of organisations in civic Scotland.

It is important that the key messages on a piece of forthcoming legislation or on the stage 1 process are made very visible, and Parliament tries to do that. However, when we submit evidence in response to a committee inquiry request or a call for evidence at stage 1, it sometimes feels as though there is quite a quick turnaround time. There is not always adequate time at that point for us to go back and fully consult our members in order that we can identify more easily the expertise that is most pertinent to a bill.

The Convener: Is the Government's annual announcement of its programme for legislation, which is generally made in early September—the timing might be slightly different this year—helpful in enabling you to work out the shape of your year?

Ann Henderson: Yes, it is. Obviously, developments happen during the process, as was the case with the Criminal Justice (Scotland) Bill, but it is helpful to have the key messages set out in advance to give us an idea of what is likely to come forward.

Magnus Gardham: It is hard for my organisation to take a view on whether engagement could be improved. We see the engagement that there is—the written submissions and so on—so we write stories based on that, and we can talk to the people and groups who make the submissions. I do not know whether a greater range of engagement or submissions could be attracted.

Professor Reid: It is important to see the legislative stage only as part of a much bigger process, which starts with earlier policy documents and consultation exercises on them. There may or may not be a draft bill. The primary legislation then goes through, but often there will be secondary legislation—rules and regulations. It is important to consider the opportunities for outside engagement

throughout that extended process, rather than just in the narrow legislative stage of the bill's going through the Parliament.

Most of the time, there are opportunities before stage 1 and at stage 1; that is very good. The problems sometimes come at stages 2 and 3 and with subsequent regulations. Parliament sometimes approves a broad enabling act, which in some ways is appropriate, but people might want to say things that depend on answers to later questions. I admit that I give up at stages 2 and 3. I engage with the process on a bill and follow it up to stage 1, but then I just wait to see what comes out at the end because it is too much effort to follow all the amendments and work everything out. I know that I could find out all that stuff, but it is not a priority and it would be too much effort to try to follow everything all the way through.

The Convener: You are professionally involved as a professor of law and you find it difficult from your perspective, but does the situation create difficulties that matter in terms of the effectiveness of the process for the legislators?

Professor Reid: I suspect that it does. An experienced lobby group or interest group that is a stakeholder in the legislation might have sufficient capacity to have dedicated people who follow the process carefully, read the amendments and see what is happening and what balance is appearing. The people who are in the know—the inside outsiders, as it were—can follow it. I suspect, however, that somebody who was trying to follow the process for the first time would find it very difficult to follow what happens after stage 1.

The Convener: Is that an indirect suggestion that the process would be enhanced if those novices had a source of support for their activity in relation to legislation?

Professor Reid: That may help, or there could be greater explanation of what is going on. From the marshalled list of amendments, it is hard to work out which are significant and which are merely technical tidying-up amendments. It is hard to know what the policy is or whether amendments add up to a shift in the policy and the outcome.

Fiona McLeod: I am interested in Magnus Gardham's point that he feels that his role in engaging the public is to publicise and report on submissions when they come in. From the earlier panel, we heard about how we can get more people engaged at stage 1, or before it. Parliament is doing all sorts of things—for example, tweeting about stuff—to try to get beyond the usual people who look at these things. Is there a role for the media before stage 1 in almost being part of that by saying which bills are coming and by writing stories that would get folk's interest?

Magnus Gardham: Certainly, more and more journalists are tweeting and flagging things up rather than being purely reactive and reporting what has happened. However, primarily, the media's role in the process is essentially passive and is about reporting what is there. I am not sure how active a role the media could play. It strikes me that it is more a job for the parliamentary authorities to do, through tweeting, blogging or Facebooking to drum up a bit of interest. If something is newsworthy, it will attract a greater degree of pre-publicity, but a lot of the Parliament's work is not hugely newsworthy. There is possibly a role for the parliamentary authorities in that.

Margaret McDougall: Are there other ways of encouraging engagement by interested parties? Fiona McLeod touched on social media, but do you have any other suggestions for ways to encourage more engagement?

10:45

Ann Henderson: Over the past few years, the STUC has worked on a number of issues with parliamentarians. Although we are talking specifically about public bills, it is worth looking at some of our experiences with members' bills, such as our recent experience on the proposed human trafficking (Scotland) bill; the Government has taken on the issue and will introduce a bill of its own.

Over the years, some aspects of our work—for example, on asbestosis, mesothelioma and health and safety in the workplace—have become joint pieces of work with external organisations. The work has involved a lot of communities, retired members and constituents talking to their MSPs. A huge amount of work has been done. That may have resulted just in a piece of paper or a website saying that a members' bill was proposed, that a process would follow and that the Government supports the policy, but an awful lot will have gone on behind the scenes, including people coming in to lobby members and articles having been written in the press. Therefore, perhaps we need to consider how much engagement has taken place.

In looking at the written evidence on this inquiry, a lot of people will have looked at the inquiry title and thought that it does not affect them, when it fact it does. The wider world has an interest in how legislation is made and what access they have to comment on it. Therefore, it should be considered how Parliament conducts consultation; how issues are labelled; how, for example, we link up with the education department's work with schools; and what briefings are given to members at each stage. Members see the *Business Bulletin*, but how do we make the information a little bit more real, so that even in members' constituency

newsletters it is possible to flag up and ask in a simple way whether constituents have a view about whatever topic is coming up on the parliamentary agenda?

The Convener: Has our legislation become too complex? If so, why might that be the case? If we go right back to the Common Good Act 1491, it has literally only three lines. The Indian Independence Act 1947 is in many ways quite complex—it provided for three referendums and quite a lot of other things—but is only 12 pages long. It is very seldom that legislation here is much less than 50 pages.

Magnus Gardham: Are you asking whether the process is complex?

The Convener: What about the outcome, too?

Magnus Gardham: The consensus among the journalists working in the media tower is that stage 3 is particularly complex and difficult to cover. That has consequences for how we construct our reports and cover the issue.

I conducted a wee straw poll among colleagues. I was greeted, by and large, with blank looks. In one case, the response was even worse than that: someone said, "Well, at least you're the right guy to be doing it because you know where the committee room is." I'll not drop Alan Cochrane in it and tell you who said it. [*Laughter*.] That is generally the picture among print journalists.

I should say that the SPJA represents not just the print journalists but the broadcasters. Even colleagues at the BBC "Democracy Live" unit, who are probably most closely wired into the minutiae of Parliament's workings—they describe themselves with pride as the geeks of parliamentary coverage—say that stage 3 is too quick, it is incoherent to the public and the marshalled list of amendments is meaningless. The journalists who work in that unit even find it difficult to pick out the newsworthy items from the marshalled list of amendments. A couple of the words that were used in relation to that were "dense" and "opaque". That is the reaction of the journalists who know best how the process works.

A specialist health reporter, for example, might be brought in to cover the passage of a health bill but—from a journalistic point of view—the great advantages to bringing in someone like that who has specialist knowledge is nullified by the complexity of the parliamentary procedure. That difficulty impacts on how topics are covered. People tend to cut corners, so the reporting process largely bypasses the ins and outs of stage 3. Mid-afternoon, when it dawns on reporters that they have to file a report on the passage of a bill by 6 o'clock, they will phone the Scottish Government press office to get a quick idiot's guide to the main provisions; they will tee up the people who are likely to react to it; and they will have the story largely written but for the numbers for the final vote, particularly as they are heading towards newspaper deadlines. A lot of the quite important battles that take place during stage 3 debates about last-minute amendments are dismissed in a single sentence or they are underplayed, so there are consequences for how things are reported.

It was interesting to see in Professor Reid's written submission the idea of splitting stage 3. That idea has also received a little bit of support from the Law Society of Scotland, and from the Liberal Democrats, I think. It is clearly not for the SPJA to take a view on whether that is a good or sensible thing to do, but it would have a consequence for how the workings of the Parliament were reported. I am well prepared today, so I can give you an example. Earlier this year, the Children and Young People (Scotland) Bill was passed. The BBC website coverage says:

> "Increased provision of free childcare is part of a package of reforms which have been approved by MSPs."

That is the kind of story that reporters knew they were going to be writing at 10 o'clock in the morning. The penultimate paragraph of the BBC coverage states:

> "Conservative education spokeswoman Liz Smith tabled a last-minute amendment on the plan that would have limited the named person to under-16s, rather than under-18s. The move was defeated."

That is the penultimate paragraph. If stage 3 had been split, that would have been the top of the story and the process that I have just described would have happened at what has variously been called stage 3.2 or stage 4—a new stage.

From a reporting point of view, there would be another day of the story and there would be a greater focus on aspects that are currently underplayed. The committee might think that that would be valuable. I do not know.

The Convener: Can I play that back to you and test something? In a sense, you seem to be suggesting that, because of the difficulties in reporting what is going on, the media does not connect with the general public in a way that would encourage them to be a bigger part of the process and, ultimately, we are doing it for the people out there.

Magnus Gardham: Aspects are underplayed—certainly, if members of the public who read the stories are interested in those aspects, they are not being as well served as they might be.

The Convener: That is the point that I hoped we might get to.

Richard Lyle: Good morning.

You may have heard my question to the first panel. Basically, it comes down to the timescales that are allowed between stages 1, 2 and 3. Should they be lengthened for some bills and shortened for other bills, depending on how controversial the bill is?

Professor Reid: I have not studied the internal workings of the bill process. I am well aware that, from the outside, it is easy to say that there should be lots of time to do everything, but that just creates problems elsewhere. From the outside, it is not altogether clear why the timescales are set in the way that they are. Some bills seem to go through a very leisurely process, whereas others go through a quick process. If someone is not focused on following a particular bill stage by stage, it is quite easy for them to miss things.

From the point of view of understanding what is going on, people may know that, after stage 1, various amendments are talked about and that various proposals come forward at stage 2, but knowing exactly what is coming forward and when they will have the chance to submit is very difficult unless they make it a priority job to follow the bill process. I suspect that a bit more time would make that easier, but I am conscious that there is a danger that you could just stretch everything out for ever and create different logjams at different stages.

Ann Henderson: I want to make a point that overlaps with one of the points that Professor Reid made earlier.

I think that there would be some benefit to ensuring that the timescale allowed for more briefing or policy background notes to be provided with the amendments at stages 2 and 3. That would make a difference to the ability of the public to understand what was going on; it would also make a difference with regard to reporting and so on. It would also allow there to be a little bit more discussion about the impact of a particular amendment. However it is done, there should be more of an onus on a member to explain why an amendment has been lodged. That would allow more separating out of amendments that are technical in nature from amendments that would substantially change a policy aspect of the bill. From the STUC's point of view, that would make much more sense, because, even in a condensed period, we would be able to find a way to bring in expertise from a particular workplace or profession so that there could be an informed discussion of why an amendment might or might not work.

The process is too tight and not enough attention is paid to public explanation of the motivation for amendments.

The Convener: At stage 2, it is the convener who decides whether to accept an amendment for debate and, at stage 3, it is the Presiding Officer who does so. I am perhaps leading you further than you have gone, but are you suggesting that, in selecting amendments, the convener or the Presiding Officer should make it a condition of accepting amendments that are deemed to be of significance that a policy intention statement is associated with them and provided at the time?

Ann Henderson: I certainly think that that should be considered.

In the early stages of the Parliament, we had discussions on equal opportunities. You might be coming to this in your lines of questioning anyway, but I know that, in 2009, the committee did some work on how equal opportunities could be more effectively mainstreamed in the legislative process. We have certainly not succeeded in doing that, collectively.

I think that there should be a stage in the amendment process at which the equal opportunities implications—and, indeed, the financial implications—are given some regard. As you suggest, that links to some sort of policy memorandum being provided. Some amendments that are lodged quite late in the day could, arguably, have serious equal opportunities or financial impacts, or could impact on or cut right across another policy that somebody else is trying to progress, and there is very little time to have proper discussions about that.

The Convener: So, with regard to those amendments that might have a wide-ranging effect, you would support a requirement to have a policy explanation—a note or a memorandum, whatever you choose to label it—when the amendment is lodged. Is that correct?

Ann Henderson: I think that the STUC would find that helpful. That would bring with it the other context that policy memorandums require, such as the need to have due regard to equal opportunities.

The Convener: It is certainly not currently forbidden, that is for sure.

Magnus Gardham: If longer timescales allowed for greater engagement in addition to greater understanding, from our point of view, there would be more to report on as there would be more reaction. Beyond that, we do not really have a view.

Cameron Buchanan: Realistically, the public tend not to follow what might be seen as cut-and-paste amendments at stage 3. Do you think that, for the benefit of the public, there should be a better explanation of those amendments? People have raised with me the fact that the amendments are never really explained.

Magnus Gardham: I think that they are not really followed by reporters, either. I can see that, by necessity, the amendments are going to be complicated—we are talking about the passage of legislation, after all. If, as I mentioned earlier, stage 3 were split, there might be more time for reporters to get their heads around the minutiae of the issue and report it separately before reporting an overall story but, in general, I would have to agree with your point. From conversations with colleagues in the media tower, I know that there is widespread ignorance of the inner workings of the process.

11:00

Cameron Buchanan: I had an MP up from Westminster who could not follow the stage 3 amendments that the Parliament was considering at all and did not have any explanations of what the heck was happening. I presume that he is more knowledgeable than the general public or the journalists. I would have thought that it would be better if there was some sort of small explanation of why amendments are grouped together and what they mean. I think that that is what Ann Henderson and the STUC are suggesting.

Professor Reid: A simple explanation of what an amendment does could be provided. I can see that such explanations could become overblown into full policy memoranda with various different elements. We just need a statement of what the amendment is doing, what its point is and what its effect would be.

The Convener: Let me just test what that means, because during a debate on an amendment that question would be answered. I suppose the question is whether that is soon enough or whether that should be done when the amendment is lodged.

Professor Reid: If you want outside people to have the opportunity to comment and to try to influence things, they need to know what amendments mean at an early stage, especially when you are dealing with organisations, which often have internal processes and other priorities, so their work is organised in different ways. They need to be able to identify, with ease, that there is an issue. It is important for them to have at least a few days to gather a response.

The Convener: From memory, I recall that there were something like 500 amendments to the Land Reform (Scotland) Bill and there were amendments to amendments to amendments. I somehow have a memory that there was an amendment 54DC, which was an amendment to 54D, which in turn was an amendment to amendment 54. I have no idea how anyone was supposed to follow that.

Fiona McLeod: It is quite interesting that the discussion about the various stages and the length of time for them is beginning to include a discussion about the policy documents that are required for those stages. I was going to ask what you think about the rules and the supporting documents that we bring in at the introductory stage. Professor Reid has talked about sustainable development.

Can you answer the question in two halves? The first part of the question is about the introductory documents that we provide at the initial stage. The second part relates to the fact that you seem to be suggesting that we might need to have similar documents at stages 2 and 3. Am I correct?

Professor Reid: Having the documents at all is great, although sometimes the explanatory notes just reorder the words in the bill rather than explain what is happening. As I said in my written submission, I find that the sustainable development elements that I have studied are, at best, very variable. I suspect that those who have looked at the finance, equal opportunities and other elements may equally be critical of some of those, but I cannot comment on that.

When you are trying to understand an act once it is finally in place, there is a danger that when you look back at the early documents, you find that there is a big disjunction, because new policy elements have been added or things have been significantly changed and the documents do not match up. The question is whether that is a problem on the way through. To the extent that the memoranda are meant to be informing people and helping to explain the legislation to them as part of the scrutiny process inside the Parliament and allowing outside people to know when it is important for them to get involved, there seems to be a gap, because if a bill goes off in a new direction and has a new bit added on to it, there is not the same support for the debate.

Ann Henderson: The initial documents are helpful. I agree that we should be in a position whereby they build on an earlier consultation or the initial statement about the intention to introduce legislation. Before I came to the meeting—this perhaps overlaps with a number of other issues—I was thinking about the role that external organisations play in supplementing the briefings and policy documents. Part of that is about not just the written evidence that a committee gets when it conducts stage 1 scrutiny, but the general atmosphere around a topic that is out there for discussion.

There was a huge amount of interest in a number of aspects of the recent Children and Young People (Scotland) Bill. Although the policy memorandum is important and the procedure is

quite good, it is right that politicians should be exposed to all the other lobbying that goes on, all the briefings and information that are provided, and all the meetings with people who work in the sector, or whatever it is. All that allows members to develop additional questions when they conduct their scrutiny and to pick up on points that have not come in through written evidence, because people have missed deadlines and so on. It is also a way of allowing members to find out from their own constituencies what have become constituency issues and seeing whether they fit with what has been discussed and flagged up in the proposed legislation. That process is quite a lot broader.

I do not know how things look from your side. We put quite a bit of effort into doing some of that external work by getting an MSP to arrange a lunch or a briefing, or by writing to MSPs. I do not know how effective that is. That might be another question. It would be good if people understood that those things had been effective, as they might do them again.

The parliamentary timetable might or might not be on your agenda, but it needs to be continually monitored. I do not know whether the new parliamentary timetable is in any way restricting or increasing the slots of time that are available for external groups to come in, but that is an aspect of the way in which the whole Parliament operates. External engagement means people coming in here and having a chance to speak to members, rather than just working off the policy memorandums.

The Convener: Given that Parliament sits in session three days a week, I suspect that there are probably more MSPs here more of the time. If it was a committee-only day, as we used to have, and a member did not have committees, they would not be here. However, that is only a personal view.

George Adam: How effective are stages 2 and 3? Can we make any changes around amendments?

I will tell you why am I asking. I am a member of the committee that scrutinised the Children and Young People (Scotland) Bill, which you mentioned. The only that way that I could keep track was by using a very analogue system of Post-it notes. I should say that my wife, who is a volunteer for me, physically tested her love for me by putting those Post-it notes where they fitted into the copy of the bill. I could see no other way in which I could track the bill. How do we report on that process? I can see how difficult it would be for organisations and the public to use such a process. It is difficult and time-consuming for us to do it and it is our job.

Is there anything that we could do between stage 2 and stage 3 that would make it easier?

Magnus Gardham: From the point of view of reporting what is going on, stage 2 is less of an issue for us. Committees take evidence, issues come up one by one, and they can be reported on discretely day by day. It is really at stage 3, when everything comes together and there is also a need to report the fact that a bill has been passed, that problems arise. I am not sure that I have any thoughts on how the process could be streamlined for members. For a reporter, as legislation moves through committee scrutiny, that works quite well.

Ann Henderson: As we are talking about the Children and Young People (Scotland) Bill, I should say that the handling of stage 3 and the changes to the parliamentary sitting times were problematic for public perception and for people following what was going on. It also made reporting difficult, of course, because when the final vote is at 8.30 at night, it misses all the deadlines.

We could ask how we reach a position in which a piece of legislation requires 400 or 500 amendments. Does that indicate that it tried to cover too many topics in the first place or that it was not drafted as well as it could have been, and that a different approach—for example, producing a draft bill first—might have led to a more efficient and easier-to-follow stage 2? There would then not be an attempt to manage that number of amendments.

I am not sitting in the member's chair, so I do not know the answer to that question, and I am not a lawyer. However, if there is to be any chance of any us following things, the headline, "This badly drafted piece of legislation was rushed through with 400 amendments that there wasn't time to consider properly" is not helpful for anybody. It is not helpful for the Parliament or for working people and families who will be affected by the legislation. Therefore, that needs to be looked at.

George Adam: That brings me on to stage 3. I read Professor Reid's ideas about a possible tidying-up committee or a stage 3 split into two. I understand why that would probably make the process a lot better from Magnus Gardham's point of view.

As a relatively new MSP, I still do not see the point of holding a debate directly after we have gone through the stage 3 amendment process. Perhaps there could be a debate at a later date once everyone has had a chance to look at the information. It simply feels that we go through the process for the sake of doing so. That is a purely personal view. What does Professor Reid think about that? I know that he has submitted ideas.

Professor Reid: My comment was based purely on the technical side of things. There is a danger with amendments being dealt with and nobody sitting down to check them and tidy them up. There has been some experience of that. The numbering already has to be done afterwards, before the bill becomes an act. It is changed if there have been amendments.

The Convener: It is not, actually.

Professor Reid: Is it not? It was at one stage. Perhaps I have been looking at older versions.

There is a chance to deal with the purely technical side. Your concern is more about the substantive opportunities to comment and debate. It is very much for the Parliament to decide how it wants the process to go together.

At the end of the previous evidence session, I heard the idea that carrying on the passion and interest of the debate may have advantages. There would need to be an element of self-discipline. A multiplication of stages could simply mean a multiplication of the same arguments. The internal culture of what you expect at different stages will partly determine how the process should go.

The Convener: It is worth observing that one of the reasons why there is not renumbering, even though, logically, that makes sense, is that that would make it even more difficult to make sense of the previous debates in which numbers were referred to. That would happen if the numbers in the final bill were different.

Professor Reid: Yes, but I seem to remember that there were examples of that after bills were passed and before they were printed as acts.

The Convener: Well, but even so—

Professor Reid: That was when the bill went to the Queen's printer for Scotland—not in the Parliament, but afterwards.

The Convener: Manifest errors will be corrected. For example, in the Climate Change (Scotland) Bill, among the hundreds of amendments that we considered, we passed an amendment that ended up referring to a bit of the bill that was not there. Therefore, that was tidied up. It had no legal effect that mattered. The wording was tidied up, but the numbering was not changed, because if people went back and read the debates, they would not be able to relate to the final act. Renumbering is attractive, but is not a price that we pay.

I am sorry; I am intervening and perhaps going beyond my role.

George Adam: On the example of the Children and Young People (Scotland) Bill, in effect we had a situation in which we almost had stage 2 twice. I do not believe that that was because of the bill; I think that a little bit of politics was involved. We could have done without that, because it made stage 3 a bit messier than it should have been.

In general, I think from my experience that there must be a better way that we can do stage 3. In my limited view since 2011, we seem to rush things through with the timescales at stage 3.

Magnus Gardham: I think that you are right about some stage 3 amendments being politically motivated. They can be quite a dramatic way to make a point. Obviously, that is brilliant from a reporting point of view because it gives us a good story. As I said, by splitting stage 3 we would have a day of focusing on that and then a day of focusing on the bill in its entirety.

George Adam: You are talking me out of the idea now, Magnus.

Magnus Gardham: It is my duty to give you an honest and in-the-round appraisal of what might happen.

11:15

The Convener: Reference has been made to things such as the marshalled list of amendments and the groupings list. Does the panel have any further observations on that or help that they might provide us as to how we could improve the quality and content of those documents so that they are more intelligible, not just to us but to others?

Magnus Gardham: I do not know how you would improve it, but certainly the glazed expressions that I was greeted with in the media tower over the past couple of days in talking about the issue suggest that you might wish to consider something.

The Convener: Cameron Buchanan has the next question.

Cameron Buchanan: My question is not relevant in this context.

The Convener: Okay. We are looking at legislation in general, but we have not covered secondary legislation and the processes around Scottish statutory instruments. Do you have any observations on those processes? It is not compulsory to comment.

Professor Reid: I was involved in some of the evidence sessions on the tidy-up of the procedure two sessions of Parliament ago. There are now fewer variations, which is definitely beneficial. That again comes back to the point that I made earlier that the legislative stage is often only part of a process. Where there is good consultation and public engagement beforehand on a policy—that often happens on draft statutory instruments—there are opportunities for people to get involved.

Sometimes, though, for various reasons, instruments seem to appear rather more unexpectedly.

Another issue is about the connection between primary and secondary legislation. Often, for very good reasons, a bill is a skeleton or an enabling bill, which means that it is hard to see what will happen. The processes for the first set of regulations under a bill might be more important than those for subsequent tidying up, as there might be more policy issues to consider. An example of that is the Regulatory Reform (Scotland) Act 2014, under which basically all environmental law will be rewritten. The process and scrutiny that you will want for the first set of regulations will be rather different from the process for tidying up little bits in 10 years' time.

Ann Henderson: The STUC and a number of other organisations were quite involved in the statutory instruments relating to the specific duties in the Equality Act 2010. The matter was referred back by committee to the Government for further discussion. I would not say that we ran into any problems with the process. However, the point about the wider agenda and discussion is important. The trade union movement in the widest sense, along with a range of equality organisations, was very involved in the United Kingdom Government's Equality Bill in 2010, and with the act, in working out what would be devolved and where the responsibilities lay and the specific duties that were being discussed in Scotland and Wales. That meant that there was an informed discussion, and we were comfortable in contributing to it. In the context of a much wider debate in which we had already brought in a lot of knowledge, that process was not a problem.

The Convener: I give you all the opportunity to make any concluding remarks and to draw our attention to anything that you think we have not covered but which we might sensibly have thought about in this session.

Magnus Gardham: One thing that has not been touched on is draft bills. I was reminded by the Law Society of Scotland's submission that not every bill is preceded by a draft bill. From a reporting point of view, a draft bill is handy. It is a hard, concrete and clear statement of intent—more so than a consultation or set of aspirations. From a reporting point of view, it is useful to have a draft bill, although I am not sure whether you are considering that issue as part of your inquiry.

The Convener: Your view is that that would be another way in which we can draw people outside the Parliament into the process.

Magnus Gardham: I think so, because we would be able to write stronger stories based on an existing draft bill.

Professor Reid: I agree with that. It would be a part of flagging up the start of the wider debate and discussion; it might also be helpful in flagging up problems so that some amendments could be made before the bill was introduced rather than during the parliamentary stages.

Ann Henderson: I have a couple of points. We are quite keen that more attention is given to post-legislative scrutiny, which would allow the expertise of wider society to be brought to bear. As I said, I do not think that there is any consistency in how the equal opportunities requirement is covered, even in the policy memorandums. I quickly looked through all those covering the current legislative programme and could see no consistency in the attention that is given to the equal opportunities requirement. It often feels as if they take the kind of tick-box approach that was challenged in the committee's 2009 report because it obviously does not do the job. Because there is only one sentence on equal opportunities, that does not allow us to discuss any differential impact on black and minority ethnic communities, people with disabilities or women in society, although we know that other statistics will tell us that different things are sometimes going on in those communities. We are therefore not linking those properly together.

My other point is on the issue of late-running debates. Again, I know that we are still testing out the new arrangements for the parliamentary timetable, but some consideration needs to be given to whether an unintended consequence has been to restrict the time that is available in the chamber and committees to examine some issues in depth. That might not be the case, but it felt like that in the week when the Parliament was considering the Children and Young People (Scotland) Bill. However, I think that that issue needs to be looked at. Some of the discussion that we have had has led us to the position of feeling that sometimes more detailed scrutiny or longer consideration will be required for legislation. Obviously, you can do that by splitting a debate over three days; you do not have to decide that you will do it from 2 o'clock to 8 o'clock at night.

People get only two or three days' notice of the fact that stage 3 debates will run late. Other events, such as civic engagement events, are arranged to take place in the Parliament perhaps months or even a year in advance. We got caught up in that because a trade union week event was running in Parliament on the day of the stage 3 debate on the Children and Young People (Scotland) Bill. We had already made arrangements for the event because we had been given the dates a year in advance, but we were then given a week's notice to make new arrangements for something that should have started at 6.15 to start at 8.30, by which time

everybody would be exhausted. That situation was by no means ideal, although we had tremendous support from MSPs. We brought people from all over Scotland for that event in Parliament, which was part of the external engagement of which the Parliament is proud, so what happened brought home to us that there is a problem. There was a crammed period for completing a piece of very important legislation and participating in a parliamentary event, and the two things did not go well together.

My next point is probably linked to post-legislative scrutiny. I looked at a piece of work that the STUC did in the early days of the Parliament for the Housing (Scotland) Bill in 2001. We did a lot of work with individual MSPs for the committee stages at the Social Justice Committee. We had discussions with the committee on incorporating provisions in the bill on the responsibilities that local authorities should have with regard to the supply of construction and maintenance labour—I am giving a specific example of how the STUC really engaged early with the legislative process. From our point of view, we were successful as we got that into the bill. Given what is happening in the labour market now, it is quite an important requirement for local authorities to have due regard to work in their areas. However, the state of post-legislative scrutiny is such that we have not looked back at that, even though there is another piece of housing legislation going through the Parliament just now.

The question then is how, with legislation that has been passed with good engagement, we ensure that the next Government or Parliament does not decide that, without incorporating all the external and internal work that went into drawing up the earlier piece of legislation, it is time for another piece of legislation in the same area.

The Convener: I thank our panellists for their time and their valuable contributions. Like others, I am sure, I will read the report of the session in tomorrow's newspapers with particular interest. I shall read the *Daily Telegraph* with especial interest to see what Alan Cochrane makes of Magnus Gardham's reference to him. Thank you very much indeed.

11:25

Meeting continued in private until 11:34.

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