

PROCEDURES COMMITTEE

Tuesday 15 February 2000
(Morning)

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CONTENTS

Tuesday 15 February 2000

	Col.
CORRESPONDENCE.....	303
CONVENERS LIAISON GROUP	305
REMIT.....	306
COMMITTEE WORK (NON-MEMBER INVOLVEMENT)	308
EXECUTIVE ANNOUNCEMENTS	315
CURRENT WORK	318

PROCEDURES COMMITTEE

3rd Meeting 2000, Session 1

CONVENER

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

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

Donald Gorrie (Central Scotland) (LD)

*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 ALSO ATTENDED:

Iain Smith (Deputy Minister for Parliament)

Elizabeth Watson (Head of Committee Office, Scottish Parliament)

CLERK TEAM LEADER

John Patterson

SENIOR ASSISTANT CLERKS

Jim Johnston

William Venters

LOCATION

Committee Room 4

Scottish Parliament

Procedures Committee

Tuesday 15 February 2000

(Morning)

[THE CONVENER *opened the meeting at 10:01*]

Correspondence

The Convener (Mr Murray Tosh): We are quorate, although we have apologies from Andy Kerr, Michael Russell and Donald Gorrie.

The first item was raised some months ago but it was agreed that it was not a priority issue. There was concern about the possible conflict of interests that might arise from members operating as conveners of the subject committees that cover the brief for which they are their parties' spokespeople. The issue was raised by George Lyon in a letter and the report before us today includes correspondence from him, John Swinney and the Presiding Officer, and an extract from the *Official Report* of 15 September. The report also contains research work that has been done to find out what the situation is in other Parliaments and an analysis of issues that have arisen or might arise.

I have been talking for several minutes to allow time for Gordon Jackson to gather his papers together and for someone to find his name-plate. Now that he is official, we will begin discussion of the paper.

I do not know if members have any views on the matter, but I believe that, while it seemed that it might become a problem early in the life of the Parliament, it has not done so. It might be reasonable to advise the Parliamentary Bureau that we have discussed this issue and to invite the bureau to let us know if it thinks that there are any difficulties in the way that the Parliament has been operating.

Janis Hughes (Glasgow Rutherglen) (Lab): I am confused that we are discussing this issue again. I thought that we had discussed it fully before and had taken the view that you have just expressed. I believe that we decided to come back to the issue once the Parliament had been in existence for about a year.

Mr Gil Paterson (Central Scotland) (SNP): I agree with that. Any member could have a conflict of interest as, to a greater or lesser extent, we are all party spokespeople, as we demonstrate in the chamber. I have heard you being very passionate

at times, convener.

The Convener: I do not think that you should be saying that, Gil.

Mr Paterson: I will leave it on record.

If you happen to be passed the black spot and become a spokesperson for your party, convener, I do not think that you will face any conflict of interest. I think that the paper suggests that Labour and Liberal members might be more likely to face a conflict of interests due to the pressure to keep the pack together. Having said that, I see no reason why anyone should not be a convener. I will hold that view even in a year's time.

Gordon Jackson (Glasgow Govan) (Lab): I am the deputy convener of a committee whose convener is a party spokesperson. I can see that there might be a problem with that in theory, but it has not been a problem in practice. To revisit it before a problem arises would be pointless.

The Convener: From our discussion, it is clear that we do not have to be as proactive as I suggested at the outset. It might be appropriate to advise Mr Lyon that we have discussed the matter and that we will review the situation if a difficulty arises in the future. We feel that the situation can take care of itself. Are we agreed?

Members indicated agreement.

Conveners Liaison Group

The Convener: Item 2 deals with the question of the conveners liaison group and amendments that might be necessary to standing orders. We have a fairly substantial paper that covers the origins of the issue. The essence is that the conveners liaison group, at its first meeting, decided that it wanted to be formally constituted. That required consideration of its role and remit, which required that other bodies that would be affected by its coming into being had to discuss its role and remit. It also meant that remits had to be written and other people had to take views on those remits.

All of that has resulted in some clear discontinuities. The conveners liaison group has taken views on its role and purpose that are not shared by the bureau. The matter rests with us. I suggest that there is not a lot that we can do, given that the committee has no clear remit.

It is appropriate to consider the implications for standing orders of a matter that has been discussed and agreed elsewhere. I thought that it might be possible for us to consider having a set of standing orders revisions that reflected either the views of the conveners liaison group or the views of the bureau. It is clear, however, that that would involve a lot of work. It does not seem sensible to do that work until we know what the desired outcome is. I asked myself whether the conveners liaison group needs a written remit, given that it has been functioning satisfactorily, and whether any changes to standing orders are necessary. The conveners liaison group still wants to be formally constituted, however.

I believe that we should ask the bureau and the conveners liaison group to resolve precisely what remit they want the group to have. When that is made clear, we can start to make decisions and recommendations. We are not here to resolve a conflict of opinion between two other bodies.

Mr Paterson: There are a few related issues that I would like to raise, but I agree entirely with what you have said, convener.

Janis Hughes: It is not for us to have an opinion on the matter. I have personal opinions about the formalising of the conveners liaison group, but this committee should not discuss the issues. Our role would be to examine the standing orders if it were agreed that the group be formalised.

The Convener: As we appear to have general agreement on that, I will so advise the bureau and the conveners liaison group.

Remit

The Convener: The main substance of the brief report that we have before us is the section that gives the proposed remit of the committee, subject to its being cleared by the legal office, which has been considering the remit in some depth. The principal difference between the original proposal and the current form is in the third paragraph of the report, which tells us that the corporate body has taken the view that interparliamentary liaison would be best handled elsewhere. I know that some members of the committee were deeply concerned about the foreign travel and high-quality wining and dining that the committee might be subjected to if it had been given that remit. You will all be heartily relieved to know that none of you are expected to drink, dine and travel for the Parliament.

Gordon Jackson: That was a lucky escape.

The Deputy Minister for Parliament (Iain Smith): I have no difficulty with the principle of the committee's remit as stated in the report. I am a little concerned that the definition makes the remit very wide, particularly part (c), which says that the committee should consider and report on

"any administrative matter arising from or relating to the Scotland Act 1998."

That could encompass just about anything and might open to this committee to a lot more work than it needs to get involved in. It should, perhaps, consider issues as they are referred to it by the Parliamentary Bureau or the Presiding Officer, rather than having such a broad remit.

Janis Hughes: I welcome the paper, but I share Iain Smith's concern. We will, on occasion, have to deal with matters arising from or relating to the act, but he is right to say that we would do that only if another body referred the matters to us. It is dangerous to define our remit in the way that part (c) does.

The Convener: The intention was that difficulties that were raised relating to the act would be clearly identified as being our responsibility. We have been consulted on various occasions about difficulties that arise in relation to somebody else's work. For example, on our agenda today we have a paper about people who are not MSPs being on committees and we have had discussions about ways in which private bills might be addressed. Solutions to such problems might involve a re-examination of the Scotland Act 1998. The problem has been in identifying a body that can sweep up all such issues—in that sense, we have a dustbin role.

As the committee does not intend to initiate any

consideration of matters arising from or relating to the act, I do not think that the proposed narrowing of the remit presents any difficulty for us. None of us is looking for a wider remit. I think that we should get the legal people to agree on a suitable form of words.

Mr Paterson: Perhaps we should turn the question on its head and ask what this committee would not be interested in considering and what administrative area we would not be interested in examining. I can think of no areas that we would not be interested in. The brief that we have in the report covers what the committee is about.

10:15

The Convener: I do not think that that is wrong either. The concern that has been raised is that we will start ferreting through the whole system looking for areas in which we might identify clashes or cause trouble. However, the way in which we tend to work is to respond to difficulties that the Parliament encounters in practice as it develops. I have no problem with trying to find a more precise form of words. If it is decided that it is difficult to conceive of an alternative form of words, we can always talk about it again.

Gordon Jackson: I found it difficult to tell precisely what is meant by the words "any administrative matter". I was trying to think of specific cases that might arise. Perhaps that wording could be made clearer. I feel that what we would be dealing with is not made specific.

The Convener: There has been great difficulty in finding a precise form of words to cover what we are asked to do without giving us too-sweeping responsibilities.

Janis Hughes: The present wording might take us into territory that we may not be equipped to deal with, especially if we are asked to deal with difficult legal matters. It would be helpful to find another form of words; otherwise, we will have to revisit the subject.

The Convener: I think that I understand where we stand. There is no particular urgency about this matter except that, when we agree a revised remit for the committee, we will need to propose a minor order to the Parliament to change the standing orders. We would seek to do that quietly one day on a formal basis. We shall revisit this matter in a fortnight and try to resolve it then.

Committee Work (Non-Member Involvement)

The Convener: A precise example of how matters arise from the Scotland Act 1998 is the next item on the agenda. This issue was originally raised in the Equal Opportunities Committee and then in the conveners liaison group, which has asked us to consider how non-MSPs might become involved in the work of the Parliament's committees.

Non-MSPs can be involved in a number of ways. However, this matter arises specifically from the feeling in the Equal Opportunities Committee that it is one of the deficiencies of the Parliament, through no one's intention, that there are no members of the Parliament from any of the minority ethnic communities in Scotland. The committee would like to include someone on a permanent basis and is unhappy with the suggestion that it should simply bring in an adviser to assist with specific issues.

The paper shows that the matter has been considered carefully and that the Scotland Act 1998 simply does not allow the co-option of non-MSPs. If we are to promote a solution to the problem, we must either find a mechanism to allow non-MSP participation or persuade the House of Commons to amend the Scotland Act 1998.

The paper suggests that the best way of allowing such participation is to appoint a standing adviser; instead of bringing in an adviser for a specific subject, committees could bring in people permanently if they wanted to. Those people would not be there to deal with token issues from here and there on the agendas. They would be asked to strain all the business of the committee through the perspective that they bring to the committee's business. We think that that would be the best way of allowing the Equal Opportunities Committee to progress.

Do members have any thoughts on that suggestion?

Gordon Jackson: Mechanisms in the Scotland Act 1998 make it difficult to co-opt people on to committees. However, if they are not going to vote in any event, presumably it makes no difference in practice whether they are formally co-opted or are appointed as standing advisers. They would have the same role without voting rights regardless of how they were appointed. There seems no need to go back to Westminster, with all the problems that that would entail, to get a formal co-option procedure. If they are not going to vote, what difference does it make?

Before devolution, there was discussion about

this. I was involved in writing a book that suggested that people should be allowed to sit on committees. That was one of the new ideas for this Parliament, but there was political resistance to it. It was not done at Westminster, and the idea of non-members becoming members of committees was frowned on. I do not know what Iain Smith thinks, but I suspect that Westminster might not be too cheery about that principle. There may be no point in allowing co-option if participation can be achieved by another route.

Janis Hughes: The whole issue of co-opting non-MSPs on to committees gives rise to a problem of democratic accountability. Central to the way in which committees were set up and the vision of the Parliament being run on a committee structure was the fact that the people playing the main part on those committees would be elected MSPs.

I know that the clerks have studied other examples, but I do not think that they found a precedent for what is being suggested. I am not saying that we should always look to precedents to decide the best way for us to go. If we want to be different, we certainly should be. However, we must remember that other Parliaments have had a longer experience than we have, and they may already have considered or tried co-option.

There may also be problems with standing advisers. I favour the appointment of advisers rather than the co-option of non-MSPs, but an adviser should be there to give advice on a specific issue. A general adviser, like most MSPs on the committee, may know a little bit about a lot of things but not much about a specific issue. The benefit of an adviser should be that that person has great knowledge about a specific subject, which would benefit the committee in its discussions.

When the cross-party groups are up and running in a formal capacity, they will be considering specific issues and we may be able to draw from the outcomes of their discussions. However, I urge caution on co-option and on the appointment of general advisers.

Iain Smith: I endorse what Janis has said. The proposal raises issues of democratic accountability, which must be considered in more detail before we consider the mechanics of co-option. The Equal Opportunities Committee has put forward its case, but to whom would co-opted people be accountable and whom would they represent? Those are big issues that deserve more detailed examination before any decision is made.

I have a question that I would like to ask in a personal capacity rather than on behalf of the department. I am a little confused by the advice in

the paper on the reasons why the Scotland Act 1998 says that we cannot co-opt. It makes reference to the fact that, because section 27 specifically gives rights to the Lord Advocate and the Solicitor General, as the law officers, to participate in the proceedings, it therefore excludes anybody else from being co-opted. I am greatly surprised at that. I would have thought that that section was about giving specific rights to the law officers, rather than about removing the rights of the Parliament to consider whether other people should participate in the proceedings. I am not a lawyer—perhaps Gordon Jackson has a better idea about that.

Gordon Jackson: I suspect that Elizabeth Watson may be able to give us the answer.

Elizabeth Watson (Head of Committee Office, Scottish Parliament): The advice that we had from lawyers is that one of the basic principles of statutory interpretation is that the specific inclusion of one group entails the exclusion of another. If it was thought necessary to make specific reference to the law officers, any group to which specific reference is not made is excluded.

Iain Smith: I may not have expressed myself clearly, but my interpretation of section 27 is that it confers a specific right on the law officers to participate, as opposed to allowing the Parliament to allow them to participate. By conferring a specific right on the law officers, the act does not allow the Parliament to allow other people to participate. I am not sure that that adds up. I am not sure that the intention of section 27 was to exclude other people from participating; it was to confer specific rights to ensure that the law officers could participate.

Gordon Jackson: Committees are part of the proceedings of the Parliament. The idea that unelected people could participate in the proceedings of the Parliament is, generally speaking, a non-starter. The status quo of a Parliament is that only the elected members can be there. That is why the Lord Advocate had to be given a specific right; otherwise, the Parliament could not have allowed him to be there. He is the exception to the general rule that nobody but an elected member can be there. By including him in section 27, the fact that nobody else can come in is made even clearer, as the norm of a Parliament is that no one but elected members can take part in proceedings. The law officers are being given an extraordinary right. If they did not have that right, it would not be a matter of everybody having it; it would be a matter of nobody having it.

The Convener: Is that legal point clarified?

Iain Smith: I am glad that Gordon Jackson has been able to explain it to the rest of us.

Mr Paterson: The legal point is made in the

papers before us, is it not? It is as simple as that. Going back to a previous issue, perhaps those people should be made conveners. That might solve a few problems. [*Laughter.*]

On a more serious note, Janis Hughes made some relevant points. However, in cases such as the consideration of the McIntosh report by the Local Government Committee, there could be a halfway house, with one or two anchor persons sitting on a committee for the duration of a series of evidence sessions. I have found that we have been all over the place on some occasions when we have taken evidence. Sometimes it would be useful to have someone on hand who has a fuller knowledge of the subject. To bring in an expert in the longer term, rather than for a few days, would greatly benefit the committees.

The Convener: There are two separate issues here. On the one hand, there are experts on a particular topic or discipline. For instance, if the Transport and the Environment Committee was considering planning, there would be no point in having a general adviser who was pretty ace on the operation of railway systems. That would be within the committee remit but in a separate discipline.

On the other hand, the request from the Equal Opportunities Committee is somewhat different. Its role is to consider everything that the Parliament does, including legislation, from an equal opportunities point of view. The committee's view is that it cannot do that adequately unless it has at least someone on the committee who has the perspective of being a member of an ethnic minority. It is felt that the committee would be better placed to conduct that business if there was such input, as it would allow members to understand every issue in the remit from that standpoint.

That is the point of view from which the Equal Opportunities Committee has made its request. I do not think that, in that context, the proposal is a bad idea. Of course, it could only appoint a representative; one could not seek to represent every minority. However, having someone with expertise in and knowledge of ethnic minority issues would allow the participation of a person who could identify possible problems from the point of view of people who have a different language, culture or religion.

I do not know how the committee would select such a person, and that raises the question of how representative he or she would be. The argument is for some form of virtual representation; it is better to have someone who has an ethnic minority perspective than to have absolutely nobody who has that perspective. Although what is being suggested might not have universal validity, I think that it is valid for the Equal

Opportunities Committee.

Janis Hughes: I completely agree. Equal opportunities should underpin everything we do, not only in the Parliament but in life. I accept that the Equal Opportunities Committee is justified in wanting someone from an ethnic minority group to be there to oversee the issues under discussion and to offer a different perspective. The problem, as Iain Smith asked, concerns to whom that person would be accountable. If that person is acting in an advisory capacity, presumably accountability is not so relevant as it would be if he or she were appointed to the committee.

Can we deal with this situation for one committee? What would we do if another committee made another justifiable request to appoint a non-MSP? Are we being asked to consider how non-MSPs may become involved in the work of any of the Parliament's committees, or are we looking only at the Equal Opportunities Committee? We have to define the point that we are addressing.

10:30

Elizabeth Watson: The appointment of an adviser of any kind to a committee has to be approved by the Parliamentary Bureau, and the bureau then allows the committee to issue directions to the Scottish Parliamentary Corporate Body for the appointment. No committee could take a decision to appoint any form of adviser that has not been approved by the bureau and by the corporate body.

The Convener: Under these circumstances, it is suggested that we recommend to the SPCB that the role of general adviser would be appropriate for the Equal Opportunities Committee. The possibility having been established and the principle having been created, it would be a matter for that committee to consider whether it would be reasonable to appoint another general adviser in other circumstances. I suspect that other committees would take the view that they see no need for one, and the SPCB might question the point of having one.

We are talking about a specific perspective, so it can be seen as a rule for one committee, but one with a distinct role, and one which feels that, in executing its role, it currently has a distinct lack. The appointment of a general adviser is a way for us to do something to help within the scope of what is achievable.

Gordon Jackson: I agree that the Equal Opportunities Committee is a special case. There is an issue about the lack of input from ethnic minorities in the Parliament. If the Equal Opportunities Committee is in a position to deal with that, I wish to give the proposal every

consideration.

I cannot imagine the Justice and Home Affairs Committee ever doing the same thing. Do we in that committee need another lawyer? The place is crawling with them; we do not need any more. I can see that it would be warranted for the Equal Opportunities Committee, and I think that we should try to facilitate the proposal for that committee as a one-off.

The Convener: It would not be for us to say that it is a one-off, but for the SPCB.

Gordon Jackson: Of course.

The Convener: We would be tipping the SPCB the broadest wink that we have looked at the matter, and that we believe that the appointment of a general adviser for the Equal Opportunities Committee would address the problem. We would propose to make the SPCB the guardian of that mechanism, but as we have been asked for our views, we are giving them.

Janis Hughes: To be clear, the request on this came from the conveners liaison group, presumably because they agreed that co-option may be useful. Are we now saying to the Parliamentary Bureau that we have discussed it, but we feel that co-option may be only an option because of the Equal Opportunities Committee's difficulties? I would be concerned if our report said that if a committee felt that it wanted to co-opt for a particular reason, it could do so.

The Convener: No, a committee cannot co-opt, and cannot appoint its adviser. It can approach the SPCB with a request to appoint an adviser.

As is explained in the final paragraph of the paper on the involvement of non-MSPs in the work of committees, we are currently operating on the basis that a committee may appoint an adviser for a specific piece of work,

"or for a specific period of time."

By and large, it is expertise or professional discipline which is being imported. The argument is that it is different with the Equal Opportunities Committee, because perspective, which is sought for everything that the committee does, can be brought in. It is not a request for insight from a narrow or compartmentalised discipline. Therefore, the argument is that the Equal Opportunities Committee is different, and that its remit is different.

In essence, we are not making that judgment, but we are suggesting to the SPCB that they consider it.

Iain Smith: Should we broaden what we are suggesting? The Equal Opportunities Committee might wish to consider some of the other possible mechanisms for obtaining views. There is the

suggestion about expert panels. They could feed information in, perhaps by having one committee member as a reporter, or by giving evidence directly to committees on specific issues. That could be a way of getting the views of specific minority groups.

The Convener: I think that the Equal Opportunities Committee is aware of that, and is well disposed to doing those things. It felt that it wanted someone on a standing basis, who would always have a remit to think and speak from a certain point of view. What that committee really wanted was to co-opt someone. We cannot do that, but this is the best way in which we can suggest that they have someone to work on a standing basis.

It is absolutely appropriate for the Equal Opportunities Committee to ensure that the perspective imported to its meetings is representative, through speaking to panels of people from ethnic minorities. That might be how the Equal Opportunities Committee ensures that its adviser is fully representative, and it would be for that committee to organise, using all the mechanisms at its disposal.

Are we all happy with that?

Members indicated agreement.

Executive Announcements

The Convener: This item keeps running. There have been renewed points of order and issues arising in the Parliament since the Christmas recess about how media announcements are made and about how news is issued by the Executive.

I spoke to Mr McCabe on Friday morning about another matter, but these questions came up in the course of our discussion. In addition to items which have come before the committee, I have asked myself one or two questions about how parliamentary questions are used. There is also an on-going committee study on the parliamentary questions system.

I previously asked Mr McCabe to consider whether the Executive's practice might be provided as a sort of protocol so that we could understand the circumstances under which some announcements were made in Parliament, some were made elsewhere, others were simply media announcements and yet others were answers to parliamentary questions. We merely initiated that discussion.

Mr McCabe asked me about his difficulty in justifying certain statements as emergency statements, although he feels that he ought to be able to programme in non-emergency ministerial statements. There is a whole area of concerns and issues.

We have an issues paper on these matters, and I think that we are simply looking for agreement that I continue to discuss the matter with Mr McCabe and that we attempt to come up with an agreed practice. The issues paper also proposes some other points, suggestions and areas of research, which members may wish to comment on now.

Janis Hughes: I think that the best thing to do is to keep trying to come to some sort of agreement. I feel that one of the main sources of complaint is that statements are made on, say, a Monday. I do not understand how people can feel that statements may be made only on a Wednesday or Thursday so that they can then be debated in Parliament.

There would be a heck of a lot more criticism about holding things back, not getting things done and not getting on with the job if announcements were kept to Wednesdays and Thursdays. It is not feasible. Without going over the old arguments, I think that it is best if you keep plugging away, convener, and try to come up with a protocol that everyone can agree with. I hope that the matter will not then keep coming up.

Mr Paterson: I think that there is a need for a mixed bag. What is sadly lacking in many cases is a bit of common courtesy. In some areas relating to local government, things have been announced that could, quite frankly, have waited a couple of days, until the morning of the day when the committee that was working on the relevant issues met, or until its meeting. It really rankled with the committee.

Announcements in some, but not all, cases are perhaps being made in search of a soundbite, and not on the basis of good practice. After all, we have a Government, and it should govern, and there can be a need for emergency action, which needs emergency statements. The procedure should be tightened up in line with what you are suggesting, convener. That gets my support.

The Convener: Are we all agreed on that?

Iain Smith: Listening to that discussion, I think that the committee is aware of the difficulties that the Executive has in trying to ensure that information gets out to the public and to the Parliament as quickly as possible while striking the balance between the need to be open and accountable and the need to ensure that the Parliament is properly informed.

Steps are being taken to improve that, including new procedures for advising all members when what is known as an inspired question is tabled, and a Government announcement comes out. There is now a procedure on the intranet, so that all members are aware of those questions and their answers as soon as they are published, which I think is an improvement.

I am sure that the officials would be happy to meet the clerks to discuss a possible protocol on ministerial or Executive statements, in addition to your direct discussions with the Minister for Parliament, convener.

The Convener: Note for the record the felicitous phrase, "inspired question". I have heard them called other things.

Iain Smith: Better than "planted".

The Convener: Yes, better than "planted". We will treasure that little nugget.

My favourite example was the announcement on roads management at 5.30 on Christmas eve. It had to be made then because the decision had been made the previous day and it needed to be communicated as quickly as possible.

We understand that there are areas in which there has to be news management and presentation. If we could all agree on the rules, that would be a happier way for us all to proceed. If we can unlock that in discussions, I hope that we can produce a more definitive paper; it is an area

which the Minister for Parliament may agree to discuss with this committee. We need, however, to get closer to a point of agreement and understanding before that would be a particularly fruitful exchange.

Current Work

The Convener: We thought that members should be advised on how things are going in relation to a number of the matters that have recently been discussed in committee. The paper that members have in front of them simply advises them of where things stand vis-à-vis parliamentary questions. There is a letter from the convener of the Subordinate Legislation Committee to explain what that committee is doing on work that primarily belongs to it but which is shared by us, as procedural matters are involved.

We hope to bring a response to Donald Gorrie's paper to a meeting soon, and there are other matters ticking away in the background, although the list on our information paper is not an exhaustive one. We will seek a response at an early date from the Finance Committee on some financial procedural matters that have come before the committee, and the chief executive has raised some issues about how we pass private bills. A considerable volume of work may be involved in that.

Unless there are questions on any of those matters, that is that for today. I thank members for their attendance.

Meeting closed at 10:42.

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