

PROCEDURES COMMITTEE

Wednesday 15 November 2000
(*Afternoon*)

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PROCEDURES COMMITTEE 12th 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 :

Carol McCracken (Director of Clerking and Reporting, Scottish Parliament)

Alasdair Rankin (Scottish Parliament Directorate of Clerking and Reporting)

CLERK TO THE COMMITTEE

John Patterson

SENIOR ASSISTANT CLERK

Mark MacPherson

ASSISTANT CLERK

Katherine Wright

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Wednesday 15 November 2000

(Afternoon)

[THE CONVENER *opened the meeting at 12:59*]

The Convener (Mr Murray Tosh): We will now get started. John, does Kay Ullrich have to make a declaration of interests, as this is her first meeting?

John Patterson (Clerk): Yes.

The Convener: Kay, as you are joining the committee, we have to allow you the opportunity to declare any interests that you think might have a bearing on your duties in the committee.

Kay Ullrich (West of Scotland) (SNP): The only thing that I wish to declare is that I am a member of Unison.

The Convener: I am sure that Unison is procedurally flawless, so that is not a matter for concern.

Private Legislation

The Convener: The first item on the agenda is the draft committee report on private legislation in the Scottish Parliament. Changes have been made to the report. The paper before us is essentially a summary of those changes, which are the shaded sections in the annexes. We are asked to comment, and once we have done so and received clarification, to approve the report and its onward submission.

Are there any questions about the changes to the report? I have no questions; they all seem to have been taken care of. The opportunity for members to make points is going, going—

Gordon Jackson (Glasgow Govan) (Lab): Gone.

The Convener: We come now to annex B, which is draft amendments to the standing orders. I have three queries, but we can address them rule by rule.

Are there any comments on rule 9A.1, which is on the first page of annex B, or rules 9A.2, 9A.3, 9A.4, 9A.5, 9A.6, 9A.7 or 9A.8? Is there a clearer way to word paragraph 5 of rule 9A.8, because a degree of Sir-Humphreyism has crept in? I appreciate that Sir-Humphreyisms are necessary sometimes, but I read that paragraph and thought, "Wow. What is that?" Is Carol McCracken happy

that the sort of person who will read the standing orders will deal comfortably with that paragraph?

Carol McCracken (Director of Clerking and Reporting, Scottish Parliament): I think so. If necessary, we could clarify it and pad it out in the guidance that will be prepared on the standing orders. If you read paragraph 5 immediately after paragraph 4—

The Convener: I did.

Carol McCracken: Paragraph 4 states that

"Any further documents provided . . . are referred to as 'supplementary accompanying documents'"

and that they should be in the same form. I think that we would be all right with that.

The Convener: Are there any questions on rule 9A.8 or 9A.9? I wondered about paragraph 3 of rule 9A.9, which refers to

"The persons referred to in paragraph 2",

meaning those who are invited to attend proceedings. You have allowed for objectors who have a particular interest. What about third-party objections? Do they ever feature? Should people who have an amenity concern about a proposal also have a right to be invited to attend a meeting and give evidence? Can you clarify that?

Carol McCracken: I suggest that there may be a difference between what we are doing here, which is setting out the right to be heard, and the fact that there is discretion to invite. The committee has the discretion to invite anyone it wants to hear. We were trying to set out where, in the interests of fair procedure, we recommend that there should be a right to be heard. On the amenity interest, it is always open to the committee to consider such objections, and whether it wants to hear from those objectors.

The Convener: I understand and accept that.

Are there any questions on rule 9A.9, 9A.10 or 9A.11?

The final sentence of paragraph 6 of rule 9A.12 reads:

"A manuscript amendment may not be moved at the Final Stage."

I hate to mention this again, but we had a precedent in the rules for public bills that everyone was very unhappy with. Can we be sure that, whether the final decision is to allow or disallow manuscript amendments at the final stage, the decision will apply equally to public and private bills? If we require to change standing orders for public bills, we should do so for private bills as well, so that we have similar procedures.

Carol McCracken: One or two issues of public bill procedure are being considered in the context

of the review of standing orders. Our suggestion is that, if we make amendments to the part of standing orders that deals with public bills, we should consider whether parallel amendments should be made for private bills.

Gordon Jackson: Why is the rule so inflexible? Why do we say that a manuscript amendment may not be moved? There might be occasions when everybody in the room thinks that it is a good idea. Why do we have this inflexible, mandatory negative, instead of saying, for example, that such an amendment should not normally be moved, or that it may be moved by agreement? We might end up with a standing order putting a mandatory block on something that everyone thinks is a good idea.

Carol McCracken: That issue has been raised in the context of public bills. At the moment, the standing order rules for public bills state that a manuscript amendment may not be moved at the final stage. I think that the clerks have been sent away to do some more work on that, before coming back to the Procedures Committee. The proposal is that, if the Procedures Committee decides to change the rules for public bills, we would make that change for private bills as well.

Gordon Jackson: So changes would be made in tandem?

The Convener: Yes. That relates to the point about the European convention on human rights that has come up before. We will not try to resolve that now, but will do so in the context of the whole system.

Gordon Jackson: That is fine.

Donald Gorrie (Central Scotland) (LD): In relation to amendments being selected or not—whether they are manuscript amendments or otherwise—is the Presiding Officer protected from any action? If an organisation were promoting a private bill on which lots of money hung, and the fact that an amendment was not selected greatly prejudiced its position, would it have any redress against Sir David Steel, or is he iron-clad?

The Convener: Carol McCracken will tell us whether the Presiding Officer is iron-clad.

Carol McCracken: He is not. Decisions such as a decision by the Presiding Officer to select or not select an amendment are open to judicial review. The main ground for that would be the ground of reasonableness. The Presiding Officer would have to justify a decision not to select the amendment.

The Convener: There does not appear to be a rule 9A.13—I do not know whether that is because of superstition or because of a sequencing problem. I am sure that it will be taken care of.

Are there any comments on rules 9A.14, 9A.15

or 9A.16?

Members indicated disagreement.

The Convener: I started the meeting rather sharpish, Donald. Did you have any other points on the draft standing orders?

Donald Gorrie: No—this sort of thing is not my scene.

The Convener: Do members then approve the report and the two annexes—although I think that we need approve only annex B? Can we agree all that and recommend the report?

Members indicated agreement.

Standing Orders

The Convener: The second item on today's agenda is to note amendments to the draft committee report on changes to the standing orders of the Scottish Parliament. Those deal with the remit of the Subordinate Legislation Committee, with substitutions on committees of the Parliament, and with the extension to 45 minutes of members' business. We discussed that last issue at our previous meeting. It is suggested that we do not deal with the issue of substitution on committees because a proposal has not been made to us in time.

The paper that members have in front of them today is the final version of the changes to the remit of the Subordinate Legislation Committee. The clerk to that committee, Alasdair Rankin, will tell us about the difference between the report as circulated and annex A.

Alasdair Rankin (Scottish Parliament Directorate of Clerking and Reporting): One paper offers for approval the full text of the rules with the amendments inserted; the other shows the insertions and says where they would go in the existing text. The difference is entirely presentational; the effect of the amendments is exactly the same.

Donald Gorrie: I have a question about the substitutions on committees.

The Convener: We are not including that in our report. The issue has not been resolved in time for us to do so.

Donald Gorrie: I did not know that we would not make progress unless we got something back from the committee conveners.

The Convener: At our previous meeting, we expressed views that could be taken into account when the Parliamentary Bureau, the political parties, the conveners group and everybody else discussed the matter. When a decision comes out of the Parliament system, the Procedures Committee will have to approve the consequent changes to the standing orders. Until we reach that point, we cannot do anything. We did not intend to implement decisions based on the opinions that we expressed last week.

Do members approve the recommendations on the remit of the Subordinate Legislation Committee and therefore approve our report for presentation to the Parliament?

Members indicated agreement.

The Convener: Thank you for your co-operation, ladies and gentlemen. Enjoy your lunch.

Meeting closed at 13:10.

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