

PROCEDURES COMMITTEE

Tuesday 16 December 2003
(*Morning*)

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2003.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 16 December 2003

Col.

NON-EXECUTIVE BILLS.....	183
SUSPENSION OF STANDING ORDERS	187

PROCEDURES COMMITTEE

9th Meeting 2003, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)

*Mark Ballard (Lothians) (Green)

*Bruce Crawford (Mid Scotland and Fife) (SNP)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Linda Fabiani (Central Scotland) (SNP)

Robin Harper (Lothians) (Green)

Irene Oldfather (Cunninghame South) (Lab)

Mr Keith Raffan (Mid Scotland and Fife) (LD)

Murray Tosh (West of Scotland) (Con)

*attended

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Procedures Committee

Tuesday 16 December 2003

(Morning)

[THE CONVENER opened the meeting at 10:33]

Non-Executive Bills

The Convener (Iain Smith): Good morning. All members are present, so there are no apologies.

I am keen to crack on with business. Agenda item 1 is consideration of future witnesses for meetings on our non-Executive bills inquiry. A note on possible witnesses has been provided by the assistant clerk. We had hoped to have representatives from the Scottish Parliamentary Corporate Body and business managers at the meeting, but the notice that they were given was too short. We hope that they will attend a future meeting.

We agreed to consider suggestions for members and organisations that had previously been involved with non-Executive bills to come forward as witnesses. The note shows the non-Executive bills that were introduced in session 1. Do members have any comments about whom it would be appropriate to invite to give evidence to the committee?

Karen Gillon (Clydesdale) (Lab): It would be useful to hear from Mike Watson in particular, given the complexity of his bill and the number of amendments that were lodged at stages 2 and 3. He could give us a slightly different perspective on non-Executive bills.

I would certainly like to hear from a member whose bill has been passed with support from the non-Executive bills unit. I think that Keith Harding is the only member who has had a bill drafted by NEBU that has been passed. I would also like to hear from a member whose bill did not get through the process, although I am not particularly bothered who that member is.

The Convener: I got a bill that NEBU drafted through the process, but I do not think that I will call myself as a witness.

Bruce Crawford (Mid Scotland and Fife) (SNP): I agree with Karen Gillon that Mike Watson should be invited to give evidence—I, too, had highlighted him as a witness. It would be good to speak to Keith Harding as well, as he managed to have a bill passed with support from NEBU.

Perhaps we should consider hearing from those members who have been critical of the process. Tommy Sheridan has been one of the sternest critics. I withhold judgment as to whether such criticisms are valid, but inviting Tommy Sheridan might be useful so that he can tell us why he thinks that there have been problems. We need to understand exactly what has been at the root of those problems and whether the difficulties have been real or imagined.

In the first session of Parliament, my erstwhile colleague Mike Russell was for a long time heavily involved with a bill that eventually fell. It would be useful to speak to him. Those are the four members whom I would choose to invite from the list of witnesses.

On witnesses from the business managers, it is extremely unlikely that there will be a single view from the Parliamentary Bureau, as committee members will have seen from the note, which states:

"The Bureau has submitted a response which sets out the current position of the Bureau, which does not exhibit consensus across all Business Managers."

That is a wee bit unfair, as there was consensus among the business managers around the core principles of what needed to be achieved, the need for a prioritisation process and when there should be such a process. The disagreement was about the mechanics of how those things should be achieved. Therefore, it is inevitable that we should invite business managers from the various parties to enable them to express their views. That probably means that Mark Ballard and I would have to attend as witnesses, unless other members substitute for us.

It would be useful to start with the Minister for Parliamentary Business, as that would provide a link back to the previous business managers' paper. I do not necessarily share the views that were expressed in the paper, but Patricia Ferguson, who is the Government's business manager, could usefully start the process. Perhaps she could come with a representative from the Liberal Democrats, although I am not sure what the Liberal Democrats would think about that. Each party will certainly have different views and there will be different nuances in respect of procedures and mechanics. However, if we start from the position from which the Government parties are coming, members can at least reflect on those views and throw in their considerations.

Mark Ballard (Lothians) (Green): My colleague Robin Harper spent a long time pushing the Organic Farming Targets (Scotland) Bill through NEBU and has much experience of working with NEBU right from the start. He, or possibly Alex Neil—who has also had a bill drafted by NEBU—could be invited, although I am not familiar with the

progress of Alex Neil's bill. As we are considering NEBU, it would be useful to invite people with experience of NEBU and I know that Robin Harper has spent a lot of time working through and with the unit.

The Convener: I presume that a case can be made for inviting any member who has put a bill through the process. Obviously, a case can be made for inviting Tommy Sheridan and perhaps Robin Harper to the committee to give their parties' positions on the issues in question along with or instead of business managers. It might be easier for Robin Harper and Tommy Sheridan to give evidence on behalf of their parties rather than ask other members. That would avoid duplication.

Richard Baker (North East Scotland) (Lab): That is a worthwhile suggestion.

The Convener: I suggest that we invite Mike Watson to give evidence. As was suggested at the previous meeting, it might be useful if he had someone with him from an outside body that has been involved with bills. He might want to bring along someone from the Scottish Campaign Against Hunting with Dogs to give their perception of how the system has worked. I suggest that we invite Keith Harding, too. That would enable us to hear evidence on a bill that was passed without NEBU support and on a bill that was passed with NEBU support. We could also hear from Tommy Sheridan and Mark Ballard for political balance. Are members happy with those suggestions?

Bruce Crawford: What about Mike Russell?

The Convener: Shall we invite Mike Russell as well?

Mr Jamie McGrigor (Highlands and Islands) (Con): I would be very happy to hear from Mike Russell.

The Convener: In that case, we shall invite Mike Russell. We will try to arrange to hear from the members concerned at our next two meetings, depending on availability. Because SPCB meetings take place on the same day of the week as ours, we may have to start slightly earlier when we take evidence from a representative of the corporate body. I suggest that when we do that we start at 10.15 am, rather than at 10.30 am, to ensure that the SPCB representative can get finished in time for their meeting. Because of members' transport arrangements, I do not want to start earlier than 10.15 am. Are members happy with that?

Members indicated agreement.

Karen Gillon: I have read the note and it occurs to me that many bills have been drafted by outside organisations. I would be interested to know how that impacts on the Parliament. What quality check is done on those who draft bills? How is quality

maintained? Is there a list of people who are qualified draftspeople or can any lawyer do it? Do we set a standard? If a bill is poorly drafted, that has an impact on the legislation team and on committees during the scrutiny process. I would be interested in obtaining more information on that over the next few weeks.

The Convener: The clerk may be able to provide some background information on the issue that Karen Gillon raises.

Andrew Mylne (Clerk): I am happy to help. Before I came to this job, I was the head of the legislation team, which is responsible for overseeing the introduction of all bills. That includes bills drafted by the Executive and by NEBU and bills that come from other sources. The team will provide support to a member who has not gone through NEBU or does not have a professional draftsman on board. It will provide assistance in tidying up and improving their initial draft of a bill. Some drafts are in reasonably good condition and some are very rudimentary. The same skills are brought to bear on those drafts as are used when assisting members to draft non-Executive amendments throughout the bill process. The clerks in the legislation team have relevant experience, although it is an amateur service and not a substitute for the professional service that NEBU provides. However, it allows bills to be tidied up sufficiently to be fit for introduction.

Karen Gillon: In the inquiry, we may want to consider how that impacts on the rest of the process.

The Convener: After we have taken oral evidence, we can review whether we need to take additional evidence before producing a draft report. It would be sensible for us to do that at that stage. Are members happy with what we have discussed as the way forward in the non-Executive bills inquiry?

Members indicated agreement.

Suspension of Standing Orders

10:42

The Convener: Item 2 on our agenda is consideration of a note from the clerk on the suspension of standing orders. The note suggests some changes to the rules on the suspension of standing orders. I seek comments and questions from members. Andrew Mylne, who drafted the note, will probably be able to answer specific questions on matters of detail.

Bruce Crawford: I have a number of questions about the note, but I cannot remember discussing the issue before. Perhaps we have, but I wonder where it came from. Can you remind me why the note was produced?

The Convener: The issue was on our original work programme. Along with emergency bill procedures, it is a small item that is running in parallel with our other work.

Bruce Crawford: The note raises the issue of the suspension, in isolation, of smaller units, such as sentences and subparagraphs of standing orders. The last sentence of paragraph 6 of the note states:

"it would be useful to be able to suspend just those sentences that happen to present an obstacle in a particular situation."

It would be useful to have specific examples of where that has proved to be a problem. Given that we are considering the issue, I am sure that such situations exist. However, I am not aware of them.

Paragraph 15 of the note discusses providing a rule that would authorise the Parliament to make specific rules

"perhaps on a motion of the Bureau".

Paragraph 17 suggests:

"Perhaps this could be limited only to the Bureau to ensure a good degree of cross-party agreement before any proposal to depart from the normal Rules was put to a majority vote."

Could a motion to suspend standing orders be lodged only if the bureau were unanimous, or could it happen on a vote of the bureau? The current procedure is that 10 members should sign an amendment to a Parliamentary Bureau motion. Is it more appropriate that a certain number of members should sign a motion to suspend standing orders, or should such a motion be lodged by the bureau? I am not sure that we have worked out fully how that decision may be arrived at.

Before I can say more, I will need to hear from Andrew Mylne. I need to understand more where

the specific problems were and whether all the implications of the decision-making process that will determine how and by whom standing orders are suspended have been thought through.

The Convener: In the first session of the Parliament, on all but one occasion when a normal motion, with notice, to suspend standing orders was moved, that was done by the bureau. I exclude from that motions that were moved on the spur of the moment. On the one occasion in question, the motion to suspend standing orders was moved by the convener of a committee. No individual member has moved a motion, with notice, to suspend standing orders, although there is provision for that to happen. Andrew Mylne may be able to answer some of Bruce Crawford's other questions.

Andrew Mylne: I am sorry, but I have forgotten the first question.

Bruce Crawford: It relates to the last sentence of paragraph 6 of the note. Can you provide specific examples of a small unit in standing orders presenting an obstacle?

Andrew Mylne: There have been occasions when the clerks have considered options for suspending standing orders and have been conscious that they are dealing with large paragraphs made up of a number of sentences. In certain circumstances when we have been dealing with bills, there has been pressure to take a bill through slightly more quickly than the normal time scales allow. In chapter 9 and other chapters of standing orders that deal with bills, there are paragraphs made up of a number of sentences, but we do not have the option of suspending just the relevant sentence. I cannot give the member a precise example of such a paragraph, but they exist.

Bruce Crawford: Before we start to change standing orders, it would be useful for us to have the number of the rule over which there has been a problem. We need to understand where the blockages and wicked issues are. If the Parliamentary Bureau or individual members have made requests to suspend standing orders that would have been supported by the chamber but have not been able to happen because of a sentence or small unit, we would be justified in examining whether there should be a loosening of the current rules. If there have been no such instances, why are we considering the issue?

The Convener: Bruce Crawford describes what is proposed as a loosening of the rules, but it might be seen as a tightening of the rules. If we suspend a specific provision that needs to be suspended, rather than a whole rule, we are not suspending the other parts of the rule. That is the issue.

Bruce Crawford: I understand that. However we describe it, on occasion small units have caused wicked problems when the Parliament has tried to suspend a rule. If that is not the case, why are we considering the issue?

Andrew Mylne: The origin of the issue is the cumulative experience of the clerks over a period of time. Behind the scenes, we have examined problems that have arisen in relation to the suspension of standing orders in particular circumstances. On a number of occasions, the lack of flexibility has been an obstacle.

Bruce Crawford: I appreciate that.

Andrew Mylne: I am happy to come back to the committee on the issue. The note that is before members is a preliminary paper that is intended to float the issue with the committee. I would be happy to come back with more specific examples.

Bruce Crawford: I appreciate Andrew Mylne's advice, which is useful. However, what he says is anecdotal, rather than evidence based. It does not demonstrate why we should make a decision on the matter.

Andrew Mylne: I am happy to come back to the committee with specific examples.

Bruce Crawford: Can you reflect on the issue of how any suspension of standing orders would take place? The Parliamentary Bureau should be able to lodge a motion to suspend standing orders and is the only body that has done so. However, should there be other mechanisms for suspending standing orders, although such motions might be defeated? Perhaps that process already exists.

Karen Gillon: Currently, any member can move a motion to suspend standing orders. I would be uncomfortable if we supported the suggestion in paragraph 19 of the note to restrict that right to members of the bureau. Any member of the Parliament should have the right to move a motion to suspend standing orders, which could be required for any number of reasons. I would be wary of moving away from that situation.

The Convener: The current rules allow any member to move that a rule be suspended for the purpose of a particular meeting. The Parliamentary Bureau can move that a rule be suspended for the purpose of a particular item of business—an emergency bill, for example—so that a motion for suspension does not have to be moved at each meeting at which the business is referred to.

Bruce Crawford: If we can find a way of allowing other members to do that, I would have no objection.

Andrew Mylne: It would certainly be possible to bring forward options about who might be able to

move relevant motions in different circumstances. For example, conveners might wish to suspend standing orders for the purpose of a meeting of their committee. Those options can be explored in a further paper, if the committee so wishes.

Karen Gillon: I think that we need more information. Having read the clerk's note, I have genuine concerns that allowing only members of the Parliamentary Bureau to move that a rule be suspended, as is suggested in paragraph 19, would restrict members' powers. I do not think that the Parliament would accept that. We may be trying to make something more complex than it actually is. What powers does a convener currently have to suspend standing orders?

The Convener: I do not know—that is the simple answer to your question.

Mark Ballard: A convener does not have specific powers as a convener; they have powers only as a member—

The Convener: I think that only the Parliament can suspend standing orders; a committee cannot do so without the agreement of the Parliament. I could not move to suspend the standing orders for the purpose of this meeting, for example.

Mark Ballard: Rule 17.2.1 of standing orders seems to suggest that standing orders could be suspended for the purpose of a meeting of a committee or a sub-committee.

The Convener: Yes, but only on a motion in the Parliament. I do not think that that can happen on a motion of the committee—I think that that is probably the right interpretation.

Mark Ballard: Okay.

The Convener: If other members want clarification on any matter, they should let Andrew Mylne know so that we can bring forward a paper that deals with their concerns and sets out more options for consideration at a future meeting. Are members happy with that?

Members indicated agreement.

The Convener: We agreed at our previous meeting that the next item would be taken in private, so I declare the public part of the meeting closed and wish all members of the public and press and others who take an interest in the proceedings of the Procedures Committee the very best for Christmas and the new year.

10:52

Meeting continued in private until 12:10.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Tuesday 23 December 2003

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 606 5588

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

RNID TYPETALK calls welcome on
18001 0131 348 5412
Textphone 0131 348 3415

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers