

# **PROCEDURES COMMITTEE**

Tuesday 28 September 2004

Session 2

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## **PROCEDURES COMMITTEE**

### **12<sup>th</sup> Meeting 2004, 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)

\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

\*Mr Bruce McFee (West of Scotland) (SNP)

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**

Jane McEwan

#### **ASSISTANT CLERK**

Lewis McNaughton

#### **LOCATION**

Committee Room 6



## Scottish Parliament

### Procedures Committee

*Tuesday 28 September 2004*

[THE CONVENER *opened the meeting at 10:16*]

### Interests

**The Convener (Iain Smith):** I welcome members to the first meeting of the Procedures Committee in the Holyrood building. I hope that members find the new surroundings amenable to entertaining discussion on procedures. I have received apologies from Jamie McGrigor, who is unable to attend this morning.

I welcome Bruce McFee to his first meeting of the committee. I place on record the committee's thanks to Bruce Crawford for his contribution to the committee in the past year or so. The first item on the agenda is for Bruce McFee to declare any interests.

**Mr Bruce McFee (West of Scotland) (SNP):** I have nothing to declare, unfortunately.

### Private Bills (Witness Expenses)

10:17

**The Convener:** Agenda item 2 is a standard item, to delegate to me, as the convener, the responsibility for arranging for the Scottish Parliamentary Corporate Body to pay, under rule 12.4.3, any expenses to witnesses in the inquiry into private bills. Are members content to delegate that authority to me?

**Members** *indicated agreement.*

## Committee Away Day

10:18

**The Convener:** Agenda item 3 is to consider the note on the committee away day that was held on 13 September. The note is provided for information and to allow members to make brief comments. The main point to draw attention to is the discussion on the work programme at the end of paragraph 6, particularly the part on oral questions. We hope that we will consider that matter further at our meeting on 9 November. During the away day, the suggestion arose that we might move to a system in which, rather than having members submit questions that are then selected at random, we could select the members, who would submit a question knowing that it would be taken that day. I will work on a paper with the clerks for submission to the committee. If members have any thoughts on how to improve question time, they should discuss them with the clerks to allow them to be included in the paper for consideration at future meetings.

As there are no comments on the report on the away day, we will simply note it.

## Private Bills

10:19

**The Convener:** Agenda item 4 is on our inquiry into private bills. We have a note from the senior assistant clerk on how we should proceed with the inquiry. We received useful background information on the issue at the away day. I thank the clerks from the House of Commons, and our clerks and staff in the Scottish Parliament, for the information.

The note makes suggestions on how we might proceed with the inquiry. We will go through it page by page and, if members have any questions to ask or comments to make, they can let me have them. Are there any comments or questions on the first page? We seem to have become shy in these new premises.

**Mark Ballard (Lothians) (Green):** I have a question on paragraph 6, which starts on page 1. Would it be appropriate to invite bill promoters along to the committee at that initial stage as well as statutory bodies and private bill committee conveners? As we have received a submission from the National Galleries of Scotland, which was involved with a non-works act, it might be a good body to invite, along with the promoters of one of the works acts, such as those dealing with the railway lines or the tramlines.

**The Convener:** That would be helpful. Perhaps it would be best not to invite one of the current bill promoters, but the promoters of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill might be useful witnesses, as they have gone through the whole process. It would certainly be useful to have bill promoters along as one of the panels of witnesses at a future meeting.

**Mark Ballard:** There is another possibility. I think that there are four law firms in London that handle private bills.

**The Convener:** Yes, the parliamentary agents.

**Mark Ballard:** We might invite a parliamentary agent.

**The Convener:** We have written to the parliamentary agents, but we are still awaiting a response from them. They would be a useful group from which to take evidence.

**Richard Baker (North East Scotland) (Lab):** It might be useful for us to hear from somebody from the private bills unit. We heard from the non-Executive bills unit at the beginning of our review of the procedure for private bills.

The three private bills that have already been enacted were on a relatively small scale compared with the bills that are being dealt with now—perhaps with the exception of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill,

which received a large number of objections and involved a great amount of documentation. I wonder whether any of the conveners of the private bill committees that are currently sitting might have time to give evidence, as there may be issues of scale.

**The Convener:** I have no objection to any of the conveners of the current private bill committees putting forward comments. However, they may risk compromising the position of the committees if they raise concerns about the procedure of committees that they are currently convening. That might not be the best way forward.

**Richard Baker:** I take that point. Perhaps those issues could be addressed by a representative of the private bills unit.

**The Convener:** Do members have any further points on suggested witnesses?

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** No, but I have a comment on paragraph 7, on page 2, on the subject of a committee adviser. From the presentations that we were given at our away day, it was clear to me that we have experts within the Scottish Parliament. If we needed any extra advice or assistance, I am sure that we could call on the expertise at Westminster. I do not think that we should appoint an outside adviser. We should use the expertise and knowledge that we have in-house.

**The Convener:** Do members agree with that? I think that would be sensible. I am not sure that there would be an adviser out there who could provide us with more information than we are getting in any case.

**Mark Ballard:** To some extent, that depends on which way we end up going. I agree that it is premature to appoint an adviser, but there might be a situation further down the line in which we find that we need help with something specific. I would not like to shut the door entirely on the idea of having a committee adviser.

**The Convener:** No. That option is always open to the committee. However, I agree that we should not seek to appoint an adviser at this stage.

The final item on pages 2 and 3 is the possibility of undertaking a fact-finding visit. From what I have read in the report, it seems that the Parliament in Dublin has gone down a similar route with private bills in recent times. It may be beneficial to members to visit Dublin to see why the Parliament there has changed to a new procedure, how it has gone about it and what changes have resulted. If members are agreed, we will work up a case and put in a bid to the Conveners Group for that fact-finding visit. Is that agreed?

**Members indicated agreement.**

## Bills (Timescales and Stages)

10:24

**The Convener:** We now come to agenda item 5. If we carry on at this rate, we will be finished quickly, although I have a funny feeling that we will not.

A number of papers relate to item 5, but we will concentrate on the note from the clerk, paper PR/S2/04/12/4, which refers to some of the other papers in the bundle. I draw members' attention to a couple of corrections that should be made to the note, which was written before we received the Scottish Executive's response that is anticipated in paragraph 37 of the note as drafted. First, it turned out that the Scottish Executive was more amenable to what the committee was looking for than we expected. On our suggestions about explanatory notes, the note states:

"The Executive is not keen on such a change".

However, that is obviously out of date as a result of the letter that we have now received from the Executive. Secondly, we could have been slightly clearer in paragraph 39 that we dealt with the draft rule changes in relation to the explanatory notes to members' bills in the members' bills inquiry.

Let us go through the note paragraph by paragraph and pick up the issues that require to be addressed. Further clarification is needed on those issues following the decisions that we made at our last meeting. We do not intend to reopen the issues on which we have already reached agreement; we just seek further clarification on those points.

The paragraphs on page 1 deal with the possibility of a committee report not being published within the agreed timescale. The idea is that the proposed rule change to standing orders would require the report to be published five days before the debate. If that did not happen for some reason, the Parliament would be given the power to decide to go ahead with the debate despite the fact that the committee's report was published perhaps a day late. Paragraph 8 asks who might be able to move such a motion—whether any member could do so, whether only the member in charge of the bill could, whether a member of the Parliamentary Bureau could or whether any of those people could. Do members have any thoughts on that?

**Mr McFee:** You speak about reports being published late, but I want to clarify how late would be acceptable. You suggest that a report might be published a day late, but what happens if it is published the day before the debate?

**The Convener:** We do not want to prescribe the circumstances in which a report might be late. We

just want to give some flexibility if, for example, something went wrong at the printer's.

**Mr McFee:** I understand that, but if a situation arose in which a report was extremely late, going down the proposed route would present us with the problem that certain matters could be considered in the debate despite the fact that many members might not have had the opportunity to read the report. As this is my first Procedures Committee meeting, I realise that I might be getting into this issue somewhat late and that decisions might already have been taken on the matter. However, that is my concern about the proposal.

**The Convener:** The purpose of the proposed rule change is to introduce a deadline to ensure that reports are published sufficiently far in advance of the debates to allow members of the public and Parliament time to read them properly. However, in exceptional circumstances something could go wrong with that arrangement—for example, because of the timing of committee meetings, because a committee was waiting for a supplementary report from another committee or because a committee was waiting for a minister's reply. Those circumstances could cause the publication of a report to be delayed by a day or so. It would be for the Parliament to determine whether it wished to go ahead with a debate if a report had not been published in time, but we need to decide how much flexibility should be allowed and the circumstances in which someone could move a motion to allow the debate to go ahead.

**Cathie Craigie:** How often has such a situation happened? I have forgotten to bring my glasses again—I cannot read the table of information in the paper.

10:30

**The Convener:** Paper PR/S2/04/12/6 shows the intervals between the stage 1 report and the stage 1 debate. As the statistics show, the interval has tended to improve as time has gone on. In session 1, the average interval between the publication of the stage 1 report and the stage 1 debate was 6.6 days for all bills and 4.6 days for Executive bills only, but we are now seeking to make the minimum five days. In the majority of cases, the minimum that we are proposing has been met; that has increasingly been the case as the Parliament has become more used to the procedures.

If we are going to allow the Parliament the flexibility to let the stage 1 debate go ahead in certain circumstances irrespective of whether the stage 1 report is published a day or two late, who should move the motion to allow that to happen?

Do we want any member of the Parliament to be able to do it or do we want to restrict it to the member in charge of the bill or a member of the Parliamentary Bureau?

**Mr McFee:** Surely it should be any member of the Parliament, as we believe that the circumstance will not commonly occur.

**The Convener:** Are members happy with that?

**Members indicated agreement.**

**The Convener:** The next part of paper PR/S2/04/12/4 that we need to discuss is paragraphs 9 to 14, which concern the minimum interval between stages 1 and 2 and address a slight anomaly that might result from the original proposal to increase the interval from seven days to eight. The clerk is good at explaining the anomaly, so I will let him do so.

**Andrew Mylne (Clerk):** When, for the purpose of drafting the rules, we reconsidered the proposal to increase the interval between stages 1 and 2 from seven days to eight, I became concerned that that could create anomalies depending on when the committee that is considering stage 2 meets. The danger is that, in some situations, the effect of increasing the interval would be to add an extra week to the timetable, whereas in other situations it would not make any difference. It is more or less arbitrary which of those two situations a committee falls into. As this committee's decision might result in creating a slightly anomalous result, we propose that members either settle on the current interval—which is a whole clear week between the stages—or increase the interval by a whole week for all circumstances, which would require the rules to refer to 11 or 12 sitting days rather than seven. Eight days is neither one thing nor the other.

**The Convener:** What are members' views on that?

**Mark Ballard:** We decided to increase the period because we heard a lot of evidence on the need for a decent interval to allow members to develop stage 2 amendments and outside bodies to hear about the stage 1 debate and to get involved in the process, so I would be sad if we were to retain the current interval. If, as Andrew Mylne says, the interval should, according to the maths, go up to 11 or 12 sitting days, that would be preferable to retaining the current one.

**Mr McFee:** I did not hear the evidence and have only gone over the background papers briefly. Are we referring to the minimum interval between stages 1 and 2 or stages 2 and 3?

**The Convener:** Stages 1 and 2.

**Mr McFee:** So that evidence was led on stages 1 and 2.

**The Convener:** Yes.

**Karen Gillon (Clydesdale) (Lab):** How many calendar weeks would the increase involve? Would it mean a full extra week between the two stages?

**Andrew Mylne:** Yes. The current requirement for seven sitting days means that there is a whole week between the week in which the stage 1 debate takes place and the week in which stage 2 starts. If the requirement were increased to 11 or 12 sitting days, it would mean, in effect, that there were two clear weeks in between. The question is whether the committee considers that to be too long a minimum period.

**Cathie Craigie:** How would the timetabling of parliamentary and committee work be affected if we were to make the gap two weeks? Andrew Mylne seems to suggest in his note that it would be better to have seven days than eight days. Would it also be better to have seven days than 14 days?

**The Convener:** If the gap is seven days, the effect is consistent for all committees, irrespective of when the stage 1 debate is and irrespective of which day the committee meets on. However, if the gap is eight days, and if the debate is on the Thursday and the committee meets on a Tuesday, an extra week is added. An anomaly arises if we move from seven days to eight days. When we agreed to increase the gap to eight days, did we intend to increase the period by an additional week? If so, logic would dictate that we move to 11 days. If there were an urgent reason for a bill to progress more quickly, there would still be the opportunity to suspend the rules.

**Mark Ballard:** According to the figures, the average gap has been 13 days in this session of Parliament and was 15 days in the previous session. Therefore, we are not really talking about increasing the minimum.

**The Convener:** It is certainly the case that the norm is 11 days or more at present.

**Karen Gillon:** That leads me to ask where the evidence for a change is coming from. If the evidence says that there is not enough time between stage 1 and stage 2, but the average gap is still greater than we are proposing, how do we square the circle? At the moment, the average is more than 11 or 12 days, but where are all these committees that are meeting early at stage 2 so that people do not get a chance to lodge amendments?

**The Convener:** Again, I refer members to the tables in paper PR/S2/04/12/6. The paper shows that a number of bills had nine or fewer days between stage 1 and stage 2—including the Mental Health (Care and Treatment) (Scotland)



Bill and my member's bill. However, in most cases the interval was longer than that. The question is whether we want the minimum to be eight days or 11 days.

**Mr McFee:** I understand the point that eight days will make it arbitrary whether the minimum gap between stages 1 and 2 is one week or two weeks. It would clearly be nonsense to go for that option if it does not ensure something other than what happens at the moment. To answer Karen Gillon's point, if the average gap is 13 days—with a few bills taking less time than that—we should make the minimum two weeks. That would give a minimum period that around 90 per cent of bills currently have anyway. Setting that minimum would not make terribly much difference to the operation of the Parliament, but it would ensure a minimum that, from the evidence that I hear, would be desirable.

**Karen Gillon:** I do not disagree with that, but the folk who led the evidence were probably referring to the majority of bills, for which the gap was already 13 days. Our proposal will not change the situation in which those people found it difficult to lodge amendments. I do not have a problem with setting the minimum at 11 or 12 days, but the evidence suggests that, unless we set it at around 20 days, we will not satisfy some of the people who complained to the committee. However, I do not think that 20 days would be feasible, because it would disrupt the work of the Parliament. Our proposal would only ensure something that happens in most cases anyway. That would not be satisfactory to the organisations that have commented.

**The Convener:** The reality is that every organisation would want more time, but the line has to be drawn somewhere. I propose that we move to 11 days.

*Members indicated agreement.*

**The Convener:** We agreed in principle that when a committee meets twice in the same week to consider stage 2 amendments there should be only one lodging day. The issue is that a slight anomaly arises if, for example, there is a meeting on a Monday and a meeting on a Friday. Do we have the same lodging deadline compared with the situation when there is a meeting on the Friday and one on the Monday? We are trying to resolve that slight anomaly. Are we talking about the calendar week or are we talking about the interval between the committee meetings, if you see what I mean?

The clerk's note gives two options. One of them is that, if a committee meets in the same week to dispose of amendments, there should be a single lodging day. The other option is that, if the lodging deadline for the second meeting would be before

the first meeting had taken place, the two meetings should have the same lodging deadline—that effectively would apply to committees meeting within a two-day interval.

**Mr McFee:** Could you repeat that?

**The Convener:** I will try. If a committee is due to meet twice and the first meeting would be before the lodging deadline for amendments for the second meeting, there would be a single lodging deadline. The lodging deadline for the first meeting would become the lodging deadline for the second meeting, which essentially means that, if there is less than a two-day gap between meetings, the lodging deadline for the meetings would be the same.

**Karen Gillon:** If the object of the exercise is to make it easier for people to participate and to understand the procedure, the lodging deadline should be the same whether committees meet on a Monday and a Wednesday or a Monday and a Friday. That would make it much easier for people to understand; they would know that there was just one lodging deadline and when that was.

**Mark Ballard:** I agree with Karen Gillon. I think that, to clarify the situation, we need one lodging deadline for all committee meetings in the same week. Instead of referring to the number of days between meetings, we should refer to whether the meetings fall within the Monday to Friday period. There is a big difference between a Monday committee meeting then a Friday committee meeting—although there are more sitting days in between—and a Friday meeting then a Monday meeting. Rather than referring to the number of days between the meetings, we should make the decision on the basis of whether the meetings are in the same week. That would be clearer.

**The Convener:** Option A is essentially what Mark Ballard is suggesting. Are members content that we go with option A rather than the slightly more complicated option B?

*Members indicated agreement.*

**The Convener:** Paragraph 21 is on the lodging deadline for normal lodging days. There is currently no such deadline, but clerical practice is that the lodging deadline is 4.30 pm. Are members content that we formally put that into the rules? It does not make any difference to current practice, but it makes the situation clear in the rules.

*Members indicated agreement.*

**Karen Gillon:** Can I go back to that issue? I am not clear whether we took evidence on this, but one of the big issues at stage 3 for me is that we do not get the amendments quickly enough. If the lodging deadline is left at 4.30 pm—

**The Convener:** The proposal does not apply to the final day of lodging: the final day deadline is earlier, at 2 pm.

**Karen Gillon:** Okay. Does that apply for all stages?

**The Convener:** Yes. For all stages the deadline on a normal lodging day is 4.30 pm, but 2 pm on final lodging days at stage 2.

**Karen Gillon:** Okay.

**The Convener:** We will now consider motions without notice to alter stage 3 timetabling motions. There are three issues. One is whether we should put a limit on the length of time by which we can extend the debate. The second is whether there should be an overall limit on how many times that can be done at stage 3. How many motions without notice to increase the length of the debate can we have during the debate? The third question is who should be allowed to lodge those motions. Should any member be able to lodge such a motion, should a member of the bureau, which is responsible for lodging the timetable motion, do so, or should the member in charge of the bill do it?

10:45

**Karen Gillon:** I do not think that we should put a limit on the time, because the Parliament will decide that. However, once a motion has been voted on and rejected—and I do not know if this is possible—members should not be able to lodge another such motion while we are discussing the same group of amendments. In other words, it is fine for the Parliament to vote on a motion to extend the debate by 15 minutes. If there is then another motion to extend the debate and Parliament says no, we should not have another motion two minutes later as a time-wasting measure. I do not know whether that can be accommodated in the rules.

**Andrew Mylne:** We have considered several ways of coming at the issue. The existing rule, which allows an extension of up to 30 minutes on any debate, has been used only once. There is a protection under the rule that, if such a motion is moved and disagreed to, another motion to extend the same debate cannot be moved.

We took the view that perhaps that was not appropriate in this context. The difficulty is that we do not know whether an extension is necessary until just before the deadline is about to expire. It is difficult to see so far ahead and there is a risk that, if a member tried to extend the debate too early, the motion would be defeated, because members would not know at that stage whether an extension was going to be necessary. That would prevent anyone else from trying to extend the

debate later on when it became clear that an extension was going to be necessary.

Our inclination was not to go down that road but to put in a protection whereby the Presiding Officer has to agree to any such motion being moved. That would guard against the overuse of the procedure, because the Presiding Officer will presumably not allow a sequence of motions to be moved if that was a time-wasting device.

**Karen Gillon:** That is an awful lot of power for the Presiding Officer.

**Andrew Mylne:** It is not the only way of doing it. Your suggestion is an alternative.

**Mr McFee:** I assume that the answer to this question will be yes. Karen, are you suggesting that, if a motion to extend is moved once during a debate on a group of amendments and is rejected, that is the matter dead within that part of the debate?

**Karen Gillon:** Yes.

**Mr McFee:** The argument that someone might move a motion too early without knowing whether the debate needed to be extended is not a good one. I believe that having a limit of one motion for each group of amendments would be acceptable and that any member of the Parliament should be able to move such a motion. The only thing that I would caution against would be malicious use of the procedure early on in a debate in order to prevent an extension, although I am sure that no one would do that. That is the only circumstance where we might fall foul, but I think that the ability to move such a motion once in a debate on a group of amendments is reasonable.

**Karen Gillon:** Such a motion should be able to be moved more than once within a group, but only until the Parliament rejects a motion.

**Mr McFee:** Yes.

**Karen Gillon:** A member could move at the beginning of the debate that it be extended by 15 minutes. Near the end of the debate, when it became apparent that six members were still waiting to speak, another motion could be moved. If the Parliament agrees to the motion, that is fine, but, if the Parliament rejects it, that is it.

**Mr McFee:** Once the motion has been denied, that is the end of the matter.

**Karen Gillon:** Yes.

**The Convener:** Is it the view of the committee that there should be no limit to the number of extensions that can be applied for during a stage 3 debate? In theory, we could have a 15-minute extension to every group. Are we content with that?

**Members indicated agreement.**

**The Convener:** Does the committee want to indicate a limit on the time allowed for the extension for a debate on a group or should that be left open?

**Karen Gillon:** If we have the option to move such a motion more than once, we could set a time limit. It could be set at 30 minutes and a member could move for a debate to be extended for any length of time up to 30 minutes. I would be reluctant to allow an hour or two hours because we might not need it, but if members have the power to move such motions more than once, I would be happy to set a 30-minute limit.

**Mr McFee:** There is a logic in using terminology such as “up to”, because it sets a maximum but does not mean that a member has to ask for the entire 30 minutes.

**The Convener:** The motion would be to extend the debate for a specified time up to 30 minutes. The specified time does not have to be 30 minutes. Is that right?

**Karen Gillon:** Yes.

**The Convener:** Are members agreed?

**Members indicated agreement.**

**The Convener:** Are we also agreed that any member will be able to move such a motion?

**Members indicated agreement.**

**The Convener:** Paragraphs 30 to 34 are about the delegated powers memorandum. Are members happy with that proposal?

**Members indicated agreement.**

**The Convener:** The suggestion for the revised or supplementary delegated powers memorandum is that the Executive could choose whether to revise fully the memorandum or just write a supplement to it depending on the extent to which changes had been made to the bill at stage 2.

As I mentioned earlier, the Executive seems to have come to the view that it is willing to provide explanatory notes, so I suggest that the committee accepts that gracious offer.

There is an additional issue about the suspension of committee meetings. Currently, a committee meeting cannot be suspended while a plenary meeting takes place. It makes sense to amend standing orders to allow committees to be suspended in such circumstances, as that would allow a committee to meet before Parliament starts on a Thursday morning and again at lunch time without having to create two separate meetings. Are members content with that proposed change?

**Members indicated agreement.**

**The Convener:** The final point is on private bills. Because we are in the process of reviewing the procedure for private bills, it would make more sense to hold over any changes to standing orders relating to private bills. There are few amendments to private bills, so the changes would not have had a major effect and I suggest that we leave the matter to be resolved in our private bills inquiry. Are members content with that?

**Members indicated agreement.**

**The Convener:** We now move into private session.

10:52

*Meeting continued in private until 12:06.*



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