PROCEDURES COMMITTEE

Tuesday 18 September 2001
(*Morning*)

Session 1

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PROCEDURES COMMITTEE
7th Meeting 2001, Session 1

CONVENER

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

DEPUTY CONVENER

*Mr Kenneth Macintosh (Eastwood) (Lab)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)
*Donald Gorrie (Central Scotland) (LD)
*Fiona Hyslop (Lothians) (SNP)
*Mr Frank McAveety (Glasgow Shettleston) (Lab)
*Mr Gil Paterson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Alison Coull (Scottish Parliament Directorate of Legal Services)
Professor David McCrone (Adviser)
Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting)
Huw Williams (Scottish Parliament Corporate Policy Unit)

CLERK TO THE COMMITTEE

John Patterson

SENIOR ASSISTANT CLERK

Mark MacPherson

ASSISTANT CLERK

Katherine Wright

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 18 September 2001

(*Morning*)

[THE CONVENER *opened the meeting at 10:31*]

The Convener (Mr Murray Tosh): Good morning, everyone. Welcome to the seventh meeting this year of the Procedures Committee. Before we start, I should explain that I am having some difficulty this morning. My glasses are somewhere at the bottom of the Water of Nevis, and I am therefore peering through an old sellotaped pair. If anyone finds me squinting at them peculiarly, I ask them please not to draw the wrong inference from that—it just means that I am having difficulty in focusing.

Interests

The Convener: The first item is a declaration of interests by Fiona Hyslop.

Fiona Hyslop (Lothians) (SNP): I have no relevant interests to declare. However, I should perhaps point out that I gave evidence a few months ago in the committee's inquiry into minority reports.

The Convener: Thanks very much. You are now a fully fledged member of the committee. I welcome you to the committee and hope that you enjoy the work that we do. I also note the contribution that Brian Adam made to the committee. He developed a keen interest in our work and performed creditably. If you do as well as he did, you will suit us well. I would be grateful if you could pass those comments on to Brian, whose work I appreciated.

Fiona Hyslop: I shall do that.

Minutes (Publication)

The Convener: The second item is publication of the minutes of the Scottish Parliamentary Corporate Body. The issue was raised with the committee previously and members are asked to note that the SPCB's minutes are now available. Unless members have any questions or points to raise, we merely note that information.

Members *indicated agreement*.

Selection Panels

The Convener: Item 3 is selection panels. For this item, we are joined by Huw Williams of the corporate policy unit and Alison Coull of the directorate of legal services.

Huw Williams (Scottish Parliament Corporate Policy Unit): I hope that the paper that the committee has received is self-explanatory. Its purpose is to seek an amendment to standing orders to allow a standardised procedure for selection panels made up of members of the Parliament to be set up in connection with the recruitment of office-holders, to enable the Parliament to make a nomination to the Queen for appointments. The other key issue is that, given the length of time that the recruitment process can take, we are suggesting that that process should commence after stage 1 of a bill.

The Convener: We will go through the paper section by section so that members can ask questions on each one. Are there any questions on the paper's purposes?

Members: No.

The Convener: What about the background? I have a question on paragraph 4, which advises us that the

"policy on these proposed changes has been noted by the Presiding Officer, SPCB and Bureau."

Whose policy is that and where did it come from?

Huw Williams: The policy was drawn up by officials and is based on the existing standing orders for the appointment of the Auditor General for Scotland.

The Convener: What consultation was undertaken on carrying forward that policy into this procedure?

Huw Williams: We discussed the matter briefly with the SPCB, which agreed that the Presiding Officer should write to you, as the convener of the committee, to suggest a standardised procedure for these appointments.

The Convener: That information was known to the committee. Has the consultation been any wider than that?

Huw Williams: No.

The Convener: Do you think that wider consultation is required?

Huw Williams: We prepared a fairly detailed paper for the Parliamentary Bureau, which raised no comments about the paper or the proposals.

The Convener: Okay. We will leave it at that.

Mr Kenneth Macintosh (Eastwood) (Lab): Could we have further explanation of the proposal in paragraph 6 to begin the recruitment process for appointments before a bill has been passed? It seems a little presumptuous—even if the principles of a bill are agreed—to start appointing somebody before the post exists. Later in the paper, a specific example is given of circumstances in which that might be appropriate. However, the change would be a little hasty if it was for the sake of one set of circumstances. Can you give any further explanation of the proposal?

Huw Williams: The proposal has been made in view of the length of time that the recruitment process can take. In the case of the freedom of information bill, no formal appointments would be made until the bill received royal assent. However, having the freedom of information commissioner in place early on would allow him or her to undertake the necessary publicity exercises and to generate awareness among the public of his or her work. It would be helpful for that process to begin as early as possible.

There could be problems in relation to the proposed Scottish public sector ombudsman bill, following the retirement of the current Scottish parliamentary ombudsman. When the consultation document was issued, the Executive was not aware of the ombudsman's impending retirement. It would be helpful to have that post filled as early as possible.

Mr Macintosh: The point about the ombudsman is addressed in paragraph 10 of the document. However, if the information commissioner and the public sector ombudsman are not in post already, why is there a huge rush? If we have waited several years to appoint somebody, why should we suddenly rush to appoint them before a bill has been passed? That would be to put the cart before the horse. I do not understand even the legality of the situation. It strikes me as an odd procedure to start advertising a post that does not exist. What if the bill does not create the post? What if Parliament changes its mind before stage 3 and decides that that part of the bill should be deleted?

Huw Williams: The appointments would not be made formally and we could cease any recruitment procedures.

The Convener: But you said that you wanted the ombudsman in place as soon as possible, following the retirement of the existing postholder.

Huw Williams: Yes.

The Convener: How do you reconcile having that person in place as soon as possible with not filling the post until the bill has been passed?

Huw Williams: If the recruitment process started earlier, we would be able to identify a nominee to be appointed as soon as royal assent to the bill was given, which would save a considerable amount of time.

The Convener: When Kenneth Macintosh mentioned legality, I noticed a smile flit across Alison Coull's face. I see that she is desperate to speak.

Mr Frank McAveety (Glasgow Shettleston) (Lab): So you can see some things, convener.

The Convener: It is just reading that I struggle with.

Alison Coull (Scottish Parliament Directorate of Legal Services): It is normal practice, both in the Executive and in other organisations, to commence a recruitment process before a bill receives royal assent. You may have noticed that the Executive is advertising for a water services commissioner, although the relevant bill has not even been introduced. The adverts are normally placed on the basis that the posts will be dependent on the bill's receiving royal assent, and that is made clear in the various procedures.

We take the view that there needs to be a provision in standing orders that would allow the Parliament to initiate the recruitment process after stage 1. If there were no such provision, it might be difficult for the Parliament to commence the process at that early stage.

It has been suggested that advertising for a post that did not yet exist could cause a legal problem. In fact, there could be a legal problem if there were no mention in standing orders of a procedure to allow the recruitment process to begin after stage 1. The aim is to provide flexibility. The Parliament would not have to follow the procedure in every case. The recruitment process could start after royal assent had been given. It all depends on the implementation timetable for the legislation concerned.

Donald Gorrie (Central Scotland) (LD): I am obviously missing something. There is already an ombudsperson, who is resigning. He was presumably appointed under some system. There is a system in place for appointing ombudspersons. We are proposing to introduce a different system.

Alison Coull: Yes. The existing Scottish ombudsman was appointed under a transitional order arising from the Scotland Act 1998. That order was transitional on the basis that it would be for the Parliament to decide what procedures it wanted to put in place for the appointment of its ombudsman. The Executive is planning to introduce a Scottish public sector ombudsman bill. The existing ombudsman is the UK ombudsman. The Executive bill would introduce a new Scottish ombudsman. The bill will require the Parliament to

make a nomination to Her Majesty. The proposed changes to standing orders are designed to give the Parliament input into that process.

Donald Gorrie: Is the ombudsman the only appointment over which there is a rush or do the same considerations apply to the appointment of a freedom of information commissioner? I share some of Kenneth Macintosh's concerns.

Alison Coull: We understand that there is concern about the appointment both of a freedom of information commissioner and of the proposed public sector ombudsman.

Fiona Hyslop: At issue is whether the Parliament has the final say. I assume from the paper that the Parliament could say that it did not want to proceed either with the proposed bills or with the appointments. Would there be a conflict of interest if a member who served on the democratic body appointed by the Presiding Officer to make an appointment were to vote against the relevant bill at stages 1, 2 and 3? Would it cause procedural difficulties if the persons making an appointment did not support the bill under which that appointment was being made?

The Convener: That is a question that our witnesses did not expect.

Alison Coull: The issue that the member raises would be for the Presiding Officer to consider when appointing members to the selection panel. I am not sure that a member would be disqualified from serving on the selection panel if they had voted against the general principles of the bill at stage 1. There is no legal reason why that should be the case.

Fiona Hyslop: It might be more helpful if, rather than leaving the make-up of selection panels to the Presiding Officer's discretion, we were to make a standing body—such as the conveners liaison group—responsible for making appointments on a regular basis. If members knew in advance the pool from which those making appointments would come, that might prevent potential conflicts of interest of the sort that I have described from arising.

Huw Williams: The proposed changes to standing orders would provide a degree of flexibility. They would allow conveners to be appointed to selection panels.

The Convener: I do not know how often a selection panel is likely to meet or parliamentarians are likely to be involved in selecting a postholder of the sort that we are discussing. Perhaps the conveners and the Presiding Officer could discuss the procedures for appointing members to selection panels and the possibility of having a standing panel. We can canvass opinion on those matters and, if there is a difficulty, we can return to them.

10:45

Patricia Ferguson (Glasgow Maryhill) (Lab): I do not want to go down the road of having a standing panel. We all come to this Parliament new, regardless of our previous experience. It is important that members have the opportunity to take part in as wide a range as possible of the Parliament's activities. For that reason, I would be reluctant to have a static appointments process. It may also be necessary to include on selection panels people who have particularly relevant interests or expertise. The proposed changes to standing orders make a great deal of sense, as they would ensure that a range of people was available to serve on panels. Flexibility is always welcome, given members' diary commitments.

Mr Macintosh: I still have concerns about this proposal. If we start an appointments process before a bill has been passed, we are prejudging Parliament's view on the legislation and creating momentum for it that it may or may not merit. The Parliament may have agreed to the general principles of the bill at stage 1, but there might be important arguments to be had later in the legislative process.

The examples that are given in the paper are non-controversial and I do not suppose that any member of the committee would object to either of the appointments that have been referred to being made speedily. However, it is not difficult to envisage situations in which a particularly contentious bill is going through Parliament. We would then be nominating people to make an appointment about which the Parliament was not agreed. To start the process of appointment before legislation has been agreed finally strikes me as rather odd. Is there no other mechanism for making such appointments? Can we not speed up the appointments process once the legislation has been passed, instead of prejudging the Parliament's view on that legislation?

Huw Williams: I do not think that we could speed up the recruitment process. There has to be a period for advertisement and sifting. Once an appointee has been identified, they must give notice to their current employer. Experience has shown that a recruitment process can take between six and 12 months.

The appointments of an independent commissioner to safeguard the public's interests in relation to freedom of information and of a public sector ombudsman are important parts of the freedom of information bill and the Scottish public sector ombudsman bill respectively. We do not envisage many similar appointments coming before the Parliament.

Alison Coull: Under the proposed changes to standing orders, it would be open to the Parliament in the case of a controversial appointment to decide not to start the recruitment process after stage 1 but to wait for the bill to receive royal assent.

Mr Macintosh: Who would have the power to decide that? Would it be the Presiding Officer?

Alison Coull: Presumably it would be the Presiding Officer, as the person responsible for making appointments to the selection panel.

The Convener: That is difficult. How would the Presiding Officer come to such a decision? How would the Parliament communicate its view formally to the Presiding Officer, given that the Parliament would or would not be approving the principles of the bill concerned at stage 1?

Huw Williams: We could consider introducing a mechanism that would allow the Parliament to determine at stage 1 whether the recruitment process should be commenced.

The Convener: So we could create a mechanism that would allow the Parliament, after approving the general principles of a bill at stage 1, to indicate that it understood the implications of that decision and to resolve separately to start the recruitment process.

What you have been doing seems perfectly okay, but it strikes me that it is simply what has always been done and that the assumption has been that it would just rattle on and that we would simply accept the proposal. The point has been well made that the decision to start recruitment should be a conscious decision rather than a reflex action.

Within the time scale that you have in mind for the creation of the posts, is there time to rethink your ideas? Would that create huge difficulties for you?

Alison Coull: It would not create huge difficulties for us.

The Convener: Could the paper be refined in order to take this discussion into account? We will give it the earliest possible treatment to ensure that we do not create any problems further down the line.

Alison Coull: Yes.

The Convener: Are we all happy with that?

Donald Gorrie: We have not yet finished considering the rest of the document.

The Convener: I am sorry, Donald. Do you have other points to raise?

Donald Gorrie: The point that I wish to raise figures in paragraph 12 and in annexe A, paragraph 5 of which reads:

"In appointing members of the Selection Panel, the Presiding Officer shall have regard to the balance of political parties in the Parliament."

Given that there are supposed to be between four and seven members of the panel, not including the convener, I do not see how a balance can be achieved. The balance in the Parliament is fairly clear-cut: for every one Liberal Democrat or Conservative member, there are three Labour members and two SNP members. If there are four members of the panel and the Presiding Officer decides that all four parties should be represented, he is under-representing the two larger parties; if he decides that the smaller parties should be excluded, he is being unfair to them. The figure of four does not allow Sir David Steel to take account of the balance of political parties in the Parliament.

The Convener: The expression in the report is that the Presiding Officer should "have regard to" the balance of parties in the Parliament. It is not suggested that the selection panel should be absolutely proportional, for the practical reasons that you have mentioned. I assume that the Presiding Officer would ensure that all the significant parties were represented and that the strength of the largest party would be recognised. The panel could not be truly proportional unless it had something like 27 members.

Donald Gorrie: It is possible to be broadly proportional with six members plus a convener. The membership of this committee is broadly proportional, for example.

Mr Macintosh: I thought that the rule meant that the Presiding Officer should try to achieve a rough balance.

If one party does not want to participate in a selection process, would it be able to veto the selection? If the Presiding Officer asked it to take part, would the fact that the party did not choose to participate veto the process?

The Convener: The only example of that that I can think of would relate to the leader of the Holyrood progress group. However, I would think that, as that group has been established, everyone would want it to run efficiently and effectively.

If anyone decides that they do not want to participate in a process—perhaps because they are opposed to the creation of the post—that is up to them. I do not think that their declining a position on the selection panel would constitute a veto. We are okay on that count.

Donald Gorrie: This may be pedantic, but the final paragraph says that, if there is a division,

"the result is valid only if the number of members who voted is more than one quarter of the total number of seats of members."

That seems bizarre. Is it put into every such document?

The Convener: I have seen those words before. Would our witnesses care to comment?

Alison Coull: The position mirrors the existing provision for the Auditor General.

The Convener: Presumably, it is designed to ensure that a sufficient number approve the process, so as to give it some validity and credibility. It might be possible, for example, to have only 10 people in the chamber for a division—although that might be below the quorum.

Donald Gorrie: The energetic efforts of our friends, the party whips, ensure that there is a good turnout.

The Convener: Unless Frank McAveety has an educational trip planned for that afternoon.

Would a motion of the sort that we are discussing always be dealt with at decision time or could it come up during the day? Some votes are taken during the day but usually they are to do with procedural matters rather than substantive issues and it is possible to get a low attendance.

Alison Coull: The standing orders seem to indicate that a vote on the sort of issue that we are discussing would be taken at decision time.

The Convener: In that case, there would have to be a powerful counter-attraction at decision time if the attendance were to be reduced to the level that is mentioned in the final paragraph—perhaps Scotland appearing in the world cup final or something.

Donald Gorrie: My point is not a big deal.

Committee Meetings

The Convener: Item 4 deals with a proposal to allow committees to meet at times when members are available but when committees are not currently allowed to meet—essentially, lunch time on a Thursday. The matter has been canvassed on and discussed and I think that there is little difficulty with it in principle. We anticipate a report to the Parliament later in the autumn and the principle would have to be incorporated into the standing orders. If members agree to the request for changes to be made, I ask that the matter, including the revised standing orders, come before the committee again at the earliest opportunity, perhaps even at the next meeting. Are we agreed to proceed in that manner?

Members *indicated agreement.*

Public Bills

The Convener: Item 5 deals with guidance on public bills. Andrew Mylne joins us for this item. Andrew will understand that, although members have faithfully read the report, they might not have gone through the existing guidance for comparison purposes. I invite him to highlight the most significant changes.

Andrew Mylne (Scottish Parliament Directorate of Clerking and Reporting): The foreword that makes up the first page of the document is intended to explain where the main differences lie and it lays out the rationale for the changes that have been made.

Little of substance should be new to the committee, because most of the changes in the guidance simply reflect changes to standing orders and to practice, which have been made as a result of the committee's deliberations. However, we have taken the opportunity to tidy up the wording and to make it more clear and helpful throughout the document. Therefore, although a lot of the words have changed, little of substance has.

The Convener: Masterfully batted back, Andrew.

Do members have points to raise?

Donald Gorrie: I have one point to raise. Perhaps Patricia Ferguson could guide us—I think that she was in the chair at one of the meetings of Parliament that I want to talk about.

I am not sure whether each section of a bill must be voted on regardless of whether or not there is an amendment to it. I think that it must be and I also think that that is the Westminster practice. The document does not appear to cover that, but I might have missed the relevant section.

Andrew Mylne: Mr Gorrie's point is covered in the guidance. The situation here is different from that in Westminster. In both houses in Westminster, at the committee stage of a bill, the formal decision on each clause—as they call sections—is taken by a decision on what is called a question on clause stand part, which is archaic language that is used in Westminster. That question allows an opportunity to decide whether a particular clause should be included in a bill. The rules at Westminster are such that, at committee stage, it is not possible to lodge an amendment to leave out a clause. Therefore, if members want to remove a clause from the bill, they must vote against the question on clause stand part. If the division is lost, the clause is removed from the bill.

That is the Westminster system. We have a different system here, in which the way to remove a section or schedule of a bill is to lodge an amendment to omit it. Such amendments are subject to all the normal rules about amendments and are treated like any other amendment. That system has a number of advantages. In particular, it means that notice is given of those amendments just as with any other amendment. Such amendments appear in the marshalled list as one of the numbered amendments. At Westminster, such an amendment is in a different category and is treated rather differently.

11:00

In consequence, it does not make sense to allow MSPs to divide on the question on the section because that would give them two procedural mechanisms to achieve the same result. In other words, if members want to oppose a particular section of a bill in this Parliament, the way to do that is to lodge an amendment to leave the section out, not to oppose the question on the section.

The mechanism of considering each section separately at stage 2 is a helpful device to allow points to be raised that have not been covered in lodged amendments. It might be that the points on a particular section that have been raised through amendments are quite specific and focused, but members might want to discuss the section more generally before moving on. There is an opportunity to do that.

Donald Gorrie: My concern is that issues might not be properly debated. If we do not have an equivalent of the Westminster procedure—"clause 3 ordered to stand part of the bill"—how can the committee debate the section? If there is no amendment, but some members wish to debate the section, can they do so?

Andrew Mylne: Yes. We have always tried to make clear to conveners who are handling a stage 2 proceeding that the question on each section affords the opportunity to discuss it more generally. That is because members might have generalised doubts or queries about a particular section of a bill, which they have not been able to crystallise into the terms of an amendment. Members might not have thought in advance to lodge an amendment about issues that have arisen as the debate has gone on.

It seems reasonable that members should have a chance to have a short debate—if need be—about any section or schedule of a bill without having to go through the rigmarole of lodging a specific amendment to achieve that purpose. Members might just want to discuss a section; they might not necessarily want to change anything.

It must be said that members have not used that opportunity very often.

The Convener: That is because nobody knows about it.

Andrew Mylne: It exists.

The Convener: I have been through two committee bills and I did not know that we could have a debate other than on an amendment. Now that I know that, I will make sure that everybody knows it. That might slow the process down a wee bit.

Andrew Mylne: We have tried to explain that to conveners in guidance.

The Convener: The conveners have kept it a carefully guarded secret.

Patricia Ferguson: That was the way in which we conducted the debate on the Erskine Bridge Tolls Bill in the chamber last week when we met as a Committee of the Whole Parliament.

The Convener: When we did that last week, I thought that the possibility of an amendment was ruled out because by approving the general principles of the bill, we had made it impossible to delete section 1. The entire substance of the bill, other than the name, was in that section.

Patricia Ferguson: That is correct.

The Convener: Even if it had been possible to amend section 1, you—as the convener—would not have allowed it to be taken out because no one had lodged an amendment to do so. An amendment would still have fallen on that basis.

Patricia Ferguson: Andrew Mylne will keep me right, as he always does. When we got to section 2 I asked whether any member wanted to lodge an amendment because, even at that stage, it would have been possible to accept an amendment. The Committee of the Whole Parliament would have had to adjourn—which I pointed out—but we could have accepted an amendment to the second section of the bill because it would not have been a wrecking amendment; rather it would have been an amendment to leave out part of the bill.

The Convener: Are there any other points that members wish to make on the report?

Fiona Hyslop: I have a point to make on paragraph 3.10 of the guidance on public bills. I would like confirmation on the different steps in stage 1 of a committee bill. The report states that because such a bill must go through such an exercise of agreement in committee, evidence must be taken before the bill is introduced. The proposal for the bill must come before the Parliament for it to agree whether the bill can be introduced. Committees must follow a rigorous procedure at that point.

I am concerned about the implications of referral of a bill to other committees later. If a committee has gone through such a rigorous process to get the Parliament to agree to its proposal, there must be some trust and faith in the committee's drafting of the bill. I could not see any recommendations in the guidance about what is required at stage 2. The question whether a committee bill should be referred to another committee or to a Committee of the Whole Parliament might become an issue.

The points in the guidance underline the pre-introduction work that has to go into a committee bill. The vigour with which the proposal for a bill is introduced reassures the Parliament about what has not been seen at stage 1, but will be introduced at stage 2. That is why a committee bill is quite distinct and separate from member's bills or Executive bills.

Andrew Mylne: That is right. The three-stage process that applies to all bills is intended to ensure that there is informed input by a committee. There is agreement on the general principles, then amendments to the bill, then a decision on whether to pass the bill. The difference with a committee bill is that the first bit of the process is to some extent the other way round; the committee's detailed consideration and input comes at the stage in which it is formulating its proposal before the bill is introduced. At that stage the bill escapes the normal stage 1 inquiry on the ground that that is likely to replicate what the committee that introduced the proposal has done.

The guidance is meant to reflect the rules as they stand; in other words, the minimum requirements. The rules are reasonably flexible in that respect. There is, for example, nothing to prohibit a committee that has had a bill referred to it at stage 2 from taking evidence on the bill before it reaches the formal business of considering amendments. That has always been in the guidance. Time scales do not often permit that, but it is possible. Committees have the power to take evidence on any matter that is referred to them. That is an opportunity that applies to any bill, not only to a committee bill. It is within the constraints of timetables that are established for a bill. The Parliament has a degree of flexibility to allow evidence to be taken on a bill, or to refer the bill to committees for which it is relevant at the appropriate stages.

I hope that that goes some way towards answering your questions.

Fiona Hyslop: It does. I have another question about the consolidation committee that is referred to in paragraph 3.24 of the guidance. Do standing orders cover appointments to that committee? Who establishes the committee and on what basis is it established?

I spent six months discussing the Housing

(Scotland) Bill. There was a strong case for a consolidation bill on housing, in which case the most appropriate committee to refer the bill to would have been the Social Justice Committee.

Andrew Mylne: Under the existing rules, the situation is quite clear. There is a fairly precise definition of a consolidation bill. If a bill satisfies that definition, it falls under the rules that apply to such bills. As paragraph 3.24 of the guidance states, it is for the Parliamentary Bureau to propose the establishment of an appropriate committee, subject to the constraints that are set out in the rules. An ad hoc committee would be established for the purpose.

That is the only procedure that is available for a consolidation bill. In that case, the committee would have to include at least one member of the relevant committee. As Fiona Hyslop said, in the case of a housing consolidation bill, that would almost certainly be the committee that considered the Housing (Scotland) Bill. The situation is as described in the guidance.

The Convener: If members have no other points to make on the paper, do we agree to approve the paper?

Members *indicated agreement*.

Draft Annual Report 2001-02

The Convener: Item 6 on the agenda is on the draft annual report. The item is to ask whether members have any questions or comments to make, and whether we should add to the report if anything has been missed out.

Donald Gorrie: I have one small point to make. The first page of the annexe states:

> "The Committee has published one report on parliamentary questions and anticipates publishing a second before summer recess 2001."

There is a sort of fiction that says that we wrote that annexe in May, but it reads rather strangely.

The Convener: Would it be competent to put in a footnote to the effect that, since the time of writing, a further report has been made?

John Patterson (Clerk): I do not see why not.

The Convener: If there is anything else in the report that you feel should be treated in the same way, feel free to interpret that decision appropriately, John.

John Patterson: Thank you.

The Convener: Do members agree to approve the report otherwise?

Members *indicated agreement*.

Consultative Steering Group (Principles)

The Convener: Item 7 is the inquiry into the consultative steering group principles. We are joined by our adviser, Professor David McCrone. I invite Professor McCrone to report on what he has been doing and to point the committee in the direction in which it needs to go in order to progress the inquiry to the next stage.

Professor David McCrone (Adviser): The main purpose of the report is to report back on the CSG seminar that we held on 10 September—just over a week ago. That was an opportunity, in a fairly informal setting, for members of the CSG who could attend and members of the Procedures Committee to discuss in a fairly broad and open way the issues that they felt were most relevant.

It is particularly interesting that the comments were focused almost entirely on the role of committees in the Parliament. That was an interesting way in which to handle the seminar, because we did not want to set the agenda for the CSG, but to find out what the CSG felt about the progress that had been made after two years. There was a wide-ranging discussion about committees. Four members of the Procedures Committee and seven members of the CSG were present; we had good coverage of the two bases.

The consensus was that people felt that the committee system was somewhat unstable because of changes in committee membership. People felt that the CSG had put a lot of emphasis initially on the role of committees. In the welter of the first two years it was difficult to establish the kind of distance from the issues that the CSG envisaged in its report. People felt that committee work loads were dominated by the Executive's legislative programme, which left very little time for policy development. I know that the members of the Procedures Committee raised some of those concerns. So far there had been less long-term strategic thinking than the CSG hoped for. I came to the committee to consider that.

There is also a general feeling that the Parliament should operate a slower timetable—of course, that might be impossible. There was greater pressure to perform and produce and less time to ponder and think. The fact that the CSG saw the Parliament not simply as a legislating body, but as a policy-making body came up frequently in the discussion. The CSG felt that that aspect of the Parliament had been somewhat squeezed over the past two years.

Other matters that were raised concerned the mobility of committees. Committees were encouraged to move around the country a bit more and to experiment with how they carry out their activities. That clearly had implications for information technology as well as budgetary implications.

The CSG also thought that committees should try more to obtain expert advice. The vexed issue, which the CSG and various panels debated, concerned the role of outside people on committees, not as voting members, but as expert members feeding into the committees. There is a general feeling that that has fallen somewhat by the wayside.

That was the gist of the seminar. I am sure that committee members who were present will be able to amplify that, but that was the gist of our discussion.

11:15

The Convener: Do any members have points that they would like to bring up on that—particularly members who were at the seminar? It was encouraging to see so many people taking an interest.

Mr Macintosh: I was not at the seminar; I was not able to make it, but I wanted to. The idea that the Parliament is moving too fast is one that is not common in our experience of taking evidence from business and industry. The most common complaint is that Parliament is terribly slow, and that Executive action is fairly slow. Was that view reflected at the seminar?

Professor McCrone: It was not raised. The general feeling was that the agenda, and therefore the time to ponder, was too tightly set by the legislative process. It was recognised at the seminar that there was a backlog of legislation that had been held up for a long time and which now was being put into effect, but the strategic thinking time for committees was being lost. There was a general feeling, in so far as the agenda was set by the first two years of business, that the culture of the Parliament and its committees would not allow the process to be reinvented. People at the seminar acknowledged that legislation takes some time, but it was felt that there was a problem in that there was no space for committees in particular to think strategically.

Mr Macintosh: I recognise the concern, but I wonder whether, in our evidence-taking sessions, we should seek out a different view. My experience of taking evidence on the new economy in the Enterprise and Lifelong Learning Committee was that we were told forcefully that we had to act and act now. I would be concerned if that view did not emerge, and instead the overwhelming evidence was that we are moving far too fast and we should slow down.

Professor McCrone: That is an important point. I accept the point about hearing from witnesses with opposing views, but there are other issues. One is that moving too fast, in so far as legislation is being pushed through, means that no space is left for other things to be considered. Businesses and organisations that are associated with enterprise and education support the notion that instead of rushing through potential legislation that has not been thought through, time should be taken to ponder and think strategically about the longer term. My reading of what the CSG said was simply that there was too much legislation that squeezed out thinking time, not that legislation should not be introduced at all.

Fiona Hyslop: I was at the seminar and found it extremely useful. I will pick up on Ken Macintosh's point. It is important to distinguish between Parliament and the Government. Industry's criticism, which Ken reflected on, was of the policy initiatives that are taken by the Government. It is important that we consider the wider Parliament, of which the Executive is only one part.

It was striking that people at the seminar were not aware that approximately 40 bills have been passed or will be introduced. The sheer volume of legislation was not anticipated by the CSG. I recently sat on a committee that dealt with legislation, and it is clear that committee timetables are being driven by legislation. In industry, there is always time for strategic thinking. If the committees are to be the element of the Parliament that does the strategic thinking, they need time to think strategically. Unfortunately, they have the competing constraint of being part of the legislation sausage machine. Will the committees be able to stand back? I am not sure what the solution is, but it is an important point to raise. Is that reasonable?

Professor McCrone: Yes. The background noise was that the compact is between the Parliament, the Executive and the people. There was also concern about how the people are represented, and the various channels that feed in to the Parliament and the Executive. Clearly, it is difficult to maintain those links, because it is not just a three-way link; there are two-way links on each side. It is true that the design of the CSG's scheme was premised on open access. The general feeling, as you rightly say, was that legislation was imposing itself on the Parliament, and that has the potential to squeeze out public feedback into the system. That relates to the accessibility and availability of committees, and whether they should be based in the central belt or Edinburgh.

Donald Gorrie: My understanding was that the concern about excessive speed related in particular to the tight timetables for bills. It was suggested at the seminar that at stage 2 committees could have alternate meetings to progress with bills and with inquiries, or whatever they might be doing, which would give more time for outside groups to contact committees and lodge amendments.

Much of what was said at the meeting was good but not new, but one point that was stressed and which I had not grasped was that the CSG saw committees being expert committees. We are all well aware that we are not experts in anything at all, apart from skating on thin ice, but attendees were worried that numerous changes in committee personnel meant that whatever skills and knowledge were being developed were being lost. It may not be possible for the Parliament and the parties to do anything about that, but that point was new to me and was strongly made, and we must address it.

Mr McAveety: On the second or third reading of the report—which I hurriedly performed this morning—it becomes apparent that it is quite critical. That may be because the aspirations at the beginning of the Parliament were never going to match the reality of setting up a new Parliament. What is the CSG doing to address the gap between what people thought pre-1999 and what they think following two years of operation of the Parliament? What is it doing to measure that gap?

On issues such as sharing power, the report contains a couple of welcome comments, but most of it ranges from very uncertain to sceptical to negative. That also applies to the comments on equal opportunities, which perhaps reflect a lack of information on how to break through a system, even a new one, to obtain a measurement. What is being done to bridge the gap that exists between views pre-1999 and the reality check of 2001?

Professor McCrone: It is always dangerous to speak on behalf of the CSG, but the general view was that theirs was a council of excellence, and that the Parliament deserved many plaudits for going back and examining its principles. The very act of going back and doing that, and seeing how well or how badly the principles had been adhered to, had its own impact in terms of the dynamic of institutions and committees. The general feeling was that that should be a continuing process. That does not mean continuous revolution, but constantly asking whether the Parliament is fulfilling the role that was envisaged in the four principles. At the very beginning we asked CSG members whether, if they had the time again, they would go for the same principles, and unequivocally they said yes. They evolved those principles and, two years on, they feel that those are the principles that are required.

The questions on the principles were instigating

questions. Frank McAveety is correct that few questions were attached to equal opportunities, but that does not downgrade the importance of equal opportunities, which I appreciate is the responsibility of a different committee. CSG members are very keen on the interconnectedness of the four principles. They also are realists, and they recognise that when setting up a Parliament, very rarely will the principles be applied 100 per cent. However, examining that is an important part of the process.

I should have said earlier that the purpose of the seminar was to get people to talk informally. This committee will have the opportunity to take evidence formally from the CSG, which will provide the opportunity to raise the points that have been made.

Mr Gil Paterson (Central Scotland) (SNP): You talked about first principles. Paragraph 7 of your report states that few people understand who is accountable and where the blame or the credit should lie. Is it time that we desisted from calling the Executive the Scottish Executive, and started calling it by its real name, which is the Scottish Government, given that everyone understands what that means? Should we also stop calling civil servants the Scottish Executive, given that they are the Scottish Government's civil servants? It is muddled. There are criticisms but no answers at this stage.

Professor McCrone: Yes, the use of the term Scottish Executive to mean the political system as well as the civil service was raised. That is an issue of nomenclature and, to be fair, the CSG did not want to get too hung up on the terminology, in recognition of the fact that it may or may not change, and because it has been invested in. However, the use of the term Scottish Executive was raised by CSG members, as committee members who were at the seminar will know.

Mr Paterson: But if it is a continuing problem in the minds of the public, and people who want to access this Parliament do not understand who they should address their problems to or who is giving the answers, it is a big problem that must be overcome soon.

Professor McCrone: Yes. I do not know of any survey that has asked people whether the term Scottish Executive is meaningful in the outside world, in the way that, as you say, perhaps Government is. In future, organisations may wish to examine that.

The Convener: The next step is to plan our evidence-gathering sessions. We have received more than 230 submissions from the 2,000 or so individuals and organisations that were contacted. Annexe A to the report contains an initial categorisation of the contributors. It is clear that we must allocate time to talk to the parliamentary community about how we do things. Equally, it is clear from the list of outside organisations that there is considerable interest in the wider community in talking to this committee.

We have four evidence-taking slots between now and Christmas. It is clear that we cannot do justice to the level of response by using those alone, and we will have to go into next year. We knew that the inquiry would expand if the interest was there. We must somehow whittle down the long list of individuals and organisations to a meaningful and representative group, or sets of groups, of people whom we can invite in for interview or invite to correspond with us in other ways. At the moment we have a list of categories.

Somewhere in the system there is a letter—if it has not gone out yet, it will go out shortly—that will give committee members information on all the people in the list. When they receive the list, committee members should nominate people or organisations that they wish to give evidence at a committee meeting, and we will use that as a contributory factor in drawing up a list of people. It is obvious that we will have to do some selecting. Some people will get the opportunity to give evidence and some will not. We will have to do that fairly. I would like to involve everyone in making nominations. We will fillet the lists and draw up our lists of people to come in. If committee members feel that somebody important has been overlooked, we will find a way to work them in.

As we go through the inquiry, some of the organisations or individuals who have not been invited to give oral evidence might decide that they want to give further written evidence. We must be receptive to that. The main thrust is to try to focus on the issues that arose in the initial response. We must balance our selection to take account of that.

If members are happy to give that degree of discretion to the clerks and me, we can proceed on that basis.

11:30

Donald Gorrie: I have one general point and I want to see if colleagues agree. I would like priority to be given to people who have experienced our goings-on. Witnesses who have been to a committee and said that aspects A, B and C worked quite well but that X, Y and Z were bad are more useful to us than people who have worthy theoretical ideas, but no experience.

The Convener: That is a fair point.

Patricia Ferguson: On the other hand, I would like to know why people who have not connected with the Parliament have not done so. Maybe the

committee will not connect with such people during the inquiry, but I would like us to try.

Donald Gorrie: Yes.

Mr McAveety: One of Professor McCrone's key points was that only the usual suspects had given evidence. That is no disrespect to those who have given evidence, but we must get behind that. It is important to have input from those who have experienced the process, but Patricia Ferguson is right to ask how we reach folk who do not feel that they can engage in the process. That is harder to achieve, but time should be spent on working out how we can best do so.

The Convener: That emphasises the importance of making the inquiry representative. We should try to cover as many different angles as possible. For example, there seems to be a lot of dissatisfaction with the petitioning process and we will have to examine carefully why that is the case. The problem might be that people ask the Parliament to take actions that it has no power to take, such as overturning local authority decisions—in which case, that is tough luck. Alternatively, the problem might be that people who had petitions with aims that were achievable feel that they have not been listened to or that the petitioning process was wrong. We must get at the roots of problems and find ways to resolve them.

All the members' points are valid.

Professor McCrone: There are around 250 written submissions, some of which are substantial documents that are worth reading. The committee should consider whether simply to take those as given and talk only to people who have not made submissions. Some of the written submissions contain interesting points and the committee might want to question the authors on what they meant. The committee must factor that dimension into its decision.

Mr McAveety: I am conscious of my time management and that of other members and I have a point on the volume of information. As we have some general areas of concern, convener, is there a way to summarise the key concerns with references to the submission that contains those concerns? If members want to consider submissions in detail, they can do so, but we will have the key themes that have emerged.

John Patterson: Such a document is in preparation and it will be circulated before the witness sessions.

Fiona Hyslop: It is important to consider the themes and issues rather than who has raised them. We are supposed to be considering the principles so the evidence should be driven by principles rather than by who has submitted the comments.

John Patterson: Yes, but it will be clearly cross-referenced, as an aid to members.

The Convener: Professor McCrone, would you like to add anything?

Professor McCrone: We talked about taking evidence from throughout the country. When we began the process, we were keen for it not to be central-belt driven and to ensure—even simply geographically—that we had a better spread of submissions. That brings us back to the people who do not think that it is up to them or that it is their place to submit evidence. Those people are the most difficult to get hold of, but their attitudes might be the most valuable.

Patricia Ferguson: In addition to the committee travelling to where people are, it might be that videoconferencing is one of the solutions for the committee and for the people that Professor McCrone was talking about. I am conscious that the places that have been identified are good for people who happen to live within a 10-mile radius, but people who do not will be restricted in getting to those places.

The Convener: We are agreed on the way forward. Before I close the meeting, I inform the committee that Katherine Wright, who is one of our assistant clerks, is moving to the chamber desk. Now that she knows who you are, she will interfere with your questions. [*Laughter.*] I thank her for the work that she has done and I wish her well in her future career.

Meeting closed at 11:35.

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