

PROCEDURES COMMITTEE

Tuesday 23 November 1999
(*Morning*)

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PROCEDURES COMMITTEE **8th Meeting**

CONVENER :

*Mr Murray Tosh (South of Scotland) (Con)

COMMITTEE MEMBERS :

*Donald Gorrie (Central Scotland) (LD)
*Janis Hughes (Glasgow Rutherglen) (Lab)
Gordon Jackson (Glasgow Govan) (Lab)
*Mr Andy Kerr (East Kilbride) (Lab)
*Mr Gil Paterson (Central Scotland) (SNP)
*Michael Russell (South of Scotland) (SNP)

*attended

THE FOLLOWING MEMBER ALSO ATTENDED :

Iain Smith (Deputy Minister for Parliament)

COMMITTEE CLERK :

John Patterson

SENIOR ASSISTANT CLERK :

William Venters

ASSISTANT CLERK :

Jim Johnston

THE FOLLOWING CLERKS ALSO ATTENDED :

Alasdair Rankin (Clerk to the Subordinate Legislation Committee)
Callum Thomson (Senior Assistant Clerk to the Finance Committee)

Scottish Parliament

Procedures Committee

Tuesday 23 November 1999

(Morning)

[THE CONVENER *opened the meeting at 09:01*]

Standing Orders

The Convener (Mr Murray Tosh): Although Janis Hughes is not here today, let us make a start, as some members must disappear early today.

The bulk of today's papers relate to item 1 on the agenda: the changes to the draft standing orders. We have discussed the changes twice already, so I do not propose to go through them again. The purpose of having the agenda item is simply to keep members up to date.

The sections that were changed after our previous meeting have been tabbed and the changes noted on the relevant pages. The first change was to rule 9.12.6. We decided that we would extend the deadline for financial resolutions from three months to 12 months after the introduction of a bill. We will discuss that change again later. The next change was the insertion of rule 12.2A—the enabling clause—known for ever after as the *Iain Smith* clause. The third change is to rule 17.2, on the suspension of standing orders. We decided to reinsert the original section. The papers are provided simply to allow members to keep a running score of the changes that have been made as we go through the exercise.

Mr Gil Paterson (Central Scotland) (SNP): There is a small matter that needs to be tidied up regarding oldest members. Rule 12.4 says that the first meeting of a committee

“shall be chaired until a convener is chosen by the Oldest Committee Member.”

Should not that be reversed to say that the meeting will be chaired by the oldest committee member until a convener is chosen? Otherwise it seems as if the oldest committee member picks the convener.

The Convener: Well spotted. Your grasp of English is even better than your grasp of Scots.

Mr Paterson: Thank you.

The Convener: I welcome Janis Hughes. We have not got far.

Janis Hughes (Glasgow Rutherglen) (Lab): I

apologise, convener.

The Deputy Minister for Parliament (Iain Smith): The Executive secretariat might have some minor points to raise with the clerk on the drafting of the standing orders before they are finalised. I am sure that they will be acceptable, as they are not on any issue of substance.

John Patterson (Committee Clerk): We received the changes on Friday and we are talking to the lawyers. The matter is on-going.

The Convener: In accordance with our previous decision, we will allow that to go ahead unless anything significant is raised.

Subordinate Legislation Committee (Remit)

The Convener: The second item on the agenda was to be discussion of the letter that I received from Iain Smith, which covers three issues. However, as item 3 on the agenda deals with the remit of the Subordinate Legislation Committee as well, I propose to ask Iain Smith to speak briefly to the first paragraph of his letter and then to allow the clerk to the Subordinate Legislation Committee, Alasdair Rankin, who is here to discuss its remit, to speak so that we can allow him to leave. We will then deal with the other two issues covered in the letter, which might take a bit longer.

Iain, will you please explain why you have amended the change that the Subordinate Legislation Committee suggested to its remit?

Iain Smith: We want to clarify the issues that the Subordinate Legislation Committee can consider. The change that we suggested to rule 6.11.1(a)(ii) is to use the technical term “Scottish statutory instruments not laid”, which makes it clearer which subordinate legislation is being referred to.

The Convener: The papers provided for the agenda item on the remit of the Subordinate Legislation Committee include an explanatory note from the clerk to the Subordinate Legislation Committee, the draft amendment—which is now subject to an additional proposal, as outlined in Iain Smith's letter—and a copy of a letter from Tom McCabe to Kenny MacAskill, convener of the Subordinate Legislation Committee, for our information, which I should have received in time for our previous meeting, but did not.

It would be appropriate at this point for Alasdair Rankin to talk to us about the point that we were unable to pick up at the previous meeting. He will explain to us briefly what it is that the Subordinate Legislation Committee cannot do now, but will be

able to do if the amendment is accepted. Specifically, he should address the change that Iain Smith has suggested to the revised remit, so that we are all clear about it, although I think that we are all in agreement with it.

Alasdair Rankin (Clerk to the Subordinate Legislation Committee): The Subordinate Legislation Committee wants to be able to consider what are called general instruments not laid, which are a class of statutory instrument that usually would not be laid before Parliament, but which the equivalent committee at Westminster—the Joint Committee on Subordinate Legislation—gets to see. There is nothing particularly controversial about that, but members might want me to explain what the provisions are. Does the committee have any questions about the note that I passed to the committee, which members might have received?

The Convener: Everyone should have received that note from the Subordinate Legislation Committee. Are there any questions?

Mr Paterson: Is my interpretation right that, if we do not agree to the change, the effect will be either that some items will fall into a black hole, or that the Executive will make a decision rather than the Parliament? Legislation enacted at Westminster could in effect have no purpose within the Parliament, except that the Executive would make its mind up on it for us.

Alasdair Rankin: The intention is not to affect the position of the Subordinate Legislation Committee in relation to Westminster statutory instruments. The change reflects only the committee's desire to consider Scottish statutory instruments not laid. The first category of SSIs is those that are laid before Parliament, and which are subject to affirmative and negative procedure. However, there is another category of instrument that usually is not laid before Parliament under standing orders. Under the proposed amendment, the committee could consider such instruments, although they would remain unlaid and would not be subject to further parliamentary procedure. The committee would consider only the technical competence of such instruments, not the policy aspects. From the Parliament's point of view, the matter is much more to do with scrutiny than with assuring technical competence, but it has no impact on the policy content of the instruments.

The Convener: Gil Paterson is right that if the change is not added, such instruments cannot be checked by the committee for technical competence. Therefore, the amendment covers something that otherwise would not be covered by the committee.

Alasdair Rankin: Yes.

Mr Paterson: Thank you.

Donald Gorrie (Central Scotland) (LD): What is the difference, if any, between the Subordinate Legislation Committee's proposal and the Executive's proposal?

Alasdair Rankin: The difference is in the use of the term "Scottish statutory instrument", which is more specific than "subordinate legislation", which is the most general term used to describe such legislation. I understand that there was concern at the previous meeting of the Procedures Committee that the use of the term "subordinate legislation" could leave open the possibility of the committee considering Westminster instruments, which is not the intention at all. The Executive amendment clarifies that point and to that extent, my understanding is that the Subordinate Legislation Committee welcomes the change.

Donald Gorrie: Does the Executive's use of the wording "Scottish statutory instruments not laid" mean that the various legal and other matters that were mentioned in your paper cannot be discussed? Does it unduly restrict the committee?

Alasdair Rankin: No, it does not. It can also be taken to cover general instruments not laid.

Donald Gorrie: So the Subordinate Legislation Committee would not be against the revised wording suggested by the Executive in Iain Smith's letter?

Alasdair Rankin: No. I spoke to the convener of the Subordinate Legislation Committee yesterday. He is content with the Executive's change.

Michael Russell (South of Scotland) (SNP): If the convener, the committee, the clerk and the Executive are content, it is only us who need to be content to produce a virtuous circle of delight, so we should all be content with the change.

The Convener: I believe that that is the position that we have reached. The difficulty last week was that we did not grasp what was involved. Now that the matter has been clarified, it seems perfectly acceptable to me. I also, therefore, am content. We therefore agree to the addition to standing orders of the change suggested by Mr Smith, which meets with the satisfaction of the Subordinate Legislation Committee.

If Alasdair wants to scoot off now, he is welcome to do so. We shall now discuss the other issues in Iain Smith's letter.

Priority Issues

The Convener: The next point in Iain's letter is the remit of the Finance Committee. The senior assistant clerk to the Finance Committee is here. He might bring us hot news on whether the Finance Committee accepts the Executive's

suggestion on its remit.

Perhaps Iain can explain the difference between the original change that was proposed to the remit and the proposal as redrafted by the Executive.

Iain Smith: Again, this is a straightforward matter of clarification, to ensure that the committee deals with what it was intended that it should deal with. I understand that the convener of the committee has accepted the Executive's proposal, but I am sure that the clerk will be able to advise members on that.

Callum Thomson (Senior Assistant Clerk to the Finance Committee): Unfortunately, we have been unable to get hold of the convener of the Finance Committee for the past couple of days. However, we have taken soundings from the Executive and we are happy with the Executive's proposed amendment to the remit. We intend to get the committee's approval to the revised amendment at the next meeting.

Michael Russell: The Executive amendment is more than satisfactory. The amendment that we had agreed to rule 6.6(d), which relates to the moneys for which the Parliament has responsibility, is undoubtedly too wide.

The Convener: Yes. Our original proposal raised the possibility of the Finance Committee being able to consider public finance that is outwith the remit of the Scottish Parliament, which would allow it to consider the range of Westminster activities. That would not be appropriate.

We agree therefore to the change to the Finance Committee's remit as worded in the letter from Iain Smith. If the convener of the Finance Committee is not happy with that, it will be up to the senior assistant clerk to mollify him and explain what went wrong.

Donald Gorrie: Presumably, if the Parliament thinks that Westminster is making a hash of things, it will still be able to debate the issue, as it can debate anything. It is only that it will not be within the remit of the Finance Committee.

The Convener: That is the theory, although getting such a motion past the Parliamentary Bureau might be another matter.

I thank Callum Thomson.

We move now to the issue of suspension of standing orders and the three-month, six-month and 12-month time limits. Iain, feel free to speak to the proposal in your letter.

Iain Smith: Members will have had a chance to read the suggestions that the Executive has made. The issue is whether it should be possible to suspend standing orders only for a particular meeting or on an item of business. The Executive

has requested that the standing orders be changed to allow a suspension on an item of business so that there is additional flexibility.

Last week, the matter was referred to specifically in relation to financial resolutions. I tried to suggest then that the issue applied to a wider range of matters. I have included one or two examples in my letter, such as lodging amendments during a recess. The Finance Committee has already had to defer for a week consideration of the Public Finance and Accountability (Scotland) Bill to allow amendments to be lodged in accordance with the rules about sitting days. If it had been possible, we could have suspended the standing orders to allow amendments to be lodged—still with adequate notice—on days when the office of the clerk was open rather than on sitting days.

Such a change would allow the Parliamentary Bureau additional flexibility in timetabling business where necessary. I would be grateful if the Procedures Committee could accept that that is a sensible way forward. The Executive is not trying to take control.

09:15

The Convener: I understand your position. The bureau should have the power to move a motion to suspend standing orders for an item of business that might spread over several parliamentary meetings, committee meetings and days when the office of the clerk is closed.

I am intrigued by the final paragraph of your letter, which suggests the possibility of adjusting the wording of rule 17.2 by inserting:

"including retaining the right for members to table motions"

in relation to suspending standing orders. I assume that that means that such a right had disappeared. Are there any other circumstances in which standing orders might be suspended, including suspensions without notice at the discretion of the Presiding Officer? In such an event, would members still have the right to move a suspension of standing orders?

Iain Smith: When it suggested the amendment, the Executive did not intend to reduce the existing rights of members to suspend standing orders. The amendment is meant to introduce additional flexibility, but with the safeguard that the Parliamentary Bureau can suspend standing orders only for items of business. We would be happy with an amendment that kept the existing rights of members to suspend standing orders, but which introduced additional flexibility for items of business.

The Convener: I understand that and am quite

happy with your suggestion in principle. The only difficulty is the time scale for drafting, which has become pressing. We had hoped to have a draft revised rule 17.2 this morning, but that has not arrived yet; even if we receive the draft revision this morning, it is asking a bit much of Iain and the committee to agree that draft today without a further meeting, which would complicate our timetable.

Michael Russell: The real problem is the time scale. Although I am not opposed root and branch to Iain's suggestion, it requires a bit more teasing out. The Executive has drawn an attractive distinction on the issue. The bureau's role is to suspend standing orders in relation to items of business; members should have the right to move a suspension of standing orders at any meeting.

However, the real difficulty is that we are trying to decide quickly on an issue that is not only complex but is a foundation stone of the standing orders. At the previous meeting, Donald Gorrie made an extremely important point that the use of a get-out clause in standing orders to get us out of difficulties that standing orders have created is bad procedure. Standing orders should be good enough to carry us through, and we should not need to pull a parachute rip-cord when things get difficult. In such circumstances, we should stick with our decision to allow a 12-month period for financial resolutions and to examine the mechanism for suspending standing orders in our review, which will take us up to next May.

I have discussed the matter with Iain Smith and Tom McCabe and, although I understand the Executive's keenness to tidy things up now, to do so in this way might lock us into areas that we do not fully understand. We are trying to draft quickly a new part of the standing orders that might have far-reaching implications. As a result, on balance—a fine balance, as I am sympathetic to the Executive's arguments—I think that we should stick with the decision made at the previous meeting, but put the suspension of standing orders at the top of the priority issues list for our May review.

The Convener: Iain, how do you feel about that?

Iain Smith: Mike Russell's proposals have a degree of illogicality. We are most likely to need a suspension of standing orders when we are still trying and testing them—some aspects of the standing orders have not yet been tested. I hope that we will have ironed out all the problems after the first full review. In a sense, this is almost a temporary measure to allow us to get through business without undue problems until we are confident that the standing orders are robust, which will be after the review.

Janis Hughes: I concur with Iain. A three-month period for consideration of financial resolutions allows us to focus our minds on the matter. Extending that period to 12 months might allow us to let consideration of bills to drift. We need an incentive to get on with business. Perhaps we should leave the three-month period but allow some increased flexibility that gives us a month if we need the time.

Iain is right. We are doing ourselves an injustice to leave the standing orders as they are at a time when we most need some flexibility.

Donald Gorrie: Much of the problem seems to stem from trying to introduce business at the beginning of a term after a recess. Perhaps the three-month period should exclude recesses, or we could change the rule for business that is considered immediately after a recess.

It is false to base any procedure on an assumption that we can easily turn it upside down whenever we want. What is the difficulty with changing standing orders meeting by meeting? We can raise the matter at one meeting and if people are persuaded, it can be put on the agenda; however, members have the right to raise concerns. That is important. I am an anti-steamroller person and, as the proposals potentially favour the steamroller, I am against them. There are better solutions.

The Convener: Iain, are some steps between meetings possible only if standing orders are suspended?

Iain Smith: Yes.

The Convener: Can you give us an example?

Iain Smith: Under the standing orders, amendments have to be lodged on sitting days. Committees that want to meet immediately after recess to deal with legislation cannot do so unless amendments are lodged before the recess, which might be a month or two before the meeting.

Furthermore, standing orders do not allow committees to suspend their standing orders, which means that if an item of business goes on for more than one committee meeting, the committee has to go back to the Parliament every week to have the standing orders suspended for the next meeting. It seems much more sensible to do that through an item of business rather than through a meeting-by-meeting suspension.

It might also take more than 40 days to consider statutory instruments—which, as Donald hinted, is probably a recess issue—or a committee might want to discuss an instrument for more than the allotted 90 minutes. Committees are not allowed to suspend their own standing orders to do that.

The Convener: We were not actually sure

whether the 90-minute rule applied to committees. The standing orders make it explicit that the Parliament has 90 minutes to deal with an instrument. That is one of the areas where we are not sure whether what applies to Parliament also applies to committees. Nevertheless, I see what you are getting at.

Michael Russell: This is not a star chamber matter. An over-reliance on the suspension of standing orders is, in principle, a bad thing. We need a draft revision that sets out three principles. First, it is properly a bureau matter to move a motion to suspend standing orders in relation to an item of business, as the bureau has set the timetable for business.

Secondly, the right of an individual member to move a suspension of standing orders—which is universal and common in standing orders—should be retained. I know that that right is universal because, as part of my bedtime reading, I have been perusing the standing orders—which John Patterson has provided for me—in a variety of odd places.

Thirdly, we must have some flexibility in the three-month rule. I appreciate that we must remain focused, but this is our job, and a change from three months to 12 will not make us say, “Whoopee—we can go away for a few months and not be focused on anything.” The three-month rule is unduly restrictive. Unrealistic pressure is being put on some committees, with a heavy legislative work load. A draft version might work that combines the bureau’s role, the member’s role and a slight loosening of the three-month corset and which perhaps bears in mind Donald’s suggestion that the three months should exclude recesses.

If that is a priority issue, obviously we must proceed quickly so that we keep our focus on completing the process on the standing orders before Christmas. If we can do that, perhaps the Executive’s response to the final report will have a light touch. We should also re-examine the matter when we review the standing orders.

The Convener: That sounds acceptable. The point about being flexible on the three-month issue follows if we accept that the bureau can move a motion to suspend the standing orders for an item of business. We will make progress if we agree to find a form of words that will give the bureau the power that it seeks and also protects the rights of members. The Executive will have to accept that that solution is very partial and that the whole matter should be re-examined.

Yesterday evening, we spent an hour and a half going round the circuit on the matter and all sorts of other issues arose. Donald Gorrie has made an attractive and helpful suggestion that the three-

month period should not include recesses, although it seems sweeping to apply that rule now to everything. All sorts of ramifications need to be taken into account and if we accept that this will be only an interim solution, we might have the basis of a compromise.

Iain Smith: Perhaps the new draft should not only mirror the wording of the existing rule on the suspension of standing orders, but say that the Parliament may, on a motion of the Parliamentary Bureau, suspend any rules for a specific item of business of the Parliament or committees. The end of the draft could make it clear that such a suspension would apply only for that specific item of business.

The Convener: That sounds attractive enough, but we would need to see a draft version.

Michael Russell: Before I go, I want to congratulate members of the team whose file has proved to be the ideal format for putting out papers. Although there was probably a lot of work with sticky tape, the file is excellent and I hope that the practice continues.

The Convener: They learned that in primary school and it has stood them in good stead.

Michael Russell: I am sure that I saw a squeeze bottle in there somewhere.

The Convener: We have disposed of item 2 satisfactorily and have already dealt with item 3. That takes us to item 4.

Remit

09:30

The Convener: Members have copies of our proposed remit. Attached is a report that we agreed to discuss at fuller length with the chief executive of the Parliament when he comes to our meeting in December. Today, we should confirm whether we are happy with the broad thrust of the report.

There is an incomplete version on the last page of the report, but that is subject to reassessment and reconsideration by our legal advisers. The idea is that we get a final draft remit for the committee, which accords with the report. If we are happy with that, we can agree to include an amended version in our final report. The difficulty is that we will need to see that version subsequent to today’s meeting, but before it goes into the final report; we will have to call a meeting if there is disagreement.

There is an issue of time scale. The same will hold for the previous discussion about the suspension of standing orders. If we have agreement, we can proceed; if not, we will have to

hold a further meeting. We are not taking any more priority issues from anyone, under any circumstances. We have to get this piece of work done.

Does the committee have any comments or questions about the report?

Donald Gorrie: An important part of the Parliament's work is its relationship with the Executive—we are here to keep it under control, although we are failing to do so at the moment. That could be construed as being covered in paragraph 1(b), which refers to

"the relationship of the Parliament with any other parliamentary, governmental, administrative or other body, whether within or outside the United Kingdom".

However, it is such an important part of our work that it might have to be specifically itemised.

I am raising that because of my concern as a member of the professional awkward squad.

The Convener: I am sorry—you lost me there.

Donald Gorrie: We could create a new subparagraph on the relationship with the Executive. Whether Sir David Steel talks to the Speaker of the Parliament of Madagascar is of no relevance to anyone other than him, but the relationship between the Parliament and the Executive is important. We could interpret paragraph 1(b) as covering that relationship or, as I would prefer, create a new subparagraph on monitoring the way in which we deal with the Executive.

The Convener: Is not that covered in paragraph 1(a), which refers to considering

"the practice and procedures of the Parliament"?

That would encompass the interface between the Executive and the Parliament.

Donald Gorrie: As long as it is construed in that way.

The Convener: That would be my immediate reaction. Are there any other comments on the report?

Iain Smith: I have some concerns about the proposed remit—it seems to be very open-ended. It might stray into areas that are of concern to other committees. For example, the Standards Committee would have an interest in liaison and discussion with other Parliaments on standards issues.

I wonder whether we need to tighten the remit to clarify the areas for which the Procedures Committee is responsible and how it would be asked to consider some of the wider issues that are mentioned in paragraph 4 of the report. Otherwise, the Procedures Committee might spend its entire life considering issues that are of

no interest to anyone other than the Procedures Committee. I am not suggesting that that would happen, but it is a concern. At present, the remit is wide.

In that context, I wonder whether the remit is a priority issue. Perhaps we should consider the issues in relation to liaising with other Parliaments and the various interests of other bodies—the bureau, the Scottish Parliamentary Corporate Body, the committees and the Parliament—before we present a detailed change to the remit.

The Convener: I do not think that the proposed remit would lead to the Procedures Committee examining standards in the UK Parliament; it is about picking up matters that are not covered by anyone else. Although there are many specific things that the Procedures Committee would cover, it is not about dealing with those matters, but about working out a way in which someone can deal with them. It is fair to say that the remit needs to be tightened; it is explicitly an incomplete draft, which is under consideration.

The other question is whether we decide not to prioritise the matter, but to consider it in the fulness of time. I am quite relaxed about that. I am more concerned with getting a report to the Parliament.

Members indicated agreement.

The Convener: Once that report has been completed and standing orders have been adopted, it will be possible for the Procedures Committee to deal with other issues. The remit is on the priority list, because the chief executive has prodded us. He is concerned that several important matters are being addressed in the name of the Parliament, by him or by the Presiding Officer, when they have no real way of gauging opinion. He also anticipates issues arising from the reform of the House of Lords—the Parliament might want some input, particularly on how that might affect our legislation. At the moment, there is no forum, mechanism or procedure for doing that.

Therefore, the matter is reasonably urgent. However, I doubt whether this needs to be done before the end of the year. I see no difficulty if members would prefer to spin it out a little longer.

Janis Hughes: I do not see any point in prioritising the matter for the end of the year. We have a heavy work load and other issues that need to be addressed more urgently. There is no problem with spinning it out until the beginning of next year.

The Convener: That is spinning in its traditional sense.

John Patterson: There are only two issues: flexibility and scope. We are almost there. We are

wrestling with maintaining the focus, while allowing a perspective that is wide enough to do the job that is needed. Would the committee have any objection to the clerks pursuing the matter? If the committee came to an agreement about the form of words, it could be popped into the priority issues list.

The Convener: An agreement with whom?

John Patterson: With the form of words that we would produce and circulate.

The Convener: Who would be agreeing with the form of words?

John Patterson: The committee.

The Convener: Iain Smith has registered some concern about the remit, and it should be understood that, for that reason, Iain attends the committee meetings.

I have no problem with including the remit on the priority list and I have no problem with leaving it out and dealing with it later. If the draft that is arrived at in the next couple of days seems laudable, we will put it in. If there are any difficulties, rather than scramble to get a further meeting, we should let the matter go and pick it up later.

Donald Gorrie: The point that Iain Smith made about the Standards Committee wanting to do things with other Parliaments is fine. However, it is our duty to organise the mechanism whereby other committees carry out their business. If the Rural Affairs Committee wants to examine how reindeer graze in northern Scandinavia, the mechanism of how it does that should be decided by us. We do not want to talk about reindeer, but we should discuss the procedure for talking about reindeer.

The Convener: Indeed. Is there agreement on that?

Members *indicated agreement.*

Chamber Access

The Convener: The final item is a minute from the security office that was previously brought before the committee. The committee should note the response.

John Patterson: I have just been handed a draft of the revised version of rule 17.2 of the standing orders. I will circulate copies for members to consider.

The Convener: That concludes today's meeting.

Meeting closed at 09:39.

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