



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 19 June 2014

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
10th 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:

Willie Ferrie (Scottish Government)

Joe FitzPatrick (Minister for Parliamentary Business)

Stuart Foubister (Scottish Government)

Rob Gibson (Caithness, Sutherland and Ross) (SNP)

Steven Macgregor (Scottish Government)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 19 June 2014

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

Decisions on Taking Business in Private

The Convener (Stewart Stevenson): I welcome members to the Standards, Procedures and Public Appointments Committee's 10th meeting in 2014. As ever, I remind committee members and others to switch off their mobile phones, as they can affect the broadcasting system.

Agenda item 1 is consideration of whether to take items in private. Do we agree to consider a draft report on the Interests of Members of the Scottish Parliament Act 2006 and our work programme in private at future meetings?

Members indicated agreement.

The Convener: Under the next item, do we agree to consider in private today item 6, which is on cross-party groups, and item 7, which is on committees meeting at the same time as chamber proceedings?

Members indicated agreement.

Legislative Procedures

09:31

The Convener: Item 3 relates to our inquiry into procedures for considering legislation. Members will be aware that we have had two public engagement events—in Glasgow and Stirling—in the past couple of weeks. I would like to get feedback on the record from the members who participated, who were Fiona McLeod, Cameron Buchanan, Margaret McDougall and me. Who wants to kick off on the Glasgow event—Fiona or Cameron?

Fiona McLeod (Strathkelvin and Bearsden) (SNP): The Glasgow event was incredibly well organised, not just on our side but by the Scottish Council for Voluntary Organisations. A lot of people came and truly engaged with how the Parliament goes about producing legislation.

I picked out two things from the event. One is a great concern about timings, particularly for amendments at stages 2 and 3. The attendees were all policy officers, so they were well versed in the process, but another issue that they talked about was needing supporting documents at all stages of the process. They would like supporting documents from the lodgers of amendments that show a clear policy intent for amendments and how they will affect the overall bill.

Having read the note on the Stirling event, I am delighted that the people of Stirling think that we should reinstate the Parliament's partnership libraries.

Cameron Buchanan (Lothian) (Con): It was interesting to have a couple of former MSPs at the Glasgow event, who were useful. They were Iain Smith and a guy from the Greens—

The Convener: Mark Ballard.

Cameron Buchanan: They were useful because they gave us timetables and told us from an insider's point of view what they thought was wrong. The timing of bills—everything that we will discuss—is thought to be wrong.

The Convener: That is fine. Does Margaret McDougall want to add anything from our Stirling event?

Margaret McDougall (West Scotland) (Lab): The event was interesting. The attendees were from the voluntary sector and organisations that support people. For example, there were attendees from a domestic violence support group.

The difficulty that participants raised was about communication. Not everybody has access to the internet, and some people have literacy problems. How do we get information to those people?

A network group representative said that it is difficult to disseminate information once it has been found. All the attendees seemed to have difficulty in finding information. Some people also did not know the process for getting an issue raised in Parliament. I think that the attendees found the event useful. I certainly found it informative.

Cameron Buchanan: It was interesting that the attendees liked the informal session; some of them were not the kind of people who would normally appear as witnesses. Some people from Children 1st and the Women 4 Women group would never come to the Parliament—they had never been here and had no intention of coming here. Such informal events are useful, because they are the basis of the Parliament's outreach work, which is important. That was a good aspect.

The Convener: It was interesting to hear the views of a group of people who are not so directly engaged in the process. It would be fair to say that, although we learned a lot from them, they went away having learned a lot, too.

Following on from our two visits, there will, of course, be a formal report that the clerks will prepare for us and we will publish at a later date. However, in terms of the process of Parliament, it was enlightening for the committee to go out and engage with the public, because the public are often kept pretty distant from the processes. Our views of the processes are often about what serves us best, as we are the ones who are involved in them, and our visits gave us an opportunity to see what would best serve the public, whom we serve. It was a worthwhile initiative. Everybody who visited played a helpful part in the process.

The next agenda item concerns our inquiry into the procedures for considering legislation. We have a panel of witnesses from the Scottish Government with us today. From left to right, we have Stuart Foubister, from the directorate for legal services; Steven Macgregor, the primary legislation programme manager in the Cabinet, Parliament and governance division; Joe FitzPatrick, the Minister for Parliamentary Business; and Willie Ferrie, from the office of the Scottish parliamentary counsel.

It is not usually my habit to invite opening statements, but I will give the minister the opportunity to make any comments that he wishes to make at this stage.

The Minister for Parliamentary Business (Joe FitzPatrick): My opening remarks would be similar to the written evidence that we submitted, so I will just quickly emphasise that we welcome the committee's inquiry. It is absolutely appropriate that the Parliament periodically reviews its

systems to ensure that they remain fit for purpose and to ensure that we continue to improve the Parliament's processes. It has been interesting for us to consider the written and oral evidence that you have received and to hear just now about some of the public engagement that you have been doing as part of that process. Such public engagement is one of the increasing strengths of our Parliament.

It might be helpful if my colleagues briefly introduced themselves and said what they do as part of our team.

The Convener: That would be helpful. You have anticipated my suggestion.

Willie Ferrie (Scottish Government): I am from the office of the Scottish parliamentary counsel. Our office is responsible for the drafting of the bills that form the Government's legislative programme, including the amendments to bills.

Steven Macgregor (Scottish Government): I work in the Cabinet, Parliament and governance division. I lead the Scottish Government's legislation team, so I am responsible for co-ordinating the Scottish Government's legislative programme. To do that, I work closely with individual bill teams, as well as the minister.

Stuart Foubister (Scottish Government): I am from the directorate for legal services. I have a co-ordinating role in respect of the Scottish Government legal directorate's interest in primary legislation. The SGLD is responsible for instructing all Government bills and the associated legal work in taking them through.

The Convener: At the end of our questioning, I will give our witnesses an opportunity to raise issues that they think we have missed.

Fiona McLeod: I have been pursuing issues around stage 1 of the legislative process. During our inquiry, most witnesses have said that the stage 1 process is good, fairly robust and not in need of a lot of changes. However, people have raised issues about the pre-stage 1 process—pre-legislative consultation, draft bills and so on. The committee has begun to hear some good statistics on what the Government already does. Could you talk about the pre-legislative process?

Joe FitzPatrick: Yes. Obviously, in the committee's inquiry, we are mostly looking at the Parliament's process from stage 1 to stage 3, but the whole process begins long before that, of course, and continues after that in implementation. There is a huge amount of engagement before a bill is produced. One way in which we can do that is through using a draft bill. I think that it has been pretty consistent that there have been draft bills for around 25 per cent of the bills in all the sessions of the Parliament.

When a draft bill is appropriate, it is very helpful, but I am not sure that a draft bill would be beneficial for every single bill. It would simply not be appropriate for some bills. As I said, we already have draft bills for around 25 per cent of bills, which is helpful.

When we have looked at the process, we have wondered whether the Parliament could engage more prior to a bill's introduction and somehow take part in the Government's consultation work before that. That would clearly not be to form a final view. The committees would always want to protect their position in scrutinising bills that have been introduced, but that approach would offer an opportunity for members of specialist committees who have developed specialist knowledge in an area to feed into the Government's thinking at an earlier stage in developing bills. That might be helpful.

Fiona McLeod: That is quite interesting. The committee always comes back to the question whether we need to change the standing orders to make something happen. If we want to get the committees to engage in the pre-legislative consultation process that the Government already carries out, do we need a standing order change, or do we simply need to highlight the fact that committees should consider that?

Joe FitzPatrick: I do not think that there would be any need for a standing order change to allow committees to take part in pre-legislative scrutiny. In fact, a number of committees already do that. I think that the Education and Culture Committee did a fair bit of engagement prior to the introduction of the Children and Young People (Scotland) Bill. It knew that that bill was coming, so it started to do some work. Currently, the Rural Affairs, Climate Change and Environment Committee is doing some land reform scrutiny in advance of a bill.

Such an approach is therefore possible, and it happens. When it does, it means that committee members are able to engage at stage 1 with a much higher level of understanding of the thinking of the Government and stakeholders. There might be an additional opportunity to engage with the Government's consultation process, which probably does not happen very much now. However, I do not think that any of that would need standing order changes. Perhaps we should highlight the fact that that opportunity exists.

Fiona McLeod: On your examples, when I was a member of the Health and Sport Committee, we took that approach knowing that the integration agenda was coming. The committee therefore did a short inquiry before that, which helped.

Can I go on to one of the other items that—

The Convener: I am sorry, but I have a question before we leave that subject. Is there the view on the panel that committees engaging in pre-legislative scrutiny might help those who contribute to consultations? Currently, they may have to contribute to the Government's consultation and then to the committee's consultation. Perhaps it might make things simpler and more straightforward. Alternatively, would it carry the risk of denying people the opportunity to have second thoughts when the committee was considering the bill or is it a question of horses for courses?

Joe FitzPatrick: It probably is horses for courses to some extent, but any committee involvement in pre-legislative scrutiny would have to not debar it from making decisions about how it would scrutinise any bill that came out of that process. That would be a very important principle to maintain. The opportunity would be an additional opportunity that would not take away at all from the stage 1 scrutiny.

Fiona McLeod: Another issue that has arisen is the documents that accompany bills when they are introduced. The documents that we have to introduce and their format have been laid down. Do we need to change our approach to make the documents more accessible?

09:45

Joe FitzPatrick: I think that, in the main, the accompanying documents are very robust. We have had a look at them over the parliamentary session. Perhaps Steven Macgregor will talk about how the documents have grown in size and complexity since the first session.

However, there may be an issue with how accessible all the documents are to members of Parliament and members of the public. We should certainly look at that. For instance, the financial memorandum is almost hidden away. It may be that each of the documents should be more easily accessible individual documents, so if somebody wants to find the financial memorandum, it should be relatively easy for them to find it as a document in its own right. We should look at how we can improve accessibility.

One way forward is to consider how to use the internet more. I know that not everyone has access to the internet but, increasingly, it is becoming the way people access information. Using the internet gives us opportunities to improve access and to make it much simpler for people to find the information that they want and access the documents. Accompanying documents are very helpful to the Parliament and the Government, so we should continue to try to improve them.

One of the challenges that we sometimes have is knowing exactly what Parliament wants in an accompanying document. That might be why, over time, documents have got bigger and bigger and yet sometimes we still hear that they are not doing what Parliament wants. There is a need for a discussion between the Parliament and the Government to work out some guidelines about what is expected to be in a financial memorandum, for instance.

The guidelines that currently exist are very high-level guidelines and sometimes what we produce is exactly what a committee wants and sometimes it is not what a committee wants. We need to have a better understanding of what it is that Parliament wants from the documents. Perhaps Steven Macgregor can talk a bit about some of the documents and how they have changed over time.

Steven Macgregor: If we do a quick check, starting from 1999, we see that the average size of the financial memorandum in the first session was three pages; in the second session, it was nine pages; in the third session, it was 15 pages; and in the current session, it is 21 pages. We are definitely providing more information, but the question is whether it is the right information.

We have been engaging with the Parliament on the issue. We have invited the Parliament to contribute to the training that we provide for bill teams and we are quite keen to continue with that. However, we also want to develop some guidance to lie behind that so that we can understand, as far as we can, what information the Parliament would like to see so that we can try to provide that for you.

Fiona McLeod: As a librarian, I find that interesting, because it is not about the quantity of information that can be accessed; it is about the quality of that information. The question is whether we are putting out information that supports a bill and helps all the stakeholders to understand what it is about. It is interesting to hear that we are working on that.

Joe FitzPatrick: We always try to do things by discussion with the Parliament and the committees. The Delegated Powers and Law Reform Committee, for instance, has raised concerns about the fact that the delegated powers memorandum does not include guidance and direction-making powers. The standing orders do not require that, but there is probably not a good reason for that not to be the case. That may be something that you want to look at.

The Convener: It might be surprising if we were not to agree with the DPLR committee on that particular subject. Another issue has arisen in other contexts in relation to the financial memorandum in particular, as well as other

supporting documents. The financial memorandum, of course, is required to be passed by Parliament at stage 1. However, if it is updated, it is not required to be re-endorsed by Parliament. If we were to consider that when the financial memorandum changes, it should require to be re-endorsed by Parliament, what might the implications of that be?

Joe FitzPatrick: Clearly, we want to give Parliament as much information as possible and as much time to consider documents that are produced as possible. Normally, we get that right. We need to be careful that we are not putting up barriers along the way that make it very difficult for legislation to proceed.

The Convener: Clearly, if an updated financial memorandum underpins what will now happen in the bill, it is part of what Parliament receives when it decides what it will do at stage 2 and stage 3. I can see an argument on both sides—it can be considered as part of the input.

Joe FitzPatrick: It does not seem unreasonable that Parliament should be able to express a view in some way.

Cameron Buchanan: How do you respond to the concerns about setting an end point by which a bill must complete its passage through Parliament? We have had criticism—or comment, I should say—about the length of time between stages 2 and 3.

Joe FitzPatrick: A bill's timings are often driven by a desire to implement what the bill does in a particular timescale. Normally, we look at timescales in collaboration with the lead committee to work out how much time will be required for each stage, although there are occasions when we do not get that quite right. We are always keen to listen and, if representations are made to us that the timescales are not right and are not allowing proper scrutiny, we look to be flexible.

An example of the Government being flexible in such a way was the case of the Children and Young People (Scotland) Bill. Concern was expressed that not enough time was available between the stages for stakeholders and the DPLR committee to consider amendments, so we extended the period to allow for that.

The Government will always listen to representations, but we want to get bills passed for a reason. There is a purpose behind the legislation that the Parliament takes forward. Over the four sessions of the Parliament, we have a pretty good record of taking forward legislation that, in the main, we would all agree is designed to improve the lives of people in Scotland.

Cameron Buchanan: There are fixed times between stages 1, 2 and 3, but they can be extended. Is that what you are saying?

Joe FitzPatrick: There are minimum timescales in standing orders, which we perhaps work to a bit more than we should. As an outcome of the evidence that the committee has taken, we will look more carefully at whether there is a need to work to minimum timescales. Sometimes there will be, and we would want to maintain the flexibility to set timescales to the minimum level, when that is appropriate, but we will try not to do that. The general thrust of what the Government has put across to bill teams is that they should not expect to work to the minimum timescales.

Cameron Buchanan: We heard from organisations such as Shelter that the deadline for lodging amendments is very difficult to meet—I think it was Shelter that said that. Should the deadline be extended? Professionals—people who come here all the time—said that there is sometimes not enough time to lodge amendments.

Joe FitzPatrick: We need to be careful. If we allow more time for people to lodge amendments, will that take away from the time that is available to consider amendments? That is a risk, particularly at stage 2 of a complex bill. The committee amendment stage has consequences for the next stage, so there are implications.

However, it is reasonable for the committee—and we would be happy to engage with you on this—to consider whether guidance can be produced to ensure that, whenever possible, more time is available, as appropriate, depending on the bill.

Cara Hilton (Dunfermline) (Lab): During our evidence sessions, there has been a general consensus that stage 3 needs to be reformed in some way. Should stage 3 be structured differently? Should it be given more time? Should it be split, so that consideration of amendments and the debate on the bill take place on separate days?

Joe FitzPatrick: Stage 3 is the final stage of Parliament's consideration of legislation, so it is an extremely important part of our processes. Standing orders already allow us to split stage 3, to consider amendments on one day and to hold the debate on another day—either the next day or the following week—when it is deemed to be appropriate, but we have not considered using that option very often in recent times. In the light of the evidence that the committee has received, we will give more active consideration to that for future bills. In other words, for bills that are currently being considered or are about to be considered, we will look more carefully at whether it would be appropriate for the amendment stage to be on one

day and the debate on another day. I feel strongly that there should be time to consider amendments at stage 3 and to hold the stage 3 debate.

The process that we go through is that the bill team looks at the amendments that are lodged and makes a best estimate of the time that it will take to debate them. I share that best estimate with business managers in the Parliament, who will generally ask their spokespeople whether the timing is right or whether more time is needed. On some occasions, a business manager will come back and say that their members want more time to speak on a particular set of amendments. We would extend the time, based on that information. However, it will still be an estimate. Until the debate happens and we hear the contributions, we cannot know how much time we will need in order not to curtail the debate.

Obviously, standing orders give the Presiding Officer the flexibility to use a rule to extend the session. However, that happens only once and then we have the slightly clunky situation of a motion without notice being moved. I wonder whether the PO should have more flexibility. Of course, the PO always has the flexibility to delay decision time to enable further contributions at stage 3, but it is an important part of the process and standing orders perhaps do not give the PO sufficient flexibility to ensure that the debate on amendments is not curtailed. Sometimes that stage feels a bit rushed.

Cara Hilton: Some of the stakeholders we have had before us think that it would be valuable to have the stage 3 debate in advance of the consideration of the amendments. How do you feel about that?

Joe FitzPatrick: I heard the comments from Mr Adam and Mr Buchanan on that. I understand the concerns. You go into stage 3 and all of a sudden you can be discussing what might be very technical amendments on a bill. There might be people in the gallery who have come to hear an important debate on a subject, yet they hear members talking about things that do not seem to fit in.

As the stage 3 debate consists of the minister or the member in charge of the bill moving a motion that the Parliament accepts the bill as amended, it cannot start until after the amendments have been agreed to. I understand that it seems a bit strange that there is nothing to put the amendment stage in context. Without wishing to push a Government line, I wonder whether there is a missing stage, such as a handover from the committee that dealt with the bill at stage 2 to the plenary session at stage 3. Perhaps the convener of that committee could have an opportunity to talk, in a neutral way—as conveners often manage to do—about what happened at stage 2. A bill is debated in

plenary session at stage 1, goes to committee at stage 2 and comes back to the Parliament at stage 3. If the convener had an opportunity to talk about what happened at stage 2, that might set the stage 3 debate in some context. That could be an alternative to starting straight in with amendments.

I think that the stage 3 debate must take place after the consideration of amendments, because the motion that is moved—whether by the member in charge of the bill or the minister—involves accepting the bill as amended.

The Convener: I am thinking on my feet here, but you are leading me to think about the model that we occasionally use in relation to ministerial statements, which are made without interruption and are followed by a debate on the contents of the statement. I wonder whether what you are saying leads us to think that we might start the stage 3 amendment process with a statement from the member in charge of the bill, from the committee convener and perhaps one other member to set a context for that amendment stage. Would that be possible? I am not necessarily looking for a definitive answer.

10:00

Joe FitzPatrick: There is perhaps potential to consider whether there are options to set the debate in context. It seems that there is something missing in terms of the lead committee reporting back to the Parliament as a whole on what has happened. Probably the only person who could do that in an entirely neutral way would be the convener of the committee.

Cameron Buchanan: It is also the public who do not understand what happens. People just disappear out of the chamber and the public gallery. That is the problem, I think—it looks bad from the parliamentary point of view. As a relatively new member, I do not understand why we have the debate at the end. Something needs to change, although I cannot say exactly what should be done. As we have said, the current process is not quite right.

Joe FitzPatrick: We would be happy to discuss that further.

The Convener: Before we move on, I seek Steven Macgregor's view—if he is the right person to respond to my question—on some of the mechanics. At present, the republication of the bill after amendment at stage 3 seems to take place on the following day. Is that a practical and normal timetable? If we separated the stage 3 debate on the bill from the stage 3 amendment consideration, I imagine that we would wish to have that debate in the context of having the amended bill in front of us. What would be the practicalities associated

with that? I chose Steven Macgregor, but I see Willie Ferrie nodding, which perhaps suggests that the question is for him.

Willie Ferrie: I think that I can answer that. Our office is involved in preparing an as-amended print, in conjunction with the clerks. That is normally produced overnight—that is certainly always the aim. However, with very big bills that have been heavily amended, it sometimes takes a couple of days to make the as-amended print available. Normally, the aim is to have the bill published on the Parliament's website the following day so, if the debate was separated from the amendment process, the as-amended print should be available.

The Convener: To be precise, when you say “the following day”, what time would that be?

Willie Ferrie: Normally, the aim is to publish bills by about 8 o'clock on the Parliament website. We normally get an advance draft of the bill as amended, on the assumption that certain amendments will be voted in. We have a chance to check it in advance, and we then check it against how the votes went on the day.

The Convener: So, on the mechanics, if we were to have the debate on the bill on the following day, in general members would have the morning to consider the amended bill and to incorporate that in the remarks that they made in the debate. However, on the basis of what you have said, we would be unwise to mandate that the amended bill should be available the following day.

Willie Ferrie: Yes—I would caution against that because, with big bills, it can sometimes take a couple of days.

The Convener: That point is clearly understood. I just wanted to ensure that we understand the mechanical bit.

Joe FitzPatrick: On separating the amendment and debate stages, we would not want that to be laid down in firm rules, because I am not sure that it would be appropriate for every bill but, based on the evidence that the committee has received, I accept that it would be appropriate for some bills. For a couple of bills, I am actively considering whether that approach would be appropriate.

The Convener: Given that standing orders permit that and that it is occasionally done, the committee might limit itself to making a recommendation. This is anticipating what my colleagues might come up with, but we might change the name of the debate stage and call it the decision stage, rather than stage 3, so that the public understand.

Cameron Buchanan: I was not aware that stage 3 could be split, and I am not sure that everyone else is aware of that.

The Convener: It has happened.

Cameron Buchanan: As a relatively new member, I was not aware of that. That is a useful point.

The Convener: In fact, for big bills, the stage 3 amendment part can straddle more than one day. Sometimes, we cannot fit it into a single day. The Parliament's rules are more flexible than we sometimes imagine them to be when we look at the practice of Parliament.

Cara, do you have any more questions?

Cara Hilton: I have a final question. The Law Society of Scotland mentioned the idea of having some sort of sense check after amendments have been passed at stage 3 but before the Parliament proceeds with the bill and makes a formal decision on it. What are your views on that, minister?

Joe FitzPatrick: Again, the standing orders provide the opportunity for a sense check. The member in charge or the minister can, in effect, call a halt to proceedings and go back to lodge some correcting amendments. I think that that happened on one occasion, in 2006. It might be a reason why a bill that had a lot of complex amendments would need some time between the amendment stage and the decision, to allow a sense check to be done and a motion to be moved to allow amendments.

Steven Macgregor: That is it. For a big bill, if we split stage 3 into two parts and had consideration of the amendments on one day and the stage 3 debate in the following week or even later, that would give us an opportunity to have a final look at the technical correctness of the bill and, if necessary, to tidy it up.

The Convener: I understand that it is possible for corrections to be made to the text as long as they do not affect the effect. Would you care to speak about that? For example, when I took the Climate Change (Scotland) Bill through Parliament, because of the huge number of amendments and the fact that we had to vote on a consequential amendment before we voted on the substantial amendments, none of us twigged that we had voted to accept a consequential amendment and had then voted down the substantial amendment, meaning that we had a reference to something that was not in the bill. That was corrected simply by taking out that reference.

Willie Ferrie: There are two processes. The formal process, which we have discussed, is the one in which, if we split the amendments from the debate, amendments can be lodged that will

correct amendments. That might have helped in the case that you describe and on the few other occasions when there have been slip-ups. There is also some limited scope to make what are known as printing changes, which we discuss with the clerks and which are made when there is an obvious error—usually a printing or typographical error—that can be corrected with a clear sense of what Parliament had intended to achieve. Something that is not clear could be made clear simply by correcting a printing error.

If the bill is beyond stage 3 and, therefore, beyond the stage at which it can be amended, the only opportunity to change things is through printing changes, and they are not put before members for scrutiny. We use that procedure only very rarely. If the process was split, members could take the opportunity to make a formal clarificatory amendment. The scope for making printing changes can be quite limited.

The Convener: Printing changes can and have been used to correct technical errors in the drafting that have resulted from the parliamentary process. They can be used as long as they do not change the intent of the bill. Does that capture what happens? I do not want to bounce you into giving a description that you are uncomfortable with.

Willie Ferrie: As I say, there are limits. If Parliament has voted on a particular amendment, we cannot undo the vote. However, if that amendment has resulted in a cross-reference to something that is wrong or that just does not appear in the bill, we can address that through a printing change. We cannot use printing changes to undo something that Parliament has agreed to.

The Convener: That is perhaps a more adequate description than the one that I chose to give.

Margaret McDougall: Let us move on to people's understanding of amendments and why they have been lodged. Do you have any suggestions about how the consideration of amendments in committee and the chamber could be made more transparent?

Joe FitzPatrick: One of the big challenges, particularly for a member of the public, is to understand where an amendment fits into the bill. In order for that to happen, the amendment must say something like, "Delete paragraph X." However, that often does not mean anything at all on its own, so you need to have the bill beside the amendment in order to see the bit that will be taken out and work out how that squares with everything else. That is quite difficult for anyone to do.

My view is that this is where technology should be able to help us. We should be able to go to a

website, click on an amendment and be shown how that amendment would fit within the bill and how it would change the bill. Some work is being done on the digitisation of the bill-making process, and we are content to continue working with Parliament to see how that process can be improved so that there is a clear understanding of how amendments interact with bills. A fair bit of work is also being done on an information technology project. Perhaps Willie Ferrie can talk about the work that is being done.

Margaret McDougall: Are you saying that you favour the idea of publishing amendments with a short explanation of the policy thinking behind them?

Joe FitzPatrick: That is a different matter, which we will perhaps come on to. Willie Ferrie will talk first about the technology.

Willie Ferrie: On technological developments, work is on-going to refresh our bill drafting software, as the minister said. We in the OSPC are working in conjunction with the clerks in the Parliament's legislation team to develop new software for drafting bills, including for drafting amendments. The software that we use dates from 1999 and is a bit creaky. We need something that is more fit for the digital age.

We want to move away from the system that the minister described, in which we draft each amendment as a separate document that is separate from the bill, which means that amendments and bills must be looked at separately. We hope that, with the new software, the drafter will be able to call up the bill on screen, type the desired changes straight into the bill, in order to see how amendments would look in the bill, and press a button to make the software produce the list of amendments.

I do not think that we can move away from having the marshalled list of amendments, as the standing orders require it for consideration of and voting on amendments. However, we hope that, because the drafters will, in effect, be writing amendments straight into the bill as they are drafted, the new software will make it easier to produce a version of the bill with the amendments marked up. That version could be made available to members and the public, which might help to make the process more transparent and make it easier to understand what amendments would do. We hope that that software will be available for use by the end of 2015—that is the project's current timeframe.

Margaret McDougall: Will there be an opportunity to produce an explanation of the policy thinking behind amendments? That would improve the understanding of the public and members who are not closely involved with a bill.

Joe FitzPatrick: It is important that members understand the intention behind amendments and groups of amendments. Supporting information on amendments is already produced for the Government and we share it with the relevant committee clerks. We would need to consider whether that information could be shared more widely.

One of my concerns about publishing purpose-and-effect notes is that courts might rely on them, which might have a big implication for the time that is taken to produce the notes. We would have to ensure that everything that was said in the notes was legally sound, as they might be used in court if they were published.

Producing a note for members' information would be different from producing something that might be used in court because it was published. We already produce supporting information, and we will look at whether we might be able to share that information more widely with members.

Stuart Foubister: As the minister said, we would require to consider the implications of such material being used in court. The courts' general approach is that a bill means what it says. The first thing that they look at in trying to ascertain parliamentary intention is the bill's text. The courts go behind that to look at extraneous materials such as debates in Parliament, policy memoranda and explanatory notes only if the text is ambiguous. If a new element of explanatory material was offered with amendments as a matter of course, the courts might look at that. There are issues to consider, but I do not think that anything is insurmountable.

10:15

Joe FitzPatrick: If we were seeking to improve the information that is available to members, we would continue the current practice of producing information on the basis of groups of amendments. It would be very onerous on Government and on Parliament if there had to be an explanatory note for each individual amendment, and that might not be terribly helpful when there was a group of amendments that did something. In such circumstances, we currently produce notes that explain the purpose and effect of the group of amendments. We share those notes, but I do not know whether all members will have seen the detailed notes that we produce. I could share with the committee the explanatory notes that we produced for David Stewart's Buildings (Recovery of Expenses) (Scotland) Bill. We shared those notes with Mr Stewart and the relevant committee.

The Convener: Will you share those on the record or for background briefing?

Joe FitzPatrick: I will share them with members for background reading, if that is okay.

Fiona McLeod: I have a question for Stuart Foubister. One document that has come up when we have talked about all the accompanying documents is the Scottish Parliament information centre briefing. It is not part of the suite of documents that has to be produced, but it is always produced. I understand that, because it is not part of the suite of documents that has to be produced, it has no legal standing. Is that the case?

Stuart Foubister: Yes, generally. I cannot think of particular instances in which the courts have had regard to a SPICe briefing, although it is a growing area. For instance, the courts are having much more regard to policy memoranda than they did in the past, mainly in relation to things such as European convention on human rights considerations when they think about the policy justification for Parliament having done something. The fact that the SPICe briefing does not come from the member in charge of the bill means that, in the long term, it may not be considered completely relevant.

Fiona McLeod: Should we leave the SPICe briefing as it is, as a non-statutory document that accompanies a bill?

Stuart Foubister: That is probably a matter for the Parliament. However, given that all the other documentation that is required is, in effect, produced by the member in charge—or by the Government if it is a Government bill—the SPICe briefing is in a slightly different category.

The Convener: Let us turn to how amendments are dealt with where there is interaction between consequential amendments and the substantive amendment. Would it be useful if the Presiding Officer had the power to designate a group of amendments that clearly stood together to be voted on together in a single vote? Alternatively, should there be a change to the current drafting rules under which, when a proposed change would affect different parts of the bill, it has to be broken down into separate amendments rather than submitted as a single amendment to be voted on? I seem to remember that, when we make amendments to a bill that, in turn, amends pre-existing legislation, those amendments can have a scattergun effect.

Joe FitzPatrick: The current situation, whereby we debate a group of amendments and vote on them at different times—sometimes weeks later—is very confusing for just about everyone concerned. I am pretty sure that, when members vote on amendments, they sometimes have little recollection of the debate that took place. One challenge that we face is the rule of progression in

moving through a bill. However, I wonder whether we could find a way whereby, when we have debated a suite of amendments in a group, if we cannot vote on them as one group we can at least vote on them all together, so that there is more clarity for anyone who is watching and for members who are taking part in the process at stages 2 and 3. That might improve things, but we must be careful that there are no unintended consequences. We would have to work with Parliament to achieve such a change.

The Convener: Leaving aside the rule of progression, are there any legal issues around our changing our approach in the way that has been described?

Willie Ferrie: I am not sure that there are necessarily any legal issues; it is just an issue of how Parliament handles the business. If you vote through a whole block of amendments in one go, there is always a risk that there may be the potential for clashes with conflicting amendments that come later. Nevertheless, I would hope that such issues could be worked out in the context of agreeing the groupings, so that amendments that were related to the same topic would be grouped together. I do not know that there is a particular legal issue.

The Convener: The existing provisions and what the Presiding Officer or the convener might say in relation to pre-emption—

Willie Ferrie: Those would still apply.

The Convener: However, they would perhaps become a little more complex.

Willie Ferrie: We would have to give careful consideration to what the consequences could be for managing the proceedings in relation to other amendments and other groups if we decided to deal with a group of amendments through one vote. There would be issues to consider, such as pre-emption and whether votes on alternative and competing amendments might be taken on different days. For example, what would happen if members voted on a group one day but then, on a later day, had to deal with a competing amendment that was in the same place? Those issues would have to be thought through carefully. At this stage, we cannot say that it is not doable; we just have to ensure that we think through those technical issues about the handling of amendments.

The Convener: The bottom line is that, if the committee wants to consider the subject and comment on it, you are not strongly advocating that we desist from so doing.

Joe FitzPatrick: That is correct.

George Adam (Paisley) (SNP): I quite like the idea of software for the bill team to use when the

bill is going through Parliament. My current system, which I used for the Children and Young People (Scotland) Bill and the Post-16 Education (Scotland) Bill, is very analogue—it could have been made in the 1970s. I think that physically seeing how things fit is better. I do not know whether it is because I am a control freak, but I would rather know exactly where amendments fit in a bill. At the moment, much to her dismay, my wife has to put post-it notes into the bill for me.

What are your views on the input of secondary committees—the Finance Committee and the Delegated Powers and Law Reform Committee—in the process? Earlier this year, the Finance Committee was able to see a revised financial memorandum only on the morning of the stage 3 debate.

Joe FitzPatrick: Sometimes, those committees cause us a bit of trouble, but they are invaluable in terms of the Parliament's process. They have a hugely important role to play—

The Convener: I wonder whether you might care to rephrase your comment, minister, in order to make it clear that the Government and the bill sponsors occasionally cause the committees some trouble.

Joe FitzPatrick: The role of those committees is to be welcomed because, ultimately, we all have an interest in passing robust legislation. It is absolutely correct that those committees continue to have that role, and it is incumbent on us to do our best to accommodate and facilitate their investigations and the work that they do as part of the bill process. We should always try to ensure that as much time as possible is given to those committees in the process, which might involve flagging that up to the subject committees so that, when they work out their work programme for a bill, they take into account the work that needs to be done by the committees that you mention, which play important specialist roles.

The Convener: That concludes our questioning. Does any member of the panel wish to add anything to our consideration at this stage?

Joe FitzPatrick: No. As I say, we continue to watch your proceedings with interest, and we are keen to work with the committee in any way that we can to take forward some of the thinking that comes out of the inquiry.

The Convener: Thank you for a pretty helpful set of inputs. We will leave it to you to judge what we do with them and to make your own comments in due course.

10:23

Meeting suspended.

10:30

On resuming—

Cross-party Groups

The Convener: Agenda item 5 is oral evidence from Rob Gibson MSP on the activities of the cross-party group on Russia and the cross-party group on the Scots language. I welcome Rob Gibson to our meeting; thank you very much for coming.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): Good morning.

The Convener: We will go straight to questions, after which you will have the opportunity to raise anything that we should know that has not emerged. Fiona McLeod will kick off.

Fiona McLeod: Good morning, Rob, and thank you for coming. We have a few concerns about the cross-party group on Russia and the cross-party group on the Scots language. The cross-party group on Russia has only four members, yet it has to have five MSPs to be established. The CPG on the Scots language has five members, but they are all from one party. How has that situation arisen and how do you plan to address it?

Rob Gibson: Thank you very much for the invite.

First, I will deal with the longest standing of the two groups, which has existed since early in the Parliament's life: the cross-party group on the Scots language. At an earlier stage, it had active members from various parties—Cathy Peattie was a long-standing vice-convener of the group—who gave it breadth. Since 2007, the nominal support of enough members to allow the cross-party group to continue has been extremely nominal. Indeed, it has become less and less of a cross-party group in terms of attendance, as the only people who have attended are members of the Scottish National Party and the Green Party. That has made the reality of the group at variance with the rules—the original founding principles. I can go into the reasons why the reality has reached that stage later.

The cross-party group on Russia was founded in the previous session, when it existed briefly, and I resurrected it. You could say that the secretaries and conveners of cross-party groups should take a closer look at the rules under which they are supposed to run, and I could say “*Mea culpa*” in terms of the cross-party group on Russia not meeting the rules about members. We had members from three parties, but we did not have enough members. When that was forcibly drawn to our attention by the committee earlier this year, the international situation meant that it was—to put

it mildly—not the best climate in which to recruit MSPs to the group.

There is potential to ask other members to join, perhaps on a nominal basis, but we have not done that for the reason that the group has not met in the past six months.

Fiona McLeod: Do you think that you will be successful in recruiting a fifth member?

Rob Gibson: It is entirely possible. We have good engagement with the Russian community in this country on issues related to Russia, and it is certainly possible that we could attempt to recruit a fifth member. I have not attempted to do so recently in order to allow the international situation to play out. However, we accepted an invitation to attend the Russian national day last week, which was organised by the consulate general, and there were 200 people there from many different strands of Scottish life. There is no reason to think that we cannot ask MSPs to reflect that and to maintain the discussions that the cross-party group can have, which have been fruitful in the past.

Fiona McLeod: Would it be appropriate for me to make a suggestion, convener? If the committee gave Rob Gibson a date or deadline of after the October recess to see whether he can attract and recruit enough cross-party members for his two groups, we could reconsider matters at a meeting in November.

The Convener: Before I invite Rob Gibson to respond to that suggestion, I want to get a sense from committee members of whether they agree with it. I get that sense from the nodding heads.

Rob Gibson: In that case, we will try to do that. Our intention is to hold an early meeting in August, if that is at all possible, in order to start that process. Thank you very much for that agreement.

The Convener: That is helpful. What are your intentions in relation to the other group?

Rob Gibson: Well, the cross-party group on the Scots language—

The Convener: I am sorry; I cut across Fiona McLeod.

Fiona McLeod: I meant for both groups.

The Convener: I beg your pardon. In that case, let us be clear about what Rob Gibson's response is.

Rob Gibson: On the cross-party group on the Scots language, at the end of 2012 there was a discussion about the aims and future work of such a group. In the period leading up to 2007, many issues had to be campaigned on. In general terms, there are still many more, which are laid out in a statement of principles that was drawn up in the group in 2003. However, since the accession of

the minority SNP Government and then the majority SNP Government, some of the key campaigning issues have been addressed. For example, the Scots Language Centre, which is mainly online, and the Scots language dictionaries have been directly funded by the Government, whereas before they were at the mercy of the Scottish Arts Council. Doubts about whether they fitted into an arts portfolio were laid aside by that, and those important things are now directly funded.

The census in 2011 asked for the first time a question about use of the Scots language. We campaigned for that for many years; indeed, I was a member of the Economy, Energy and Tourism Committee that dealt with the orders in Parliament to create the questions in the census, along with other items. At that time, there was hostility from some members of the committee to having a question asked about Scots, but it was passed by the majority, and that took place successfully. It established a precedent to establish the role of Scots in our country's life. It should also be said that the ministerial working group on the Scots language has set out a number of aims, which are starting to be achieved.

The work of a cross-party group in the Parliament is therefore truncated by the fact that the Government is responding to many of the issues that were campaigned for over the years but were not achieved until after 2007. The original ideas of the cross-party group have become less relevant. Because people have taken a view that there are things that the Government is applying, the campaigning zeal of the cross-party group is less important, and a role for any future campaigning is unclear. The group received more support from members of the governing party in particular, and less from the Opposition parties, which did not give it priority in the way that the governing party did. The cross-party nature of the group has therefore ended.

We have attempted—with outside help—to service such a group, but we have not yet asked people again whether they are prepared to support it. That is partly because we are not clear exactly what should be done, but we are also clear that there has been little support from the other parties to make the group a cross-party group.

Fiona McLeod: That is clear.

The Convener: I will say a couple of things. First, I make a tiny wee reference of personal interest. My second cousin Jim Stevenson was the editor of the Scots dictionary for a while, although he has been dead for 20 years.

Rob Gibson: That is a big task.

The Convener: If I recall correctly, he edited the entries for L to P, or something like that, over a long period.

I have a technical point to put into the mix of your consideration. It might well be necessary to have additional members in any group that meets, because otherwise the meeting is unlikely to be in conformance with the rules. I invite you to make that part of your consideration, Mr Gibson.

Cameron Buchanan: Mr Gibson, are you saying that you think that we should disband the group on the Scots language? It cannot be suspended—it must be either disbanded or functioning.

Rob Gibson: I am saying that the practical circumstances at present make it difficult to meet the rules. A lot of people who were campaigning for many things are seeing them being achieved. Therefore, we might say that their job is done, but it is not entirely done—far from it, because Scots does not have the status in our country that it could have. However, the practical issue is that, because of the rules, we cannot suspend the group during this period—we have to end it. We have not ended it because we wanted to keep a watching brief. I have done that as convener of the group and in my role as an MSP in asking ministers questions on particular aspects of development.

The two things overlap; the rules are in conflict with the situation. I agree with Cameron Buchanan that, under the rules, the group should be disbanded or ended. If we were to follow the rules strictly, that is what we would do. Until now, we have not done that, but if we are instructed to find cross-party support or disband the group, we will do that.

The Convener: We had a suggestion, to which we have all signed up, that we extend the period in which you can consider the matter to the end of the October recess. However, if you as convener of the group come to an earlier conclusion that it will not be possible to proceed, it would be helpful if you wrote to the clerks to notify them formally of that. I am thinking of the Scots language group, on which your comments are substantially less encouraging as to a successful outcome.

On the group on Russia, speaking for myself, I think that, in times of difficulty with a country such as Russia, which is a very important country in the world, the need for such links is perhaps enhanced. I would personally encourage as much work as possible to regularise the position, particularly as I have heard an indication of substantial community engagement across Scotland in Russia's national day.

In my constituency responsibilities, I am working with Russian interests to see a statue to Michael

Barclay de Tolly, who was the field marshal who defeated Napoleon when he invaded Russia, and who came from Banff in my constituency, erected later this year in the grounds of the University of Aberdeen, so I speak with a personal interest in the matter.

As members have no further comments, I thank Mr Gibson for his attendance and his helpful remarks.

Rob Gibson: Thank you.

The Convener: We now move into private session.

10:44

Meeting continued in private until 10:59.

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e-format first available
ISBN 978-1-78457-674-5

Revised e-format available
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