



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 11 February 2016

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
4th Meeting 2016, Session 4

CONVENER

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

DEPUTY CONVENER

*Mary Fee (West Scotland) (Lab)

COMMITTEE MEMBERS

Cameron Buchanan (Lothian) (Con)

*Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*Michael Russell (Argyll and Bute) (SNP)

*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

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

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 11 February 2016

[The Convener opened the meeting at 10:30]

Standing Orders

The Convener (Stewart Stevenson): I welcome members to the fourth meeting in 2015 of the Standards, Procedures and Public Appointments Committee. As usual, I remind everybody to switch off mobile phones, as they affect the broadcasting system. We have received apologies from Cameron Buchanan, so again we have John Scott with us as a substitute.

There is only one item on today's agenda, which is consideration of a note by the clerk regarding chapter 9B of the standing orders: "Consent in Relation to UK Parliament Bills". I hope that we can discuss that in short order by keeping fairly well focused.

I do not usually do this, but I am going to exercise my prerogative as the convener to speak first on the matter. I have been wrestling with what Mary Fee has entirely properly brought to us and have come to some personal conclusions that my political colleagues and committee colleagues might or might not agree with. I will just put them out there to see whether they help at all.

I have come to the conclusion that what Mary Fee is trying to do is, in a sense, restricted and too narrow. Underlying the issue that Mary's proposal quite properly addresses is the broader issue that, from time to time, the Scottish Parliament will wish formally to inform another Parliament, generally Westminster, of a view that we take on a subject that might or might not be within our legislative competence. I offer the example—not for any particular political reason—that if we felt strongly about it, we might wish to make a comment to Westminster about the Scottish Parliament's view on a defence matter, which would clearly and absolutely be outside our legislative competence. Mary Fee has given us the opportunity to think about the processes by which we might do such a thing.

Paper 1 makes reference to the National Assembly for Wales's recent activities on a legislative consent memorandum. Indeed, that illustrates that what I am talking about, and what we are wrestling with, is not necessarily a matter just for the Scottish Parliament but is for Wales and Northern Ireland, too. It could even be a

matter for the jurisdictions of Jersey, Guernsey and the Isle of Man. I happen to know from a meeting that I had that Guernsey is wrestling with difficulties regarding how its views are dealt with.

My starting position is that Mary Fee has suggested something that I do not think I am willing to support in its present form. However, I think that Mary could be asked—this is entirely for her to consider—to work with the clerk and others on the committee to bring forward a stronger proposal that would be a stand-alone provision that our successor committee in the new parliamentary session might consider. In the meantime, we could consider asking the Presiding Officer to meet or correspond with her opposite numbers in other jurisdictions to establish a Parliament-to-Parliament protocol that would be quite different from what we currently have and which would mean that there would be a formal way in which the Parliaments could inform other jurisdictions of their views on important matters of the day that might or might not be within their competence.

That is merely my thinking on the matter, and it is not set in stone. I am not taking a position on Mary Fee's proposal; I have just tried to think of where we are in that regard. Having exercised my prerogative, I now resume a position of absolute impartiality in relation to the discussion that we are about to have and invite committee members to address what the clerk has outlined in paper 1. Do you want to start, Mary?

Mary Fee (West Scotland) (Lab): I am grateful to the committee for taking the time to look at the issue. The committee will know that the issue arose with the introduction of Westminster's Trade Union Bill and our ability—or inability—to comment on it or to lodge a legislative consent motion. My letter proposed a change to rule 9B.1.2 of the standing orders that would allow us to lodge a legislative consent motion on treating the Trade Union Bill as a relevant bill.

The convener mentioned the Welsh Assembly, which has considered an LCM on the bill and has not agreed to consent. We, of course, do not have that opportunity—we would be required to change our standing orders to allow us to do that.

I am grateful to the clerks for preparing paper SPPA/S4/16/4/1, which has been helpful in explaining the issues regarding the Sewel convention and the memorandum of understanding. I am also grateful for the convener's suggestions, but I would be concerned about opening up the matter too much. We need to keep quite a narrow focus on what we are doing and look to change only rule 9B.1.2 of our standing orders.

I would be content for the issue to be included in the legacy paper and considered in the next Parliament, but we would have to be quite constrained in how we did that. I would be interested to hear other committee members' views.

Michael Russell (Argyll and Bute) (SNP): I think that everyone agrees that something should be done; as ever, the problem is in deciding what should be done. It is right that the issue be considered by the next committee through our legacy paper.

I am instinctively attracted to what you suggest, convener, because you have identified an issue that, despite our discussing the matter on two previous occasions, had not been identified. That is your particular genius, if I may use that word—although I do not want to be quoted on that. The issue is one of Parliament-to-Parliament communication, not Government-to-Government communication.

I am happy to repeat what I said last week, because Mary Fee was not here then. The issue is not the thoroughly obnoxious nature of the Trade Union Bill, which is certainly opposed by the vast majority of people sitting around this table, who do not want the bill to be passed. It is also not about the individual ruling of the Presiding Officer, whether or not we agree with it. Presiding Officers are not infallible, and there could be room for debate on the issue. The issue is how we resolve the matter for the future.

The Parliament's being able to express its opinion about a piece of proposed legislation or legislation made elsewhere that is not and will not be subject to a legislative consent motion is attractive, because that would give us an opportunity to do something if the process were properly formalised. For example, it might require the Scottish Parliament's clerk to communicate that opinion to the clerk of another Parliament—not necessarily Westminster—and the clerk might request that the communication be laid in the other Parliament, although whether that happened would not matter.

One issue is that, no matter what we do, we are not sovereign, so because we do not have the power, we cannot refuse the legislation. We should formalise matters in a way that would give us the maximum opportunity to say what we want to say in the most effective way; we should not rush to change the standing orders on the basis of a single ruling. Nevertheless, Mary Fee has identified a weakness in the present structure, which must be changed. I am attracted to your suggestion, convener. I am not attracted to the idea of a narrow solution based on a single instance, but I am attracted to a new opportunity

that the Parliament would get, were the convener's proposal to progress.

Whatever happens, the issue must go into our legacy paper. The question is how it should go into it. I am sympathetic to saying that the issue creates a desire and a need for a change to the standing orders, but the question is what that change should be. The successor committee would need to inquire into that.

The Convener: I expect that we will deal with the content of our legacy paper at our next meeting. We may not need to open up too widely today what might be said in that legacy paper, although it would be helpful to the clerks if they could get a sense of what, broadly, we wish to be in it. We will come to the detail later if the deputy convener and I agree with what the clerks propose should come to the next meeting.

John Scott (Ayr) (Con): I agree with almost all of what has been said. On the question of adding something, I point out that, at the moment, there is a great deal of interaction between the Parliaments on legislation and there is a measure of uncertainty as to how it will all pan out. Like other members, I would not wish to seek a change to our standing orders on the basis of one piece of proposed legislation, however much it is the expressed view of the Parliament that we do not like it.

That said, what you have suggested, convener, is a pretty reasonable idea. I am not averse to Parliament-to-Parliament communication and to some kind of protocol being established to allow the views of one Parliament to be made known to another. What particularly interests me is the standing of such a communication when such a view was made known and received. How would it be dealt with? Would it simply be a matter of taking note of it?

However, that is a matter for the future. I am very much of the view that, if the matter is going to be examined—if we believe that it should be examined—it should be examined properly, in depth, reasonably, cautiously and in a considered way. All my experience tells me that we should not act in haste and repent at leisure when it comes to changing the standing orders or, indeed, to making new legislation. I think that the place for the matter is in a legacy document.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): We are where we are, and we know exactly what the situation is in relation to the Trade Union Bill. It is going through Westminster and there is nothing that we can do about it—that is a fact. That is unfortunate, as I am very much personally opposed to it, as I said at our meeting last week.

The devolved Administrations in Wales and Northern Ireland will be interested in your suggestion, convener. If we can get agreement with them, that will be a very powerful consideration in any discussions that we have with the United Kingdom Parliament. It has always been said that devolution is a process. Be that as it may, the matter that has been highlighted by Mary Fee in respect of the Trade Union Bill has highlighted our impotence in relation to it. It would be good if we could achieve a Parliament-to-Parliament agreement among all four Parliaments in the UK and perhaps even among other jurisdictions including Guernsey, the Isle of Man and Jersey. That would help to put things on a proper footing and move things forward.

When we discuss our legacy paper, we will need to go into a little bit more detail about our ideas so that the committee that follows us understands what we are asking it to do.

John Scott: Were the proposed process to be put in place, it could be a case of there being for every action an equal and opposite reaction. Doubtless, you will be as au fait with Newton's second law of motion as I am, convener. If there were to be a process whereby we, as a Parliament, and other devolved Parliaments had a way of making our views known to the Westminster Parliament, it would be only reasonable for that process to be a two-way street. How much would we welcome the Westminster Parliament's making its views known to us about legislation over which we have authority? That is why it is important to know what status such a communication would have.

10:45

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I will address John Scott's point first. I do not think that there would have to be a reaction, as he put it.

The fact of the matter is that Westminster can legislate for us but we cannot legislate for Westminster—it is a one-way street in that sense. I do not have a problem with what the convener suggests, but would it make any difference? Probably not—it would just be more of the same. It would not resolve the problem that Mary Fee's letter seeks to resolve because, in a sense, it is unconnected to that particular problem. The idea may have arisen as a result of that letter but, worthy though it may be, it would not do anything to resolve the problem that we face regarding the Trade Union Bill, and my concern is that we need to do something about that bill.

The Convener: Colleagues, I think that we have given it a square go and, informally, I see what our positions are. I now formally invite members to

indicate whether they wish to support Mary Fee's proposal to change the standing orders.

Michael Russell: Is the decision on whether there should be an immediate change to the standing orders?

The Convener: That is what Mary Fee is asking for.

Michael Russell: I could not support an immediate change to the standing orders, but I could support a change to the standing orders after due consideration.

The Convener: Mary Fee has put a very specific form of words in front of us, so we are quite clear about what we are taking a decision on. We have reached the point at which we, as a committee, must take a view on the matter. I invite those who wish to support progressing an immediate change to the standing orders to so indicate.

For

Mary Fee (West Scotland) (Lab)

Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against

McLeod, Fiona (Strathkelvin and Bearsden) (SNP)

Russell, Michael (Argyll and Bute) (SNP)

Scott, John (Ayr) (Con)

Stevenson, Stewart (Banffshire and Buchan) (SNP)

Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

The committee therefore does not agree to an immediate change to the standing orders. That takes us forward—although not unanimously, which is always my strong preference.

The issue that we were discussing in the run-up to taking that decision—

Michael Russell: May I make a point of order, convener?

The Convener: Yes, if you are sure that it is a point of order and not merely an observation.

Michael Russell: I presume that the recording of decisions at this committee will include the fact that the vote was on an immediate change to the standing orders and not on the merits or otherwise of the legislation, which has been opposed by the vast majority of those present and continues to be opposed by them. I just want to make that point in case there is any chance of misrepresentation of the issue.

The Convener: I am not sure that that is a point of order, but we are in public session and your remarks will, of course, appear in the *Official Report*. I see no one dissenting from them, so I think that they represent, as far as I can establish, the views of the committee.

I get the impression that the committee is minded to think further about changes to the standing orders. In my opening remarks I suggested that Mary Fee might continue to take the lead on the issue if she wishes to do so—I am getting a nod.

Mary Fee: Yes. The issue definitely needs further consideration. The convener's suggestion that we find a mechanism for Parliaments to communicate their views to each other would not automatically lead to a change in our standing orders that would give us the ability to consent to or not consent to something. A change to the standing orders would give us that ability, which is why I am concerned about the convener's suggestion. However, we need to continue to look at the issue; some form of inquiry into the best way of taking the matter forward may ultimately lead to the conclusion that we need to change our standing orders.

Dave Thompson: On the face of it, changing the standing orders seems to be simple and straightforward. Some people would argue that it may deal with the problem, but I am not sure that it would. I think that we need more than that. We need to look at the standing orders and the interparliamentary situation. We have only to look at what happened in Wales. The Welsh Assembly voted on an LCM, and it voted against the Trade Union Bill according to the clerk's note. However, we believe that the UK Government just said, "Well, sorry—it doesn't apply." Even changing the standing orders now to allow us to debate an LCM would achieve the same result as was achieved in Wales. We would give our view that we are against the Trade Union Bill—which we have given anyway—only to be told by the UK Government, "Sorry. It's a reserved matter, so it doesn't apply."

We need to look at the issue carefully and involve people from outwith the parliamentary process, including civic Scotland and, more widely, the other devolved Administrations. It will take quite a bit of work to work out just how we can get a sensible relationship with the other devolved Administrations and with the UK Government in relation to these matters. It is not something that we can do quickly. We have to think it through and work out all the angles because, if we rush in, there could be unintended consequences. We need to be careful when we are dealing with such matters.

The Convener: I remind the committee that we are beginning to talk about what will be in our legacy paper. We expect to discuss the legacy paper at our next meeting, which I think is the proper time to continue that particular discussion.

10:51

Meeting continued in private until 10:51.

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