

PROCEDURES COMMITTEE

Tuesday 28 March 2000
(Morning)

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PROCEDURES COMMITTEE

5th 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)

Mr Dougal Carnegie

CLERK TEAM LEADER

John Patterson

SENIOR ASSISTANT CLERK

William Venters

ASSISTANT CLERK

Katherine Wright

LOCATION

Committee Room 4

Scottish Parliament

Procedures Committee

Tuesday 28 March 2000

(Morning)

[THE CONVENER *opened the meeting at 10:04*]

The Convener (Mr Murray Tosh): Good morning, everyone. We are slightly late, but we can get cracking—I think that everybody who is expected is here. I would like to start by welcoming Katherine Wright to her first meeting. She is our new assistant clerk, replacing Jim Johnston.

Remit

The Convener: The first item is the committee's remit. The substance of the issues paper is in the appendices—annexe A and annexe B. The matter at issue is the basis on which the committee will examine the administrative and constitutional matters that are added to its remit.

The first suggested option—members might think of further options—is that the committee has a full scope as described in annexe B, although we have agreed that essentially we would operate in a reactive manner if we received referrals from other agencies within the Parliament, including the Presiding Officer. In annexe A, the same procedure is set out, but it is defined more clearly. It is suggested that the Presiding Officer would be the filter through which constitutional or administrative issues would be referred to us for consideration.

Donald Gorrie (Central Scotland) (LD): With due respect to my esteemed former colleague, I am not sure that filters are necessary. Can we not be our own filter? If somebody comes up with a pretty silly idea, we can say that it is a silly idea and not pursue it. Is the concern that we would deal with things that are reserved matters or matters outwith our ken?

The Convener: I think so. Does the minister want to expand on what the concerns are?

The Deputy Minister for Parliament (Iain Smith): They relate more to the original concern about there not being a route for some issues to be discussed. It is more about the committee being a place to discuss things for which there was no other forum. As such, those matters would be emerging from another source, and would not be matters that the committee would discuss just for the sake of it.

One issue was about the House of Lords: it was felt that the Parliament perhaps needed an opportunity to consider some of the issues relating to its reform, but there was no particular place to refer the matter. The initial intention was to give the committee additional powers so that it could consider such matters if they were referred to it.

I do not think that there was ever an intention that the committee would be an open house, and would be able to consider any constitutional issues referred to it. That would be seen as widening its remit. The intention behind having a filter was not just to have a filter as such, but was more to have a natural source of the matters that would be referred—it would not be a filter to stop things coming to the committee.

Michael Russell (South of Scotland) (SNP): In principle, I am not opposed to a filtering mechanism. I accept the point made in the paper that having a filter for this committee would be unusual—but this is an unusual committee. It operates on behalf of the Parliament and is, to an extent, a housekeeping committee for the Parliament.

The question is what the proper filter or mechanism is. If we take the Presiding Officer out of the equation, the matter is about the committee acting on behalf of the Parliament, in examining the issues that come up.

Who, on behalf of the Parliament, should be referring such issues to the committee? The Presiding Officer represents one mechanism, but there is another: I do not think that one should bind the hands of individual members who have concerns about a given matter. Rather than discussing this in terms of being for or against a filter and then deciding whether the Presiding Officer or the Parliamentary Bureau should be the filter, it might be simpler to resolve the problem in this way. As shown in annexe A, the new paragraph 2 of rule 6.4 would state that the committee

“shall examine such matters . . . falling within — . . .

(b) paragraph 1(b) and (c) as may be referred to it by the Presiding Officer”.

We could add the words, “or requested by a member of the Parliament”. That would narrow it down; it would mean that we were not just sitting waiting for people to write to us. There could be a danger of members of the public petitioning the committee on a range of constitutional matters that were not our concern.

However, if the Presiding Officer alone were to refer something, that would be a blockage rather than a filter, if I can put it that way. We must be concerned to give members rights within this Parliament. Members could refer matters to us; we would then decide whether to take them on. To a

greater or lesser extent, the committee is a political committee, as are all committees of the Parliament. Therefore, a referral to us would carry a political weight on which we could then decide.

I would like the instigation to come not just from the Presiding Officer but from members of the Parliament. Paragraph 2(b) would be acceptable to me with such an addition.

The Convener: One way in which matters frequently come from members to the committee is through something happening in the chamber, which the Presiding Officer then refers to us. Sometimes, it has been the member who has referred something to the committee, usually if they have not agreed with the Presiding Officer. What Mike Russell has suggested would certainly extend and acknowledge the rights of members.

I am not sure how Iain Smith would react to that. It might throw open the possibility that the committee would be invited to consider anything or absolutely everything. It might recall the fear of our getting bogged down in matters that are not appropriate for us to consider. It would throw back to us the initiative and responsibility to filter such matters ourselves.

Iain Smith: Making that addition to paragraph 2(b) probably would not achieve the intention expressed in our previous discussion on the remit, which concluded that the committee should be able to discuss matters that the Parliament feels should be considered. It is a question of the Presiding Officer acting on behalf of the Parliament in this case, rather than on behalf of individual members of the Parliament.

The Convener: The point that Mike Russell made is obviously valid, but if a member wants the Procedures Committee to examine something, it is almost like a point of order when he or she says, "Can you refer that matter to the Procedures Committee, Presiding Officer?"

Michael Russell: That would be one route to take, but suppose a member did so and the Presiding Officer said that he did not want to refer the matter. I think that a member would then have a right to approach this committee—but that does not place an obligation on the committee to accept the member's request. The committee might say that the Presiding Officer has refused to refer the matter, or it might ask whether the matter has gone to the Presiding Officer and whether he wants the committee to consider it.

At least that would give the member the right to approach the committee, which paragraph 2 currently excludes. I would be very nervous about excluding the rights of members of this Parliament; to maintain that right is important. The weight that we gave to a referral from a member of the Parliament as opposed to one from the Presiding

Officer would be a moot point—but I do not think that we should take such a right away.

The right would exist for all other matters that came before the committee, so we would be excluding a significant right were we to follow the current wording.

Janis Hughes (Glasgow Rutherglen) (Lab): To return to our previous discussion on the matter, we talked about paragraph 1(c), which mentions

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

Our previous discussion reflected the concern about widening our remit in such a way that we could get into territory that perhaps we should not be treading in. We suggested a filter—who that filter would be was up for discussion—because someone could then say that a matter either should be discussed by the Procedures Committee or should go elsewhere if that was felt to be appropriate.

I still have that concern. I feel that if we open this up and say that anyone can approach the Procedures Committee with anything that they want, and that the committee will then decide on it, that is treading into that dangerous territory. I would be worried about the legal aspects—I do not know whether the clerks can clarify whether we have taken any legal advice. I still have the concern that, if there was not a filter to decide whether a matter was in the remit of the Procedures Committee, and therefore whether it should be referred to us, we would be treading in territory where we would not want to tread.

John Patterson (Clerk Team Leader): The paper before the committee was written with legal advice.

Janis Hughes: Therefore, there would not be any legal implications if we took on anything that came to the committee, as long as it fell under the general headings. "Administrative matter" is pretty general.

John Patterson *indicated agreement.*

Donald Gorrie: Looking at annexe A, I think that one could distinguish between paragraph 1(a) and paragraph 1(b) and (c). I think that this is what Mike Russell was saying, although I did not fully follow him. Paragraph 2(a) should be broadened out, but I am happy not to broaden out paragraph 2(b). If other, external matters are routed via the Presiding Officer, that is fine. However, on an internal parliamentary matter, a single member should have the right to say to the committee that it should be considered. Paragraph 2(a) should end with words to the effect of, "may be referred to it by the Parliament, by another committee or by another member".

Members should have a chance to raise any matter relating to the conduct of the Parliament. A route for external matters—if it is not a filter—via the Presiding Officer would be fair enough.

10:15

Michael Russell: The ruling that Sir David Steel gave on Wednesday in response to my request for him to refer a matter to the Procedures Committee was, essentially, that any member or member of the Procedures Committee could raise an issue with the Procedures Committee. That ruling should be understood. Donald Gorrie is right and, although annexe A does not specifically refer to it, it is understood that a point of procedure can be referred to us by a member—there is the example of Dennis Canavan's letter, which we discussed at the previous meeting

The Convener: The wording

“as it may determine appropriate”

is important. We have conducted our business on the basis that any matter referred to the committee is appropriate, and have not turned away any approach that a member has made. If that is how we understand what is appropriate, the rights of members will be protected.

The problem arises in relation to the extension of the remit into the areas that are outlined in paragraph 1(b) and (c) and the question whether members should be given the right to raise matters that they cannot raise at the moment because there is no forum in which they can raise constitutional matters. We might be put in the position of having to turn down members who raise matters that we do not wish, or feel that it is appropriate, to pursue. Such matters would go beyond the day-to-day working of the Parliament. For example, one can imagine a Scottish National party member raising a matter of profound significance to the constitutional settlement.

Michael Russell: As we often do.

The Convener: The committee must be able to point out that its purpose is not to rewrite the whole Scotland Act 1998.

Michael Russell: Exactly; the committee can do that. The same potential exists for the abuse of standing orders. One can imagine ways of raising all sorts of things, but people do not abuse standing orders in that way. [*Interruption.*] Despite what Andy Kerr is indicating, members do not do that. Members could raise matters with the committee, and the committee could reply that it is not part of its job to adjudicate on them. I am concerned that a system of referral through the Presiding Officer does not establish the full rights of members.

The Convener: It seems that we have accepted that we are working on annexe A. The difference of opinion arises in relation to the filter. The question is whether the Presiding Officer should act as the channel through which matters in the areas that are outlined in paragraph 1(b) and (c) might be raised, or whether any member should have the right to raise such matters.

Michael Russell: I am happy to formalise: I suggest that—subject to a legal opinion from John Patterson—we add to paragraph 2(b), which says:

“paragraph 1(b) and (c) as may be referred to it by the Presiding Officer,”

the words “or any member”.

The Convener: That is a suggestion. Are there any other views?

In the absence of any other views, Michael Russell's proposal has been accepted by the committee.

Amendments to Motions (Meetings of the Parliament)

The Convener: Item 2 is a report on a letter from Mr Carnegie, who is here this morning. Members will have read the report and Mr Carnegie's letter. If, once we have discussed the matter, Mr Carnegie wishes to participate in the meeting, he will be welcome to do so, but it is not obligatory that he should.

The question is whether there is a need to change standing orders to redefine amendments or to accommodate alternative types of motion in Parliament: should there be counter-motions rather than amendments?

Michael Russell: Politicians are incorrigible and will make their point, no matter what. It would not be helpful to make it more difficult for them to do that, by making it procedurally more difficult to lodge motions and amendments and by policing those more rigorously. If a motion with which one disagrees is lodged, the right thing to do is to move a direct negative or to try to amend it in such a way that one finds some common ground between oneself and the movers—even if that requires only a millimetre movement in the motion.

On this point, the standing orders are very similar to those that apply in almost all Parliaments, and in political parties, school debating societies and anywhere that debate takes place. Therefore, I do not think that there is an urgent need to make the way in which we operate more restrictive. With respect to Mr Carnegie, I do not think that his suggestion would help debate in the Parliament, because, inevitably, we would find ways round any restriction.

Mr Gil Paterson (Central Scotland) (SNP): One might agree with the whole of a motion, or one might agree only within narrow parameters. The suggestion means that one would have to lodge a definitive motion rather than one that was flexible. A very small change might make a motion acceptable—Mike Russell articulated that point better than I can. I am against change on this point.

Janis Hughes: I sympathise with Mr Carnegie's position. As a trade unionist, I come from the same school of thought as he does. I was always taught that amendments should not change the spirit of the motion—that they should add to the motion without making substantial alterations. However, I accept Mike Russell's point about the present practice being the norm in Parliaments elsewhere. The essence of a debate in Parliament is different from that of a debate at, for example, a trade union conference. I agree with the ethos that an amendment in Parliament is regarded as an

alternative proposition; it is a counter-motion, which allows both sides of the argument to be debated, rather than an amendment changing one part of a motion. The rules that apply in other forums might be appropriate there, but our current practice is right for this forum and I do not recommend any changes.

Donald Gorrie: As a matter of semantics, what we have should be described as counter-motions. Following on from Janis Hughes's point, debate at a meeting of a body such as a trade union is trying to establish the policy of the trade union; if the issue is, say, blinds, one's amendment must be on that issue. In Parliament, members might know that they will not win the vote, but they wish to stake out the policy of their party—that is why amendments at Westminster and in other Parliaments will say something like, "delete all after 'believes'". Our practice is correct and should be retained, although we should probably call amendments counter-motions.

The Convener: I think that there is general agreement on the matter. I thank Mr Carnegie for raising it. He has focused our minds on what we are doing. I am glad that he has attended regularly—I hope that he enjoys our meetings and will continue to attend.

Mr Dougal Carnegie: It was not my intention to restrict debate in Parliament. It was a matter of semantics. I thought that it was unfair to describe many amendments as such, as they change the wording straight after the first three or four words. A motion might state that the Parliament recommends, proposes, or notes something and the amendment will delete everything after "notes" and insert completely new wording. I agree that often that new wording is relevant to the motion, but in some cases there is so much disagreement in the wording that it amounts to a counter-motion.

I agree that Parliament is a particular forum. I was pleased to receive a reply from the committee clerk, which explained your thinking. I would not want to restrict debate and am happy with the answer that I received. The type of amendments that are used certainly provoke debate and debate has never suffered because of the small semantic point that I raised.

The Convener: We agree that you are right in principle. You are now a member of a small and select band of people who understand amendments and counter-motions.

Michael Russell: The committee should thank Mr Carnegie for drawing the matter to our attention. Committees are meant to be open and accessible. It is encouraging that as part of the parliamentary process someone can sit at the committee table and take issue with us on a question of semantics or procedure.

Committee Agendas

The Convener: The third item on the agenda, which is my letter to Sir David Steel following the discussion at our previous meeting on how committee agendas should be composed, is simply for information.

Michael Russell: I am sorry to delay you, convener, but an important point arises out of that issue. Discussion on Dennis Canavan's letter eventually focused on the way in which a ruling from the chair could be challenged. An element of that question was highlighted by the points of order that were raised in the chamber about the Spencely report.

I do not want to address that substantive issue, but the procedural issue that arises out of those points of order—perhaps John Patterson could circulate them to members—is how members can challenge a decision of the corporate body in Parliament. The corporate body is elected by the Parliament, as its representative, to make certain decisions. If there is disagreement, is the proper procedure to challenge the decision in the chamber or to challenge it in writing when the minutes of the meeting of the corporate body are distributed, which can be a considerable time after the meeting? Should the proper procedure be, as I suggested on Thursday afternoon, to seek permission to move a motion without notice, or to lodge a motion taking issue with a decision of the corporate body—a motion without notice would be an emergency action?

The chair of the corporate body is the Presiding Officer, so when one challenges the actions of the corporate body through the chair, one challenges the Presiding Officer's interpretation of what took place and how procedure is followed. This is the first time that such a case has arisen, and we should consider the matter seriously. Perhaps in the first instance we should seek the views of the corporate body and the Presiding Officer. It would be useful to have a procedure in case the situation arises again.

The Convener: That point is obviously only tangentially related to the matter that is covered by this letter, but it is essentially the same point. It is a question of how matters are put on the agenda for discussion. I accept that, although it has arisen in relation to the Spencely report, it is a general point about how members might question what the corporate body is doing, which is an appropriate matter for us to consider.

Iain Smith: I understand the points that Mike Russell has made. It is important to remember that the corporate body is a separate legal entity. The Scotland Act 1998 sets out a specific function and

remit for the corporate body. I think that once it is appointed it has a legal status that is separate to that of the Parliament, to which it is ultimately accountable. For any discussion on challenges to the decisions of the corporate body, we would have to have a clear legal note about its powers and about the Parliament's rights to challenge its decisions.

Michael Russell: I entirely accept that point. A problem that we face is how we ensure that the corporate body is accountable in practice to Parliament in view of the status of the corporate body—that term is a tautology—as the legal entity of the Parliament. It is important to work that difficulty out. We need a paper from the clerks on the matter and we need a discussion.

The Convener: I agree, although you will accept that that will take time. The whole debate that sparked this discussion will have moved on by the time we examine the issue.

10:30

Michael Russell: It is not about that particular debate.

The Convener: That is probably a good thing, because we will be able to examine the procedural point separately from the policy matter.

Janis Hughes: I do not have a problem with that. We probably need to address the issue. However, we also need to address the number of points of order that are being raised. Many of us in the chamber are fed up with points of order being raised that are not points of order. Last week, decision time was delayed by 15 minutes because of the number of points of order, none of which was valid. The Presiding Officer agreed to allow some leeway only because it was such an important subject. We need to incorporate that issue into any paper that comes before us.

The Convener: Having indulged Mike Russell, I felt that I should indulge Janis Hughes on that point, but we are taking the discussion a wee bit far away from the spirit of my letter on the setting of committee agendas.

Mr Paterson: It is not possible to come up with a form of words on points of order. It is impossible to tell which points will be raised until someone is on his or her feet. It is up to the Presiding Officer to decide. I do not think that we can rule on the matter.

The Convener: That is right. We are not capable of resolving the issue.

Michael Russell: The Presiding Officer is entitled to be severe with people who abuse the system, but people will always abuse it.

Mr Paterson: He is very practised at that.

Michael Russell: I have seen our convener do it.

Janis Hughes: I disagree with Gil Paterson. This is not just a question of the Presiding Officer making a ruling; it is about members taking collective responsibility and raising only points of order that are valid. We all know what those are.

Michael Russell: That is a piece of political hopefulness.

Janis Hughes: I am ever the optimist.

Michael Russell: We all admire that, but it will not happen.

The Convener: In the general spirit of amity that exists around the table, I have allowed this discussion to take place. It was not on the agenda and it is out of order. We should probably conclude at this point.

I see that Michael Russell wants to intervene. Is it a relevant point?

Michael Russell: You have just glowered at me. It is a pity that we do not have a visual record of the meeting, because people would know that I am now pushing my luck.

The Convener: When did you ever do anything else?

Michael Russell: Not at all.

I want to raise one final point. I give notice that I will be writing to you and the clerk to ask the committee to consider another point of order that was raised in the chamber last week, on the serious matter of entitlement to emergency statements. Members have great difficulty in getting emergency questions and emergency debates. We have discussed the matter before. Last week's business raises the issue of emergency statements. Once you receive the letter, convener, I hope that the matter will be scheduled for discussion by the committee.

The Convener: We will include the matter in our on-going work. There is a file on that topic already. Your letter will simply be added to the extensive input that we have received.

Thank you for your attendance, ladies and gentlemen.

Meeting closed at 10:32.

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