

PROCEDURES COMMITTEE

Tuesday 25 April 2006

Session 2

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PROCEDURES COMMITTEE

7th Meeting 2006, Session 2

CONVENER

*Donald Gorrie (Central Scotland) (LD)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Robin Harper (Lothians) (Green)

*Alex Johnstone (North East Scotland) (Con)

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

COMMITTEE SUBSTITUTES

Murdo Fraser (Mid Scotland and Fife) (Con)

Patrick Harvie (Glasgow) (Green)

Tricia Marwick (Mid Scotland and Fife) (SNP)

Irene Oldfather (Cunninghame South) (Lab)

*attended

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Jonathan Elliott

LOCATION

Committee Room 4

Scottish Parliament

Procedures Committee

Tuesday 25 April 2006

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

The Convener (Donald Gorrie): The first item on the agenda was to be a declaration of relevant interests by Robin Harper, who is a new member of the committee. However, he has sent his apologies. In that context, the committee will wish to record our thanks to the member who has left the committee, Chris Ballance, who was a valued member during his time.

Annual Report

10:16

The Convener: Agenda item 2 is on our annual report, not the general subject of annual reports, which we will discuss later. The clerks have prepared a draft annual report. As we discovered from our discussion about annual reports, under the present rules, committees are fairly tightly constrained as to what they include and do not include in their annual reports. I think that the annual report has been produced correctly—the matter is fairly straightforward. As members have no comments on the draft report, do we agree to approve the report, which will be submitted on our behalf?

Members *indicated agreement.*

Parliamentary Time

10:17

The Convener: Agenda item 3 is the review of parliamentary time. The clerks have produced a paper on our inquiry, PR/S2/06/7/2, and one that contains information that we learnt when a delegation from the Finnish Parliament came here, which is additional to what we discovered when we went to Finland—that is paper PR/S2/06/7/3. The clerks have also circulated some issues that were raised during the debate on the legislative process on 15 March. We will consider mainly the points that are raised in paper PR/S2/06/7/2, which sets out the situation well.

I suggest that members notify the clerk of any issues that they are particularly keen on raising in our discussions. Those could be matters that have been raised during the inquiry or new ideas about

how to deal with the problems. After those issues have been fed in, the clerk will submit papers on particular issues, which we will then discuss. That should allow us to make worthwhile progress before the summer recess. What do members think?

Mr Bruce McFee (West of Scotland) (SNP): Paragraphs 6 and 9 cover the issue well. It is not unreasonable that we should identify the main options before the summer recess.

The Convener: Good. The clerk is scoring well on his report so far.

Mr McFee: The day is young.

The Convener: Oh dear.

Members' Bills

10:19

The Convener: The next agenda item is on whether the member who is in charge of a member's bill should be able to be a member of the committee that deals with the bill. The matter is summarised in heavy type at the bottom of page 3 of paper PR/S2/06/7/4. We have three options: to leave matters as they are; to amend the rules so that the member in charge of a bill cannot be a member of the lead committee; or to amend the rules to allow substitution. What do members feel?

Karen Gillon (Clydesdale) (Lab): My initial view was that we should prohibit the member's involvement in the committee but, having listened to and chatted with members, I now think that the member should simply not be able to participate as a committee member in the committee's work on the bill, or have sight of private committee papers that relate to the bill. By amending the rules on substitution so that a substitute committee member can take part in that work, and so that the private information for that work is not available to the member in charge of the bill—as is the case for all non-committee members who participate in any bill process—we would have equality across the board. That is the right way in which to proceed.

Mr McFee: I am not sure what concern there is, other than the one that Karen Gillon has raised. Changing the substitution rules would make no difference to the member in charge having sight of the private papers and suggested lines of questioning, because substitution normally takes place fairly late in the day. Would the substitution be compulsory?

Karen Gillon: I am suggesting that, once the Parliamentary Bureau and the Parliament have decided that a member's bill is to be given to a committee, it should be clear from the outset that the member who is in charge of the bill cannot participate as a member of the committee in the consideration of the bill. They would be treated as Dennis Canavan is treated when the Enterprise and Culture Committee considers the St Andrew's Day Bank Holiday (Scotland) Bill. He presents evidence and can cross-examine witnesses, but he does not receive the private papers that the committee receives.

The substitution would be compulsory but, if the member's party chose not to substitute a member, it would then be a member down and a vote down in any votes. However, from day 1, the private papers should not be available to the member who is in charge of the bill.

Mr McFee: So your suggestion is more akin to option B in the paper, rather than option C.

The Convener: I suppose that it is a mixture of the two, but the main point is about substitution.

Mr McFee: Yes, the point is to allow a substitute to come in.

Karen Gillon: I will explain my reasoning. If I had a member's bill that came next week to the Enterprise and Culture Committee and I was excluded from the committee's work for the next eight weeks, that would mean that, although I sat through all the evidence on stage 1 of the Bankruptcy and Diligence etc (Scotland) Bill, another member would have to come in for stage 2, even though they did not hear the evidence. We should have a hybrid system.

Mr McFee: I understand the logic, but I am trying to consider the extension, which is whether the substitution would be compulsory. That would change entirely how the system operates. With normal substitutions, the member of the committee still receives all the information, whereas, under Karen Gillon's suggestion, we would deny, or at least not give them access to, that information. I was trying to get to the bottom of that issue. If that is the only perceived problem, Karen Gillon's suggestion would eliminate it. In many ways, we could argue that the suggestion would be advantageous, particularly for smaller parties, because they would have a member advocating the bill and a member questioning in favour of the bill, too.

The Convener: I support going along the lines that Karen Gillon suggests. However, the clerk has pointed out some effects of choosing option C. A more general issue about substitution arises. The clerk blames me for this, because the measure was agreed to by the Procedures Committee in the first parliamentary session but, for some reason, the smaller parties—which did not exist then, as there were singletons rather than small parties—do not have substitution rights. We would have to amend that rule, but I do not see why smaller parties should not have substitution rights.

Also, the present rule is that a substitute has to substitute for the whole meeting, not single items. We would have to change that if Karen Gillon's proposition commands favour in the committee. It seems to me quite logical that members should be able to substitute for a single item on a member's bill.

Karen Gillon: I have a point of clarification on paragraph 19. At the moment, nobody is excluded from substitution, because the independents are a group.

Andrew Mylne (Clerk): That is not correct. They are a group and they have a representative on the Parliamentary Bureau, but the rule is specific that substitution is available only to political parties with five or more members.

Therefore, the independents do not count for the substitution rules.

Karen Gillon: I am not sure that it is possible to have a substitute. If an independent member is on a committee as an individual, how can they have a substitute?

Andrew Mylne: They cannot under the current rules.

Karen Gillon: But how can they have a substitute? I understand that, if a member is on a committee as part of a group that is represented on the Parliamentary Bureau, whether a political party or a grouping, it is possible to have a substitute from within the group, but how is it possible to have a substitute for an individual member? There is no other person to substitute for them.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): They cannot have a substitute at the moment, as I understand it. A group does not count; only a political party can have a substitute.

Karen Gillon: I am saying that I can understand how we would amend the rules to allow for groups that are represented on the Parliamentary Bureau to have substitutes, but how can we create a rule that allows a member to be substituted when there is no alternative person to substitute for them?

The Convener: The independents are a group that is recognised by the bureau.

Karen Gillon: I understand that and I can accept changing the rules to enable them to substitute, but what happens if, in the next parliamentary session, there is a group of independents and another independent, who is not part of the group and who is on a committee? How can that person have a substitute? Who would be the substitute for them?

Mr McFee: This discussion presupposes that everybody who sits on a committee will vote along a party line.

Karen Gillon: No it does not.

Mr McFee: I think that that is the implication. I understand where Karen Gillon is coming from. If the Labour group has three members on the committee and one cannot make it, they should have a substitute from the Labour group. The same applies to any other group. Karen Gillon is right to raise the matter, although I have come to a different conclusion. I am concerned that if an independent who is not a member of an independents group is the member in charge of a bill, we might remove their rights to vote and receive the committee papers, but nobody will replace them. I am genuinely concerned about that.

Karen Gillon: That is surely the situation for any member on any bill. If a Labour member brings a

member's bill to a committee of which I am a member, I do not pass the private papers to that Labour member. That is against the Parliament's rules.

Mr McFee: I am not arguing that.

Karen Gillon: You are. The members you are talking about are not being disadvantaged. We would be excluding somebody only while a committee considered their member's bill, not from everything else. We would therefore be treating them as we would treat any other member at any meeting of a committee of which they are not a member.

Mr McFee: It would alter the balance.

Karen Gillon: Jean Turner is on the Health Committee because she was a general practitioner and everybody thought it was right to put her on the Health Committee. Who would substitute for Jean Turner and who would decide who her substitute would be?

The Convener: She would.

Karen Gillon: Why would she decide? She was put on that committee by a decision of the Parliament, not because she wanted to be on it. Should the Parliament not decide on an individual's substitute?

Mr McFee: Yes, as it does with Labour, Scottish National Party and Tory substitutes; we propose our substitutes and the Parliament approves them. The procedure would be exactly the same for independents. If the Parliament thought that a proposed substitution was not appropriate, it would not agree it.

The Convener: That could cover it. If we change the rules to allow substitution for specific items, an item could be put on the Parliament's agenda to agree that, for the purposes of a certain rule, the substitute for X could be Y. If the Parliament did not like it, it could vote it down. That is a possibility.

10:30

Cathie Craigie: We must make clear that a substitution would be allowed only when a committee was discussing specific items in a member's bill. We must tie that in clearly to the current rules, otherwise members would try to use substitutes for many reasons. There has been controversy in the Parliament over the past few weeks about the way in which substitutes have been used, so we must be clear.

I mentioned earlier that I was the member responsible for a bill on the then Social Justice Committee. There were no difficulties with that, but there could have been. It is right that we clarify the position and give everybody confidence that they know where they stand on the issue.

The Convener: That is a useful point. We would have to produce a new rule that specified that a substitution would be allowed only for discussion of a specific item. We would need a rule for agreeing the substitution.

Cathie Craigie: The only change we would need to make to the rules for substitution would be that a substitute would have to be a member of a political party or a group that was recognised by the Parliamentary Bureau. I do not know how we would deal with an independent MSP who was not a member of an independents group. A member may choose to resign from a committee or to take their member's bill through. There should be options, but I do not think that we can write rules to suit independent MSPs who are not members of an independents group—the majority of members represent political parties.

Alex Johnstone (North East Scotland) (Con): Are we suggesting that an independent member in that position should have a free hand to appoint as their substitute whichever member of Parliament they like? If so, how strictly can we regulate who they choose to appoint?

Cathie Craigie: I do not think that we should allow that.

Karen Gillon: My view, for what it is worth, is that if we amend the rules for substitution to include parties that are represented on the Parliamentary Bureau, the independents group could nominate a substitute for an independent member. For example, the independents group could nominate a substitute for Dennis Canavan on the European and External Relations Committee. I do not think that we are in a position to allow individual substitutions, but we might disagree on that. A member would not need to resign from a committee to take a member's bill through; they just could not vote on parts of the bill that pertained to them. They could still attend committee meetings, except for meetings in private in which the committee took a view on the bill.

Mr McFee: I think we are on dangerous ground when we start to say that there is one set of rules in the Parliament for folk who are members of political parties and another set for those who are independent members.

Cathie Craigie: But there are.

Mr McFee: There are and I think that that is wrong—and there is a huge difference between present practice and what we propose. The present practice for substitution is for when an MSP is unable, for whatever reason, to make a particular committee meeting. We are talking about removing the right of a committee member who is in charge of a bill to sit in deliberation on the bill. When we remove somebody's right to do

something, we must have a counterbalance. In this case, it must be right to have a substitute. None of our political parties can say, for example, that Karen Gillon can substitute for Cathie Craigie—the Parliament must decide that. I suggest that the same rule should apply to everybody.

The Convener: Andrew Mylne wants to say something.

Andrew Mylne: I just want to clarify a point for members. Karen Gillon's point was that it would be relatively easy to change the rules so that the substitution option was available to an independents group that had formed to gain a representative in the Parliamentary Bureau. That would cover the independents group as it is currently constituted. There might be particular issues about an independent MSP who was not a member of a group. I am not sure what the committee's view is, but I think that the gap would be for a party that had three or four MSPs. If it was the only small party in the Parliament, it could form a group and it would in principle have enough members to allow substitution. Under the current rules, it would not have that right, so the question is whether members want to cover such a situation as well.

The Convener: I would have thought that, if the Parliament has to approve the substitution, that would cover it. Normally, the party would already have a nominated substitute for the committee who has been approved by the Parliament. On an ad hoc basis, a smaller party or the independents could propose to the Parliament that they wanted the substitute to be so-and-so and the Parliament would approve that, which would give them their chance. It would be the same for an independent independent, who could nominate somebody who he or she felt was friendly to the idea of the bill.

Karen Gillon: Surely, convener, that is not the point of the committee. What you say illustrates exactly my primary concern about an independent member being able to nominate somebody else to a committee to consider their member's bill: they would nominate somebody who was supportive of their position and the Parliament would have no right to change that nomination.

Mr McFee: Oh!

Karen Gillon: Bruce, the convener has made the point that if an independent member was taking a member's bill through the Parliament, they would have the right to put somebody on the committee who supported their bill. As a Labour member, I do not know, nine times out of 10, how other Labour members will vote on a member's bill. If I introduced a corporate killing bill now, I would not know whether the three Labour members of the Justice 1 Committee would

support my position. Some of them would and some of them would not, but they would examine and assess the evidence that was presented to them. If an independent member was able to propose a substitute whom they believed to be sympathetic to their member's bill, we would have given them an unfair advantage.

What we are proposing equalises the position because, currently, a member who introduces a member's bill that is considered by a committee on which they sit is in a much more privileged position than a member who introduces a bill that is considered by a committee of which they are not a voting member. A member should not be able to vote on their own member's bill in a committee; a member's bill should be considered by a committee of the Parliament without bias and without fear or favour. That is the way in which Parliaments should do their work. No member should be in a position to do otherwise and to vote on a bill that is of their own making.

Cathie Craigie: Do you mean in a committee?

Karen Gillon: Yes.

Mr McFee: In that case, we are in danger of creating a quagmire in which, as long as the member in charge of a member's bill is a member of a political party with more than five members, they will be allowed to have a substitute for that agenda item but, if they are not, they will not. There is an argument to be had about whether the present rules are right and we can have that argument at a different time, but it would be fundamentally wrong to do what Karen Gillon proposes. If we want equality on the matter, we would have to keep the status quo or say that the member in charge cannot serve on the committee that is considering their bill. There is a fundamental problem with having particular rules that could easily affect the outcome of stage 1 consideration and are to be applied differently to some members, groupings or non-groupings.

Karen Gillon: I will suggest a compromise. I do not have the right to nominate somebody to replace me on a committee.

Mr McFee: That is correct. Neither should an independent.

Karen Gillon: But you are suggesting that they should.

Mr McFee: No, I am suggesting that the Parliament should.

Karen Gillon: There is potential for compromise in that the Parliamentary Bureau could nominate a substitute whose appointment would not affect the d'Hondt balance in the committee.

Mr McFee: Yes, I am absolutely happy with that. In effect, that is what happens—although the

Parliamentary Bureau clearly listens to the views of the parties that are represented on it—and then a motion is lodged.

Karen Gillon: It is not what happens—for instance, I cannot substitute for an SNP member—but, in the peculiar circumstances in which a member does not belong to a party that is represented on the Parliamentary Bureau, the bureau could nominate somebody as long as their appointment did not disturb the d'Hondt balance of the committee. If it was an Opposition independent, they would be replaced by an Opposition member and if they were a Government independent, who was making up part of a wonderful new rainbow coalition, they would be replaced by a member of a Government party. I do not know whether it is possible to do that within the rules.

Cathie Craigie: We need to think the matter through. The committee discussed the amount of parliamentary time that is taken up by consideration of private bills and the difficulties for members of private bill committees who serve on other parliamentary committees in giving their committee work the time that it requires. If the main parties in the Parliament are asked to substitute a member, there will be a strain on everyone's time.

Members have a choice whether to introduce a bill that raises a conflict with the committee on which they serve. An independent must decide when the time is right to introduce such a bill, given that their proposal might not attract the collective support on which organised groups in the Parliament can rely.

The Convener: We seem to be heading towards a proposition that I can support. We are suggesting that it is wrong for a committee member to introduce a bill for which their committee will be the lead committee. Therefore, a member who introduces such a bill should not be allowed to take part in the committee's consideration and standing orders could be changed to allow a substitute to take part in agenda items that relate to the bill. The substitute would be proposed by the Parliamentary Bureau and approved by the Parliament in the usual way, which would enable members to object if they thought that a proposed substitute was a bad choice. I assume that the bureau would propose a member of the same party as the member in charge of the bill—the substitute would have to have the time to give the matter the proper attention—or, if the member in charge of the bill was an independent, seek advice and propose a member who was neither wildly for nor wildly against the bill, but would give it a fair hearing.

Richard Baker (North East Scotland) (Lab): I endorse that approach, which seems to address

everyone's concerns. The use of a substitute would not affect d'Hondt and would be unlikely to put additional pressures on political parties or independent members, which might address Cathy Craigie's concerns. The approach represents a sensible compromise. I am sure that it is not beyond our wit to change the rules to address concerns about current practice.

The Convener: Can the clerks draw up a proposal along the lines that I suggested?

Andrew Mylne: We can work on that.

The Convener: I thank everyone for their contribution. We worked our way towards a sensible proposition.

Annual Reports

10:43

The Convener: Item 5 is consideration of committee annual reports. The matter was raised by the Conveners Group and the committee has discussed it briefly.

Because the issue was in the public domain, a response was generated and we were rather taken by surprise by the seriousness with which people regard the matter. We have received written evidence from academics and evidence from the House of Commons library, which is particularly interesting because it suggests that committee reports are valuable and that there is demand for them.

The committee may consider various options. First, as the Conveners Group suggested, the practice of producing annual reports could be abandoned on the ground that matters are reasonably covered elsewhere. Secondly, annual reports could be improved to provide more of the information that people want. Thirdly, we could consider developing a new rule to ensure that the matters that committee reports cover are dealt with in other ways.

In that context, I circulated a response to a question I asked the Scottish Parliamentary Corporate Body on behalf of the committee. I asked about the Scottish Parliament statistics, which have not been published since 2002. The SPCB responded that production of the annual volume of statistics will resume. Perhaps some people's concerns will be addressed when the statistics are flowing forth again.

10:45

The committee must consider whether we should abolish the requirement for committees to produce annual reports or require that better information goes out to the public. We want the Parliament to be open and transparent, but we do not want to waste resources. We need a system that provides the best possible information for members of the public who are interested in the Parliament's work.

Whatever we decide, our first step should be to write to the Conveners Group, because it raised the matter, rather than follow our normal procedure, which is to make a proposal to the Parliament.

Karen Gillon: I am not convinced that we should spend a vast amount of time on the matter. We should leave the situation alone and allow committees to continue to produce what they think is relevant to the work of the Parliament.

Richard Baker: Karen Gillon's suggestion is sensible. I add only that if there is a practical problem to do with producing reports in hard copy, reports could be produced online. If people want to print off copies, they can do so.

Mr McFee: I understand Karen Gillon's point, but the matter was raised because there are restrictions on what committees can include in annual reports. It is too simplistic to say that committees should do whatever they want to do, given that the rules expressly forbid them from doing so—or at least militate against their doing so.

We must consider whether current practice is adequate. The response that the convener received indicates that it is not adequate. Barry Winetrobe might not be the favourite of all members in the committee, but he made relevant comments in his submission—

Karen Gillon: You like to play to the gallery, Bruce.

Mr McFee: I apologise for not recognising Barry Winetrobe in the gallery—I would not know the guy if I met him in my soup. If I had recognised him, I could have said all sorts of wonderful things about him.

We must consider what people should expect from an annual report and what information the Parliament should provide. The response that the convener received from the SPCB indicated that the Scottish Parliament has not published statistics for nearly four years. Indeed, volumes of statistics were published only for three years. Westminster is not my favourite place, as members know, but I cannot imagine that that would happen there.

The general point is that the information that we provide should be in a format that the general public, who pay for this place, can understand and access readily, although I am not saying that everyone in the general public reads the annual reports. I have looked for information about the SPCB on the Parliament's website, so I know that trying to find the nooks or crannies in which information is hidden can be an exhausting task. That bigger issue is compounded by the fact that information that was provided previously has ceased to be provided. The SPCB response to the convener's question states:

"Staff turnover in the team responsible for their production has disrupted work on later volumes"—

for four years—

"but we will publish them as soon as possible."

I cannot imagine any company saying that it has had staff turnover problems for four years but has done nothing about that. There is a bigger issue that should not be dismissed.

The Convener: I was pretty astonished by that answer, too. Members also have a paper from the House of Commons that is headed "Modernisation: Select Committees: core tasks", which might give us another approach. As I understand it, the House of Commons sets out each committee's core tasks, such as examining a department's administration or expenditure. Our committees could be instructed that their annual reports should relate to their core tasks. However, that would mean that we would first have to give the committees core tasks. We could clarify what the committees are trying to do, after which they could set out in their annual reports, more interestingly, how they are doing that.

Karen Gillon: Bruce McFee said that committees cannot do what they like. However, rule 12.9 of the standing orders states:

"Each mandatory or subject committee shall, as soon as practicable after the end of each Parliamentary year, submit a report to the Parliament containing details of its activities during that Parliamentary year, including details of its meetings and the number of times the committee has met in private."

Where does it say there that committees cannot produce what they like? It is up to each committee to decide what it wants to produce. If committees do not take the process seriously, that is up to them. It is not for this committee to prescribe what should be in other committees' annual reports. If we want to, we can prescribe what is in our report and produce a wonderful annual report as an example of best practice, but we should not prescribe in the rules of the Parliament what should be in committees' annual reports.

Mr McFee: I am not suggesting that we do that.

Karen Gillon: The rule is open.

The Convener: In practice, the Parliament does precisely that—it does not obey the standing orders. There is guidance, or whatever the correct term is, for the committee clerks. They have a bible that shows them how to write the wretched things and they must stick to it. Karen Gillon is right to point out that that is not in the standing orders, but the clerks appear to have rules.

Andrew Mylne: That guidance does not come from the clerks. In addition to the rule that Karen Gillon read out, which prescribes only that an annual report must give an account of the committee's activities over the year and include basic statistics about the number of meetings, in the past few years the practice has been for the Conveners Group to agree a template that all committees follow. In effect, there is a self-imposed discipline that the Conveners Group could change or relax at any time. For example, the template sets a word limit that does not exist in the rules and has a few other generalised

paragraphs and a structure that clerks follow in drafting reports for committees. The template is agreed by the Conveners Group.

Karen Gillon: So those rules are agreed by the very people who asked us to consider the matter again. We have considered the issue and, I think, we conclude that the rule in the standing orders is sufficient, although the implementation of the rule is perhaps lacking. We should forward the information that we have received to the Conveners Group, along with the rule, and ask it to bear in mind the views from civic society when it draws up the guidance to committees on the publication of annual reports for next year.

Mr McFee: That would be useful. It seems strange that the group that hands down self-imposed rules in the form of guidance has said, "By the way, we should abolish annual reports, because there is not enough information in them."

The Convener: I apologise to the clerks. I assumed that they composed the rules, but evidently the Conveners Group did. I was not aware of that because I became a member of the group only recently.

It seems to be the committee's feeling that we send all this stuff, including the stuff from the House of Commons, to the Conveners Group, which might learn from it and perhaps draw up core tasks and so on for committees.

Mr McFee: Perhaps we can ask the group to be prescriptive by considering how the annual reports could be improved.

The Convener: We can say that we are in favour of better information being provided and of the improvement rather than the abolition of annual reports, and that we hope that the group will produce interesting ideas.

Mr McFee: We look forward to the group's inspired comments.

Karen Gillon: The rules should be sufficiently flexible to enable the information to be provided.

The Convener: That is helpful.

Transport and Works Bill

10:56

The Convener: Item 6 is a draft response to the Executive's consultation on its proposed transport and works bill. We discussed the matter at a previous meeting and the committee was fairly stropic—I do not know whether that is a parliamentary expression. We felt that the committee—before I was involved in it—had worked hard on the subject and produced a good way to go forward but that the Executive's proposal had abandoned some of the committee's proposals and reduced the democratic input into the subject. The committee clerk tried to reflect all that in the draft response. I am interested in members' views on that.

Mr McFee: You are right. The subject was gone through backwards, forwards and sideways. There was a great deal of discussion on the issue over a number of months. I, for one, would not have signed up to the report if I had thought for a moment that this bill would be the outcome. The bill would remove the parliamentary element of parliamentary scrutiny. That is dangerous. I know that there were reasons why, particularly for the interim model, members wanted to go ahead on a particular basis, but I think that the bill guts an important part of the committee's recommendations. The draft response largely reflects that view.

Richard Baker: I am happy enough with the letter and the points that are made in it and with the committee's overall concern that there should be sufficient parliamentary scrutiny. However, I would still support the proposed model over the current one. There could not be a worse system than the current one. If the Executive's proposals are not amended, they will still get my support.

Mr McFee: It is unusual to capitulate before the first shot is fired, but not to worry.

Richard Baker: I am not capitulating.

Mr McFee: I would not suggest that you become a defence minister.

Richard Baker: What I am saying is that, not for the first time, I disagree with you and the point that you made.

Mr McFee: Yes, but you do not need to run up a white flag as you do it.

Richard Baker: Not at all—I am just making points about the overall system. I am happy with the points in the letter and if we can secure what we seek, that will be fine.

Alex Johnstone: Send the letter.

Richard Baker: Send the letter before Bruce and I start arguing more.

The Convener: The ministers and their advisers will note from the letter that we are not happy—that message must be put across strongly.

Karen Gillon: I am happy with the letter, although I probably do not agree with the first bullet point, which is about initial parliamentary consideration. I think that we could improve the current procedure on that. It is difficult to give consent to something when we do not have full details on it. We sometimes vote for things at the initial consideration stage that become substantially different after amendments are made, but we get so far down the process that we are bounced into proceeding. I will be interested to see what alternative the Executive produces in its bill. I will not die in a ditch over that point, but there are key parliamentary approvals in the latter part of the legislative process that we must stick by and seek to achieve.

The Convener: We will write to the relevant official.

Motions and Decisions

11:00

The Convener: Item 7 is on small tidying-up of standing orders. The clerks have suggested putting use-and-wont practices into the standing orders, in case anyone challenges them. We have a paper on that, which lays out the specific proposals and the possible changes to the standing orders. At our previous meeting, we discussed whether we should seek colleagues' views, so the clerk has also produced a draft letter to MSPs. I ask members whether that letter is the best approach to what are relatively minor points.

Mr McFee: Can we deal with the draft letter first, convener? If we are going to send a letter to members to ask them for their views, it would obviously not be wise first to make a decision on the proposals.

I have a few comments on the draft letter. Is there a particular reason why there is no question 4? I assume that that is just a mistake.

Andrew Mylne: It is.

Mr McFee: Fine.

Alex Johnstone: So it is not some dubious clerking practice of which we are not aware.

Karen Gillon: Is there guidance on that?

Mr McFee: Yes—that the number 4 is to be deleted from all correspondence.

The questions in the draft letter could be worded 100 different ways, but I have a concern about question 1. The first option in question 1 mentions the "Current system", but that option describes not the current system but the current practice. My understanding is that the third option describes the current system, which is that only a member can remove a motion, and that the current practice is different.

Karen Gillon: Let us change "system" to "practice" in the first option, then.

Mr McFee: The issue is important, because the current system is as described in the third option, although that is not the practice. I just want us to be clear about that. Those are my only comments on the draft letter, although I have issues to raise about the paper. There are some issues on which we do not propose to consult.

The Convener: Bruce McFee is right to draw attention to the fact that the first decision must be whether we wish simply to recommend the changes or whether we wish to consult members on the changes.

Richard Baker: We should consult members.

The Convener: Okay. Unless anybody objects, we will consult members about what to do with old motions.

We also need to decide whether to consult on a second issue, about pre-emption of amendments. It could be argued that, as motions are members' property, it is sensible to consult them on changes to the rules on motions, whereas the procedure that the Presiding Officer follows with regard to amendments is, as it were, a more technical parliamentary party-political issue. We need to discuss whether we should consult on that issue, too.

Mr McFee: It would be useful to consult on that, too, because again the practice is clearly different from what the rules stipulate. We must speak to members about such a case, first, to make them aware of it—I rather suspect that most are not aware—and, secondly, to find out what, if anything, they think about it. Under a strict interpretation of the rules as they are now, it would be possible to have majorities for two diametrically opposed motions on one subject and there would be no way of changing the opposing motions. I presume that that is the reason why the rules are not interpreted strictly. We have considered the problem a number of times since it first came up. It is clear that such a situation could happen and, therefore, there must be a method of resolving it—hence the practice that has evolved over the past seven years. Members should be aware of what that practice means.

The Convener: We will consult about when and how outstanding motions are removed from the list and on having a rule in the standing orders about the Presiding Officer deciding on pre-emptions. Is that okay so far?

Members indicated agreement.

The Convener: The first half of the paper also deals with voting thresholds, admissibility and the withdrawal of motions. Do members suggest that we pursue those matters?

Andrew Mylne: The first half of the paper is included to remind members where those issues stand. It is up to the committee whether it wishes to make decisions on them today or whether it wishes to wait until a draft report is produced.

The Convener: We will wait until we have consulted members on the other matters. Does anyone want to consult on the slightly more obscure issues, such as withdrawal and admissibility?

Mr McFee: No. If you do not want to go through those other issues today, I will bring up one issue to do with the proposed rule changes on voting thresholds. I ask for an indication of what has been regarded as an absolute majority for the

purposes of the proposed change to rule 12.1.8(b).

Andrew Mylne: It is defined in the standing orders. Basically, an absolute majority is achieved when the number of members voting in favour is more than half of the number of seats for MSPs—in other words, more than half of 129—or, if it is in a committee, more than half of seven, in the case of this committee.

Mr McFee: My understanding of an absolute majority is that it is more than half of those who are eligible to vote.

Andrew Mylne: Yes.

Mr McFee: In that case, I invite you to reconsider the proposed change to rule 12.1.8(b), which concerns the removal of a member from office. The proposed change says:

“he or she is removed from that office by a decision of the committee on a motion under paragraph 8A which shall, if taken by division, require an absolute majority”.

My understanding is that “if taken by division” is the new element in that. This committee comprises how many members?

Andrew Mylne: Seven.

Mr McFee: And what is the quorum?

Andrew Mylne: Three.

Mr McFee: The implication of saying that the decision to remove a member from office

“shall, if taken by division, require an absolute majority”

is that if it is not taken by division, it does not require an absolute majority. This committee consists of seven people; if three of them met and decided to remove Karen Gillon—

Karen Gillon: Please do!

Mr McFee: She may welcome and therefore not oppose that.

As long as those three members did not have a vote, it would be possible for them to remove Karen Gillon with the agreement of less than an absolute majority of the committee. Therefore, the proposed form of wording cannot stay because it implies that a decision to remove a member from office can be taken without the agreement of an absolute majority if the decision is taken by a means other than division.

It is the converse of the situation in which we found ourselves before. I do not have a form of words to cover it at the moment.

The Convener: I contest the idea that an absolute majority means an absolute theoretical majority. An absolute majority refers to those present, voting and eligible to vote.

Mr McFee: That is why I asked for the definition of “absolute majority”.

Andrew Mylne: That is not what the rules say.

Mr McFee: Exactly—there are different definitions of it.

Karen Gillon: It is the majority of those who are eligible to vote.

Mr McFee: Yes, whether they are there or not. The quorum is set at below 50 per cent, so it is possible to have a unanimous decision but no absolute majority.

Karen Gillon: If you want me to go—

Mr McFee: We must make the position clear in the final version of the letter.

Karen Gillon: That is a fair point, convener. Andrew Mylne can consider that.

Andrew Mylne: Bruce McFee is right that the implication of the rule change, if it was agreed to, is that it would be theoretically possible for a committee of seven members to remove a convener by the unanimous decision of the only three members present at a meeting. It is simply a question of whether that is what members want. If members do not want that but want the rule to be that a decision to remove a convener from office can be taken only by a majority of the members of the committee, we can adjust the rule change to make it clear that that is the rule. The point is that the rule is not particularly clear at the moment about which way it goes.

Mr McFee: I think that the rule is crystal clear, although it suggests that all decisions will involve a division. I accept that point, which Andrew Mylne made in previous meetings. However, the rule is crystal clear that if a committee wants to remove a member, an absolute majority of committee members must agree to it. There is a difference between changing a rule to make it clearer and changing a rule to change the intended result of the rule. That is my difficulty with this.

To be perfectly frank, I do not know just now what form of words should be used. The current rules assume that a division would take place in all circumstances, but Andrew Mylne was correct to say that if a decision was unanimous, there would be no division per se. However, the converse of that is also true if we say “only if taken by division,” which in effect is what the proposed new rule says. That phrase implies, just as much as the current rule does, that something else would apply if a decision were taken in a different manner. For that reason, it might be advisable to bring all the proposed changes back in one paper.

Andrew Mylne: We will do that.

Karen Gillon: Joy.

The Convener: So we will send out a letter to all MSPs asking for their views. We want a rapid response so that we can discuss their views at the next committee meeting. We will then respond on the issues that are in the paper.

I thank members for their attendance. We will see how we get on in the future.

Meeting closed at 11:13.

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