

PROCEDURES COMMITTEE

Tuesday 21 December 2004

Session 2

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PROCEDURES COMMITTEE

17th 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

Robin Harper (Lothians) (Green)

*Tricia Marwick (Mid Scotland and Fife) (SNP)

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 21 December 2004

[THE CONVENER *opened the meeting at 10:19*]

Private Bills

The Convener (Iain Smith): Good morning, colleagues, and welcome to the final Procedures Committee meeting in 2004. We have received apologies from Bruce McFee, for whom Tricia Marwick is present as a substitute. As this is her first meeting of the present committee, I ask her whether she has any interests to declare.

Tricia Marwick (Mid Scotland and Fife) (SNP): My only relevant interest is that I am the Scottish National Party business manager and chief whip, so I am obviously interested in proceedings. I have no formal interests to declare.

The Convener: I remind members that agenda item 4 was deferred from our previous meeting, at which we agreed to consider the item in private.

Mr Jamie McGrigor (Highlands and Islands) (Con): Did we agree to consider it in private?

The Convener: Yes. We agreed to hold the item in private before we agreed to defer it.

Agenda item 1 is on private bills, for which we have two papers. One is a note by the clerk on where we are in our inquiry and how we should proceed. The other is the report from the working group of Executive and Parliament officials—paper PR/S2/04/17/1—which we will consider first. The easiest way of approaching the report is probably for us to go through it page by page. If we have any points of clarification, we can ask Andrew Mylne, who is a member of the working group.

Does anyone have any points of clarification on page 1? What about page 2? And page 3? Page 4? Page 5? Page 6? Page 7? Page 8? Page 9?

Mark Ballard (Lothians) (Green): On page 9, under the heading “First stage”, paragraph 37 suggests that

“The Bill would be referred to a committee to consider and report on”.

Would the bill be referred to an existing committee or, as happens under the current structure, to an ad hoc committee that was appointed specifically to deal with the bill?

Andrew Mylne (Clerk): The paper sketches out various models in pretty general terms so that members can get a feel for the different ways in

which the private legislation system could be reformed. We tried to avoid going into a great deal of specific detail about how each model would work. The issue that you raise would require to be developed and refined at a later stage if that model was favoured. In providing an outline of the model, we did not think it crucial to specify exactly what sort of committee the bill would be referred to. However, it certainly could be an ad hoc committee.

Mark Ballard: Secondly, I have a question on the second bullet point under the heading “First stage”, which states:

“The Parliament would then decide whether the Bill should proceed, but on the clear understanding that this was a provisional decision without prejudice to the rights of objectors.”

Did your working group discuss how we might ensure that such an understanding existed? As Karen Gillon has said several times, we would need to ensure that an endorsement at that stage in the parliamentary process did not in any way act as an endorsement of the principles of the bill.

Andrew Mylne: To some extent, that would be reflected in the rules that would be put in place for the parliamentary parts of the process if that model was implemented—for example, there would be no reference to a decision on the general principles of the bill. It would also be reflected in the motions that were lodged and so forth. Other than that, the matter would need to be backed up by guidance and by practice.

Mark Ballard: Thirdly, I was slightly unclear about the final sentence of that second bullet point, which suggests that, if the bill was unopposed, it could be referred promptly back to the committee. How would opposition to the bill be detected? If the first stage involved taking evidence only from the examiner and the promoter, how would we know whether there was public opposition to the proposal? How would we know that without asking for indications of opposition?

Andrew Mylne: There would still be a process whereby people would have the right to object. The point about the decision that is taken at the first stage is simply that the relevant committee would hear directly only from the promoter and the examiner on the issues that had been sketched out. There would be a separate process in which people would lodge objections, if they had them. Those objections would be considered at the second stage, but even at the first stage we would know whether there were any.

The aim is to have a slimmed-down, more streamlined process for bills that do not raise complicated issues. The suggestion is that, if there were no objections or objections were withdrawn

because they had been negotiated away, one would not go to the trouble or expense of setting up an outside inquiry but deal with the bill in house. That would be a much simpler process.

Mark Ballard: Thank you for that clarification.

The Convener: There are no further questions on the paper. I thank the officials for producing that helpful report, which will assist our deliberations.

Paper PR/S2/04/17/2 is a note from the clerk on how we should proceed with the inquiry. It suggests that there are two stages to that. First, we must decide whether to recommend that we want to take one of the routes that are outlined in the officials' report, which would require primary legislation. Secondly, we must decide whether we want to amend the process at present, before primary legislation is introduced. I invite comments from members on the way forward.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I seek some clarification. When we took evidence from the minister at an early stage of the inquiry, we agreed that there would be discussions and liaison work between parliamentary staff and Executive civil servants. Do we intend to invite the minister to appear before us again or to discuss with her the Executive's view on the report that has been prepared for the committee? I presume that a similar report will be made by civil servants to the minister.

The Convener: It is for the committee to decide whether to invite the minister back at this stage. Another option that is suggested in the paper is for the committee to produce an interim report, to which the Executive could respond formally. We could ask the minister to comment on the officials' report, but the committee may want to give an initial indication of how it believes we should proceed. We could ask the Executive to respond in writing or to give further evidence to the committee on our initial views.

Cathie Craigie: I raise that issue at this stage because we appeared to be seeking a form of joint working. It might be useful for us to have a discussion with the minister before we put anything down on paper.

Richard Baker (North East Scotland) (Lab): That is a useful suggestion. The clerk's note suggests that we may want to speak to some of the officials who were involved in drawing up recommendations. That would be very useful. There is another reason for us to speak to the Executive in the form of the minister or officials. Some of the recommendations clearly involve transfers of costs from the Parliament to the Executive. If we recommend something, we must be clear that the Executive will be prepared to foot the bill for it.

I have clear preferences regarding models, but I would be more confident about making a recommendation if I knew exactly the practicalities of implementing it. We need to know whether it is realistic for us to ask the Executive to take on greater burdens or whether such a request would meet resistance. The officials have produced a good report and it would be helpful for us to hear some of their franker opinions about what they regard as a good way forward.

10:30

Mark Ballard: As Andrew Mylne said, the officials who compiled the report have done a good job of putting together three different strands or options. However, the committee needs to have more investigation and discussion about how those strands might work in practice to make ourselves clearer about some of the implications that the officials have presented in broad brush strokes. In particular, we need to consider the Westminster Transport and Works Act 1992 model. As was mentioned in a previous paper by the clerks, a consultants' report to the House of Lords looked at how the 1992 act model that is currently used at Westminster might be improved, particularly in relation to an increase in parliamentary scrutiny.

Just as we ended up having the old system of private bills without taking proper cognisance of the 1992 changes at Westminster, I would hate for us now to jump to the current Westminster model without taking proper account of changes that might be discussed or are in the pipeline there. A bit more investigation is required into how the TWA, the Private Legislation Procedure (Scotland) Act 1936 and the semi-parliamentary models might operate in practice, so that we are more familiar with the issues about the option that we may eventually recommend.

Tricia Marwick: Although I did not take part in the committee's discussions of the matter, I have some knowledge of the area as the convener of the Waverley Railway (Scotland) Bill Committee. I have been listening to what members have said about taking more evidence and involving the Executive, but time is pressing and a number of other private bills are in the pipeline. The system that we operate at the moment is extremely time consuming for staff and members and is not easy to understand for either the members or potential and actual objectors. Although speed is not the most important factor, a decision needs to be taken at some point. If we suggest today that we should take more evidence or invite the Executive to respond, we have a duty to introduce a timescale, as that would be helpful for members and the officials who currently operate in a system that is cumbersome, burdensome and confusing.

The Convener: What Cathie Craigie and Richard Baker have said does not go against what Tricia Marwick suggests. At the next meeting, we can have a summary of the evidence that we have received to date and invite the minister and the relevant officials to give further evidence. Perhaps that would be the best way forward. Will Mark Ballard clarify whether he is looking for more written information about the TWA, or does he suggest that we take oral evidence?

Mark Ballard: It would be handy to have a look at the details of the consultants' report to the House of Lords. I wonder whether it would be worth having a discussion before doing that, so that we are more familiar with how the three models might operate in practice. That would help us in our questioning of the minister. Richard Baker spoke about the implications for parliamentary and Executive financial responsibilities. It would be helpful if we were clearer about some of those matters before we meet the minister, so that we have clearer ideas about the models that we are testing.

The Convener: I am not entirely clear about what additional information we would need. If we had the Executive officials in first to talk about the reports, we could clarify our position before inviting the minister to indicate what the Executive's views are on the suggestions. I am reluctant to draw the process out, because we meet only every other week. If we have the officials one week, wait for the next meeting to see the minister and then consider the options in the following meeting, we would start to drift into Easter before we drew any conclusions. If primary legislation is required, we would be drifting towards the end of next year before it could be enacted. I am keen that we should try to do as much information gathering as possible at our next meeting, so that we can start to draw conclusions.

Cathie Craigie: Mark Ballard mentioned a consultants' report. We are bound to be able to get a copy of that report, which could be circulated to members, provided that it is not a huge piece of work.

The Convener: We can certainly obtain and circulate an executive summary and allow members to get the main document, if required. I think that the review was instituted by the Department for Transport.

Do members agree to invite Executive and parliamentary officials to give evidence on their report at our next meeting? We will then ask the minister to give an indication of the Executive's thinking on the proposed options. A summary of the evidence that has been received to date will also be available.

Members indicated agreement.

Work Programme

10:36

The Convener: Item 2 on our agenda concerns our forward work programme. We will go through paper PR/S2/04/17/3 page by page to identify questions that need to be asked and issues that need to be clarified. We will then reach some conclusions.

Page 1 provides an update on existing inquiries. We have dealt with private bills. Later in the meeting we will deal with and, I hope, produce a final report on the issue of oral questions. Provisionally, we have committee time, shared with the Standards Committee, for a debate on a subsequent report on oral questions on 24 February.

I refer members to pages 2 and 3 of the paper. At a previous meeting, we agreed that following our review of the procedure for private bills our next major inquiry would relate to Sewel motions. There is a further note from the clerk on that issue. The inquiry could be fairly large. We need to decide whether to examine only the internal proceedings of the Parliament or to widen the scope of the inquiry. I invite comments from members.

Mr McGrigor: Will we get Lord Sewel to come to talk to us?

The Convener: We can invite him, if we wish.

Karen Gillon (Clydesdale) (Lab): Why?

The Convener: Because he was the minister who established the convention. That is a matter for the committee to decide when we consider in more detail the remit and possible witnesses for the inquiry. It is an option that we could consider.

Mark Ballard: As we discussed at the away day, it would be difficult practically for us to choose the narrower option, which would constrain us. In particular, the third bullet point of paragraph 15, which deals with the broader option, raises an issue that has been discussed when Sewel motions have been lodged. It would not be possible to limit the inquiry to the narrow agenda. We would end up spilling out into the broad agenda, so we should bite the bullet and go for a broader inquiry. Members of the Parliament have expressed concerns about some of the issues listed in paragraph 15.

Tricia Marwick: The narrower option is very mechanistic and relates to how the Parliament deals practically with Sewel motions. As Mark Ballard indicated, that option is constraining. I would hate for it to be specified in standing orders how the Parliament should deal with Sewel

motions. The concern about Sewel motions is not the mechanics of how they are handled in the Scottish Parliament; it goes far wider than that and relates to the number of such motions that are lodged and the range of issues that they cover. People are probably less concerned about the narrow mechanics of the system than they are about the fact that the motions are coming to us in the first place. That is why we need to have the broader inquiry suggested in paragraph 15.

The Convener: I note your points. The other side of the coin is that we can deal only with the standing orders of the Scottish Parliament; we cannot require changes to be made to procedures at Westminster. A broader inquiry would obviously take a lot longer and might be unsatisfactory in that we might end up making recommendations that cannot be implemented. The narrower inquiry would introduce standing orders in an area in which there are no standing orders at present.

Karen Gillon: I am interested in several points. Whenever I have voted on a Sewel motion, I have voted on the general principles of a bill. How do we go outside the "scope of that consent" if we are voting on general principles? I am confused about what we are saying. Are we saying that we should have the right to veto the legislation if it is amended by the House of Commons, which is similarly democratically elected?

The Convener: We vote on a Sewel motion on the basis of what is in the memorandum about the scope of the United Kingdom bill and the issues with which it will deal. If the bill is amended and deals with something that was not in the memorandum on the bill, there is no mechanism for the Scottish Parliament to review its consent for Westminster to legislate in that area. I accept that Westminster can legislate without the Scottish Parliament's consent, but the purpose of the Sewel convention is to ensure that that consent is sought. The issue is whether there needs to be a mechanism for dealing with amendments. The amendments might not be Government amendments; they might have come from the House of Lords or Opposition parties and they might change the nature of the legislation in a way that was not envisaged when the Sewel motion and memorandum were drawn up. That is a legitimate point to investigate.

Karen Gillon: I would be concerned if we had a second Sewel motion debate if an amendment was tabled. I can understand why we might have a debate if an amendment was agreed to. However, amendments are tabled all the time and often do not mean very much.

The Convener: I hear what you are saying. I do not think that we need to get into a debate about the details at the moment. We are just trying to get a steer on whether the committee wants to go for

the narrow remit or the broader remit. If we go for the broader remit, we will produce a paper on the full remit of the inquiry at a future meeting, when we will be able to discuss the details.

Karen Gillon: On the broader option, I am not convinced that we have the powers to cover some of what is mentioned. We do not have the power to determine whether the Parliament can use the Sewel procedure; the Parliament will have to determine that. We need to clarify what responsibility we have. I do not have a problem with covering that issue, but we have to clarify what is within our remit to do and whether the changes to procedures that we can make are in line with some of what is in the paper. The paper states that we might consider

"why such decisions are made more frequently than was originally envisaged".

Who decided what was to be envisaged?

The Convener: If we produce a detailed remit for the inquiry, we will have to refer to what we can do as a committee under the standing orders. The detailed paper on the scope of the inquiry would be the place to consider what we can and cannot do, given our remit. We are saying that we want to go for the broader inquiry, subject to its being within the scope of our remit.

Cathie Craigie: We should come back with a remit that condenses the three bullet points in paragraph 15 into one. Karen Gillon is right. The Sewel mechanism is how we operate and we do not have the power to change that. Some members of the Parliament would just oppose using the Sewel mechanism in principle, because they do not agree with it, but the committee has a duty to consider whether the Parliament is operating that mechanism in the best way that it can.

10:45

Tricia Marwick: I just wanted to ask a question—because I am not entirely sure—that picks up on the point that Karen Gillon and the convener made. When amendments are made at Westminster after consent has been given by the Scottish Parliament, is there no mechanism at all at present for a further Sewel motion to come back to us? Is it in the hands of the Executive at the moment to determine whether it wants to come back with such a motion? I do not know whether that is right but I believe that the Executive can, if it so wishes, come back on any bill that it has Seweled when amendments have been tabled or passed to get our consent later.

The Convener: That may or may not be right; it is something that I would want to consider in the inquiry. We may want to require the Executive to report back if there are significant changes to a bill

that would affect what was agreed in the memorandum, but that is something that our inquiry would have to consider.

Tricia Marwick: The question that I am asking is whether our processes rule out that option at the moment. I do not think that they do. I think that it is in the Executive's hands whether it brings back such a motion.

The Convener: I shall ask Andrew Mylne to give us a bit more information about that.

Andrew Mylne: At the moment, the process is largely governed by Government guidance, which is issued by the Cabinet Office to all Government departments; the Executive obviously has its own guidance, which ties into that. It is the responsibility of the UK Government and the Scottish Executive to approach the Parliament with a Sewel motion and they then have to keep an eye on legislation that is subject to that consent as it is going through. The guidance says that, if there are significant amendments, it may be appropriate to come back and seek further consent. However, from the point of view of procedures in the Parliament, the judgment is exercised by the Government and by the Executive and the Parliament itself does not take a decision as to when such motions are appropriate. There is therefore room for uncertainty about the extent of the consent that was originally conferred and the circumstances in which it may be appropriate to seek further consent.

Tricia Marwick: Thanks. That was extremely helpful.

The Convener: I suppose that the other issue is that, in the Westminster parliamentary timetable, the final amendment might be agreed to at the last minute. The Government may have the intention of overturning an amendment but may change its mind at the last minute, so the consent issue might not have time to kick in and the bill could be passed before we had the chance to have another say.

Mr McGrigor: The broader remit is more sensible than the narrow one, in my view. Have there been practical examples of what you have described? Has a bill that was the subject of a Sewel motion been amended in a way that went beyond what the Scottish Parliament intended?

Andrew Mylne: I do not have chapter and verse, but I am aware of at least a few instances where there has been a second Sewel motion on the same bill because of amendments that have been made. I cannot give you specific examples.

Mr McGrigor: But it has happened.

The Convener: As part of the background to the inquiry, we would also want to get information about the Sewel motions that have been passed

and the relevant legislation attached to them. We shall look at that as part of the inquiry.

Are members happy to bring forward a detailed brief for the inquiry, which will take account of the committee's remit?

Members indicated agreement.

The Convener: We turn to page 4. We had also agreed that we would want to consider a review of the parliamentary week. It was suggested that that should be the next inquiry that we start, some time next year. Tricia Marwick is looking a little sceptical.

Tricia Marwick: I am a little puzzled. Do you mean that it would be the next inquiry after the Sewel inquiry or the next inquiry?

The Convener: The Sewel inquiry will be the next one to start, but the inquiries may run in parallel to some extent. We will not necessarily wait until the Sewel inquiry is finished before we start on our parliamentary timetable inquiry. Are members content with that proposal?

Mark Ballard: My only slight concern is that there might be a knock-on effect from our discussions later today on rearranging the part of the parliamentary week in which question time takes place.

The Convener: The inquiry would deal with much wider questions about the pattern of meetings in general rather than how business is organised within particular hours. It will range much wider than the marginal adjustments to the parliamentary day that we will consider later today.

Mark Ballard: Will the inquiry consider issues such as when the parliamentary week starts and finishes?

The Convener: It will be a full inquiry on how the Parliament organises its business. However, we could come to the conclusion that we do not need to make any changes.

Page 5 lists possible minor inquiries on issues that have been flagged up. Do members have any questions on those? Are there any issues that members think we should not address?

Karen Gillon: I would like us to address the petitions issue. The Public Petitions Committee has undertaken some work on the matter already. We should assist that committee in bringing about the necessary conclusions to its consultation.

The Convener: The inadmissibility of petitions is dealt with in paragraphs 37 to 39. We could deal with that issue as an early additional inquiry.

We may also receive a request from the Finance Committee for an amendment to its remit, but that should be a relatively minor matter.

Are members happy that all the matters listed in the paper should be slotted in as and when we have time to consider them?

Members *indicated agreement.*

The Convener: Page 7 mentions parliamentary debating time for the committee. As I said earlier, we have provisionally been allocated a slot for the debate on oral questions. If that debate is relatively short, we may be able to fit in a debate on our commissioner for public appointments inquiry at the same time; alternatively, we may need to request more time. We will also need debating time at some future date for our private bills proposals.

Paragraphs 44 and following deal with external research. The question is whether we want to commission any external research for our inquiry on Sewel motions and for our inquiry on the parliamentary week. As is mentioned in paragraph 46, we might want to consider consulting more widely on our parliamentary week inquiry and commission external research.

Cathie Craigie: We could consult widely on the parliamentary week inquiry, but I do not think that we need to bring in people from outside to give evidence.

The Convener: That is not what I meant. The suggestion is simply that we might want to commission specific research.

Finally, I draw members' attention to the revised dates for the schedule of meetings that are given on the extra paper that has been circulated. I apologise that the first set was slightly erroneous. That was my fault.

Karen Gillon: Did you not count the recesses?

The Convener: I did, but some dates were wrong.

Are members content with the recommendations in the report?

Members *indicated agreement.*

Minor Rule Changes

10:53

The Convener: Agenda item 3 concerns minor rule changes, on which we have a note—paper PR/S2/04/17/5—from the clerk. Let us deal with the two issues separately. Are members content with the rule change that is proposed on page 1?

Members *indicated agreement.*

The Convener: Page 2 details other minor consequential rule changes. Are members content with the proposed rule changes on page 2?

Members *indicated agreement.*

The Convener: In that case, we will introduce those rule changes at an appropriate point. We may manage to get them through on 24 February.

That ends the public section of today's meeting, so I ask the public to depart.

10:55

Meeting continued in private until 11:42.

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