

PROCEDURES COMMITTEE

Tuesday 18 January 2005

Session 2

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PROCEDURES COMMITTEE

1st Meeting 2005, 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 18 January 2005

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

Items in Private

The Convener (Iain Smith): Good morning and welcome to the first meeting in 2005 of the Procedures Committee. I wish you all a happy 2005. Karen Gillon has been delayed en route as a result of the weather, but I hope that she will arrive at the meeting at some point.

Agenda item 1 is on items in private. First, do members agree to take item 4, which is consideration of a draft report, in private?

Members indicated agreement.

The Convener: Secondly, do members agree to consider in private at future meetings the draft reports on the commissioner for public appointments and private bills?

Mr Jamie McGrigor (Highlands and Islands) (Con): Are you talking about agenda item 4?

The Convener: Item 4 will be dealt with today, but I am seeking permission for the committee to consider two draft reports in private at future meetings.

Mr McGrigor: I would prefer the discussion to be in public.

The Convener: Members have already agreed to take item 4 in private.

Mr McGrigor: Have they?

The Convener: I am sorry. I am afraid that I have caught you out.

Do members agree to consider in private at future meetings the draft reports on the commissioner for public appointments and private bills?

Members indicated agreement.

Sewel Convention Inquiry

10:18

The Convener: Agenda item 2 is consideration of a draft remit and prospective witnesses for the proposed Sewel convention inquiry. I propose to go through the issues topic by topic to find out whether there are any questions that need to be clarified and whether members agree to the suggested approach. If we reach agreement, we can consider the call for evidence and a press release for tomorrow to get things under way.

Are there any comments or questions about paragraphs 1 to 8 of paper PR/S2/05/1/1? Those paragraphs are on the purpose and general scope of the inquiry.

Richard Baker (North East Scotland) (Lab):

On paragraph 5, I understand that we must consider how business is conducted at Westminster in order to inform whatever new procedure we will come up with in Scotland, but are we straying into the territory of making recommendations about what should happen at Westminster? Obviously, we will consider the current system and how we can change the system in Scotland while complying with the Westminster system. Is that right?

The Convener: Our remit extends only to what happens in the Scottish Parliament, so we can make recommendations only about that. In writing our report, we may come up with some thoughts on the situation in Westminster, but it would be up to that Parliament if it wanted to do anything in that regard. It would not be within our remit for us to make recommendations to another body on how it conducts its business.

Mark Ballard (Lothians) (Green): I take that point entirely, but it is important that we hear from those other bodies. In particular, it would be interesting to hear from the Department for Constitutional Affairs and the Scotland Office about their roles in the process. I am unfamiliar with how the Westminster process works and I think that, if we are to come up with a process that fits with Westminster, we have to find out how its process works and about the role of Parliament, the DCA and the Scotland Office.

The Convener: That is a valid point. We will deal with it when we consider what witnesses to invite.

Mr McGrigor: We should consider the possibility of having the two Parliaments working together—for example, through a joint transport committee. That is an important matter to consider.

The Convener: As I say, there are limits to this committee's remit. We can examine possibilities for joint working, but whether that is feasible would be a matter for the relevant Parliaments. We can examine the issues, but we cannot make recommendations to Westminster that would require joint working, for example.

Mr Bruce McFee (West of Scotland) (SNP): The general point that we appear to be making is that we should do enough to ensure that we have a good understanding of how matters are dealt with without impinging on the authority of another organisation. I take Mark Ballard's point that we need an understanding of the process at the other end if we are to make decisions here.

The Convener: I agree. Just as we cannot make recommendations to Westminster, we would not expect it to tell us how to conduct our business. The issues are two sides of the same coin.

Paragraphs 9 to 11 deal with the various kinds of Sewel consent that exist.

Mark Ballard: I have now got my head around the two different kinds of Sewel consents. It would be worth discussing whether it would be appropriate to have two separate mechanisms to deal with those two kinds of Sewel motion. It is important that we do not treat Sewel motions as a block but consider the different types of Sewel motions. In that light, I think that this section of the remit should be strengthened to make clearer the fact that Sewel motions are not homogeneous.

Mr McFee: I agree with Mark Ballard's point, which opens up the issue of the original purpose of Sewel motions and the question whether we will actually get what the Parliament has effectively agreed to. We should consider not only the two different types of Sewel motion, but the general issue of legislation that affects Scotland.

Mr McGrigor: Our party's view is that the Sewel mechanism was supposed to be the exception rather than the rule. However, more than 50 Sewel motions have been lodged and even Lord Sewel has complained that that is excessive. We have to consider that issue. Sewel motions seem to be used for everything now.

The Convener: We must be clear that it is not for the Procedures Committee to make a judgment about the political issues; it is for the Parliament to decide whether Sewel motions are appropriate. However, I would say that a lot of Sewel motions concern administrative issues relating to base legislation that is reserved, such as consequential changes to courts procedures in relation to drugs laws. Many of those matters are not major policy issues; they are mainly administrative. A brief analysis of the types of Sewel motion that there have been would show whether that is the case

and I am sure that that will come as part of the answer to Donald Gorrie's questions to the Executive.

Mr McGrigor: There have been Sewel motions on civil partnerships, for example, which are a contentious issue.

The Convener: That is right. There have been one or two Sewel motions on major policy issues. I do not want to get into discussions on particular Sewel motions, but the legislation on civil partnerships involved an amalgamation of devolved issues and reserved issues. That meant that it would not have been possible for the Scottish Parliament to have passed the same legislation that was to be passed at Westminster; it could have passed only part of that legislation. Although we must examine how the Scottish Parliament deals with such issues, I do not think that it is for the committee to decide whether the Parliament should have used Sewel motions in particular cases.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The paper by the clerk on the draft remit for the inquiry points out that we will be considering not the number of Sewel motions that come before the Parliament, but whether we have in place the right mechanisms and procedures. We will be able to recommend either that the right mechanisms and procedures are in place or that changes are necessary to improve them. The issue is about using Sewel motions at the appropriate time.

The clerk's paper is certainly helpful. We might think that we know what Sewel motions are about but, before we embark on a full inquiry, I wonder whether it would be possible for members to have briefings on what happens here and on the process down at Westminster. That way, we would learn about the facts of what happens and we would have more than our perceptions to go on.

The Convener: That is a fair point. As regards evidence, we are proposing to allow 12 weeks for the submission of written responses, but during that 12-week period we could take initial oral evidence and get some background briefings so that we have the necessary knowledge when we start the full oral evidence sessions later on.

Are there any comments on paragraphs 12 to 16, which begin on page 3?

Mr McFee: I am not unhappy with what those paragraphs say, provided that we do not rule out at this stage any of the various models that could be considered, such as the hybrids. Our paper just comments on the different procedures and the lack of consistency in the way in which Sewel motions are referred to committees and the way in which committees may deal with them. Provided that we are leaving all that open to consideration, I am happy with what the paper says.

The Convener: At this stage, we are not ruling anything in or anything out. Andrew Mylne has confirmed that.

Do members have any points on paragraphs 17 to 20?

Mr McFee: Paragraphs 24 and 25 give almost diametrically opposed views. I take it that they are in the paper simply for comment; no decision has been made on which of the two models might be preferred.

The Convener: Paragraph 26 refers to that very point.

On the remit, I do not want to send the committee down a particular road until we have started to take evidence. At that point, we will be able to begin to focus on a specific direction. At this stage, we are not opting for paragraph 24 or for paragraph 25.

As there are no other questions on paragraphs 21 to 28, are members happy with paragraphs 29 to 32, which are about whether the Sewel convention should operate through Government?

Mr McFee: That section is useful and it should influence our choice of witnesses.

The Convener: Are there any comments on the section entitled "Issues of timing and priority", which runs from paragraph 33 to paragraph 38?

Mr McFee: That section is one of the more important parts of the report. Although it addresses the issue of priorities, it does not deal with outcomes. Whether or not I think that Sewel motions are a good thing, it is clear that, when the Parliament agrees to a Sewel motion, the motion should achieve what was intended. The Parliament will otherwise think that it has agreed to one thing only for something else to come out at the other end of the process. The Civil Partnership Bill is probably one of those examples. We should spend some time looking at the outcomes in cases where the Parliament has not been satisfied with what has come out the other end. I believe that, when that happens, the Parliament should be able to disengage from the process.

10:30

Mark Ballard: In the context of paragraph 38, the issues around private members' bills are complicated and we should investigate timetabling in that respect. As the paper says, most Westminster private members' bills do not succeed. However, it is important for us to focus on achieving a better structure for such bills in the Scottish Parliament, given that they are different from Government bills.

The Convener: Before we consider possible witnesses, it might be useful for us to look at the

call for evidence sheet at the back of the paper. We need to be satisfied that it covers the points that are dealt with in the rest of the paper. The idea behind the witness list is that we can start to take evidence before all the written submissions are received. After that, the committee can call other witnesses if we wish. I suggest that members turn to page 13 and look at the questions that are set out in the call for evidence sheet. Are members content with the list or do we wish to delete or add to it?

Mr McFee: The list is broadly acceptable.

The Convener: Okay. Let us return to the list of possible witnesses. At this stage, we are looking only at suggestions. As I said, the idea is for us to consider witnesses from whom we can take oral evidence before the conclusion of the written submission period. That is particularly important in relation to the Parliamentary Under-Secretary of State for Scotland. We might want to take evidence from the Government before the United Kingdom general election, which everyone anticipates will be held around May. We will want to take evidence from the ministers who have had a direct involvement in the process.

Mark Ballard: In that context, as well as taking evidence from the Scotland Office, should we take evidence from the DCA?

The Convener: I am not entirely clear what the involvement of the DCA is in terms of Sewel motions.

Mark Ballard: As I understand it, the DCA set the guidelines for ministers in respect of their involvement with the devolved Administrations. Given that the DCA took a central role in the guidance process, it would be useful to have representatives of the department along.

Andrew Mylne (Clerk): I think that that is right. As I understand it, the existing devolution guidance was originally Cabinet Office guidance. Since the creation of the DCA, the department inherited that area of Government work. The DCA may be able to offer a general perspective on the issue.

The Convener: We can certainly investigate the possibility.

Mr McFee: Convener, are you inviting committee members to go through the issues one by one or just to give our general comments?

The Convener: I am looking for general comments. However, if you feel that a witness should not be on the list or that a name should be added, I am happy to consider the suggestion.

Mr McFee: I am not sure about the value of inviting Henry McLeish to give evidence. Do we want to find out the thinking of politicians when the

Scotland Bill was passed or do we simply want to find out how the system is working at the moment? I am not sure whether we want to hear evidence from parades of MPs or MSPs.

The Convener: The idea of inviting Lord Sewel and Henry McLeish is to get their ideas.

Mr McFee: Yes. Lord Sewel is a definite, particularly given his recent comments.

The Convener: I would certainly be interested to hear from Scottish MPs about their perspective on the Sewel convention and whether they feel that it operates satisfactorily. There might also be some changes that they want to make at Westminster. Although we cannot make recommendations on that, it would be interesting to hear their views—one or two Scottish MPs may have a view that it would be helpful for us to hear.

Mr McGrigor: I second that.

Cathie Craigie: I do not think that we need to have both Lord Sewel and Henry McLeish at the committee. If it came to a choice, we should hear from Lord Sewel about why the convention was set up, how he sees it and, looking in from the outside, how he believes it is working now. I am not sure about the need to invite someone from the DCA. As I said earlier, I would prefer us to have an informal briefing on how things work before we decide on whom to invite as witnesses. We would then be able to say what areas we need to focus on. There will be people on the list whom we definitely want to come along before we make a final decision.

It would also be worth while for us to look at the report that the House of Lords has produced and the report—which I may have seen, although I am not sure—by the student who worked for the Scottish Executive on a placement. I do not know how quickly we could arrange an informal briefing. I do not want to delay matters and I take the point that you made, convener, about the election coming up and some politicians not being available. However, a briefing would improve members' understanding and the quality of the whole inquiry.

The Convener: I am happy to consider how we can best arrange an informal briefing that will provide that background information. We have suggested that Lord Norton of Louth, who was the chairman of the House of Lords committee that produced that report, be invited to give evidence.

Mark Ballard: Jamie McGrigor has mentioned the historical perspective, but there is a feeling that there is a gap between the Sewel motion as it was originally conceived and the Sewel motion as it is now used. Although it is important to step away from any judgment on whether that is a good or a bad thing, I believe that it is worth looking at

the historical context of the process to understand it. There are lots of things about the Parliament that function differently from the way in which it was originally envisaged that they would function and it would be useful to get that historical perspective to understand how things have changed. That is why I thought that Henry McLeish might be a useful witness to give evidence on the historical perspective.

I agree with Cathie Craigie about the study by Chris Harrop, which is referred to in the clerk's paper. I would like to have a copy of that.

The Convener: The papers that have been referred to will be made available to members in good time. If we invite both Lord Sewel and Henry McLeish, I would be inclined to invite them to attend as a single panel.

Mr McFee: A double act.

The Convener: A double act rather than two separate witnesses. However, I will consider whether we should invite one or both of them.

Mr McGrigor: How will you decide which MPs to invite?

The Convener: We will write to the main political parties, asking them whether they wish to send a representative to give evidence.

Mr McGrigor: Might it be worth inviting someone from Hansard?

The Convener: Do you mean someone from the Hansard Society?

Mr McGrigor: Yes. Its members are close to constitutional matters and might have a viewpoint from experience.

Andrew Mylne: We could look into that. I know that the Hansard Society produces reports on such issues from time to time, although I do not know whether it has done anything recently on the Sewel convention.

Mr McGrigor: I am not sure either, but I would have thought that it might be quite close to the issue.

The Convener: We can approach it to give written and possibly oral evidence, depending on whether it has anything to contribute.

Richard Baker: I think that we are all clear on which politicians we might invite and what role their evidence will play. However, as is often the case with academics and commentators, they are just names to us. If we had their reports and publications first—including those of the Hansard Society—we might be able to decide which would be the most effective witnesses in terms of the remit and scope of the inquiry. The convener suggested that we might take evidence from

politicians first, given the timescales and upcoming elections. It might be useful if the committee read some of the reports and writings of the academics and commentators and on that basis decided whom it would be most appropriate to invite.

The Convener: We do not have to make any final decisions on witnesses at the moment, but that is a valid point. If members are keen to have a lot of reading for their February recess, I am sure that we can provide plenty for them.

Mr McFee: I agree that we should take evidence from the conveners of the Enterprise and Culture Committee and the Justice 1 Committee in relation to the concerns that they expressed, to get more practical, in-depth evidence of the difficulties that are being faced.

Richard Baker: On a point of information, Alasdair Morgan is no longer the convener of the Enterprise and Culture Committee.

Mr McFee: "Former convener of the Enterprise and Culture Committee" is an even longer title than "convener of the Enterprise and Culture Committee".

The Convener: Are there any more comments on the list of potential witnesses? Is there anyone whom we have not thought about who should be considered?

Cathie Craigie: Will we receive further briefing material and then come back and agree to the list of witnesses?

The Convener: We will get further reading material and consider the list of witnesses again at our next meeting. I will also discuss with the clerk the options for a briefing session, which will probably be after the February recess, before we start taking oral evidence. Are members content with the conclusions and recommendations in the clerk's paper?

Mark Ballard: Does that include the press release and call for evidence?

The Convener: Yes. We discussed the call for evidence. I am happy to take any comments on the press release.

Mark Ballard: I have one question for Andrew Mylne. The opening sentence states:

"The ... Procedures Committee has begun a major inquiry into the operation of the so-called 'Sewel Convention'."

Is the Sewel convention its formal name? Is there another formal name by which we should refer to it? The phrase "so-called" seems a bit sniffy.

Andrew Mylne: It certainly was not intended to convey an impression of sniffiness. "Sewel convention" has always been, to some extent, an informal name. I do not think that that is how it is

referred to in official contexts. It is a convenient label that has developed. I am happy to take out the "so-called".

The Convener: At the moment, the process is part of the protocols with the devolved Administrations, but it has informally been called the Sewel convention because Lord Sewel announced the convention when the matter was first discussed in the House of Lords.

Mr McFee: The phrase "so-called" is absolutely right, because the Sewel convention is not its correct name. It is "so-called". I argue strongly that we should leave the phrase in, because it is technically correct. I do not think that it is meant to be sniffy.

The Convener: There is no such thing as a Sewel motion, for that matter.

Mr McFee: Exactly. That is how such motions are commonly referred to.

Richard Baker: The use of the phrase "so-called" and the fact that "Sewel convention" is in quotation marks indicate that that is how the process is commonly referred to.

The Convener: We will bear that in mind when the media office finalises the wording of the press release before we put it out. Are there any other comments on the press release or the call for evidence?

Karen Gillon (Clydesdale) (Lab): The second line in the second paragraph of the press release states:

"It will focus on procedural matters, while recognising the political context which has made the Sewel process controversial."

What does that mean, if you are Joe Public?

The Convener: I think that it is intended to mean that there is a strong distinction between the procedural issues around the Sewel convention and the political decisions that are taken as to whether to pursue a Sewel motion in a particular case. It is possibly not very clear.

Karen Gillon: As a committee, how can we consider the political decisions that are taken as to how—

The Convener: We do not do that. The intention is to make it clear that we are not—

Karen Gillon: The wording does not make that clear.

The Convener: No, it does not—you are right. We will consider that.

10:45

Karen Gillon: All that we need to say is that the inquiry will focus on procedural matters. We do not

have the power to decide on or judge whether the right political decisions are being made. That is a matter for the Executive and the Parliament.

Richard Baker: The second paragraph of the quotation from the convener says:

“of course any recommendations we make at the end of the inquiry will primarily be about the procedures we operate here in Holyrood.”

My understanding is that we can formally make recommendations only on procedures at Holyrood, although we might make other comments.

The Convener: Taking out the word “primarily” is not a problem. You are right: that would make things clear.

Mr McFee: I asked earlier whether we were closing down some aspects of the inquiry. Are we focusing the inquiry already and ruling certain things out? The assurance that I got was that we were not. If we take out the word “primarily”, that would leave “any recommendations we make at the end of the inquiry will be about the procedures we operate here in Holyrood.” There might be other recommendations and areas on which we wish to report. I would not like at this stage to tie our remit as tightly as that.

The Convener: I do not think that that would prevent us from commenting and, in doing so, hinting to other bodies how they might wish to consider certain issues. However, we can make recommendations only in relation to the procedures of this Parliament. That is all that we have the power to do under our remit.

Mr McFee: I suppose that that depends on what we call a recommendation. We can recommend whatever we like.

Karen Gillon: We cannot recommend to Westminster what it should do. We can pass comment.

Mr McFee: It can tell us to get stuffed, but we can recommend—

Karen Gillon: No, we cannot recommend things to Westminster. If Westminster recommended to us what we should do, you guys would be jumping up and down having 36 fits.

Mr McFee: Westminster does that. Avoiding getting into the politics of the matter, I think that it does and it unfortunately has the power to—

Karen Gillon: Absolutely not. We are a devolved Administration within the United Kingdom. Until that changes—at the whim of the electorate—that is where we are. Let us be honest about where we are and not try to pretend to people that we are somewhere where we are not.

Mr McFee: I am not suggesting that we do that; I am suggesting that leaving out the word

“primarily” makes it look as though we are tying our remit extremely tightly.

Karen Gillon: We are.

Mr McFee: We are looking at all the other contexts in which the Sewel mechanism has been arrived at and how it is operating. We are looking at something slightly wider.

Richard Baker: All that I was suggesting is that it should be clear that we can make recommendations only for Holyrood; it is quite clear that we can also comment, look at and take evidence on the Westminster end. On the point about the word “primarily”, I was just trying to reflect the powers of the committee.

The Convener: The standing orders state:

“The remit of the Procedures Committee is to consider and report on the practice and procedures of the Parliament in relation to its business.”

That is all that we can make recommendations on. We can make comments on other things, but we can make recommendations only on

“the practice and procedures of the Parliament”.

Mr McFee: That depends on one's definition of a recommendation.

The Convener: That was my definition of a recommendation.

Mark Ballard: Would it be possible to put “formal recommendations”?

The Convener: To be honest, I think that the meaning is clear as it is expressed. A recommendation from this committee is something in relation to the procedures of this Parliament.

Mr McFee: I thought that it was clear, which is why I did not want to change the wording.

The Convener: The press release is not part of the formal remit of the committee. It was just intended to draw the attention of the public and the media to the inquiry. Are members content with the remit and press release?

Members indicated agreement.

Minor Rule Changes

10:49

The Convener: Agenda item 3 is our draft report on minor rule changes. This should be a relatively straightforward matter. These are simply tidying-up changes to standing orders, which we considered at our previous meeting. Before us are our draft report and the proposed standing order changes. I invite comments on pages 1 or 2 of the draft report. Do members agree to the recommendation that has been made?

Mr McFee: The proposed changes are all just consequential.

The Convener: Yes—they are all tidying-up amendments. Are members content to approve those standing order changes?

Members *indicated agreement.*

10:50

Meeting continued in private until 12:08.

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