

# **PROCEDURES COMMITTEE**

Tuesday 24 September 2002  
(*Morning*)

Session 1

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## **PROCEDURES COMMITTEE**

### **11<sup>th</sup> Meeting 2002, Session 1**

#### **CONVENER**

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

#### **DEPUTY CONVENER**

\*Mr Kenneth Macintosh (Eastwood) (Lab)

#### **COMMITTEE MEMBERS**

\*Susan Deacon (Edinburgh East and Musselburgh) (Lab)

Donald Gorrie (Central Scotland) (LD)

\*Fiona Hyslop (Lothians) (SNP)

\*Paul Martin (Glasgow Springburn) (Lab)

\*Mr Gil Paterson (Central Scotland) (SNP)

#### **COMMITTEE SUBSTITUTES**

Phil Gallie (South of Scotland) (Con)

Trish Godman (West Renfrewshire) (Lab)

Richard Lochhead (North-East Scotland) (SNP)

\*attended

#### **THE FOLLOWING ALSO ATTENDED:**

David Cullum (Scottish Parliament Directorate of Clerking and Reporting)

Stephen Imrie (Scottish Parliament Directorate of Clerking and Reporting)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

#### **CLERK TO THE COMMITTEE**

John Patterson

#### **SENIOR ASSISTANT CLERK**

Mark MacPherson

#### **ASSISTANT CLERK**

Lewis McNaughton

#### **LOCATION**

Committee Room 4



## Scottish Parliament

### Procedures Committee

*Tuesday 24 September 2002*

*(Morning)*

[THE CONVENER *opened the meeting at 10:30*]

**The Convener (Mr Murray Tosh):** Good morning everyone. We will make a start, as it is 10.30 am and we are quorate. I have received apologies from Donald Gorrie, who has a clash of committee commitments. Perhaps other members will arrive shortly. We have a short agenda this morning, which will come as a pleasant break to us all.

### Standing Orders (Private Legislation)

**The Convener:** The first item concerns private legislation. Members have a paper from the non-Executive bills unit. David Cullum, the head of the unit, is with us this morning. I invite him to introduce his paper.

**David Cullum (Scottish Parliament Directorate of Clerking and Reporting):** First, I will give some background to the subject. The standing orders that relate to private legislation were agreed by the Parliament in November 2000, following a Procedures Committee report. Since then, the non-Executive bills unit has worked with promoters and parliamentary agents to consider, review and update the procedures where necessary. Most recently, three determinations that were made by the Presiding Officer have been amended to improve procedure.

Since late last year, we have been involved in discussions with the agents for the proposed railway bills. During those discussions, a number of issues came to light. If any of those railway bills are introduced in the current session, they will not complete their parliamentary passage before the dissolution of the Parliament. For that reason, it is necessary for the carry-forward provisions to be workable and practical. The suggestions that are contained in the paper allow for the carry-forward provisions to cover fees. We have also taken the opportunity to clarify the start and end point of the objection period. I am happy to answer questions.

**The Convener:** It might be best if we turn to the annexe in which the proposed changes in standing orders are set out. The first proposal is for rule 9A.5 to be changed. The justification for the changes is offered in paragraphs 4 and 5 of the

paper. Do we agree to the change to rule 9A.5?

**Members indicated agreement.**

**The Convener:** The next change is to rule 9A.6 and deals with the tightening up of the objection period. The text of the change is set out in paragraphs 6 to 9 of the paper. The proposed change seems straightforward. Do we agree to the change to rule 9A.6?

**Members indicated agreement.**

**The Convener:** The next change is to rule 9A.7, which sets out the fees on reintroduction. The proposed change, which David Cullum referred to in his opening remarks, is set out in the paper. Do we agree to that change to rule 9A.7?

**Members indicated agreement.**

**The Convener:** The other proposed change to rule 9A.7 deals with the carry-forward and the objection period on reintroduction. Are we agreed to that final change to the standing orders?

**Members indicated agreement.**

## Back-bench Speeches

**The Convener:** Item 2 concerns a letter from Alex Neil, which enclosed his correspondence with the Presiding Officer. Members will be aware that, from time to time, Alex Neil and other members have raised concerns about back-bench speaking times in the chamber.

The committee will recall that we discussed the issue before the summer recess and agreed that we would survey members to get their attitudes to potential changes. We wanted to get opinions on debate times and the organisation of the working week. The preparation of the questionnaire is at an advanced stage. The assistant clerk and I exchanged e-mails at the beginning of the week—we are fine-tuning some of the questions—and we hope to be able to make quick progress.

Members may suggest any course of action that they wish, but I propose simply to advise Alex Neil of the discussion that we had before the summer, note his letter and advise him that a questionnaire will soon be issued. Before we push any of the issues that have arisen, we should have an idea of what our parliamentary colleagues think. We should find out whether there is widespread unhappiness with the current situation, which there may or may not be.

**Mr Gil Paterson (Central Scotland) (SNP):** I do not disagree with anything that you have said, convener, and I support your proposed course of action. However, Alex Neil's correspondence with the Presiding Officer highlighted the problem of back benchers, with eight getting the opportunity to speak in a particular debate but four not getting that opportunity.

There is another point about which I have spoken to Alex Neil. It is not a party point, but a general point. The way in which business is organised—using lists that have been made up by spokespeople—means that the same back benchers are at the tail end of every debate.

**The Convener:** Some of those issues are really for the Presiding Officers, who will accept the point about looking after members who may always come at the tail end. The Presiding Officers have the power, which they sometimes use, to vary things in order to be fair to everyone.

**Mr Paterson:** I think that the Presiding Officers are complicit in the way in which back benchers do not get the opportunity to speak. I say that because I think that the Presiding Officers like a nice tidy list to operate from. I do not think that there is anything dubious about that, but, right from the start, Sir David Steel said that he liked having a list so that he could manage the time. I understand that, but we have to consider other

factors as well and not use the convenience of the list to make things difficult for back benchers.

**The Convener:** We like days when the number of speakers coincides with the amount of time available so that everyone gets called. That makes things much easier.

**Mr Kenneth Macintosh (Eastwood) (Lab):** I do not want to have the full debate now, because we will come back to the issue, but I want to put on record the fact that I have a lot of sympathy with the points that Alex Neil has made, both on the number of back benchers who are called and on the amount of time that they are given. Given how I voted in a recent debate, those points were illuminated for me by the frustration that I felt when I was not given the chance to speak. I was grateful to the Deputy Presiding Officer for reading out and acknowledging those members who were still waiting to be called. I found that helpful and, for the record, I whole-heartedly commend the practice. It does not make things any better but it certainly reduces the feelings of frustration on the back benches.

**The Convener:** That is not generally done, because we do not want a whole lot of members pressing their request-to-speak button on every subject, thinking that, although they will not get called, they will still be able to say that they had tried to speak. However, in the recent health debate, we knew that every local member would have wanted to speak and that they would have a legitimate interest in demonstrating to constituents that they had attempted to speak. We knew that we could not call everyone, so it seemed fair to put on record the names of those who were not fortunate enough to catch the Presiding Officer's eye.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** Like other members, I am happy to proceed on the basis that you outlined, convener. I, too, echo the view that we should be willing to consider the issue quite widely—I am sorry that I missed the meeting at which members discussed it. It is important that we consider in the round all the different aspects of debate procedure that impact on one another.

I seek two assurances. First, will our work—the questionnaire and our wider inquiry—address some of those wider questions, including those that are within the Presiding Officer's domain? I would have thought that we could comment on those questions, despite not having the power to implement changes ourselves. Secondly, I would like confirmation that committee members will have an opportunity to pass comment on the questionnaire before it is issued.

**The Convener:** When I think that the questionnaire covers everything that was raised in

the committee's previous discussion, we will circulate it to members, at which time everyone can have a cut at it.

**Paul Martin (Glasgow Springburn) (Lab):** Two issues arise. First, we will never be able to accommodate all the back benchers' aspirations. We have all been disappointed on a number of occasions. I was in the same situation as Ken Macintosh; I, too, would have liked to speak in the debate to which he referred. It will always be the case that some MSPs will not be accommodated in a debate—the survey will have to be clear that accommodating all MSPs is not possible.

Secondly, I have always been concerned about the time that is allocated to party spokespersons for opening and closing debates. That issue affects all parties. If we could shorten the length of those speeches—even by only one minute—we could create an opportunity for an extra back-bench speaker. I know that the logistics are not as simple as that, but we could consider the amount of time that is allocated for opening and closing speeches, because the length of those speeches is a serious issue. All members want ministers to take interventions during closing speeches, which creates problems with time. We also want other speakers to take interventions, which adds to the time that is taken up.

We should be honest with one another. We can conduct a survey, but are we being genuine when we say that we will be able to accommodate everyone who wants to speak in a debate? We can aim for a maximum number, but members are in for a surprise if they think that they will be accommodated simply because they press their request-to-speak buttons.

**The Convener:** That is fair point. We should send the questionnaire with a clear warning about expectations. There is no remedy that will allow all members to speak for an unlimited length of time.

**Fiona Hyslop (Lothians) (SNP):** I apologise for being late.

I am sympathetic to back benchers' concerns that they do not get an opportunity to speak, particularly in controversial debates. That is a key point—there are many debates in which we do not so much persuade members to speak as let it be known that it would be helpful if willing volunteers were to come forward. The question is one of judging which debates require a greater allocation of time. I have to consider that question as a member of the Parliamentary Bureau. Frequently, I have been able to secure longer debates on what I believe are controversial issues. That applies both to debates and to ministerial statements, in which we know that a large number of members are interested and about which they wish to ask questions.

Paul Martin made a good point when he referred to the length of time that front-bench speakers are given during longer debates. The problem may not be as severe as we perceive it to be. Alex Neil, who has also contacted me, has a good record of being able to contribute to debates, but many others find themselves at the tail end of debates, as Gil Paterson said. It is helpful that the Presiding Officer notices and brings to the attention of the parties the fact that some members are frequently not called to speak. In the SNP, there is no major lobbying or banging on doors by members who want to change the procedure. People believe that they are getting a fair crack. This is a front bench versus back bench issue about the allocation of time.

The debate on the School Meals (Scotland) Bill is a good example of the problem, because that was a controversial issue and many members wanted to speak in the debate. The bureau should ensure that enough time is allocated to debates on controversial issues, so that members are able to speak. That means that a judgment call must be made in advance of a debate about whether an issue is controversial—sometimes we do not know whether an issue is controversial. As the Presiding Officer knows, sometimes debates run for less time than has been allocated. The Procedures Committee has had to address what happens when there are too few speakers for a debate and what we should do about decision time in such circumstances. That is the flip side of the problem and it is difficult to manage.

We may be able to make some changes, including changes to the length of time for front benchers' speeches in the longer debates, in order to leave more time for back benchers' speeches. I encourage all parties to monitor which members are not being called to speak and to trawl all members to find out who wants to speak and who does not. We have conducted studies that show that, usually, only one member is not called during a debate. However, that might be due to the fact that members are not putting themselves forward because they think that they might not get in. There are issues that the Procedures Committee can manage, but there are also issues that are more to do with internal party management. The parties should ensure that all their members have an opportunity to speak.

10:45

**The Convener:** We all recognise that there are aspects of the issue that are matters for the parties, for the Parliamentary Bureau or the Presiding Officers. The point is well made.

**Mr Paterson:** It is quite apt that we are speaking about this today. At Westminster, there will be a 12-hour debate in which members will get more

than four minutes in which to speak. They will be able to make their points well on an important world issue. Until we get the opportunity to do the same in the Scottish Parliament, we will always be scrambling about.

**The Convener:** There are also issues about the total length of time that is available. Do not believe that the situation at Westminster is ideal. Although members sit there all day, a succession of privy councillors can jump the queue in front of them.

**Mr Paterson:** I know that it is not ideal.

**Susan Deacon:** I do not want to prolong the debate, as we will return to the issue. However, it worries me that we can become quite technocratic in discussing how we make speeches fit the window of time that is available. I find it encouraging that, in our wider discussion around the inquiry, we have taken a step back and thought laterally about the bigger objectives regarding debates in the chamber. I hope that we will not restrict our thinking to how we can fit things into the current model. We must also think about how the quality of the chamber experience can be enhanced both for members and for observers. The issue of allowing more flexibility in the length of debates and speeches must be considered. The stilted approach that we currently take is satisfying neither front-bench members nor back-bench members and it often makes the experience not very rewarding for members of the public who are listening to debates.

There is an argument for having more flexibility and I hope that we are capable of thinking outside the box on that. Anything that we do to canvass our colleagues on the issue should not just steer them into thinking within the norms; we are, after all, still only in the first session of the Parliament. We must guard against building in precedents and practices at an early stage by accident rather than by design. Now is a good time to take stock and I hope that we will think more about the qualitative issues. I am sure that we will.

**The Convener:** Okay. We will send Alex Neil a response, including the *Official Report* of this discussion and the previous one. Committee members will receive copies of the questionnaire and the text that will be issued with it, so you will all have an opportunity to ask that additional questions be put or that questions be put to address all your concerns. We will try to accommodate all committee members' requests. Are we agreed on that course of action?

**Members indicated agreement.**

## Standing Orders (Committee Remits)

**The Convener:** Item 3 relates to the proposed changes to the standing orders to cover the remit of the European Committee. We have received apologies from the convener of that committee, Irene Oldfather MSP, who is unable to be with us. Stephen Imrie, the clerk to the European Committee, will introduce the subject, after which we will discuss the proposed changes to the standing orders.

**Stephen Imrie (Scottish Parliament Directorate of Clerking and Reporting):** It is a pleasure to appear before the committee. This is my first time at the other end of the table and I hope that I will do myself justice. I reaffirm Irene Oldfather's apologies for not being able to attend this morning's meeting. Although the papers in front of members are fairly self-explanatory, I will spend a few moments going back through the history of the item, as it has been on the go for a substantial time.

The issue was raised initially by the then convener of the European Committee, Hugh Henry, when the Executive had a minister whose portfolio explicitly included external affairs. Members' dossiers contain a copy of the letter that the convener wrote to the Presiding Officer, which suggested following the principle that, if an Executive minister is responsible for external affairs, there should be some scrutiny of the portfolio. The letter was copied to the then First Minister and the then Minister for Parliament. Members also have the Minister for Parliament's response, which said that the Executive was content with the principle, but noted that it was properly the responsibility of the Scottish Parliament to consider changes to standing orders.

The convener approached the Procedures Committee with an issues paper, which the committee discussed in May 2001 and agreed in principle. The European Committee was then invited to consider some suggestions about how standing orders could be revised to give effect to the change. That has taken a reasonable period of time, not least because the European Committee has been engaged in a whole range of other tasks and activities. However, on 18 June 2002, the European Committee signed off its proposals for the changes to standing orders, although it noted that it was up to the Procedures Committee and Parliament to decide on any such changes. Although, as I have said, the changes and the accompanying notes are fairly self-explanatory, I am happy to comment on them.



**The Convener:** Before we begin, I should point out that Irene Oldfather's letter raised other issues that are not up for discussion today. We are looking solely at the proposed changes to standing orders. As a result, we should focus on annexe A in the heart of the papers, which analyses the proposed changes and places them in three categories. Amendments 1 and 2(a) propose changing the European Committee's title to European and external relations committee, the justification for which is given in the explanatory notes. Amendment 2(b) effectively extends the committee's remit over the Executive's wider external relations policy, including the Deputy First Minister's remit. Finally, amendment 3 loosens up the remits of mandatory committees and allows for changes to their remits as it becomes clear that certain issues are relevant to their core functions. This is an opportunity for members to raise points of clarification.

**Mr Macintosh:** I wonder whether Stephen Imrie could give examples of when it would be necessary to use the standing order that is outlined in the third amendment. The paper says that the amendment

"makes it clear that the remit ... can be changed at any time".

I am not so sure about that. Can a mandatory committee change its own remit? Moreover, what would be the procedure for changing its remit? As I have said, I would find it helpful to have an example of when such a power would be necessary.

**Stephen Imrie:** I believe that precedent has already been set by the Subordinate Legislation Committee, which is a mandatory committee. It has been able to consider, tinker with and extend its remit to a small degree. As far as I am concerned, the intention behind the third amendment is not for a mandatory committee to be able to change its own remit; rather, it is simply to say that at the start of each Parliamentary session, the Parliament creates its mandatory committees and their remits are set out. However, the proposed amendment would allow those remits to be extended or altered during the course of a session.

The procedure would be the same as for any change to standing orders. The committee would make a recommendation to the Parliament and the Parliament would agree on any changes to standing orders. Changes to committee remits would follow the same procedure. A committee is not the sole arbiter of any changes to its mandatory remit.

**The Convener:** What, in that case, is the purpose of building in a new rule that merely allows the committee and the Parliament to do

what they have already done without any apparent difficulty? As you just said, we changed the Subordinate Legislation Committee's remit. I also recall an early change to the Finance Committee's remit. Why should we have a new rule?

**Stephen Imrie:** I am not a legal expert but, as the paper sets out, the change is intended to clarify the possibility of changing a mandatory committee's remit, and to avoid doubt. Precedent has been set, but some officials in the Parliament think that the suggested change would make clearer the role of mandatory committees and allow changes to such committees' remits over the course of time.

**Fiona Hyslop:** There are two distinct issues. The definition of the European Committee is straightforward and it makes sense. The second issue is nothing to do with the European Committee, but is more generally to do with the Parliament. Currently, if we have to change a committee's remit, it is the Parliamentary Bureau's responsibility. The Bureau would make recommendations to Parliament, as has been done previously.

For example, there was concern about whether the Local Government Committee's current remit would allow it to scrutinise the Public Appointments and Public Bodies etc (Scotland) Bill. The Bureau therefore recommended to the Parliament that the Local Government Committee's remit be extended so that it could scrutinise certain issues.

We need a mechanism that allows a bit more flexibility, but it would not be for the Procedures Committee to recommend changes of remits to the Parliament; that would be a function of the Bureau.

**The Convener:** That is not strictly accurate. If a change to a committee's remit requires a change to standing orders, that change must be recommended by the Procedures Committee.

**Fiona Hyslop:** There have already been changes to committee remits—I have given an example—that the Bureau has recommended to the Parliament. Those changes have been approved. Do we need to have a change to standing orders to change committee remits?

**Mark MacPherson (Clerk):** The Local Government Committee is a subject committee of the Parliament and is not established according to a remit set by standing orders. However, the European Committee, for example, is a mandatory committee and is listed specifically in standing orders. A change to that committee's remit would therefore require a change to standing orders. You are right that a change to the remit of the Local Government Committee does not require a change to standing orders.

**Stephen Imrie:** That is correct; that is the distinction to be made. The European Committee's remit is spelt out in standing orders whereas the Local Government Committee's remit is not because it is a subject committee.

**The Convener:** So in making those recommendations in relation to mandatory committees, you have not raised an issue for the Bureau. There is no question of the Parliamentary Bureau's existing authority being affected by the recommended changes.

**Stephen Imrie:** I believe not. There has been some correspondence with previous members of the Bureau and Bureau officials to ensure that they are comfortable with the proposed changes as set out in annexe A.

**The Convener:** Okay. Are there any other points?

**Mr Macintosh:** I am sorry that I am still not clear about this. I am still unconvinced that the change is necessary given that we have made changes to committee remits already without the proposed rule. I certainly do not want to stop the European Committee changing its remit. However, I am not convinced by the third proposed amendment.

Stephen Imrie has suggested that standing orders should clarify what is meant by a mandatory committee, but I do not see anything in the proposed amendment that makes that clearer. What part of the rule change would clarify what is meant by a mandatory committee?

**Stephen Imrie:** I believe that the proposed amendment should be read in conjunction with the rest of the standing order; specifically rule 6.12. The amendment seeks to clarify the definition of the word "mandatory" and the issue of whether or not a remit can be extended during a Parliamentary session. It is not about the specific issue of the powers or responsibilities of a mandatory committee.

I accept that a precedent has been set, as Mr Macintosh says. We are trying to tease out whether it is permissible or possible to change the remits of mandatory committees, which are spelt out in standing orders, during a parliamentary session.

11:00

**Mr Macintosh:** I accept fully that the European Committee has considered the matter and I do not wish to place any unnecessary hurdles in the way of a necessary and desirable change to that committee's remit. Have our clerks examined paragraph 3(b) of annexe A to the European Committee's letter, which is the second part of its proposal concerning rule 6.12? Do we have an opinion on whether such a change is necessary for other committees?

**John Patterson (Clerk):** The change has been cleared by the directorate of clerking and reporting, so the paper stands as the views of clerks as a whole.

**Mr Macintosh:** Does it stand as the view of the directorate?

**John Patterson:** Yes.

**The Convener:** I asked myself this morning whether we were content that all the bases had been covered, and whether the issues that have been raised by the European Committee did not simply represent an individual bid by an individual committee. I am assured that the matter has been cleared and discussed across the board.

**Susan Deacon:** Like other members, I am happy with the proposal as far as the European Committee is concerned, and I am keen for the changes to go ahead. However, I share reservations about the proposed change to standing orders. I am instinctively uncomfortable about something that builds into the standing orders what seems to be a provision that could either be viewed as flexible or that could encourage us to be lax about how we think of such matters in the first place. There is a limit to how much we should encourage such change. It feels as if we are enshrining something a bit casual in standing orders, as far as changes to committees' remits are concerned.

The main questions that occur to me are: Whose responsibility are the changes? Is work under way, as we near the end of this Parliament, to consider how committees' remits have worked to date? It is one thing to think about the committee structure in the abstract—as happened before the Parliament was established and during the early stages of its work—but it is another to do so now that we have three and a bit years' experience under our belts.

Rather than changing remits incrementally, I would prefer that there were certain times when we took a step back and gave some thought to how the remits work, and that we got matters right at those times.

What scope is there for improving the dialogue or interface with the Executive on such matters? The same issue applies to ministerial portfolios. One of the drivers for change as far as the European Committee was concerned was the way in which ministerial portfolios are organised. I am not suggesting that anything should be formally established whereby committees could or should work directly in line with ministerial portfolios—or, conversely, that ministerial portfolios should be directly aligned to committee portfolios. I do not think that that would be possible, in any case. However, it is clearly desirable to have some symmetry between the two. That would avoid the ad hocery that has existed during the first

Parliament, when there have been series of changes to ministerial responsibilities that have had a knock-on effect on committees.

Forgive me for extrapolating on a small and simple proposed change.

**The Convener:** I see an article developing.

**Susan Deacon:** It is important that we think about such issues more globally—it will be to our discredit if we fail to do so when we have the chance. This is the right time for us to think about such issues; if we do not we will be into another Administration without having thought about them. If you would like an article, I will be happy to provide one.

**The Convener:** I am not saying that such issues are unimportant, but the issue relating to committees that shadow ministerial remits essentially concerns subject committees, which are established by the Parliamentary Bureau rather than by the standing orders. Later, the committee may wish to discuss that matter properly. In dealing with the mandatory committees, we are dealing with much tighter and more specific issues. I hope that the assistant clerk can tell me whether the mandatory committees are founded in the Scotland Act 1998 or only in the standing orders.

**Mark MacPherson:** The mandatory committees are founded only in the standing orders. There is no legal requirement for them under the Scotland Act 1998.

**The Convener:** So they are in the standing orders and not covered by the practices or decisions of the Parliamentary Bureau. There must therefore be a mechanism for changing remits.

We have received ad hoc and incremental bids from committees to change their remits. As the discussion has progressed, I have come to understand the purpose of the third proposed change. There is nothing sinister or difficult about it, but I wonder whether it is necessary and whether we might find in future that, having agreed such a mechanism for changing a committee's remit, we will want to change a mandatory committee's remit but find that the reasons or the arguments that are given for so doing do not fit with the amendment and that we are bound by the new standing orders. The amendment might be a loosening or enabling tool, but it might also restrict our opportunity to make changes in future. I wonder whether the third proposed change should be issued simply as guidance to committees that are considering asking for changes in their remits, rather than be enshrined in the standing orders.

**Fiona Hyslop:** I agree with the convener. If committees want to change their remits, could not

we ask them to propose changes case by case? If the committee is a mandatory committee, it will have been established for a particular reason. It will have been thought essential that it must be treated as a mandatory committee and that it must be part and parcel of the Parliament. Changing its remit is therefore a serious matter. Rather than have a loose rule that allows ad hoc changes to happen, should not we consider changes, as per the European Committee's request today? It would be incumbent on the Procedures Committee to meet timeously to expedite proposed changes to standing orders. Proposals would be considered case by case.

**The Convener:** I want to clarify something with Stephen Imrie. The first two proposed changes are your changes to meet the European Committee's requirements and I think that they are acceptable to the committee. The third proposed change is not your change—it is from the directorate of clerking and reporting and seeks to establish an umbrella approach. Nothing in it is specifically pertinent to the European Committee. If we agreed the first two changes and sought further discussion on the third change, that would appear not to interfere with the European Committee's objectives or prevent the first two proposals from proceeding imminently to the Parliament.

**Stephen Imrie:** That is my interpretation of the matter. The first and second proposed changes are specific to the European Committee's request to conduct scrutiny, but the third proposed change relates to a broader issue. I believe that your interpretation is correct, but if it proves to be incorrect, I will be happy to contact you.

**The Convener:** I therefore suggest to the committee that we can resolve the issue by agreeing on and recommending the first two proposed changes and reporting to the Parliament on the matter. We can seek a paper from the directorate of clerking and reporting on the third recommendation in the fullness of time. That will allow us to have a more focused discussion on the need for a chapter on changing committee remits.

**Mr Macintosh:** I agree whole-heartedly. Would the paper touch on the points that Susan Deacon made about reviewing mandatory committees?

**The Convener:** If we invite the directorate of clerking and reporting to give us a paper on standing orders changes in relation to mandatory committees, that will be quite a tight and specific remit, which should encompass every aspect that the directorate of clerking and reporting might want to tidy up at the same time. The other points, which concern ministerial relationships to subject committees, are not really matters for us to initiate, although we might wish to discuss them with the Parliamentary Bureau and the Executive. Those other points are not part of the mechanical

process of changing the standing orders to facilitate the work of the mandatory committees. Members might wish to think further about what they would like to do about subject committees—that would not be ruled out of order when we come to discuss the mandatory committees. We should not dive in at the deep end. We should go away and think about what the committee wants to achieve and what right, remit and time scale it has to carry out what could be a significant piece of work. The area is fairly sensitive, as we would be dabbling in the remits of the bureau and of the Executive. That is not to say that we should not carry out such work, but let us disentangle the two procedures.

Do members agree to approve the recommended changes 1, 2(a) and 2(b), to reflect further on change 3 and to report to the Parliament on the recommendations to which we agree?

**Members** *indicated agreement.*

## **Standing Orders (Standards Commissioner)**

**The Convener:** Item 4 concerns further changes to standing orders, which have been requested by the Standards Committee. We are joined by Mike Rumbles, the convener of the Standards Committee, and its clerk, Sam Jones.

**Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I am delighted to be here. I had quite forgotten that three members of the Procedures Committee are also members of the Standards Committee, so a fair amount of expertise on the issue is present.

I thank the Procedures Committee for giving me the opportunity to attend the meeting to give some background to the standing orders changes that the Standards Committee has asked the Procedures Committee to consider. The draft rules were considered and fully endorsed by the Standards Committee at our most recent meeting on 11 September. The proposed changes to the standing orders are consequential on the Scottish Parliamentary Standards Commissioner Act 2002, which received royal assent in July.

The proposed rule 3A.1 will enable the Parliament to appoint the Scottish parliamentary standards commissioner. The draft rule reflects the provisions in rule 3.13, which relate to the appointment of members of the Scottish Commission for Public Audit. Rule 3A.2 sets out how the commissioner may be removed from office. It is an important rule that reflects section 1(7) of the Scottish Parliamentary Standards Commissioner Act 2002, which states that the commissioner may be removed from office only following a motion of the Parliament that receives the support of two thirds of those voting. Rule 3A.2 will provide the commissioner with a high degree of security of tenure.

The Scottish Parliamentary Standards Commissioner Act 2002 also permits the Parliament to make various directions to the commissioner. The Parliament can make directions on how all investigations should be carried out; for example, it could direct that all interviewees should be informed that they have the right to have a third party present. The Parliament can also direct the commissioner on how certain classes of complaint should be dealt with; for example, it could direct that all anonymous complaints should be referred to the Standards Committee in the first instance. The Standards Committee could, nevertheless, authorise the commissioner to investigate. Our proposed rule 3A.3 will provide that the Standards Committee make such directions to the commissioner.

I should stress that the act prohibits the Parliament and the Standards Committee from directing the commissioner on how any individual investigation should be carried out. That is to ensure that investigations that are carried out by the commissioner are carried out independently of the Standards Committee and the Parliament.

Rule 3A.4 will provide that the commissioner's reports be made to the Standards Committee, which is consistent with the committee's remit, as set out in rule 6.5.1 of the standing orders. I know that members of the Procedures Committee have just discussed committee remits.

**The Convener:** The proposed new standing orders are set out on the back page of members' documentation. Mike Rumbles has added to the reasons that have been provided for agreement to the new standing orders. We will deal with the changes one by one. I offer members the opportunity to ask questions or to seek clarification.

Are there any points on rule 3A.1, which deals with the appointment of the commissioner?

**Members indicated disagreement.**

**The Convener:** Are there any points on rule 3A.2, on the removal of the standards commissioner?

**Members indicated disagreement.**

**The Convener:** Are there any points on rule 3A.3, which relates to directions by the Parliament?

**Fiona Hyslop:** I would like Mike Rumbles to give us a bit of background on the Standards Committee's discussions about anonymous complaints. I understand that the Standards Committee is reluctant to go on fishing expeditions if there is no proof or if the member is not named.

11:15

**Mr Rumbles:** When the Parliament debated the Scottish Parliamentary Standards Commissioner Bill, it was clear that members wanted strict measures under which the standards commissioner should act. The commissioner will be independent. The act stipulates that when a complaint is lodged, it must be accompanied by certain facts; for example, the MSP concerned must be named. However, a complaint that has been lodged that does not name an MSP might be such a serious complaint that it would be silly if the commissioner were not able to investigate it. Therefore, we felt that the Standards Committee should be able to refer the matter to the commissioner for investigation. That means that an independent commissioner will not need to go on fishing expeditions elsewhere. If a complaint

that does not meet the requirements of the act is lodged, the complaint will come to the Standards Committee, which will direct the commissioner.

**Fiona Hyslop:** Does that issue relate to cases in which the MSP to be investigated is anonymous—in other words, it is not known which MSP is involved—and to cases in which the complainant is anonymous?

**Mr Rumbles:** That is correct.

**The Convener:** Are there any other points on directions by the Parliament? Are there any points on rule 3A.4, which concerns reports to the Parliament?

**Members indicated disagreement.**

**The Convener:** Do members agree to the proposed changes to the standing orders and do members agree to report to the Parliament?

**Members indicated agreement.**

**The Convener:** That concludes this morning's business. Thank you for your attendance and your contributions.

*Meeting closed at 11:16.*



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