



OFFICIAL REPORT
AITHISG OIFIGEIL

Standards, Procedures and Public Appointments Committee

Thursday 16 May 2019

Session 5



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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
8th Meeting 2019, Session 5

CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

DEPUTY CONVENER

*Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

Jamie Halcro Johnston (Highlands and Islands) (Con)

*Tom Mason (North East Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*Elaine Smith (Central Scotland) (Lab)

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dean Lockhart (Mid Scotland and Fife) (Con)

Mike Rumbles (North East Scotland) (LD)

John Scott (Ayr) (Con) (Committee Substitute)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 16 May 2019

[The Convener opened the meeting at 09:38]

Decision on Taking Business in Private

The Convener (Bill Kidd): I welcome members to the 8th meeting in 2019 of the Standards, Procedures and Public Appointments Committee. We have received apologies from Jamie Halcro Johnston, who is unable to be with us today. In his place, we have John Scott MSP.

Are members content to take in private agenda item 6, which is consideration of a draft report and draft standing orders rule changes?

Members indicated agreement.

Cross-party Group

09:39

The Convener: Agenda item 2 is consideration of an application for recognition of a proposed cross-party group on the USA. Dean Lockhart MSP is the proposed convener of the group. I welcome him to the committee and ask him to make a short opening statement on the purpose of the proposed cross-party group.

Dean Lockhart (Mid Scotland and Fife) (Con): Thank you for giving me the opportunity to appear before the committee this morning.

The proposed cross-party group on the USA could make a number of important contributions across trade, foreign investment, education and cultural exchange.

On trade, the US is already Scotland's largest export partner internationally, and accounts for about £5 billion of exports each year—roughly 18 per cent of Scotland's international exports. Both the Scottish Government and the United Kingdom Government are looking to promote trade with the US, so the proposed CPG could play an important role in promoting collaboration between key stakeholders in trade between the countries.

In respect of education, thousands of students come from the US each year to Scottish universities and colleges, and the number of exchange programmes between the countries is increasing. Research collaboration is also increasing. I hope that the proposed CPG could encourage such trends in the future.

On cultural activity, there is a huge Scottish diaspora in the US and there is already significant cultural exchange between the countries. I believe that the proposed CPG could enhance that further.

Ellen Wong, who is the principal officer at the US consulate general in Edinburgh, took up her post six to eight months ago. The proposal is coming to the committee now partly as a result of a number of discussions with her, as she is keen to increase her engagement with the Scottish Parliament. Edinburgh Chamber of Commerce has agreed that it will, if the CPG is approved, act as its secretariat.

I believe that there is a lot of support for the CPG to be established in order to further the aims that I have just mentioned.

The Convener: Thank you. I invite committee members to ask questions.

Elaine Smith (Central Scotland) (Lab): I thank Dean Lockhart for joining us, and I apologise for my voice. As you can hear, I am struggling a wee bit.

From what you have just said, much of the purpose of the proposed CPG involves just exchanges. That seems to be quite limited, although you did mention trade. Can you expand a wee bit on how often you think the group would meet, what other topics might be discussed and what organisations would be involved? Are there any Scottish-American organisations? There are Scottish organisations in America. I have gone blank on the names of them, but are there any similar organisations in Scotland that might want to join the proposed CPG in order to widen out the organisations that are interested?

Dean Lockhart: Absolutely. I have spoken to a number of organisations; there is a bit of a chicken-and-egg situation in that they have expressed real interest in joining the group once it is officially established. For example, I have spoken to the Carnegie institute, which is based in Dunfermline. I have also spoken to a number of universities that are interested in joining. If and when the group is established, they will come on board and take forward work in the areas that I mentioned.

On the aims of the group, there is a lot of interest in having trade missions to the US—not just missions to the US as a federal state, but missions at the level of individual states in order to increase business, cultural and education connections with specific states.

I believe that although the proposed CPG would not have execution capability because it would have limited resources, it could act as a platform at which to share information and bring together people who have interests across trade, education and cultural exchange.

Elaine Smith: In terms of the remit of CPGs in relation to informing members, I am interested in the kind of guests that you might have at the meetings and what topics you might cover beyond exchanges—if you have thought further than that.

Dean Lockhart: I met the principal officer at the US consulate general last week. I do not necessarily want to go into detail here, but she has a number of ideas on how Parliament can get involved through the CPG and on how she can promote engagement with US companies.

The US is one of the largest single investors in Scotland, and she mentioned to me that there are a number of companies that would want to be involved with the cross-party group, both to expand business links and to enable the Scottish Parliament to have a better understanding of what is happening between the USA and Scotland.

Elaine Smith: Would the principal officer join the group? She is not listed at the moment.

Dean Lockhart: Absolutely. She was one of the inspirations behind the idea of the cross-party group, so she would be a central figure in it.

09:45

Tom Mason (North East Scotland) (Con): For clarification, does the US not have a consul general in Edinburgh any longer?

Dean Lockhart: The US calls the post “principal officer”, so—

Tom Mason: She is, in effect, the consul general.

Dean Lockhart: Correct.

Tom Mason: Why would she not join the group as a permanent member?

Dean Lockhart: She will join it. She is waiting for the group to be established before she formally joins it.

Tom Mason: Okay. Will you clarify the other individuals’ reasons for being there?

Dean Lockhart: I am sorry—are you referring to MSPs or other members of the group?

Tom Mason: I am thinking of Julia McIntyre, Thomas Heald and William Stirling.

Dean Lockhart: Some of them are members of my office staff. William Stirling has a significant history in the US—he is Scottish, but has spent time in the US—and he wants to look at the trade aspects of the links between the countries. As I said, a number of other members, institutions and organisations will join once the group is officially established.

John Scott (Ayr) (Con): Good morning, Mr Lockhart. Will you comment on the opportunities in relation to the cultural links between Scotland and the American diaspora, and the benefits of enhancing those links here in Scotland?

Dean Lockhart: Absolutely. When I looked at the number of events that take place, I was surprised to see that it is relatively limited. We have tartan day in April, which is the showcase cultural exchange between Scotland and the US. Given the huge Scottish diaspora across the US, there is an opportunity to increase cultural exchanges. I have discussed that with the principal officer at the US consulate general, Ellen Wong, and we have a number of ideas on how we can engage with organisations that are already involved in cultural exchange between Scotland and the US in order to encourage further promotion in that area.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): I am not sure that it is the job of cross-party groups to promote trade between

countries. I thought that they were more to do with cultural issues and stuff like that.

How many of the four individuals who are listed work in your office?

Dean Lockhart: Lesley-Anne Campbell, Julia McIntyre and Thomas Heald are listed primarily as people who will help to run the cross-party group in terms of administration. The form should probably list more individuals, but I assure you that there are a number of people who will be involved in the group if it is established.

Maureen Watt: The universities of Edinburgh and Stirling are listed. Do they have student organisations?

Dean Lockhart: Yes. I met someone from the University of Edinburgh yesterday to discuss the subject and they have a number of ideas as to how they can involve student groups in the cross-party group. We will take that forward.

Maureen Watt: There are currently no student organisations relating to the United States.

Dean Lockhart: There are, but they have not yet engaged with the cross-party group because I thought that it would be premature to reach out and engage before the group was established.

Maureen Watt: What are the names of the organisations at the universities of Edinburgh and Stirling?

Dean Lockhart: I do not know the individual names. I could have listed the University of St Andrews as well, because I have spoken to it and there are a huge number of American students there. Once the group is established, I will reach out and engage with them.

Maureen Watt: Historically, the part of Scotland with the most people from the United States has been the north-east, through the oil and gas industry. There is nothing about that in your application.

Dean Lockhart: That is true. We can work on that once the group is established. As I said, if the group is established, Edinburgh Chamber of Commerce, which has a number of planned trade activities to aid the Scottish Government's ambition to increase trade with the US, has agreed to act as the secretariat. Edinburgh Chamber of Commerce will add a powerful voice to the cross-party group not just in relation to trade, but by providing business links.

I agree that the role of a cross-party group is not to increase trade, but part of its role could be to increase business connections, which is all about collaboration, sharing ideas and increasing the network of people who are engaged in improving links between the US and Scotland. That also applies to education and cultural activities.

I see the cross-party group as a platform for enhancing interaction between Parliament, MSPs and stakeholders who are involved in the Scotland-America relationship.

Mark Ruskell (Mid Scotland and Fife) (Green): I appreciate what you have said about what comes first—the chicken or the egg—and that setting up a cross-party group will lead to individuals and organisations coming on board. However, I am a bit surprised by the initial list of individuals, most of whom are members of your staff team. Will you provide the committee with letters and notes of interest from the US consulate and the other organisations that are listed saying specifically that they are interested in joining the group and describing the contribution that they would make to it?

You have talked about potential, but I do not see a firm list of groups that want to come together to work with you and other MSPs to further the understanding or opportunities that engagement with the US presents. The case looks a little weak at the moment, so will you convince us with evidence that the cross-party group will be robust and useful?

Dean Lockhart: I will happily do that. To give you—

Mark Ruskell: I am sorry. Can you provide the letters, emails, notes of interest and phone commitments to join the group now?

Dean Lockhart: I cannot do that now. I did not know that that was a formal requirement of a cross-party group application, but I can easily provide the committee with that information.

The committee probably remembers that I was here five or six months ago to set up the cross-party group on Japan. To provide reassurance, I point out that that group at first had a similar number of individuals who were involved, but 35 people were at the first meeting of the group and now a large number of organisations are involved. I believe that the cross-party group on the USA will follow a similar pattern. However, if Mark Ruskell would like the paperwork, I will be happy to submit it to the committee.

Mark Ruskell: That would provide reassurance about the group's direction and remit.

Will there be links with other groups? Is there an all-party group at Westminster that focuses on trade with the US and other such issues?

Dean Lockhart: There is not. Historically, I think that there was a group, but I understand that there is not, for whatever reason, one in the current Parliament at Westminster.

Mark Ruskell: Such a group would be a natural place for trade issues to be discussed.

Dean Lockhart: Yes.

Mark Ruskell: Will there be links with other cross-party groups? You will be aware of the burgeoning number of cross-party groups. In many ways, they are the victim of their own success. There are now moves to seek greater collaboration between groups; the joint meetings that I have attended have been very successful. What would be the proposed group's shared agendas with other cross-party groups?

Dean Lockhart: There is definitely an opportunity for collaboration and for holding joint meetings with other cross-party groups that focus on education. If the group were established and we were looking at education, we would definitely engage with other cross-party groups that are involved in education. Likewise, we could involve other groups in sessions on business development or trading links, to ensure that we use parliamentary time in the most efficient manner possible by not doubling up the workload or using up resources to hold two separate meetings.

Mark Ruskell: I declare an interest as co-convenor of the cross-party group on food. Would food policy and trade be considered?

Dean Lockhart: The cross-party groups on Scotch whisky and food are ideal examples of groups with which we could work. The US is our biggest market for food and drinks exports, including Scotch whisky exports, so if the cross-party group on the USA were having a session on exports or food and drink, for example, we could naturally involve two or three other cross-party groups in the meeting.

Tom Mason: The US is a big area to cover. Do you anticipate concentrating on particular states, or do you think that you will make a broad-brush attack?

Dean Lockhart: That is a good question. I think that the approach would involve engagement with federal and state organisations. If Scotland's economy was ranked alongside those of US states, we would be the 25th state in terms of economic size. That gives you a fair idea of how big the Scottish economy is in comparison with the economies of individual US states. We are bang in the middle of the average economic size—I am talking in terms of gross domestic product per capita. Five or six states already have strong links with Scotland, and we would look to build on those links but also to develop new links with other states.

The Convener: I am getting a feeling, from the questions that are being asked, that members believe that having a cross-party group on the United States could be advantageous, but I believe that there is also a feeling on the part of a number of members that further information on the

areas that have been inquired about might give us more comfort about the establishment of the group.

I suggest that the committee send you a note of the areas that have been asked about—I do not expect you to remember them all. You could reply to us and then come back to the committee in the not-too-distant future, so that we could go over your responses. Hopefully, that would give us a feeling that establishing a cross-party group on the USA is a good idea. Do you agree to that suggestion?

Dean Lockhart: I am happy to proceed on that basis.

The Convener: Okay. I thank you for your attendance. The committee will consider whether to approve the application for recognition, and we will inform you of that decision. As I said, you can expect us to get in contact with you.

Dean Lockhart: That is fine. Thank you.

The Convener: Does that seem reasonable and fair to committee members?

John Scott: I think that it is fair, but I also think that it is a bit of overkill. In my experience, we have set up cross-party groups with a lot less evidence being required from them. I think that the group is an outward-looking one. Since the beginning of the Parliament, tartan day has been the one thing that this Parliament has gone out of its way to support. I am surprised that we have not had a cross-party group on America before, and I am surprised by the apparent antipathy towards the suggestion. I know that Elaine Smith has been to tartan week, and I am glad to encourage such cultural links. I think that Dean Lockhart's proposal is positive, and I propose that it be approved.

Elaine Smith: I do not have any antipathy towards a cross-party group on the USA, but I think that the answers to some of the questions that we asked were not readily available. Given that this committee has to make a decision, it would make sense to send Mr Lockhart a note to get the answers to those questions. I am not suggesting that we will refuse the request to establish the cross-party group, but I think that we should put off the decision until we receive those answers, which might take only a couple of weeks.

I am certainly not turning my face against a cross-party group on the US. John Scott is perfectly correct to say that I attended tartan week. That is why I asked about the societies—I wondered whether there are societies that are similar to the societies that I saw in the US, as they might be interested in the cross-party group. I suggest that waiting until we receive the information to make a decision would be the wise thing to do.

Tom Mason: I, too, am quite surprised that we do not already have a cross-party group on the US. We have as much evidence before us today as we have had in relation to groups that we have previously approved, in my limited experience. If we are going to agree to the proposal anyway, it seems a bit unnecessary to put in place additional hurdles. Having that additional comfort blanket will not necessarily change the decision.

10:00

Mark Ruskell: It is important that cross-party groups are established in a thorough way. I see strong evidence that, on the whole, they are, but there are questions about the initial membership of the proposed group on the US. It is clear that Mr Lockhart has gone to some trouble to reach out to some organisations, but I would have liked to see a letter from the US consulate or substantial reassurance that organisations such as the Carnegie Trust and the various universities and student bodies would participate. I do not think that it would be particularly onerous for Mr Lockhart to secure that, but it would mean deferring consideration of the proposal for another few weeks until he provided the correct evidence.

The Convener: It is not for us to run the cross-party group before it has even been established. However, the general mood—notwithstanding what John Scott and Tom Mason have said—is that, although we would almost definitely be in favour of the group being set up, it would be useful to gain further information on how it would be established and who would be members of it. Given that we already have 106 cross-party groups and we have talked about rationalising the number of groups that we have, it would do no harm to ensure the viability of the group before it came into being.

John Scott: It is important not to limit new groups simply because of the number of groups that have already been set up. I declare an interest: when I set up farmers markets, a long time ago, I knew that many would make the endeavour but that not all would succeed. The best farmers markets were the ones that continued and prospered, and the same is true of cross-party groups. All proposals for CPGs should be encouraged. The best ones will succeed and the ones that fall by the wayside will do so because of a lack of interest or because they are not sufficiently well managed.

I do not wish to be presumptuous, but I do not think that the Standards, Procedures and Public Appointments Committee should set out to prevent new groups being set up simply because we already have more than 100 CPGs.

The Convener: That is fair enough. I do not want to spin out the discussion for too long, because we have other business, but I believe that there is a general mood that a cross-party group on the US is quite a good idea, although a majority of committee members would like to see further information so that we can be satisfied that the proposed group would be successful. Does that seem reasonable?

Maureen Watt: The proposal is focused very much on the central belt. Given that there is a large American population in the north-east, I would have thought that Mr Lockhart might have reached out a bit further than the central belt.

Mark Ruskell: If we defer a decision on the proposal, what will the timescale be?

The Convener: The general feeling is that we would like to ask Mr Lockhart to come back to us with further information. Members' views have been recorded and we will follow up on the matter. We hope that Mr Lockhart will be able to provide us with further information in the not-too-distant future, including information about the geographical areas that the proposed group will cover, and that it will go on to be a successful cross-party group. Is that agreed?

Members indicated agreement.

Annual Report

10:04

The Convener: Agenda item 4 is consideration of, and agreement to, our annual report. Does anyone have any comments to make on the draft report, which has been circulated?

Maureen Watt: Yes. The introduction, which is on page 2 of committee paper 2, includes membership changes but not the committee's current membership. The Rural Economy and Connectivity Committee's report, which we looked at this week, includes its current membership.

The Convener: Thanks very much, Maureen. My advice is that that will be included and will appear at the start of the report.

Mark Ruskell: I may have missed this, but I did not see a breakdown of the gender balance of the witnesses who gave evidence to the committee. Would that be a helpful inclusion, given that all the parliamentary committees are, I think, reporting on that?

The Convener: That is perfectly reasonable. We will look into that and get back to you. I think that there is a general direction on that, although maybe that should not be discussed in public at the moment, because it is an area of the committee's business that we will have to consider first. However, that will certainly be looked into.

Elaine Smith: On the section on "Portfolio and general questions", under the heading "Commission on Parliamentary Reform", I wonder whether we need an explanation of why we

"agreed that the number of questions drawn for each portfolio would be reduced from ten to eight."

My recollection is that eight is a more realistic number and would allow more engagement through supplementary questions. I will probably have to go back and look at how that is working on the back of our report, but I think that the issue was not about getting eight questions in during every question time every week but about encouraging more engagement through supplementary questions.

The Convener: Yes. We can have that explanation added.

John Scott: On the issue that Elaine Smith has raised, I noted that only five questions were asked in the second set of portfolio questions yesterday. There were eight questions, but three were not lodged, which reduced the number to five. That has always been my fear about reducing the number of questions from 10 to eight. I am well aware that I am only a committee substitute for one day—I hope—but the committee might want

to keep that issue under review, as there is a very real risk of not having enough questions.

The Convener: That is an important point, particularly given your previous experience as a Deputy Presiding Officer. It is very important that we keep such potential changes and actual changes under review, and it would be beneficial for us to consider that issue. We will want to bring certain elements of the report—such as those that have been mentioned—back for the committee to have a further look at.

Tom Mason: If questions are not lodged, that enables other questions to be asked. I have had questions 9 and 10 twice and I have missed out. One gets really agitated that too many questions are pushed in, and one sits there, hoping that members will sit down.

The Convener: I have been in that situation—as, I am sure, we all have—and that point is worth consideration, too. The reasons why questions have not been lodged may also need to be looked into further. It seems unfair that, when a member has a particular question that they really would like to ask in public, they do not get the opportunity to ask it.

Tom Mason: A fine in the charity box might be a good idea.

The Convener: Maybe we will not go down that route, but thank you anyway.

Are members content with the report, with those provisos?

Members indicated agreement.

The Convener: Thank you. We will look into the issues that have been raised, and the report will be published on 21 May.

Correspondence

10:10

The Convener: Agenda item 5 is consideration of correspondence that the committee has received from Mike Rumbles MSP, who has joined us, and from Adam Tomkins MSP, regarding law officers answering questions in the chamber. The committee considered this correspondence previously, at our meeting on 28 February, and agreed to write to the Scottish Government to seek its views on the points raised.

Before I invite comments from members—and I believe that people will be comfortable with this—I ask Mike Rumbles to make a relatively short statement. We have a lot of business, but I think that it is only fair that Mike Rumbles gets an opportunity to speak.

Mike Rumbles (North East Scotland) (LD): I thank the committee for the opportunity to speak about my request that a recommendation be made to Parliament to update rule 13.7.1 of standing orders.

The standing orders are the oil that helps the machinery of Parliament to work; I know that from being a member of the Parliamentary Bureau for two parliamentary sessions. The background is that, after the Lord Advocate made a statement to Parliament in February last year, he took 14 questions from members of the Scottish Parliament on matters not related to his role as head of the prosecution service. I waited 11 months to win a place on the ballot to ask an oral question at a portfolio question time session entitled, “Justice and the Law Officers”. Imagine my surprise and disappointment when the Lord Advocate did not answer my question but remained seated in the chamber—or imagine that you had asked a question of the Minister for Public Health, Sport and Wellbeing only to have it answered by the Minister for Parliamentary Business and Veterans while the health minister looked on.

That situation has exercised my mind for nearly four months. I would like to comment on the letter that you have received from the Minister for Parliamentary Business and Veterans. First, he says:

“The flexibility offered in Rule 13.7.1. allows for instances when a Law Officer may not be available to attend proceedings in the Chamber.”

I could not agree more with that point; I am absolutely relaxed about that. That is what standing orders are designed to do if the minister—or, in this case, the Lord Advocate—cannot make it to proceedings. However, the Lord

Advocate was sitting in the chamber listening to what I had to say.

The minister goes on to say:

“there is no procedural impediment to the Lord Advocate or the Solicitor General ... as Ministers ... responding to oral ... questions”.

That is because the Scotland Act 1998 and the standing orders make it absolutely clear that the law officers are to be treated in the same way as other Scottish ministers, so, again, I could not agree more. That is how things used to operate until January, but it is not how things have operated since January.

In his letter to the committee, the minister writes at length about the law officers’ legal advice to the Government but that is not what my question was about; I had no intention of asking what the Lord Advocate’s advice to the Government was. If I had asked about that, I would not have expected an answer. That is not what I was asking about and I subsequently told the Lord Advocate that.

In his conclusion—having gone off on a tangent about legal advice, which I did not ask about—the minister states that he believes that the

“Standing Orders are fit for purpose.”

My specific request to the committee is that it consider recommending the updating of rule 13.7.1. In the very last sentence, referring to the First Minister in this case, rule 13.7.1 states:

“An oral question selected for answer at First Minister’s Question Time shall normally be answered by the First Minister but may, if the First Minister is unable to attend First Minister’s Question Time or any part of it, be answered by another member of the Scottish Government.”

That is reasonable—that is how we have operated and it is how we should operate. I suggest replacing the second sentence in rule 13.7.1 with, “An oral question concerning the responsibilities of the Lord Advocate or the Solicitor General for Scotland should normally be answered by them but may exceptionally be answered by another member of the Scottish Government if they are unable to attend the chamber.”

I am not making a political point at all. We can leave political points for the chamber. I am trying to make sure that we, as MSPs, have the right opportunity to question ministers of the Government. That is our role and standing orders should reflect that. Until now, or certainly until January, standing orders have been sufficient when the Government has recognised that. Although the minister says in his letter that there is no impediment to the Lord Advocate or the Solicitor General answering those questions, the Government chose not to ask them to answer them.

10:15

I would have thought that our job as MSPs is to make sure that we have standing orders that are fit for purpose and which make it clear what we intend. If an MSP asks a question of the Lord Advocate or the Solicitor General acting in their responsibility, he or she would expect an answer from them, in the same way as they would expect an answer from any other minister. If the law officers cannot be in the chamber, that is perfectly acceptable but, in this case, that would not have been an issue if I had not seen the Lord Advocate sitting in the chamber. If the Lord Advocate had not been there, I would have assumed—probably wrongly in this case—that he was busy elsewhere, which would have meant that it would have been fair enough if another minister had answered. That was not what happened, and I do not want that to have set a precedent.

In my view, in cases such as this, standing orders are not fit for purpose and we need to change them.

The Convener: I thank Mike Rumbles for his contribution and invite comments from members.

Elaine Smith: I have a comment rather than a question. The second sentence of rule 13.7.1, to which Mike Rumbles referred, starts:

“An oral question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland”.

Are you saying that that is too limited? Was your question beyond that? Is it a question of who decides what the Lord Advocate's remit is?

Mike Rumbles: The Lord Advocate's remit is as it is laid out in that second sentence of rule 13.7.1. The Lord Advocate is the head of the prosecution service, which is why it is in there. I have been here for 20 years, as you have—albeit with an intermission in my case—and, in those 20 years, that is how the Lord Advocate and the Solicitor General have operated.

However, that changed in February last year, which is why I think that we need to update our standing orders. It changed when the Government put forward the Lord Advocate to make a statement to Parliament and 14 MSPs asked questions of the Lord Advocate, which were not about the prosecution service, which is in the Lord Advocate's remit. My question was accepted by the chamber desk, and I waited to be selected in the ballot. I asked the oral question, which was perfectly acceptable, and the Government—not Parliament—decided that the Lord Advocate should not answer it. That is why I think that the system has changed. In his letter to me, the Lord Advocate said that it was unprecedented that he has made a change, but the Government has now set the precedent.

It means that, at any time, the Government can decide whether to put the Lord Advocate in front of members if it wants to take questions. However, we should be holding the Government to account. It is the job of all MSPs who are not members of the Government, whether or not they are in the Opposition, to hold the Government to account, and the Lord Advocate and the Solicitor General are part of the Government. A change was made to the system in February last year that is not reflected in this paragraph in standing orders.

I am only making a suggestion. If the committee decides to go away with the clerks and suggest something else, I will be happy with that, so long as the issue is addressed.

It should be clear that the Lord Advocate and the Solicitor General should be able to answer questions on points under their remit.

Elaine Smith: The issue—if there is an issue—lies in that sentence. That is what the standing orders say at the moment so, if a question is not on one of those two areas, it seems reasonable for the Government to decide who answers it. However, if the remit has changed, we need to look into that a bit further before we make a decision on it.

John Scott: I agree with Mike Rumbles and Adam Tomkins, who raise a valid concern about precedent. The standing orders were breached in the context of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill. The Government cannot have it both ways.

Mr Rumbles suggested a different form of words for the second sentence in rule 13.7.1 on oral questions in the chamber. I did not catch or write down his words, but I am sure that he has a copy of them. There might be an opportunity for the committee, the committee clerks and the lawyers of the Parliament to consider his form of words and perhaps even improve on them, bearing in mind the point that he raised, which I find myself supportive of.

Gil Paterson (Clydebank and Milngavie) (SNP): On a point of order, convener. Are we in the general debate or are we still directing questions to Mike Rumbles? Is he going to participate in this debate?

The Convener: Mr Rumbles has made his statement so we are now having our discussion.

Gil Paterson: We are in debate—okay.

Tom Mason: Mr Rumbles has raised a point that requires detailed discussion and study. As always, getting it right is all about the detail and the small print, and we must spend sufficient time looking at the issue and reaching a conclusion at some point.

Mark Ruskell: I have some sympathy with the point that Mike Rumbles raised. In particular, Elaine Smith's point about whether the remit has changed is worth looking at in more detail.

It could be dangerous for us to write into the standing orders exactly who should answer which question. I can give the opposite example to that of Mike Rumbles: I sometimes ask questions of particular cabinet secretaries and wish that another cabinet secretary would answer. In a way, it is a question about collective cabinet responsibility and joined-up government. There are times, particularly with cross-portfolio issues, when greater engagement from other cabinet secretaries would be good. I know that the question is specifically about the Lord Advocate, but there is a wider issue about pinning into the standing orders which bit of the Government must answer which question and when.

I appreciate the frustration that Mike Rumbles felt when he asked his question—it was palpable—but I am not convinced at the moment. On Elaine Smith's point, if the remit was changed, that would be—

Mike Rumbles: Can I just—

Gil Paterson: On a point of order, convener. If this is a debate with an external member—

The Convener: It is not.

Gil Paterson: Fine.

The Convener: I am afraid, Mr Rumbles, that this will be discussed within the committee and we will come back to you. We cannot have an argument across the committee.

Mike Rumbles: I just want to ensure that there is no misunderstanding.

The Convener: I understand you, so I think that it is okay. Please do not be concerned.

Maureen Watt: What we do not have here, unfortunately—I should have looked it up myself—is the answer to whether Mr Rumbles was unsatisfied with the answer to his question.

The Convener: You cannot ask him a question. You should just make your point.

Maureen Watt: We should either be asking questions, having a debate and then Mike Rumbles leaves, or we should all be discussing the issue. We are all over the place today.

The Convener: This public discussion is an opportunity for members to make their points of view known. We will follow up the matter. We can have a bit of discussion about what Mike Rumbles has presented, but it is not open to him to take part in that discussion—this is about members making their contributions.

Maureen Watt: Okay. Regardless of who in Government answered the question, the answer would probably have been the same. At stake is the legal advice that is provided to the Scottish Government, which normally remains confidential. As other members have mentioned, the other issue is what the standing orders say about what matters the Lord Advocate is in Parliament to answer.

Gil Paterson: One of the primary issues at stake is the power of a Government to govern. If a member asks a question of the Government, it is for the Government to decide who will answer that question. The standing orders say not that the First Minister must answer an oral question at First Minister's question time, but that the First Minister will "normally" answer such questions. There is no imperative in that regard. It may well be that a precedent has been set, although I do not take that as read. The Presiding Officer might have allowed the situation that has been raised to go ahead, but he should have ruled if it was not in the scope of any individual minister to make a response—that would be the point at which that should have been corrected. The fact that that may have happened does not mean that we need to change our standing orders. There must be protection for Government.

It is almost a precedent that Government would not divulge what legal advice it had sought and received. What if a question inadvertently elicits that information? Any Government and its ministers must be allowed to seek legal advice. They do so almost daily—those who have been ministers will know that. It is imperative that their right to refuse to divulge that legal advice—which they may well do—is protected, otherwise the matter could become politicised.

Having said all that—I hear what my colleagues are saying about looking at what has been presented about a precedent having being set—I am happy to look at the issue. Why not? This is a democracy. Let us look at the matter and see what we can come up with. However, there are principles at stake from which we should not shift.

If someone thinks that they want to change the standing orders now because doing so would be advantageous to them, they have no ambition to be the next Government. This is about protecting the future of this Parliament and protecting Governments' right to govern, make change, listen to advice and not have their position compromised because they have rejected the legal advice.

Elaine Smith: I agree with a lot of what Gil Paterson has said, but Mike Rumbles said in his statement that his concern is not to do with the provision of legal advice—I think that he said that the Government response to the committee on those terms was a red herring. The question for us

is whether we want to look a bit further at the standing orders. Rule 13.7.1 talks about the First Minister and other ministers and specifically mentions the Lord Advocate and the Solicitor General for Scotland. As I said at the beginning, we have to look at whether the only questions that they should be answering are on

“the operation of the systems of criminal prosecution and investigation of deaths”

and whether that remit has changed. If the answer is yes, do the standing orders need to be updated to reflect that? The rule says that such questions

“shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Government.”

10:30

If a question was to

“exceptionally be answered by another member of the Scottish Government”,

which is wording that I think must stay, I presume that the Scottish Government would be able to justify the exceptional nature of another member of the Government answering the question, rather than the Lord Advocate.

It would not have been an issue had the Lord Advocate not been in the chamber, because I suppose that we would all have presumed that there were exceptional circumstances, and we would not have wanted to delve into them in case they were personal circumstances. However, the issue arose, because the Lord Advocate was in the chamber.

I think that we need to have a closer look at the remit. Is it just

“the systems of criminal prosecution and investigation of deaths”

or is it wider than that? If it is now wider, perhaps that sentence needs to be tweaked to reflect that.

John Scott: I agree. I think that there is a piece of work to be done here. It may be that parliamentary lawyers, having looked at the matter, will come to the view that there is no change to be made, but I think that Mr Rumbles and Mr Tomkins have raised a very valid point. It is worth having a look at it, and if there is a recommendation to be made and brought to this committee, they will be able to evaluate that advice at that time.

The Convener: Tom, do you agree?

Tom Mason: Yes.

The Convener: Mark, do you agree as well?

Mark Ruskell: Yes.

The Convener: Right—thank you. I did not want us to get into a long, twisting discussion and argument. It has been useful to hear members’ feelings about what has been said, and it is all on the record. The subject will be brought back to us in a further paper. At our next meeting, we will have a general catch-up evidence session when the Minister for Parliamentary Business and Veterans comes to speak to us; we could discuss the issues further with him then, if that seems reasonable to everyone.

Members indicated agreement.

The Convener: We will do that. I thank Mike Rumbles for coming along today.

Mike Rumbles: I thank members for listening so carefully to what I had to say.

The Convener: That ends the public part of the meeting.

10:32

Meeting continued in private until 10:51.

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