PROCEDURES COMMITTEE

Tuesday 7 November 2000
(*Morning*)

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PROCEDURES COMMITTEE
11th 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)
Kay Ullrich (West of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Christine Grahame (South of Scotland) (SNP)
Ken Hughes (Scottish Parliament Directorate of Clerking and Reporting)
Carol McCracken (Director of Clerking and Reporting, Scottish Parliament)
Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting)
Alasdair Rankin (Scottish Parliament Directorate of Clerking and Reporting)
Elizabeth Watson (Scottish Parliament Directorate of Clerking and Reporting)

CLERK TEAM LEADER

John Patterson

SENIOR ASSISTANT CLERK

Mark MacPherson

ASSISTANT CLERK

Katherine Wright

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 7 November 2000

(*Morning*)

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

The Convener (Mr Murray Tosh): Good morning, ladies and gentlemen. We will make a start. I apologise for our slight lateness—the pre-meeting overran. We have a quorum and we have some apologies. Michael Russell has resigned from the committee and will be replaced by Kay Ullrich, who cannot attend today—I am not sure whether that constitutes an apology. We also have an apology from Gil Paterson and I understand that Andy Kerr will be late.

I must ask the committee whether it agrees to take item 8 in private. The item concerns the continuing review of the principles of the consultative steering group and may involve the discussion of named individuals. I propose that we discuss the issue in private, as we did before. Is that agreed?

Members *indicated agreement.*

The Convener: My only other duty at the start of the meeting is to welcome members of Public Administration International, who have given the committee an unusually large audience this morning.

Publication of Rejected Amendments

The Convener: The next item on the agenda is the publication of rejected amendments. I think that Andrew Mylne will join us for the discussion. Concern about the issue is based on several disagreements—or rather, discussions—in the chamber about the selection and non-selection of relevant amendments. Christine Grahame has written to us on the matter and we will start by hearing from her. We will then ask Mr Mylne to comment before we discuss the proposals.

Christine Grahame (South of Scotland) (SNP): It would be appropriate to the Parliament's spirit of openness to assist members and the public by publishing in the business bulletin amendments deemed inadmissible at stages 2 and 3. The segment for inadmissible amendments would refer to the paragraph of standing orders under which the amendments were rejected.

It was helpful to read the comparisons with other legislatures in the briefing paper, which says that in Westminster

"all amendments to Bills are printed, regardless of their being"

inadmissible, which is called "orderly" there. In the Australian legislature,

"the Chair has no role in selecting which amendments (to bills or motions)"

are taken. As members know, in the Scottish Parliament, the convener of the committee makes the selection at stage 2 and the Presiding Officer makes the selection at stage 3.

I am attracted to the Canadian model. Paragraph 13 of the briefing paper says that the Canadian legislature

"decided only recently to *publish* all amendments, regardless of their admissibility."

The paper says:

"The decision was taken following a recommendation by the Standing Committee on Procedure and House Affairs '. . . that Members could benefit from this (publication of all amendments) in that it would show the work that they have done and allow them to put on the record amendments which might not be procedurally acceptable. It might also provide greater direction to Members and their staff if they could see what kinds of amendments have been ruled out of order.'"

That is a commonsense way of proceeding.

At the moment, members are discontent. When matters are raised in the chamber, we do not realise that members have tried to lodge amendments, because amendments that were rejected as inadmissible have never seen the light of day. That is most unsatisfactory.

I do not advocate an appeals procedure, because that might cause problems for conveners and the Presiding Officer. There might be another way. In the Canadian model,

"members do occasionally seek clarification or elaboration of the reasons behind a Speaker's decision however and may also, by explaining their view of the intent or nature of an amendment, seek to have the Speaker reconsider a decision."

That device might be useful. The Presiding Officer could tell a member why he was going to reject an amendment as inadmissible and give that member an opportunity of discussing the matter prior to publication. If the amendment were still ruled inadmissible, at least it would be published with reasons.

I would like standing orders to be amended, but the guidance that is issued is also important. The guidance says that an amendment that has been fully debated and put to a vote at stage 2 may not be admitted at stage 3 for that reason. I feel that standing orders should refer to that mechanism. If I see that an amendment of mine will not be

accepted at stage 2, and I wish to proceed with it at stage 3, I do not move the amendment, or I seek leave to withdraw it. However, it is my understanding that an amendment that I do not want to proceed with because I want to debate it at stage 3 could be moved by another member and put to the vote at stage 2, which might make the Presiding Officer regard it as inadmissible at stage 3.

The Convener: The Presiding Officer might take that into account in making his decision. However, you are broadening the issue a wee bit beyond the paper that is before us today.

Christine Grahame: I raise that because the guidance is now substantial and affects the way in which the Presiding Officer accepts amendments.

The Convener: This is a bit like legislation: we put the bare bones of the legislation in the bill and elaborate in guidance. The standing orders have to operate in the same way, in that there has to be some elaboration beyond the specification we would want in the standing orders.

Christine Grahame: My substantive point is that inadmissible amendments should be published with reference to the standing order that has been applied—for example, it should be stated if the amendment was deemed not to be in a proper form.

My second point is that the standing orders should at least refer members to the appropriate section in the guidance. I do not want to malign any members, but some are not aware of the weight and balance that the Presiding Officer—

The Convener: Do the relevant standing orders currently refer to the guidance?

Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting): No.

The Convener: That might be a legitimate consideration, especially if the guidance is an important part of explaining to members how the system works. Just as bills refer to ministerial guidance, it might be appropriate for the standing orders to refer to guidance. However, that is something that we can discuss.

Christine, are you are talking about our adopting something similar to the Canadian system? I do not want to misunderstand you, but I think that you quoted from paragraph 13 and referred to the procedure mentioned in paragraph 14.

Christine Grahame: Yes.

The Convener: I think that you also said that you accepted what is, in effect, in the first sentence in paragraph 14: that this should not provide a mechanism to appeal a ruling to the chamber or to challenge the Presiding Officer's authority directly.

Christine Grahame: That is correct. I would be content at this stage if the Procedures Committee were to take the view that it would like the standing orders to be amended so as to allow for the publication of inadmissible amendments. We could see how that resonates among members—to what extent it alleviates any sense of unfairness and how far it deals with the feeling that things are not being explained. We could also see to what extent members are unaware of amendments that have been lodged. The practice could also act as a discipline on members. As is said in relation to the Canadian model, nobody wants all the world to see daft or badly drafted amendments.

The Convener: That is helpful clarification. Is there anything that you would like to offer to lead us through this discussion, Andrew?

Andrew Mylne: I can certainly try. There is one point on which I am not yet entirely clear. You will be aware that there is an important distinction between admissibility—which applies at stages 2 and 3—and selection, which is a separate threshold, so to speak, and applies only at stage 3. I am not clear whether what is being proposed is that amendments that are rejected on either of those grounds are printed or only those that are rejected on the ground of inadmissibility.

Christine Grahame: That is a fair point; I had not intended to deal with that. If an amendment were rejected despite the fact that the Presiding Officer had decided that it passed the test for admissibility, it would be helpful and reasonable if it was explained to members that the amendment was admissible but had been rejected for whatever reason. I do not know whether we need to go so far as for that to be published, nor do I know what the practice is—whether the Presiding Officer writes to people or contacts them to advise.

Andrew Mylne: One relevant point is that, when the selection takes place, the amendments from which the Presiding Officer selects have already been printed in the business bulletin. If they are admissible, they are printed when they are first lodged.

Christine Grahame: I know.

Andrew Mylne: I am not sure what would be achieved by printing them a second time.

The Convener: So the position at the moment is that an inadmissible amendment at either stage is neither printed nor referred to publicly again. It disappears into a great black hole.

Andrew Mylne: That is correct.

The Convener: At stage 3, admissible amendments are all printed in the business bulletin, but the marshalled amendments—those selected—do not identify those that have been rejected or the reasons for that. Are you telling us

that the business bulletin should contain the admissible amendments that have not been selected, or all amendments, whether or not they are admissible?

10:15

Christine Grahame: What happens to amendments that are admissible at stage 3 but have not made it to the marshalled list? I seek clarification from Andrew Mylne: does the Presiding Officer inform members why their amendments have not been placed on the marshalled list?

Andrew Mylne: No. All that happens is that the Presiding Officer agrees which amendments are to go forward to the marshalled list, which is then printed containing the selected amendments. It is possible for anyone who has been following the progress of the bill and who has seen the amendments that have been printed in the business bulletin simply to work out which ones have not made it on to the marshalled list.

The Convener: What Christine Grahame is getting at is that, if an amendment is not selected, the Presiding Officer will not, from what you have said, come back and say, "Sorry, your amendment has not been selected and here is the reason why." If I contact him and say, "Why wasn't my amendment selected?" will he give me an explanation?

Andrew Mylne: That would be a matter for the Presiding Officer.

The Convener: But what does he do in practice?

Andrew Mylne: In practice, I am not sure that he is usually asked. However, I am told that he does offer an explanation.

The Convener: That is important, because members should have some kind of feedback. We are discussing how explicit and how structured that feedback should be.

Andrew Mylne: There are a couple of other points, one of which is a point of clarification. Westminster has been mentioned—it should be borne in mind that there are two Houses at Westminster. It is true that, in the House of Commons, amendments are printed before it is decided which ones are to be selected. That includes some that are rejected on the ground that would be regarded in the Scottish Parliament as admissibility—they are not selected because they are not orderly. In the House of Lords, the process is different—only admissible amendments are printed, so the process there is more comparable to the one here.

The reason for the House of Commons system is probably that, as it has a selection of amendments at committee stage—equivalent to our stage 2—it makes sense to build the two filters, so to speak, into one. In other words, when the selection is taking place, some of the amendments are not selected because they are—in our terms—inadmissible. We have here only one filter—admissibility, which is decided on at stage 2. Some caution is required in making a comparison to Westminster.

The suggestion of printing in the business bulletin amendments that are not admissible could present one or two problems. There is the question of what the business bulletin is for. If we consider the various places where standing orders provide for things to be printed in the business bulletin, we see that the theme is that the business bulletin exists to provide information to members on the items of business for the Parliament. An amendment that has been rejected is not, by definition, an item of business for the Parliament. I am not sure on what basis it could be included in the business bulletin alongside matters that are to be considered or discussed.

The proposal raises some practical problems. Some of the cases that have given rise to this suggestion may have involved a decision on admissibility that was borderline or relatively close to where the line is drawn. However, there will also be cases where an amendment is rejected because it is clearly inadmissible—the amendment may be entirely irrelevant to the bill.

The Convener: What would the clerks do in the case of a decision that was marginal? Would they say to the member, "You have done something that is not quite technically competent, but you can rework it", or, "You have strayed into an area that is not within the competence of the bill but you can approach it in another way"? Would a member get that sort of assistance from the clerks?

Andrew Mylne: Absolutely. We see our role as very much being to assist members to lodge amendments that are workable. We would always look at how we could make an amendment admissible, if that was possible. Obviously, that might involve discussions with the member about options for achieving that. However, there will be cases where we think that the thrust of what the member is trying to achieve is inadmissible. If the case were clear, we would advise the member directly. Sometimes they take that advice without any further recourse. However, if there were anything questionable, the amendment would go to the convener or the Presiding Officer as the person with the formal right to decide. We would then advise the convener or the Presiding Officer accordingly.

The Convener: Are there many inadmissible amendments?

Andrew Mylne: No, they are unusual.

The Convener: I realise that this might be invidious if I push it too far but, in your judgment, do inadmissible amendments generally stem from the member not appreciating the thrust of the bill and not seeing that there is an inconsistency, or is there evidence of showboating—lodging an amendment for posturing? You do not need to refer to any specific individuals or amendments.

Andrew Mylne: I would not want to go too far in suggesting an answer to that question. Often, amendments arrive in written form, so it is difficult to assess the motivation behind them—I am not sure that it would be appropriate for me to try. There have been cases—this does not happen often—in which amendments have been proposed that were, in my view, far from admissible. If the rules were to be changed to allow inadmissible amendments to be printed in some form, that would have to apply across the board, which could give inappropriate prominence to amendments that, whatever merits they had in their own terms, did not have merit in relation to the bill. However, I am a little unclear about the purpose of printing them, unless it were done to lead to pressure to reconsider decisions about admissibility, for example.

Donald Gorrie (Central Scotland) (LD): One purpose of printing inadmissible amendments would be for those members of the public who are interested in the subject but who are not conversant with the procedure to see that, for example, an amendment that all fizzy water bottles should be blue and not green had been lodged but could not be considered. Otherwise, they might think, perversely, that the issue had not been addressed at all. In the interests of transparency and explaining to the public what we are doing, it would be helpful if inadmissible amendments were published. As for prominence, an appendix to the business bulletin would not rival J K Rowling in the publicity stakes.

If there are not too many amendments, it would not be a big deal to print them and to say under which standing order they have been refused. It would be helpful if inadmissible amendments were printed. Christine Grahame's point that that might be a tutorial for those of us who are labouring on future amendments is relevant.

The process for the selection of admissible amendments should be much clearer. That is not an issue at stage 2, because there is no selection. However, "Guidance on Public Bills" is not clear on what happens at stage 3. I have felt at Westminster that the tactic of discussing whether one will press an amendment to a vote in committee, because that might prejudice the chance of getting a vote on it at report, is awful. I am not interested in that sort of democracy and I do not want to import it here.

I accept that, if I move an amendment to the Transport (Scotland) Bill—on which I am working at the moment—and I lose the vote on it by 10 votes to one, it is reasonable that I do not get another go at stage 3. However, if I lose by six votes to three, it is reasonable that I should have a second shot. Annexe D to the report, on the selection of amendments, is prejudiced against amendments being rediscussed.

The report suggests that, as the Presiding Officer has to get business through, we have to do things in a rush. That is not what we are about. It is what the Executive is about—the Executive is all for rushing everything through—but I am against it. A slightly more leisurely approach, involving the consideration of more amendments at stage 3, would conform to my idea of democracy. I would like the procedures and the guidance to be tailored in that direction.

Christine Grahame: I agree with Andrew Mylne about preliminary discussions; I have had them with him about amendments that I have tried to lodge. That could still proceed. If the member comes back and says that they still wish the amendment to be lodged, let it be inadmissible, but let it be printed. If it is being said that there may be an abuse of process to make political points—such as by using an extreme version of an amendment for something that is not proper—it is open to the Presiding Officer to have a word with the member. There is an element of self-discipline in lodging amendments and it will soon be known if members are being naughty with the process.

With respect, borderline amendments will put clerks, advisers to conveners and the Presiding Officer on their mettle. If an amendment is on the borderline, we can all see which way the guillotine has fallen in the decision on whether it is admissible or inadmissible. That is important.

The function of the business bulletin was mentioned. There is information in the business bulletin about the progress of bills, for example, so I do not agree that inadmissible amendments fall outwith the kind of item that ought to be published in the bulletin.

To return to the Canadian model, the footnote to paragraph 13 of the report states that we do not have

"examples of the level of detail which might be provided".

It would be interesting to see what has happened with that model. I am not suggesting that we need much detail; we just need to know that an amendment is inadmissible and the relevant standing order.

I echo everything that Donald Gorrie said about selection. I accept that there may be problems

with stage 2, but I would like the reason why admissible amendments are not selected at stage 3 to be published.

The Convener: We are now redebating the issues.

Janis Hughes (Glasgow Rutherglen) (Lab): I do not understand why there is a great need for inadmissible amendments to be published. If the Presiding Officer deems an amendment inadmissible under the guidelines, I do not see why, apart from for the purpose of undermining the Presiding Officer's authority, one would want such amendments to be printed.

As for admissible amendments that are not selected, we elected the Presiding Officer knowing that his authority would be brought to bear on such issues. A public display of undermining his authority would not be helpful in the chamber. It is always open to an individual, if clarification is needed, to seek advice from the Presiding Officer on why an amendment was not selected or why it was deemed inadmissible. I see no merit in pushing to print inadmissible amendments and to reprint admissible amendments.

There may be few such amendments at the moment but, if it is decided to print them, the system would be open to abuse, with severe resource implications. I do not know how many amendments we are talking about, but there may be merit in analysing amendments that have been deemed inadmissible or have not been selected to determine what we can learn. We have to be careful that we are not challenging the authority of the Presiding Officer. The current system should remain.

10:30

The Convener: We are all over the shop—I disagree with elements both of what Donald Gorrie said and of what Janis Hughes said. There is no reason to print inadmissible amendments; if the amendment is inadmissible, that is it—off it goes. If anyone wants to know that members have proposed an amendment, they could ask and members would tell them, just as members might inform legions of constituents that they have raised issues one way or another, through questions or motions, for example. I entirely accept the point that, although the clerks will work hard to make a borderline case acceptable, if an amendment is inadmissible and cannot be made admissible, it should stay off the pitch.

I am much more interested in the argument about the non-selection of admissible amendments. Like Janis Hughes, I am concerned about challenges to the authority of the chair on that matter. It is not healthy to get caught up in disputes of that nature in the chamber. I am therefore tempted to think that there might be some merit in considering a formal response from the Presiding Officer to the members whose admissible amendments have not been selected, so that they know the reasons for the decision.

I am not clear about whether that should be done through publication in the business bulletin or by some other mechanism. A simple explanation from the Presiding Officer, such as a letter, might be the way to do it. The matter merits further consideration and we may need to take evidence—personally or in writing—from the Presiding Officer himself. Janis Hughes's idea of sampling some case studies is a good one, although the clerks will be relieved to know that I am not suggesting an exhaustive trawl through all our consideration of legislation. A sample would allow us to see what sort of grounds are given for rejecting amendments, so that we have a proper understanding of the situation.

The thrust of the report is to suggest that, if we want to consider the matter, we should do so in the round as part of our study of the legislative process. If the committee is agreeable, that is what I propose. However, I emphasise that the outcome should be to find a system that is fair to members and that does not lead to confrontation and challenges to the chair in the chamber over the selection of amendments at stage 3.

Nevertheless, we are talking about a legitimate principle. If are building a transparent and accountable Parliament, members are entitled to a proper explanation of why an admissible amendment has not been selected for debate. Our remaining work should focus on the details of that.

Donald Gorrie: On the question of printing the inadmissible amendments, I would clearly lose by 2:1. I like to stick to my guns, but I am not fussy at the moment. Janis Hughes's suggestion that there should be some research was helpful, and I am glad that you support that idea, convener.

For admissible but unchosen amendments, would it be possible to add, at the end of the marshalled list, "The following amendments were not chosen", with their numbers? That would make it easier to trace amendments through the system. If you were particularly interested in amendment 49, for example, you would be able to see that it had not been chosen. That suggestion would not involve heaps of paper and lots of work and it could be done while we are still researching other aspects of the matter.

I entirely accept that the decision of the Presiding Officer or a committee convener is final, but Parliament has the power to give guidance. We should consider altering the guidance on the selection of amendments so as to allow more favourable consideration of a bill. The

presupposition at stage 3 should be that an amendment should be taken, rather than that it should not be taken, which underlies much of what is written in parts 4.9 and 4.10 of "Guidance on Public Bills".

Andrew Mylne: It might be helpful to clarify the guidance on selection. The purpose of that guidance is to make known the general criteria that the Presiding Officer has agreed to apply in every case of selection. Under standing orders, he has the power to select. If there were to be any review of the guidance under current procedures, that would be a matter for the Presiding Officer.

There might be a little lack of clarity about what the guidance currently provides for. It has been suggested that an amendment on which there has been a division at stage 2 is less likely to be selected. The wording may not be quite as clear as it might be, but that is not what it is intended to provide for. Annexe D states:

"The fact that an amendment was disagreed to on division at Stage 2 is less important than the nature of the issue raised, and the overall level of support expressed in debate should be the guide."

To the extent to which clerks provide advice to the Presiding Officer on selection, that factor would be very much to the fore. It would not necessarily be to the advantage of a member to have avoided a division at stage 2. If an amendment was debated at that stage and it was clear from the debate that it had little support, that might have the same effect as if it had been defeated fair and square on division.

I should also say that the Presiding Officer, in making selections, aims to be as generous as he can reasonably be. It is not for me to say how he reaches his decisions, but that is the impression that I get.

Christine Grahame: I was not challenging the Presiding Officer or committee conveners, and I quite concur on that point. That is why I have moved away from the idea of appeals. However, I think that part of the problem is simply not being told why something has happened. If we are moving towards a procedure by which the Presiding Officer could intimate to the member why an amendment, although admissible, has not been selected, could the committee also consider whether a convener or the Presiding Officer could advise a member as to why an amendment was not admissible? It would not be published, but at least members could be content with an explanation.

Sometimes that matter has been raised in committee. On the Justice and Home Affairs Committee, a member challenged the convener about why an amendment had been deemed inadmissible, but she was under no obligation to explain. I thought that that was inappropriate. It would have been better if there had been a formal way of explaining the reasons behind that ruling. I know that it can be done informally at the moment, but we should regularise it. Perhaps the convener could simply write to a member to say why their amendment had not been admitted. That would not be in the public domain, but at least the member would know.

The Convener: That is a reasonable suggestion, which we shall consider with all the comments that we have heard. We need say no more at the moment on the matter. We have indicated that further work will be done on it, with the emphasis being on trying to bring greater clarity to all the parties involved in the process as to how those decisions are made. In the context of those discussions, we shall examine more closely what formal, published lists there might be of non-selected amendments. Without prejudging whether that will happen, we shall explore the issues more thoroughly and take evidence from the Presiding Officer, the business managers, their deputies and all the usual suspects.

Substitution

The Convener: We took quite a long time over that item, and we shall probably take quite a long time discussing the next paper, which is about substitution on committees in the Parliament. Elizabeth Watson, the head of the committee office, who has been sitting quietly and patiently in the wings, will join us for this item.

As members are aware, a fair amount of discussion is going on around the Parliament at the moment about the committee structure and committee personnel. We must appreciate that no decisions have yet been made and that it is not appropriate for us to make those decisions. A much wider constituency is involved. The role of the Procedures Committee will be to review the changes in the standing orders. None the less, a number of issues have been flagged up for comment in paragraph 43 of the paper, and it would be reasonable for us to express our opinions on how we see those matters operating. We shall feed those opinions back to the Parliamentary Bureau and to the conveners group and the party groups, where the debate will continue. At present, however, we are not in a position to make any decisions.

Do you have any opening comments about the paper, Elizabeth, before we turn to the specific areas on which views are sought?

Elizabeth Watson (Scottish Parliament Directorate of Clerking and Reporting): The paper sets out quite clearly the areas that the committee is invited to address. From a purely administrative point of view, my main interest is to ensure that any arrangements that are put in place are clear and easily operated, so that there is never any dubiety as to whether someone is simply attending a meeting or whether they are there as a substitute. The arrangements should be flexible but clear.

The Convener: The views of committee members are sought on the details about the substitution of members as outlined in paragraph 43 of the paper. The first principle to discuss is whether there will be a system of substitution of members.

Donald Gorrie: I find the issue quite difficult. The strength of the committee system is that committee members can build up a knowledge of the issues and can sensibly contribute to discussions. Any incomer—no matter how bright—will not have such a background.

That said, convener, you raised the point of what happens when members are expected to be in two places at once. On balance, I would accept a system of substitution, although it would be very unfortunate if that system became loose and members felt that they could send someone else to a meeting for whatever reason. As a result, any system of substitution should have tight criteria.

The Convener: That is pretty much my own view.

Janis Hughes: I more or less agree with Donald Gorrie. The continuing restructuring of committees, which we all hope will be finished soon, should reduce the need for substitutes as it will reduce individual members' committee commitments. I hope that that will mean that members will not have to be in two places at once, as so often happens at the moment. That said, there should still be a system of substitution although, as Donald Gorrie pointed out, it needs to be stringent and we must be very clear about the parameters within which it would work.

The Convener: From those comments, I take it that the committee generally agrees to the principle of a system of substitution, which is the way that the debate is going in Parliament anyway.

We move on to the next point about the criteria for such a system. Are members agreed that such criteria should include urgent parliamentary business; pressing personal reasons; emergency constituency business; and travel difficulties?

Janis Hughes: It is for individual members, not us, to decide what their own pressing personal reasons might be. Although they should have a legitimate reason for needing a substitute, that should be an internal party decision.

Donald Gorrie: I accept Janis Hughes's comments. We cannot really pry into why it is essential for a member to go to the pensioners lunch club in Coatbridge instead of to a committee. Perhaps there could be a provision for a committee member to raise a yellow card if they thought that another member was substituting too much.

The Convener: We could get round that problem with the requirement suggested later in the paper that the business manager must nominate for the substitution. It will be incumbent on business managers to ensure that their members are not abusing the system and imposing burdens on colleagues. At this stage, that might be a more effective means of regulation than any form of words. I agree with Donald Gorrie's point that we do not want the committees to lose the coherence of their membership through certain members taking advantage of the system.

The next suggestion in the paper is that any substitute should be a member of the same party only. That seems a fairly logical and obvious point.

Donald Gorrie: It is; however, members of single-member parties should perhaps be allowed to choose a substitute from another party on the basis of the issue under discussion. I am not quite sure of Dennis Canavan's current position; however, if Tommy Sheridan or Robin Harper had an amendment or particular point that they wanted to press and knew that a particular member or party was sympathetic to their views, they could choose that member or a member from that party as a substitute if they could not make a meeting.

The Convener: Any member can attend a committee meeting to move an amendment; members who cannot attend certain meetings usually arrange for a party colleague to move their amendments for them. That said, I would have thought that, under such circumstances, if any member cannot move their own amendment, they will have to find someone else to move it for them.

Donald Gorrie: Perhaps I meant that there could be a substitution when voting on an amendment, instead of when an amendment is moved. Voting is the key issue; perhaps a member could arrange for a sympathetic member to attend, speak to and vote on an amendment.

10:45

The Convener: In such circumstances, I would withdraw my amendment and try my luck at stage 3 instead.

Janis Hughes: I disagree with Donald Gorrie. Members of single-member parties should not be able to choose MSPs from other parties to represent them at committee meetings. Such a provision would contravene the Parliament's agreement on the political balance of committees. I have no problem with members of single-member parties being able to substitute for each other; however, I have a problem with those members being able to choose a substitute to vote for them from any political party that is aligned with their views.

The Convener: Does Donald Gorrie think that Tavish Scott would let him attend the Social Inclusion, Housing and Voluntary Sector Committee to vote on behalf of Tommy Sheridan and one of his amendments?

I suspect that that is a somewhat academic question.

Donald Gorrie: It raises an important example. In such a position, would it be Tavish Scott, as my party's business manager, or Tommy Sheridan, as his party's business manager, who gave me the permission to go?

The Convener: I think that your business manager would have something to say about that. I certainly do not know the answer to that question.

I agree with Janis Hughes. It is very difficult to see how a member of another party can effectively substitute for another member. I try to be extremely sympathetic to single-member parties, because I am a single member myself on my own committees, and I understand their difficulties; however, sometimes we have to say, "Tough—that's just the way it is." I cannot envisage a satisfactory form of substitution for those parties.

We have skipped over a few points in the paper. I think that members agree that any substitute must be named.

Members *indicated agreement.*

The Convener: Should the substitute be chosen only by the business manager, or can a member arrange their own substitute? Is that a matter for this committee?

Janis Hughes: That is an internal party matter and any such decision should be based on a party's particular rules.

The Convener: We should bear in mind Elizabeth Watson's point that the system should be crisply administered, and that it should be clear who is attending a committee as a substitute and why. We want the parties to agree a very clear mechanism that they will then apply.

Donald Gorrie: If we have a standard letter that is signed by the business manager, any private arrangements about substitution could be made by the business manager himself. Or herself, if there are any female business managers. Are there any female business managers?

The Convener: Yes. Trish Marwick is the SNP's business manager.

What are committee members' views on the next suggestion that a substitute cannot act as convener or deputy convener? That seems sensible to me.

Members *indicated agreement.*

The Convener: The next suggestion does not seem so sensible. Do members agree that a substitute can act as committee reporter with the committee's agreement?

Donald Gorrie: I was not too keen on that point myself.

Janis Hughes: At first sight, we might not agree with that suggestion. However, it might relate more to a situation where a member might need to go on maternity leave; or does it relate to a longer-term replacement on a committee? If a substitute member is on a committee for a prescribed period of, for example, six months, they should be able to fulfil the role of reporter if the committee agrees.

Elizabeth Watson: The people who framed the paper did so without any preconceived ideas about whether the suggestion would be appropriate. There are arguments for and against. The argument for clearly pertains to the situation that Janis Hughes described, where there is a longer-term absence and a substitution would increase the pool of members available as reporters.

However, against that argument, the committee should remember that a substitute is only a substitute and is likely to be a substantive member of another committee, from which they will likely have a heavy work load. It might be more appropriate for a committee to draw its reporters from its permanent membership rather than calling on a substitute, who may have heavy duties and may be acting as a reporter for a committee on which they are a permanent member. It is a question for you, but there may be arguments that weigh against the proposal as well as those that are in favour.

The Convener: The appointment of substitutes as committee reporters should probably be allowable because we should not circumscribe the work of committees. Circumstances could arise in which it is appropriate for substitutes to be reporters. I should have thought that there would always be a raised eyebrow at the suggestion that a substitute should act as a reporter, given the downsides that there are. It could be permissible, but one would expect the committee to be very careful about it.

Donald Gorrie: Could the committee—this question will show my ignorance—ask Member Snooks, who is very knowledgeable about a particular sphere but is not a member of the committee, to produce a report on some subject? Does a reporter have to be a member of the committee?

Elizabeth Watson: The reporter would have to be a member of the committee. The committee could invite anyone to produce a paper for it, but technically that person would not do so as the reporter.

Donald Gorrie: As I am losing out on the question of small parties, is it agreed that the two or three single members of parties can substitute for each other and that for this particular purpose they are accepted as a group? I think that that is what Janis Hughes suggested.

The Convener: Again, I am not sure that that is a question for the committee to decide. In practical terms, if a group of independent members who, as they have fewer than five members, do not form a party in the parliamentary sense choose to operate informally as Dennis Canavan, Robin Harper and Tommy Sheridan have done, it is reasonable that everybody else should respect that and co-operate with it to assist them in the conduct of their business. If we introduce substitution, I will not bat an eyelid if Tommy Sheridan is due to attend a committee and Robin Harper appears in his place—that is up to them.

The next detail on which our opinion is sought is the recommendation that

"a substitute shall be able to take a full part in committee proceedings, including voting".

Are we all happy with that?

Members: Yes.

The Convener: I draw members' attention to the representation that we have received from Lord James Douglas-Hamilton, who advises us that he does not think that that is a particularly good idea. I rather agree with him, but think that it is unrealistic to envisage substitutes attending meetings and not voting on legislation, as any significant vote on legislation is likely to be whipped. However, when committees are not talking about legislation—the nuts and bolts of changing the law—but are making decisions on committee work, such as committee reports, which are not so party political, one might wonder about someone coming in with a mandate to vote in a specific way. I like to think that, if a committee report is being considered, the only people who will vote are those who have been present throughout an inquiry, have heard all the evidence, know what the issues are and are in a position to pass judgment. It would be difficult to frame a two-tier approach, so I will accept the view of the majority.

Donald Gorrie: If the substitute cannot vote, the whole issue is redundant as other members can attend anyway—one can get a pal to go to a meeting with a watching brief. Either we have voting substitutes or we have no substitutes.

The Convener: The next recommendation is that the business manager of the party concerned will notify the clerk of the committee of the substitution, giving the names of the substitute and the person who is being substituted and certifying that the substitution is reasonable, and will do so not later than an hour before the start of the relevant committee. That permits the member who is stranded in Shetland to use travel as a reason, but not the person whose car does not start and who encounters difficulty on the Glasgow train—it is hard luck if they did not realise in time that they could not attend.

Janis Hughes: Thank you.

The Convener: I am sure that you would tell us more than an hour before the start of the meeting.

Is that recommendation agreed?

Members *indicated agreement.*

The Convener: I wish to raise the issue of the attendance of members at private meetings. Up to a point, substitution will take care of that issue, but there are circumstances in which members who are not on a particular committee might have a legitimate reason to be at a private meeting of that committee. It seems ridiculous to have to require a party colleague to stand down to make way for one as a substitute.

In the context of the issue of substitution, there should be a review of the question of who is entitled to attend a private meeting. From my background in local government, I know that any councillor could go to any meeting. Councillors who were not members of a particular committee could attend its private meetings—all members were regarded as a part of the collective body. I would not like 129 members to turn up for a private meeting of the Procedures Committee, but if for any reason a non-member wished to be present while we considered a report or another item of business in private, it should be legitimate for that member to make the case to the convener and the clerk as to why they should be allowed to be present, and that case should be viewed sympathetically.

I throw that in only as an opinion, because I think that it would require a change to standing orders or committee guidance. If giving my opinion feeds it into the system, I expect the system at some stage to spit back some kind of answer that will allow us to progress the matter—an issues paper or a proposal.

Janis Hughes: Do you think that a member who attends a private session should be able to participate or should merely be able to observe?

The Convener: I think that it would be reasonable for the member to participate, but perhaps not to vote as they would be an extra presence rather than a substitute. I am thinking of the example of a fishing spokesman who was unable to attend a private meeting of the Rural Affairs Committee to discuss a fishing report, although he had participated in the discussions all the way through. The rule that prevented him from taking part in the final business is a bit inflexible and should be reviewed. That might be the only example that has occurred, but I imagine that there might be others.

We have expressed our views on that and will ensure that they are communicated to the relevant people. They may or may not influence the outcome. This issue will come back to the committee, as any decisions that are taken will require amendment to the standing orders, which we will consider and present to the Parliament.

Members' Business

The Convener: The next paper is on the extension of time for members' business. Ken Hughes, the Parliamentary Bureau clerk, will speak to us if we require him to do so. He may not get too much glory on this occasion because the report is straightforward. If the Parliament is willing to provide the additional resources, I am sure that none of us will disagree with the proposal that the time for members' business be extended.

Janis Hughes: I do not disagree, but I want to point out that there may well be occasions on which 45 minutes for a members' business debate is not needed because there are not enough participants. Can we make it clear that 45 minutes is a maximum rather than a target time?

Ken Hughes (Scottish Parliament Directorate of Clerking and Reporting): Yes.

Donald Gorrie: It is right that there should be 45 minutes for members' business debates, but less time if the debate folds. Often members are not called to speak. Although the figures for unsuccessful attempts to speak are helpful, they conceal the true position in that often members who feel that they will not be chosen do not try. The number of frustrated would-be speakers is higher than the statistics suggest. I think that the proposal to extend the time for members' business is a good one.

The Convener: As that is agreed, we will incorporate that recommendation in the forthcoming report on standing orders.

Private Legislation

The Convener: Andy Kerr has bust a gut to get here in time for the discussion on private legislation. Carol McCracken is here. She is very confident today because Mr Leitch is not with her—is he?

Carol McCracken (Director of Clerking and Reporting, Scottish Parliament): No, Elizabeth Blair is here instead.

The Convener: We will try to crack through this item quite quickly. We can either go through it in painstaking detail or pick up on the one or two issues that have arisen from the report.

The report is a revised version of the one that we considered at our previous meeting. The revised parts of the text are in bold, so that we can pick them out. Going through the report, I ticked the amendments and noted the points on which I wanted further information.

11:00

Donald Gorrie: The summary of recommendations does much the same thing.

The Convener: It does. However, I reached the summary of recommendations only after I had been through the text, so I have ticked the amendments to the text rather than the recommendations summarised at the end of the report.

I will go through the report, picking out the paragraphs in bold. Members may intervene if they have comments. The changes start at paragraphs 6 and 7, which pick up on points made by Donald Gorrie. Is Donald happy with the proposal for hybrid bills?

Donald Gorrie: Yes.

The Convener: There are also changes to paragraphs 10, 15, 17, 21 and 22. I have comments on paragraphs 25 and 26, where I believe there is some textual inconsistency. In paragraph 25, Railtrack is reported as having supported operating under the Transport and Works Act 1992, but in paragraph 26 it is identified as an organisation that is not particularly supportive of the act. I would like that to be sorted out; I am sure that it is a textual point, rather than a point of substance. The time scale for the report meant that it had to be done in a great hurry. Presumably, we will receive a tidied-up version of it.

The next amendment is in paragraph 29. We are recommending an important change—that we allow bills to be lodged at any time. I ask Carol McCracken to clarify what we are agreeing to in the amendments to paragraph 32.

Carol McCracken: The Convention of Scottish Local Authorities suggested that the Presiding Officer should have the discretion to allow a promoter not to meet one of the requirements laid down in standing orders as having to be met before introduction of a private bill. That provision would apply if, for example, the promoter had not provided all the accompanying documents required or had not made all the necessary advertisement or notification arrangements.

In our view, it would be very difficult for the Presiding Officer to make a judgment on that. In this report—and in our previous report—we suggest that in an accompanying document the promoter either could say that he has advertised fully, in accordance with the guidance provided by the Presiding Officer, or could explain why he had not done that. If the promoter explained why he had not done something, he would still be complying with standing orders.

At the preliminary stage, the bill committee would have an opportunity to examine all the accompanying documents and to consider whether the promoter had done everything as he should. If the committee felt that there was a case for the promoter to undertake further notification and advertisement, or if he had failed to provide it with all the maps and other documentation required, the committee could consider giving him time to do that. However, we think that it would be inappropriate to require the Presiding Officer to make that decision.

The procedure is clarified if one reads paragraph 32 together with the parts of the report that explain the preliminary stage, where the committee has the discretion to do what I have outlined.

The Convener: I suggest that you include those cross-references in paragraph 32 and explain slightly more fully what waiving non-compliance means. I appreciate that the substance of the report is for the specialist. However, the report is being made to MSPs and what is being suggested in paragraph 32 is not awfully clear. The clarification that you have just given would benefit all members.

The next change is to paragraph 35. Paragraph 36 contains an important recommendation. Essentially, we have concluded that we will not require promoters to submit evidence about a bill's compliance with the European convention on human rights. That will have to be tested over the whole process, rather than just for this part of the process. We may be criticised for that, but we are not taking on the whole planning and legal system as part of this piece of work.

Paragraph 41 recommends that we make the promoter pay for copies of the bill. Paragraph 42

recommends that there should be a period of two calendar months from the date of introduction during which objections in writing can be lodged with the clerk. There is a change to paragraph 43. Paragraph 45 indicates a shift in emphasis. If the objectors fail to submit their objections in time, they must demonstrate why those should be accepted. We should be very clear that we are recommending that.

There are further amendments in paragraphs 50, 51 and 52.

Donald Gorrie: Given members' work load and the fact that local and regional members are not allowed to sit on a private bill committee, I suggest that we recommend a committee of three. The chances of finding five people who are eligible to do the work and can find slots in their diary for it are pretty slim, although if there are only three members on a committee it is essential that they turn up for meetings. Sometimes consideration of private bills can take a long time. I think that at Westminster private bill committees have three members, and that seems to work. If we had committees of three members, with a quorum of two, more than one committee could operate at a time. I have no idea how much of this activity there will be, but it would be unfortunate if we had a Harris quarry-type inquiry that lasted for ever and held up everything else. I would prefer committees of three, which would allow more than one bill to be considered at a time.

The Convener: Carol, how do you react to the suggestion that we recommend a committee of three?

Carol McCracken: We could alter the wording of standing orders to give the Parliamentary Bureau the power to appoint a committee of up to five members. We understand that at Westminster private bill committees have four members. We recommended an odd number because that would make voting easier. If members had travel or other difficulties, those might present problems for a committee of three. It is questionable whether a quorum of two is big enough.

The Convener: Would substitution be allowed on these committees?

Carol McCracken: We thought that it should not. We did not cover the issue in the report, because we thought that it should be dealt with when this committee gives detailed consideration to the question of committee substitutes. Once the private legislation provisions have been incorporated into standing orders, we can consider whether committee substitutes should be allowed. We thought not, because of the rules governing membership of the committee and because of the fact that members would be doing a sharply focused piece of work that required them to gain expertise in the area that they were examining. In that context, I am not sure that substitution would work.

Donald Gorrie: I could live with the wording "up to five members". We could have committees of five for dealing with big issues and committees of three for dealing with small local issues.

The Convener: We are agreed on that. Carol, I suggest that you address the issue of substitutions in this report, so that we do not have to tackle it later in our report on substitutions. I do not know how you should do that, but the matter should be discussed somewhere and is unlikely to get a hearing anywhere else.

Carol McCracken: Certainly.

The Convener: I agree with your point about substitutes. None of the votes on a private bill committee will be party political. To invite someone on to a committee simply to vote is unreasonable if they have not been thoroughly involved in taking evidence.

There are changes to paragraphs 51 and 52.

Donald Gorrie: I wondered about the issue of only one bill going through at the same time.

The Convener: I think that the flexibility that we have just identified could take care of that. If we find ourselves with two reasonably light bills to consider, two smaller committees might be able to do it. I do not think that it is prescribed that there will never be two committees sitting simultaneously.

Donald Gorrie: The question of party balance is relevant. We would certainly want to have more than one party represented, but, for example, I do not think that there is a Liberal Democrat view on whether Fraserburgh should have a new harbour, or a Labour view.

The Convener: We can expect that to be in an SNP leaflet next week.

Donald Gorrie: There are no SNP members here—we are all right.

Janis Hughes: The party balance does not matter.

The Convener: Indeed—we can be too hung-up about party balance on committees.

There are changes to paragraphs 53, 54, 55, 57, 58, 61, 69, 75—

Donald Gorrie: I want to talk about adversarial and consensual approaches. It is probably okay that the first part of the activity would involve discussion and going through ideas before we reached a more adversarial period with proper amendments. I could probably go along with that. It may be that we get a better result with a more

discursive and a less adversarial approach.

The Convener: When we are considering the promoters' proposals and the objectors' interests and objections, the arguments need to be gone into rigorously. The adversarial approach would be more likely to bring out weaknesses and to highlight difficulties for MSPs than would the normal way of collecting committee evidence on an issue. We need a rigorous approach and I think that the committee felt that, on balance, the case for that had been made by the witnesses.

Donald Gorrie: All right.

The Convener: The following paragraphs have also been changed: 78, 81, 83 and 89. Carol, the text of paragraph 89 appears to be corrupted.

Carol McCracken: A line is missing. The first sentences of paragraph 89 should read:

"In response, we should say that the Group's Report made it clear that promoters and objectors may put forward suggestions for changes they would like to see made to the Bill. These could be put forward by them to the Clerk. They can then submit evidence in support."

This paragraph is to do with the question of how amendments will be introduced and moved. We wanted to balance the fact that only a member had the right to move amendments with the need to allow promoters and objectors to introduce suggested amendments. We will tidy up the text.

Donald Gorrie: I would like to go back a bit. This is an example of my failing memory. Is there a member in charge of a bill as well as a member in charge of an amendment?

Carol McCracken: It is really at stage 3 that we need to consider the member in charge of the bill—especially when there is a suggestion that the bill might be remitted back to committee. With Executive bills or with members' bills, it is normally the member in charge who would suggest that. We are suggesting that the convener of the committee would act as the member in charge of the bill. We did not think it necessary, during the detailed consideration of the bill, to identify a member in charge, but it may be that the convener of the committee will formally pick up and run with most of the amendments, which should have been discussed in general terms at the inquiry stage.

11:15

Donald Gorrie: I was thinking about the proverbial level playing field. You may have a bill that sets out what may be the reasonable consensus view of those involved. You may then have an amendment that one party strongly supports. That party will brief a member, who will be fighting for the amendment. Who will be fighting for the consensus view, which may be much more sensible? I worry that things may be lost by default.

Carol McCracken: At stage 2 of a bill, when amendments are considered, we thought that that would be done initially as a cross-examination. The objectors would have said why they did not like the bill and how they would like it to be changed. Similarly, the promoters—away from the committee—may have been negotiating with objectors to try to have some of the objections withdrawn before the stage of detailed consideration was reached. We expect that much of the consensus-type discussion, between the promoters and the objectors, will take place outside the committee. However, the committee is there to listen to the objectors' arguments on the amendments. If the committee is convinced by those arguments, committee members will move and discuss those amendments. They will have already heard all the arguments of the promoters and objectors.

The Convener: After paragraph 89, the changed paragraphs are 90, 91 and 96. With our previous discussion on the Presiding Officer's discretion on selecting amendments in mind, I wondered whether paragraph 96 should refer to his doing so in accordance with the guidance on public bills. Would the same criteria apply? I feel that we ought to state some criteria, or have some framework, for the benefit of people who are promoting legislation or amendments.

Carol McCracken: All right.

The Convener: The next changes are the financial ones in paragraphs 107 and 109. Why would we propose to subsidise the cost of promoting a private bill through Parliament? As all the benefits will, I presume, accrue to the promoter, should not the promoter pay the whole cost?

Carol McCracken: We came at this from a number of angles. We considered the arguments for and against having higher costs to put through a private bill in the Scottish Parliament than at Westminster. That might arise if there were similar bills on, for example, railways. Our understanding is that costs are subsidised at Westminster. A fee is set, although we are not all that clear how it is calculated. It seems that not all the costs are recovered. On balance, we thought that there should be a level playing field, north and south of the border, for the cost of putting through legislation. Until we have had some experience with such bills, we will not be sure what the full costs will be. There will be a learning curve.

The Convener: Westminster probably has more generous resources than we have and I am worried that the costs may be considerably higher than we estimate. If there were a run of bills, the public purse would be paying a lot to promote

private interests. I hope that we may be able to build in some way of reviewing or reassessing this. After all, the promoters of bills tend to be the sort of people who promote planning applications and so are used to a fee-based system, where the planning authority will recover all its costs at the promoters' expense. I do not think that such a system would appear unreasonable to them. I appreciate the fact that we have not implemented the system yet and therefore do not know what will be involved.

Are there further comments on the changes to paragraphs 114 and 115?

Donald Gorrie: On paragraph 114, I am happy that the promoters should pay all costs of the objectors, but there should be a caveat for unreasonable objectors. Promoters should not have to write a blank cheque. If someone, such as the convener of the committee, thought that an objector was being very unreasonable, there should be some provision for that objector to pay costs.

Carol McCracken: I would like to clarify that paragraph, as it needs to be tidied up as we go through and proofread the document.

Paragraph 114 says that

"the promoters should be liable for all costs of objectors".

That refers to all the costs of objectors that would be due to the Scottish Parliament—in other words, the costs associated with the production of the *Official Report* and so on that we identified earlier. Going back to our discussion at the previous meeting of the Procedures Committee, I should make it clear that paragraph 114 does not refer to legal costs, such as the costs of representation.

There are two points about the award of costs. First, on frivolous objections, it is proposed that, at the preliminary stage, the committee would have the power to consider whether objections are relevant. If they are not relevant, the committee will have the discretion to disregard them.

Secondly, if the committee finds that an objector is simply wasting the committee's time by drawing out the process, a legal problem arises, as standing orders do not allow us to facilitate the award of costs. That point is brought out in paragraph 118. The effect of what we are saying is that a promoter who had to pick up the fees of an objector, where he believed that the objector had pursued a frivolous objection, would be required to pursue that matter through the courts. We suggest that that point should be kept under review. If it appears that the system is giving rise to problems, we could consider introducing legislation to cover the award of costs.

Donald Gorrie: I had not grasped that point. Is it not the case that the promoter would have to pay if the objector signed up someone like Menzies Campbell, Gordon Jackson or someone else who costs a lot of money?

Carol McCracken: No. We will clarify that point.

Donald Gorrie: I am content with that reply.

The Convener: That takes us past paragraph 118 and on to paragraph 119.

I remember that we discussed planning before. I wondered about this issue, but I presume that it is up to the Scottish Executive to decide whether it will run with the recommendation in paragraph 119.

Carol McCracken: We received clarification from the Scottish Executive this morning. An amendment has been made to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, through the Scotland Act 1998, with the effect of deeming planning consent to be granted to developments authorised by a local or private act of the Scottish Parliament. Therefore, that problem has been addressed. If a private bill that is passed by the Scottish Parliament requires planning consent, that consent is deemed to have been given. Therefore, the promoters do not need to go through both hoops.

The Convener: The next thing we know, the Lingerbay quarry will come to the Transport and the Environment Committee.

We are almost there. There is an important change under the heading "Carryover of Bills", where we suggest that a private bill should not fall at the end of a parliamentary session.

Carol McCracken: May I seek guidance from the committee on the carry-over of bills? The draft standing orders that are before members contain a paragraph in square brackets on that point. When we started to consider in detail how we would make that provision work, some questions of principle arose. For example, a private bill could have partly completed the second stage, and evidence could have been taken, or the bill could have been partly amended. If the Parliament were dissolved for the election to take place, and a new Parliament were established, possibly with some different members, the membership of the private bill committee might change. That would raise the question whether the committee could carry on from where it stopped.

I do not know whether Elizabeth Blair wants to comment. At the moment, lawyers take the view that the private bill may have to be allowed to fall and be picked up by the new committee, which could skip some stages, if that made sense. For example, if the previous Parliament had agreed to the general principles of the bill, stage 1 could be taken as read. However, the committee might

have to take further evidence on the bill. I am sure that the bureau would take such factors into account in timetabling bills towards the end of a session. However, the issue gave rise to difficulties of principle and technical difficulties in drafting the standing order.

The Convener: Is that suggestion covered in the changes to standing orders that have been proposed today?

Carol McCracken: Yes.

The Convener: Do you require to make further changes?

Carol McCracken: The full procedure is not included. All that the draft standing orders say is:

"A Bill introduced in any session of the Parliament falls if it has not been passed by the Parliament . . . but a Bill in the same or similar terms may be introduced in any subsequent session."

If the committee were sympathetic to the idea of a fast track, we could try to draft such a procedure.

The Convener: We would not like people to have to repeat all the evidence gathering. Even a former member who had been replaced would not wish that on their replacement.

Mr Andy Kerr (East Kilbride) (Lab): Can the new committee simply decide to do that anyway, or must standing orders make such a provision? The new committee might decide that the evidence gathering had by default already been done.

Carol McCracken: If the bill fell and we facilitated its reintroduction, the committee would be required to complete stage 1 and report to the Parliament on the general principles of the bill, unless standing orders said that it did not need to do that.

Mr Kerr: Okay.

The Convener: Donald, you seem confused.

Donald Gorrie: Yes. I thought that the bill could stay alive and that the new committee could decide on the way in which it would pick up the bill and handle it.

The Convener: What we are establishing is that a bill must die, but when it is reborn in the next session, we will find ways of streamlining procedures and avoiding duplication of work. We are developing a way of giving the new committee the principle of carry-over without its being able to carry over a bill.

Carol McCracken: There are conceptual problems in allowing a bill to be extant while there is no Parliament, but we will try to ensure that, when standing orders say that a bill may be reintroduced, we will not require all the fees and accompanying documents again. We will try to short-cut all those procedures and ensure that the system works without putting an unnecessary burden on the promoter.

The Convener: My concern is that you should make the changes to the draft standing orders to give effect to those ideas now, rather than making a further adjustment later. I do not think that all members have a copy of the draft amendments to standing orders, which I saw for the first time this morning. In the private session, I am afraid that the committee will have to discuss some mechanism of examining and approving those amendments, because we cannot do that today while they are unread. We will receive further amendments before we have a meeting to discuss the issues.

Donald Gorrie: May I press the previous issue? Is it impossible for a private bill to go into purgatory, if that is the right expression—I am not a Roman Catholic, so I am not acquainted with such terms—before resurrecting itself in the new session? Will the bill have to die and be stuck in a hole?

Carol McCracken: We think so. We are considering that at the moment. We will try to achieve a system that works as though the bill has been on hold while the Parliament has been dissolved, even if the bill must actually fall and be reintroduced.

The Convener: There is a change in paragraph 130. It is simply a procedural point. There are additional comments in paragraph 132 and a recommendation is set out in paragraph 133.

I ask members to approve the report in principle, with the various amendments that have been flagged up. We have to consider separately whether to approve the draft standing orders. I ask the relevant officials to provide us with the amended text of those paragraphs in which we have agreed today that clarification, addition or amendment is necessary. It might be a good idea to hang on to that for the meeting at which we will discuss standing orders. Is that agreed?

Members *indicated agreement.*

The Convener: The next item on the agenda is an inquiry into committee operations. We have a paper with four reports. This looks as though it will be the longest-ever meeting of the Procedures Committee.

Donald Gorrie: Could we take a short coffee break?

The Convener: Why not? My powers allow me to adjourn the meeting for a few minutes.

11:30

Meeting adjourned.

11:38

On resuming—

Committee Operations

The Convener: We have nobody in particular to speak on item 6, but if we need advice there are plenty of people on whom we can usefully draw. Is the running list of 18 issues amended from last time?

John Patterson (Clerk): No.

The Convener: Then we will take it as read.

Were additional issues brought forward as a result of our trawl of committee conveners, and will they be included?

Mark MacPherson (Clerk): There was one further issue, on the introduction of bills.

The Convener: We will take account of that when we look at that issue.

Four issues are to be discussed today. The first was raised by the Finance Committee. Does anyone have any comments or are you happy with the recommendation?

Donald Gorrie: The problem is possibly related to the complexity of financial matters, but it is also related to the lack of clarity of a lot of statements made by various Governments. It is not a party political point; all Governments tend to make financial matters as obscure as possible. We are doing better here than at Westminster, but by the time the Local Government Committee, for example, was asked to discuss "Investing in You" it was so unclear what money local government would really get that there was not much point in discussing it. Really precise and relevant information needs to be got to committees in sufficient time for them to have a worthwhile discussion of it.

The Convener: It seems also to be the case that the parliamentary cycle at Westminster is different from the cycle here, so changes are made there that mean that figures here are recalculated and programmes are readjusted. We are probably always going to be striving to deliver on commitments on information because of that. The thrust of the recommendation is to try to include as much clarity, transparency and exchange of views in the system as can be managed within such constraints.

Members *indicated agreement.*

The Convener: The second issue is joint consideration by sub-committees. It is very technical. The suggestion is that we do not need to change very much but that we should issue clarification. There is a suggestion that we insert in rule 6.14 a reference to rule 12.5. I wonder whether we should explicitly place a reference to joint sub-committees in rule 12.5. That would mean that the paragraphs cross-refer.

John Patterson: That is sensible.

The Convener: Subject to that addition, is the recommendation agreed?

Members *indicated agreement.*

The Convener: We have considered the suspension of committee meetings. The recommendations are sensible: conveners are given all the powers of the Presiding Officer, with the exception of those described by rule 7.4.4. As I understand it, if the suspension of a meeting by the Presiding Officer means that business is lost, the bulletin will be reprinted. That would not be appropriate in a committee, but I suggest that we ought to recommend that some way be found for business lost at a committee because of a suspension to be notified, so that everyone is aware that that is the case and that it will be rescheduled. Someone trying to track what has happened over a series of meetings might find that useful; changes of that sort should be in the public record. I do not think that we want a convener to be able to provoke the printing of a fresh daily business list. Are we agreed?

Members *indicated agreement.*

The Convener: That takes us to the final issue: the removal of conveners. It is slightly more interesting. The committee is invited to consider whether there should be a procedure to govern the removal of conveners and, if so, whether it approves the necessary changes in standing orders, which are listed.

Donald Gorrie: This is not a subject to which I have given any great thought because I do not aspire to such heights, but are not committee conveners appointed by Parliament—or are they appointed by the committee?

The Convener: Technically, they are chosen by the committees, but they are done so according to the rules laid down by the bureau about the allocation of convenerships to the parties on the d'Hondt principle, which means that, for example, on this committee, members had no choice but me.

Donald Gorrie: If it is technically the committee that chooses them, my objection falls. If it were technically the Parliament that appointed them, it might have to unappoint them, but if the committee appoints them, it is fair enough for the committee to unappoint them.

The Convener: Difficulties might arise if there were a single representative of a party on a

committee. That would be more of an issue in streamlined committees where there might not be another person to put in the chair under the d'Hondt principle. It is not a straightforward exercise, but it will be for someone else to resolve, not us.

Donald Gorrie: So we are lumbered with you, convener, even if we completely hate you?

The Convener: If you ditched me, you would force me off the committee and would require my party to nominate an alternative representative.

Mr Kerr: That is an idea.

Janis Hughes: It is tempting.

11:45

The Convener: Far be it from me to make such a suggestion. There are probably 18 people in room 1.08 of parliamentary headquarters who would offer you something pretty tasty not to do that.

Janis Hughes: I thought that you were going to say room 101.

The Convener: No, I do not know who is in room 101. It is obviously not Dennis Canavan.

I wanted to raise something else from the report. Essentially, what is being recommended is that the convener of a committee must place the motion for his removal—to cast him into the outer darkness—on the agenda either of the next meeting, or within a certain period of time. He cannot stall for ever; members are entitled to have the motion put on the agenda. However, it does appear that, in other respects, members are pretty limited and cannot put matters on the agenda. Are we considering that? If Donald Gorrie wanted to put an issue on the agenda and I was not prepared to have it, should not Donald have the right to put it on the agenda and at least let the committee decide that it is not going to do what he wants it to do, rather than my saying that we are not having it?

John Patterson: We are not considering that specific matter.

The Convener: Should we?

Donald Gorrie: I thought that the matter had been raised before by somebody who was cross.

John Patterson: Do you mean when we discussed any other business?

Donald Gorrie: There was a committee on which some people had a spat with the convener and the matter was raised.

The Convener: Does item 2 of the table cover it?

Mark MacPherson: Items 1 and 2 are intrinsically linked, but both of them will extend to cover some aspects of the matter that has just been raised.

The Convener: It is important that members know that they can raise an issue. A member might get only five minutes at a committee before the convener says that the committee will not do the work that the member wants done, asks whether the committee agrees and the committee takes the decision, but I am not sure that the convener should be able to say, "No, we will never discuss that."

Donald Gorrie: I agree with you.

Mr Kerr: I accept in principle what you say, convener—the principle is sound—but committees do work out their work plan in private and allocate time and resources. I tend to look at the negative, and it is clear that a system such as the one you suggest could be open to abuse by members who want to promote a particular issue outwith the generally agreed work programme.

The Convener: I understand your point. As you know, I always support you in protecting the work load of the Transport and the Environment Committee, because committees do have to be disciplined. I am thinking not so much of attempts to change the whole balance of the work load—we know that members might try that and committees would have to be disciplined to resist such attempts—as of a member who wants to bring up an awkward subject that merits 10 minutes of the committee's time and the convener simply says no. There is a difficulty there. I want to be assured that the matter is under consideration under items 1 and 2 and that we will come back to it.

With the agreements that we have made, that concludes item 6.

Standing Orders

The Convener: We move to item 7, the report on changes to standing orders, which covers three issues. Alasdair Rankin, the clerk to the Subordinate Legislation Committee, is here to deal briefly with the proposed change to the remit of the Subordinate Legislation Committee.

Alasdair Rankin (Scottish Parliament Directorate of Clerking and Reporting): Convener, the Subordinate Legislation Committee is quite content with the amendment to its remit, which it hopes the Procedures Committee will be able to approve today. I am here to let you know that the Subordinate Legislation Committee is considering two consequential amendments, which would follow on from the committee's approval of the substantive amendment that members have before them today.

The first of the consequential amendments is to rule 9.1, which is on the first page of the chapter on bill procedures, and aims to tidy up the wording to make it more consistent with the new element of the committee's remit. This morning, the members of the committee agreed in private on a form of words, but I should advise members that the Subordinate Legislation Committee is yet to go to the Executive to seek its views and its agreement, which it is preferable to do in such matters.

The Convener: You therefore have agreement on the change that we have already discussed, but not on the consequential amendments.

Alasdair Rankin: The committee has agreed on the substantive amendment to its remit and has agreed to a change to rule 6.2.1, but it has not agreed to a further amendment to the stage 2 procedure. All I wanted to tell members for now is that the Subordinate Legislation Committee will come back to the Procedures Committee with a proposed form of words for two consequential amendments.

The Convener: So you do not expect us to deal with those amendments within the time scale.

Alasdair Rankin: No, it was just to let you know.

The Convener: So that we do not say, "What are you playing at?" when the amendments appear.

Alasdair Rankin: Exactly.

The Convener: That is understood. We will live with that and incorporate any further changes in any subsequent report that we make to Parliament on changing standing orders. That is the matter satisfactorily resolved. I think that we are all quite pleased about that.

Another proposed change to standing orders related to security staff, but we have identified that no change is necessary. Therefore, the report will cover the remit of the Subordinate Legislation Committee, as just noted, the decision on committee substitutes, assuming that all of that is agreed within the necessary time scale, and the extension of members' business, which we agreed earlier. The draft report is subject to a degree of amendment and insertion, as further items are brought forward. As we will have to have an additional meeting to discuss standing orders for private bill legislation, we will ask for an update on developments at that time.

Is that agreed?

Members *indicated agreement.*

The Convener: That concludes item 7. We move into private session.

11:51

Meeting continued in private until 12:05.

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