

# **PROCEDURES COMMITTEE**

Tuesday 9 May 2006

Session 2

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## PROCEDURES COMMITTEE

### 8<sup>th</sup> 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 5



## Scottish Parliament

### Procedures Committee

*Tuesday 9 May 2006*

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

### Accountability and Governance Inquiry

**The Convener (Donald Gorrie):** We will make a start. Karen Gillon will be coming shortly. I understand that Robin Harper has again had to send apologies, so he will not have an opportunity to declare his interests, which is item 1 on the agenda.

The next item is the suggestion by the Finance Committee that we send someone along to its meetings on the issue of the appointment of commissioners. There is a problem, because the Finance Committee's meetings clash with ours. We have only a limited involvement in the subject and have met that commitment by producing our report. However, if any member would like to attend officially on behalf of the committee, I am sure that the committee would agree to that. It is also open to any member to attend as an individual. Do members think that we should send someone along?

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Convener, you have outlined our commitment in respect of this issue. It would be enough for committee members to be kept abreast of what is happening either by reading the report or by the clerks sharing information with us.

**The Convener:** Cathie Craigie appears to be expressing the committee's general view. We will reply by saying that we do not wish to send anyone officially, but that individual members may attend, if they wish.

**Members indicated agreement.**

## Parliamentary Time

10:18

**The Convener:** There are two papers that relate to the review of parliamentary time. One is a general summary of evidence received. The other was prepared by the clerk and deals with a specific aspect of the issue—the selection of speakers and speaking times. At our previous meeting, we agreed that this was such a big subject that we would take it in chunks, that the clerk would summarise all the points relevant to a particular chunk and submit a report, and that we would progress those parts of it that we wished to progress. This is the first example of a report covering a particular area. In my view, it does so quite well. I am content with this way of proceeding, but if other members have concerns about the general procedure, they may express them. There are no comments, so the clerk seems to have been given a pass mark for his report.

Much of the report summarises the present factual position. There are some questions at the end of the paper—on page 10, before the appendices. We could go through those.

**Karen Gillon (Clydesdale) (Lab):** To which paper are you referring, convener?

**The Convener:** The second paper, on the selection of speakers and speaking times. On page 6, the clerk has set out in bold type some of the points that arise.

**Mr Bruce McFee (West of Scotland) (SNP):** Andrew Mylne has set out the current position. Current practice varies widely from the rules for the Presiding Officers on ensuring balance and the order in which people should be called. Having worked with the whips, I am familiar with the practice that is set out in annex C to paper PR/S2/06/8/3, whereby we end up with 1.6 open-debate speakers. We usually know who the 0.6 is, but we are not sure about the 1. Practice has grown up in a more rigid structure than was intended when the rules were drawn up.

Paragraph 16 on page 4 refers to the other factors that the Presiding Officers are understood to take into account when choosing members to speak. It states that they consider

“expertise or interest in the subject-matter”—

which I think that Margo MacDonald talked about—

“level of attendance during the debate so far ... and ... individual members' success rates in previous requests to speak.”

All that sounds great until we realise that the prospects of anybody squeezing into the speakers

lists that the party whips hand over to the business team are virtually zero, unless the debate is undersubscribed. What was intended originally is not what has come out the other end.

The issues for possible review are worth considering. We have to consider whether we accept the need to limit speakers and speaking times. That acceptance is implicit in the paper. Karen Gillon has said previously that if we did not limit speaking times, we could not have fixed decision times, but we have seen examples in other Parliaments where the fixed decision time was first thing the next morning. Adopting that would allow us to keep a fixed decision time, but also continue business. We have to consider whether we want to take a radical view, or just juggle the slots. If we just juggle the slots, we will certainly not please everybody and I do not know whether we will please the majority.

**The Convener:** That is helpful. There is obviously a conflict between allowing flexibility in the number of speakers and in the length of speeches, and having set voting times and going by the clock.

**Richard Baker (North East Scotland) (Lab):** We have to address the issue of Opposition time that is split into two different debates, which causes real pressure. The only times that I recall being given only four minutes to speak in a debate were during such debates, which seem to be a key pinchpoint. Jeremy Purvis's comments on that are referred to in paper PR/S2/06/8/2. We should address the issue, because it seems that people are inevitably left with too little time to speak in such debates—certainly in the open debate.

**Alex Johnstone (North East Scotland) (Con):** On behalf of the Opposition parties, I have to say that it is essential that it is left to Opposition parties to decide how to use the small amount of time that is allocated to them. It can be annoying that the debates are rather short, but it is essential that Opposition parties are able to air the issues that are priorities to them in the limited time that is available to them. For that reason, the current practice makes the best of a bad decision. I defend the right of Opposition parties to allocate their time as they see fit.

**Karen Gillon:** It depends whether one thinks that the time belongs to the Opposition or to the Parliament and whether its purpose is to allow an issue to be debated or to give a political party a chance to make a statement. I would argue that if the time belongs to the Parliament, it provides an opportunity to debate an issue. I would make the same criticism of the Executive when it debates anodyne motions that mean very little to anyone that I would make of the Opposition when it tries to cram into 90 minutes or less debates on two very complex subjects, as happened last Thursday

morning, when the Trident weapons system and nuclear power were debated in the same slot. I do not think that that does the Parliament justice. I understand why Opposition members are precious about their time but, as a committee, we should consider whether what is put up for debate is genuinely a debate or whether it is something else.

**Cathie Craigie:** We need to discuss the issue. When we fell into the habit of holding split debates towards the end of the first session of Parliament, some of the larger parties were critical of the parties that introduced that format. Although I accept that the Opposition parties have an absolute right to decide what subjects they want to debate, my perception is that since they have begun to hold split debates on Thursday mornings, interest among members in general has fallen. Unless a member has the opportunity to be involved in such debates, they tend not to turn up in the chamber, with the result that the debates are less lively and less interesting.

It is worth the Procedures Committee commenting on the issue in such a way that the business managers of all parties take note. I agree with Karen Gillon that, although such debates are Opposition parties' debates, they use parliamentary time and, at present, that parliamentary time is not being used to the best effect. Perhaps it is the case that priority has been given to the political hit that an Opposition party might get rather than to the value to the Parliament of the subject of its debate.

**Mr McFee:** What has been said underlines my point. I accept what Karen Gillon said about Opposition parties cramming in two debates on complex subjects in the same morning. I am sure that the Greens would have loved to have had two mornings to debate Trident and nuclear power, which are important issues.

I also accept Alex Johnstone's point, which is that if an Opposition party chooses to debate two subjects in the non-Executive business slot—it is the subject matter rather than the parliamentary time that is under the Opposition party's control; that is an important distinction—so be it, if that is what it wishes to do. The problem is that we are squeezing business into the timetable. Should the timetable not provide the amount of time that we require to get through the business? We have things entirely the wrong way round.

I agree with Karen Gillon that the same criticism that can be levelled at the Opposition parties can be levelled at the Executive. The parliamentary timetable is an icon. The Parliament operates on Wednesday afternoon and all day Thursday. We finish at 5 o'clock and are out of the building by the time that "Neighbours" is coming on. The more I look at the system, the worse I think that it is. Why

should we squeeze business into a rigid timetable? If we continue to do so, we will keep having the same arguments and I do not think that we will ever get consensus among members.

There is a second issue, which is about the amount of time that speakers from the Executive parties get during open debate. The prospects of members of the Executive parties who are not party spokespeople getting to speak in a debate—especially a short one—are pretty remote. On pain of death, I would not want to be seen to be acting as an advocate for the rights of those members, but there is an issue that needs to be addressed and it will not be possible to address it within existing timetable strictures. We must take a more radical look at the situation.

**Karen Gillon:** I am slightly confused about why we are considering speaking times first. We are starting at the back rather than at the front. We need to begin with a fundamental consideration of what the parliamentary week should look like. We cannot sort out speaking times until we know what kind of jigsaw we are trying to fit the speaking times into. We have a nice paper on speaking times, but I do not know what shape the jigsaw of the parliamentary week is supposed to be. Until we grapple with the decisions about how the parliamentary week will look—whether we have a system of interpellations and so on—we cannot decide about speaking times, which are a subsidiary issue. They might be fundamental to members, as we want to know how long we will get to speak, but we cannot sort that out until we have sorted out point A. This seems a bit back to front to me.

10:30

**Alex Johnstone:** To play devil's advocate, the fundamental issue that we must address at the beginning is whether the principle of family-friendly hours is sacrosanct or whether that is an inappropriate restriction. Many of us may hold one view but may be prepared to support the other. When we have made that decision, we will know exactly what sacrifices need to be made to fit in with the decision.

**The Convener:** I accept the substance of what seems to be the committee's feeling. Without getting too heavily involved, I think that there are some points on which we could give a steer to the clerk on the path that we should go down when we pursue the issues in future discussions. For example, page 6 of paper PR/S2/06/8/3 mentions closing speeches. Do we need closing speeches? In my view, they are a waste of time and we should have more time for back-bench speeches. I am interested in members' views on that. The smaller parties should have a right to a speaker. At present, a speaker usually gets called, but they

should have a right to have a member put the party's official line. They may not get a second speech, but they should have a right to one speech rather than just a hope of one.

At present, the proportionality rule covers only back benchers' speeches, which is questionable. The time that is allocated to the parties should take account of the opening speeches. Another issue is that of having injury time when interventions are taken. We could pursue such issues, but I accept the main point. If members want to leave the issue and discuss the bigger picture at another meeting, I am happy with that.

**Mr McFee:** Those would all be good points if the final decision is that we adhere to a pretty strict timetable, but we have not taken that decision yet. Many of those issues would not arise if we had a more open timetable. I agree with Karen Gillon that we must take the fundamental decisions first and then work out the details. At present, we have not made that decision. Andrew Mylne said that he is producing a paper on interpellations, which would be useful. I am open to persuasion on the matter, but I see interpellations as a possible solution to the issue of non-Executive business. Indeed, such a system may provide an answer to the underrepresentation of Executive back benchers in general debate. The issue is worth while exploring and would wipe out a heck of a lot of the issues that are raised in the paper.

**The Convener:** The general view seems to be that we will park paper PR/S2/06/8/3, which is helpful, until we consider a paper on parliamentary hours and so on, into which the present paper fits.

**Karen Gillon:** I am interested in having a discussion with the Executive on interpellations, which are an interesting concept. I am interested in hearing the Executive's view on whether that concept could be implemented. The Executive's view would not make me decide one way or the other, but I do not want to charge off into the distance with something that the Executive parties could vote down in Parliament if the Executive did not support it. We should get into dialogue sooner rather than later. Interpellations are an interesting option that I am keen for us to explore further.

**Alex Johnstone:** Would the best option not be to prepare the paper and then ask for comments from the Executive?

**Mr McFee:** Yes.

**Karen Gillon:** I do not care how we do it.

**Mr McFee:** We have to engage individual members on this as well as the Executive. It might be useful to suggest a possible structure.

**The Convener:** Some time ago, we wrote to the Executive saying that we thought that there should be an experiment whereby the two parts of stage 3

were separated, so that the amendments would be dealt with one day and the final stage 3 debate would be dealt with another day. The minister has written back saying that she does not think that there is a suitable bill for that experiment. However, there is a bill that is programmed for a full day, and I think that we could respond to the minister saying that we think that the Police, Public Order and Criminal Justice (Scotland) Bill would be a suitable bill on which to try that. The Executive recognises the bill as an important one, so a full day might be taken up just with amendments and the final debate might be programmed for another day. Would it be reasonable for us to reply to the minister with that suggestion, which is in line with our previous suggestion?

**Karen Gillon:** My recollection is not the same as yours, convener. As I recall, we suggested that the Executive should look to have the whole of the stage 3 proceedings across two days, to allow more time for amendments, not to have the final debate on a second day. The point was to find out whether, by allowing more time for amendments, the bill would be more thought through. The Parliament has already made the decision to postpone a final stage 3 debate, and we have moved on from that. The final debate on the Interests of Members of the Scottish Parliament Bill will be taken on a separate day, once members have had time to consider the amendments. I may have got it wrong, but I thought that we were looking for an extension of the time to consider amendments at stage 3.

**The Convener:** Well, so long as there is more time. Are you suggesting that there should be a day and a half for amendments? What would we offer?

**Karen Gillon:** It is hard to tell. If the committees say that there are not enough amendments to sustain the debate, it would be difficult for us to say that we should have a debate just because time has been allocated for one. The Bankruptcy and Diligence etc (Scotland) Bill may require more than day's debate, and there will be major issues for debate at stage 3 of the Planning etc (Scotland) Bill. However, I do not know enough about the detail of those bills to say. There may be a need for more time to discuss tail docking at stage 3 of the Animal Health and Welfare (Scotland) Bill, although I do not know whether having a huge debate on that would change members' entrenched positions anyway. I am not sure whether any of those bills would be appropriate for the experiment, but other committee members may be more involved and know a bit more about the detail of them.

**Cathie Craigie:** We can approach the business managers for additional time only if we know that

an issue will attract an awful lot of amendments at stage 3. How the Parliament and the committees handle their legislative role has changed and the debate on whether there is enough time to discuss amendments at stage 3 has moved on. In the previous session, hundreds of amendments were lodged at stage 3 but, judging by how we have dealt with legislation during the current session, I think that the number of amendments that are now lodged at stage 3 has decreased because we are becoming more experienced parliamentarians and are able to deal with the issues at stage 2. Like Karen Gillon, I do not know whether the Police, Public Order and Criminal Justice (Scotland) Bill will attract an awful lot of stage 3 amendments. We cannot arbitrarily pick a bill for a trial over a day and a half. A decision must be made as we deal with a bill.

I thought that business managers had agreed that if many amendments had been lodged to a bill and an issue had attracted a lot of attention from members and the public, they would be flexible about extending the time for stage 3. We must ensure that we have that commitment from business managers, rather than asking for an experiment when we do not know whether it is needed.

**Mr McFee:** In some circumstances, there is a case for taking a day and a half or even two days to complete stage 3. That has been amply demonstrated. With hindsight at least, we can all say that stage 3 of the Licensing (Scotland) Bill required extra time.

The problem comes back to rigid timetabling. Rigid timetabling that results in amendments being agreed to without debate is bad, but rigid timetabling of two days when the business collapses after one day is also bad.

I understand the desire behind the proposal, but I cannot comment on how long any of the bills that we have mentioned will take at stage 3, because I am not closely involved enough in any of them to decide on that or to know how well matters will be dealt with at stage 2, for example. However, we return to the question whether any of the problems will be solved by rigid timetabling.

**Alex Johnstone:** That hits the nail on the head about stage 3. Timetabling at stage 3 is our single biggest problem. In the past year, we have seen several examples of bad decision making or embarrassing procedure as a result of timetabling. The solution might be to hold the debate on the motion that a bill be passed on a different day from the amendments, as we said, and to end timetabling motions for stage 3, so that discretion would lie with the Presiding Officer to decide what needs to be debated and how much time should be allocated—in effect we would be continuing with timetabling, but on an informal basis.



**The Convener:** In the short term, is it reasonable to pursue Cathie Craigie's suggestion that we should write to tell the Minister for Parliamentary Business that we cannot comment on any specific bill, but if dealing with amendments and the final stage 3 debate in one meeting is likely to be a problem with any bill, the Parliamentary Bureau should timetable two days for stage 3? We can keep up the pressure without specifying a bill. Would that help?

**Members** *indicated agreement.*

**The Convener:** As Bruce McFee and Alex Johnstone said, a longer-term issue agitates many of us. We will try to pursue that but, for the moment, we will keep the ball in play.

## Members' Bills

10:43

**The Convener:** Agenda item 4 concerns members in charge of members' bills. From our previous discussion of the topic, two main issues emerged. The first was that substitutes are allowed to attend only a whole meeting or not at all. It was felt that we could propose a new standing order that said that when the member in charge of a member's bill is a member of the committee to which the bill has been referred, a substitution can take effect for the committee's consideration of that bill and the member in charge can attend the committee's discussions under other agenda items. If that involves appointing a substitute—I think that it does—how would the substitute be nominated?

Under option A in paragraph 5 of the clerk's paper, the member in charge of the bill, together with his party, would nominate the substitute. Should we allow that, or do we want the bureau or somebody else to nominate the substitute? Personally, I think that the person in charge of the bill should have the right to nominate the substitute, but colleagues might not share that view.

10:45

**Karen Gillon:** I fundamentally disagree with that position. The committee's job is to judge the bill impartially. With the best will in the world, if I had the right to nominate a substitute to discuss my bill, I would nominate somebody who I knew would give my bill the most positive reading that it could get. I do not think that that is what the Parliament's committee system is about.

**Mr McFee:** There are a couple of things here. I assume that paragraph 5 was written with the intention that there will be a further rule change to allow those who are mentioned in option A to substitute for a particular item of business on a committee's agenda. If that is the case, I see no reason why there should be a threshold of political parties with "5 or more members". Presumably, if it is appropriate for parties to put up a substitute for one item of business, it is irrelevant whether the party has four members or 10 members. Option A is probably the best option, with the proviso that it refers to the substitute attending the committee for the particular item on the member's bill.

That leaves us with the question of what would happen if the member was an independent. That seems to be the question that is exercising us the most. There are dangers with both options in paragraph 6. There is a danger with allowing the member to pick a substitute, because that would

not happen within a group—the group would reach a decision on who the substitute should be. If the member chooses the substitute, they are unlikely to pick somebody who is wholly opposed to their bill, for obvious reasons. They are likely to choose somebody who is in favour of it. I am not saying that members of political parties would be immune from doing that, but there is a greater risk in the case of independents.

I note the comment—in the footnote to option B—that the d'Hondt system is not used to decide the balance of members on committees. However, there is a balance of members. As far as I know, there is no committee in the Parliament that does not have an Executive majority. The Parliamentary Bureau should not be allowed to create a situation whereby the balance between Administration and Opposition changes. I think that Karen Gillon suggested that, if I remember rightly. I think that that is what she was driving at.

**Karen Gillon:** Forgive me if I did not get the technical terms right. I have been corrected by the clerk.

**Mr McFee:** We accept your apologies.

There is a way forward, as long as we understand that the balance in committees means the balance between members of the Executive parties and Opposition members. We could go with option B in paragraph 6, with that proviso somehow woven in, or we could allow the independents group to nominate its own substitute, if we recognise such a thing as an independents group as opposed to a political party.

**Karen Gillon:** That assumes that all independent members are members of the independents group.

**Mr McFee:** Yes. That may or may not be the case. Whether the wording in paragraph 5 is “political party” or “political grouping” might be an important point. However, if someone is an independent but is not part of an independents group, how would they select a substitute anyway?

**The Convener:** There is a difference of opinion over whether the party, group or whatever should have the right to nominate substitutes. Is that—

**Karen Gillon:** I think that there is a difference between you and us, convener.

**The Convener:** Do you agree with what Bruce McFee has just said?

**Karen Gillon:** I am a member of the Enterprise and Culture Committee. If I introduced a bill that would change the law in relation to corporate homicide, I would give up my place on the committee during the times when the committee

discussed the bill. I am on the committee as a nominee of the Labour Party, so the Labour Party would nominate someone to replace me. I am not on the committee because everyone thinks that Karen Gillon knows a lot about enterprise—that is not how committee members are chosen. The Labour Party would have the right to nominate my substitute for the agenda items under which the bill was discussed. In the same way, if my son is ill and I cannot attend a committee meeting, the Labour substitute can take my place and attend the whole meeting.

**Mr McFee:** They are not a Labour substitute.

**Karen Gillon:** They are.

**Mr McFee:** No—they are a substitute who was suggested by the Labour Party and approved by Parliament.

**The Convener:** But they are a member of the Labour Party.

**Mr McFee:** Yes.

**Karen Gillon:** The person can act as a substitute only for members of the Labour Party.

**Mr McFee:** For you.

**Karen Gillon:** No—for all Labour members on the Enterprise and Culture Committee. I understand that if we change the rule to allow substitution for a member in charge of a bill that is being considered by a committee, the substitute would be allowed to attend only for part of the meeting and the member would attend for the rest. I would not be averse to allowing the same substitution rule to apply to parties with fewer than five members.

**The Convener:** Do you suggest that, under the proposed new rule, the substitutes for parties that already have nominated substitutes should be those persons, or could the parties nominate new substitutes?

**Karen Gillon:** If we change the rules on substitution to allow parties with fewer than five members to have substitutes, they will have to nominate those substitutes in advance, in the same way as happens now. Those persons would be the substitutes for particular committees. There would not be hand-picked substitutes to discuss particular issues.

**The Convener:** Would the provision apply to all parties?

**Karen Gillon:** Absolutely.

**Mr McFee:** That proposal is right, as it takes away the element of selection by hand. It is fine for the general substitution rules to be open to parties with fewer than five members. The only question that remains is whether we would treat the group

of independents in the same way as we would treat a political party. Would the rule be to allow any political party or group with five or more members to nominate substitutes? That would eliminate all but one potential case.

**Karen Gillon:** There is one slight difficulty with the proposal. When the Parliament nominated committee members, the independent members who were nominated to some committees were not part of any group. The independents group was established after committee membership was determined. Jean Turner, for example, was nominated to the Health Committee because she was a general practitioner with particular expertise. She was not nominated as a member of a group with a right to nominate.

**Mr McFee:** I understand that, but I am dealing with the present reality.

**Karen Gillon:** We are also dealing with the situation that may exist in a year's time. We could have independents who are not members of groups.

**Mr McFee:** That is the category with which we still have to deal.

**Alex Johnstone:** Do we assume that it is impossible for an individual member to have a substitute?

**Karen Gillon:** It is not impossible for the committee to have a substitute member so that the full complement of members can decide on a piece of legislation.

**Alex Johnstone:** Surely an individual nominating a substitute, even on a long-term basis, is no different from your standing down from the committee and nominating me as your substitute.

**Karen Gillon:** I would not be allowed to do that, because I am a member of a political party.

**Alex Johnstone:** By suggesting that an individual member has the right to nominate a substitute, you are putting them in that position.

**Karen Gillon:** I am not suggesting that an individual member should have the right to nominate a substitute. I am suggesting that, on the rare occasions on which the member who introduces a bill is a member of the committee that will consider the bill but is not a member of a political party and therefore does not have the right to a substitute—and would not have that right under the new rules—the Parliamentary Bureau should nominate a substitute who will not affect the Opposition-Government balance on the committee. That approach would allow the committee fully to consider the member's bill, because the committee would have the number of

members that the Parliament had deemed necessary for it to carry out its work.

**The Convener:** Do we agree that the rule would apply to the smaller parties and to a group of official independents?

**Karen Gillon:** That is the question.

**Mr McFee:** I favour such an approach.

**The Convener:** Let us set aside the independents for a moment. A political group of a recognised size would have the right to appoint a committee substitute, as currently happens, who would attend just for agenda items on the bill. The usual member would take part in discussions on other items. The bureau would nominate the substitute for an independent who was not part of a group.

Is there a difference of opinion about whether five independents constitute a group? They are accepted as a group for the purposes of the bureau, so I would have thought that they could be accepted as a group for the purpose that we are discussing.

**Karen Gillon:** What are the implications of saying that the independents are a group that has the right to have committee substitutes? Would the approach confer on the group the right to have members on a committee?

**The Convener:** No. There is no socialist on the Procedures Committee, for example. There is no right to be represented on every committee—

**Karen Gillon:** Excuse me, convener, but there are three socialists on this committee, perhaps more—

**Alex Johnstone:** We could have a good debate on the matter—but not today.

**Karen Gillon:** There are no Trotskyists on the committee, but there are certainly socialists.

**Mr McFee:** There are lots of socialists of the champagne variety.

**Cathie Craigie:** Like you?

**The Convener:** We are not conferring new rights on groups to be represented on every committee. That would be nonsense.

**Karen Gillon:** The matter should be investigated further.

**The Convener:** With all due respect, the suggestion is idiotic and no one would pursue it for two minutes.

**Karen Gillon:** I think that the clerk is suggesting that there might be merit in giving the matter further consideration.

**The Convener:** A rule that a committee member who introduces a member's bill has the right to a committee substitute would not confer further rights to do with representation on all committees.

**Karen Gillon:** We should consider the potential consequences of such a rule, because it would confer a status on the group of independents that it does not currently enjoy in the Parliament. I am not suggesting that anything would change, but we should at least explore the matter briefly.

**Mr McFee:** Karen Gillon is overplaying her hand. We are talking about a group of individuals who happen to be independents. Who knows what will happen in 2007? We might have a group of sun worshippers or even readers of *The Sun*, if such people exist. If we take away a member's right to take part in certain committee business, we must devise a method of substitution. Given that there is an approach to substitution for political parties, it would be eminently sensible to apply that approach to groups. If we do not do that, we will be treating a collection of individuals differently because they call themselves a group rather than a political party. It is logical to treat a group in the same way as we treat a political party in the context of committee substitutes—it is for members to decide whether we should consider the approach in other contexts, but I do not think that anyone is suggesting that we do so. If we take that approach, only the independent independent's position will remain to be resolved, and only the bureau can resolve that matter. We could wrap up the discussion about committee substitutes with that. However, if we are being told that that is a difficult approach, I am in favour of retaining the status quo.

11:00

**Karen Gillon:** I am not suggesting that it is difficult; I am just suggesting that there may be unintended consequences and that it would be useful to find out if there are. I am not necessarily averse to the position that Bruce McFee is advocating in saying that the independents group should be allowed to have a substitute; I am just asking whether that would confer on the group a status that it does not currently have in the Parliament and, if so, whether that would have consequences elsewhere. I also think that the bureau should have the right to select a substitute for the independent independent member, as long as that would not affect the Government-*Opposition* balance on the committee.

**The Convener:** As far as I can see, the only disagreement is about whether the independents as a group have the right to nominate a substitute. We are not arguing about the smaller political parties or about an independent independent member: we have agreed how they should be

dealt with. However, Karen Gillon seems to be concerned about whether we are creating something. I would have thought that, as the independents group is now recognised as an organisation by the bureau, it is a bit late to be worried about that. Nevertheless, in the interests of progressing, can we agree that we have agreed on what we agree on and that the clerk should write a paper on whether there would be any untoward effect of allowing the independents group to nominate a substitute?

**Mr McFee:** We are in danger of labouring the point about the independents group by looking at what the group is just now and making decisions on that basis. That would be wrong. I suggest an easy word change in option A under paragraph 5—the clerk can go away and study it to death to see whether it has any ramifications for the price of mince or anything else. I suggest that we add to the wording

“in order to allow any political party”

the phrase “or recognised group”. That would apply to any members that the Parliament recognised as a group.

**Andrew Mylne (Clerk):** The point that Bruce McFee makes is an important one. A group has a defined meaning within the rules: it is a group that is formed for the purposes of getting a representative on the bureau and it must consist of five or more members, who can be members of smaller political parties or independents. It is important to ensure that any rule change will work in any of the situations that might arise.

Currently, all the members of the independents group are independents or members of single-member parties. However, a situation could arise after the next election—I am not making a political point—in which the Greens and the Scottish Socialist Party each had fewer than five members in the Parliament but had enough members between them to form a group. That would, effectively, be a two-party group and they would get a representative on the bureau as a result of that.

A difficulty might arise when the issue overlaps with the point about who the member in charge is. The committee has already agreed that a smaller party—one with fewer than five members—would have the substitution rule extended to it. If the Greens and the SSP each had fewer than five members, they would already be covered by that. Allowing the group that they formed also to be covered would muddy the waters, as there would be the possibility of the substitute for a Green member in charge being an SSP member within the group. It needs to be clear which option the committee would support in that situation—whether the member-in-charge substitution should

be limited to the party of the member in charge or whether it should be extended to all the members of the group of which they are a member.

**Mr McFee:** John Swinburne is a member of a political party of one. Who would he nominate as his substitute?

**Karen Gillon:** The suggestion is that the rule would apply to parties of two or more members.

**The Convener:** So, we are asking the clerk to write an additional paper on the question of small groups.

**Karen Gillon:** There is another simple way in which to resolve the difficulty. We could extend the substitution rule to political parties and have a rule that says that the bureau would select a substitute for members in charge who are not members of political parties in a way that would not affect the committee's Government-Opposition balance.

**Mr McFee:** That idea has been suggested.

**Karen Gillon:** Yes. I think that that would be an easy way to resolve the difficulty and make the process simple in the rare and extreme circumstances in which such a substitution would be necessary.

**The Convener:** If the bureau were to nominate somebody that the independents group found to be unsatisfactory, would that group have any redress?

**Karen Gillon:** Independent members of relevant committees this parliamentary session were not put on those committees because they were members of the independents group; they were put on the committees because, for example, the Parliament thought that Jean Turner would bring something to the Health Committee and that Dennis Canavan would bring something to the European and External Relations Committee, given his experience at the United Kingdom level. It was not the independents group that nominated them; they were nominated in isolation by the Parliament because of their expertise.

If we now try to give those members a status that they did not have when they were nominated, we would be changing the nature of those committees. Therefore, it should be the bureau's right to nominate those members' substitutes in a way that does not affect the party balance. My position on the matter makes simple sense.

**Mr McFee:** But their status has changed by virtue of the fact that the independents group is now officially recognised.

**Karen Gillon:** But they do not support one another's different policies, for example. It is a group as designated by the bureau; it is not a group to the extent that Dennis Canavan supports

Jean Turner's policies, who supports Margo MacDonald's policies.

**Mr McFee:** That might be a good reason for allowing them to substitute for one another because, if you follow that argument through, they are not of the same ilk.

The independent MSPs have been recognised as a group; the same might happen to other independent members in the next parliamentary session. It is not defensible to say that we should not allow them to have substitutes. Allowing them to have substitutes would be useful because at the moment, if an independent member cannot make it to a committee meeting, there is no substitution arrangement.

Under the proposed rules that Karen Gillon wishes to pursue, an independent member could not have a substitute unless they were in charge of a member's bill. Such rules would be absolutely ridiculous—those members could not have a substitute if they were off for a month, but they could have a substitute for one agenda item.

We require consistency. We should consider allowing members of the independents group to have substitutes. Incidentally, those substitutes would have to be nominated early doors so that, should somebody propose a particular bill, there would be no question of their hand-picking substitutes. The same rules that apply to political parties would have to be adhered to by the independents group. In other words, there would be no picking and choosing.

**Andrew Mylne:** One potential problem with that idea is that any group can be formed under the rules at any point during the session.

**Karen Gillon:** A group would not necessarily form at the beginning of the parliamentary session. You would still disenfranchise an independent member because—

**Mr McFee:** You cannot resolve that.

**Karen Gillon:** I see that. I would argue that those members are elected to Parliament as independents; they are not elected to Parliament as part of a group, although they might form a group in order to get a seat on the bureau.

I was elected to the Parliament as a member of a political party. People know that, as an elected member of the Labour Party, I represent a set of ideas. If I was elected as an independent member, I would have put a different set of ideas to the electorate. Those independent policies would not reflect what other independent candidates stand for and people would not think, "Oh yes, if I vote for this person's policies, we will get all the policies of the other independents and they will represent us on a parliamentary committee."

**Mr McFee:** Let us bear in mind that what Karen Gillon says militates against groups being able to use the substitution arrangements. She is saying that people should be independently minded and assess a bill on its merits; they should not support it because they share with the member in charge a political philosophy of some kind. We are asking people to take a view of a member's bill outwith the bounds of their party loyalties—

**Karen Gillon:** That is what they do with any other bills that come before the Parliament. We are trying to confer on the independents group something that it does not have. It is not a group for the purposes of membership of committees, which is why we need to consider whether other consequences might arise from the proposal. In the rare circumstance in which a substitute is required for the member in charge during a committee's discussion of that member's bill, the simplest way to resolve the matter would be to do so through the Parliamentary Bureau.

**The Convener:** The independents group is recognised by and has a voice on the Parliamentary Bureau and has, on various occasions, been entitled to propose a debate. Therefore, it is treated by the Parliament as an entity. Your argument has been that the substitute must be pure and unadulterated with regard to the bill. Surely the point is that, if the substitute is an independent, they are more likely not to be hand in hand with the independent who introduced the bill. That seems to me to be quite a good argument. I do not see why the independents group should not nominate a substitute.

I return to my suggestion that the clerk write a short note on the matter. We seem to be agreed about small parties and individual members but not about the independents group, so the clerk's note would cover granting the independents group the right to have substitutes, any ill effects that that might have and the options for change. Can we progress in that way?

**Karen Gillon:** It is not a matter of ill effects, convener, but of unintended consequences. There might be positive effects.

**The Convener:** All right. We will go for unintended consequences. There might be intended consequences, but let us not get pnickety.

## Scottish Government (Correspondence)

11:12

**The Convener:** Agenda item 5 concerns references to the "Scottish Government" in motions and questions. The matter was raised by Christine Grahame. We responded to her, but she has not responded to us. We have a paper on the matter, which sets out that, because the Scotland Act 1998 refers to "the Scottish Executive", that terminology must be used in official settings such as parliamentary questions, but it is open to members to use other terminology in less formal settings. We have explained that to Christine Grahame. Can we let the matter lie there?

**Mr McFee:** I spoke to Christine Grahame because I read in the committee papers that we had not received a response. She told me that she had intended to respond, but she has been off for the past week or so and she has not caught up with things. She would be happy to respond to the points that you made. I spoke to her only this morning, having gone through the committee papers at the weekend.

Concern was expressed that arbitrary decisions were being made, but it appears from the explanation in the paper that that is not the case. The decisions were not arbitrary, but there is a certain interpretation of how a question should be asked. There seem to be fewer rules on how a motion can be framed. The degree of flexibility on what is acceptable seems to be far greater with a motion than with a question.

That begs the question whether the rules on questions that are set out in, I think, chapter 13 of the standing orders—I am sure that Andrew Mylne will keep me right on that if I stray—which refer to

"Questions to the Scottish Executive",

prohibit the use of the term "Scottish Government"—or "Scottish government", as discussed in paragraph 4 of the paper. I do not know whether those rules mean that the question must be addressed to the "Scottish Executive". I understand that that is an interpretation of the rules and might even be a valid interpretation of them, but is it the only interpretation of what they mean? If it is not, then we can call the Executive not quite anything we like, but something that is akin to the "Scottish Executive". However, if it is the only interpretation, we should change the rules in chapter 13. I accept that we cannot change the Scotland Act 1998, but we can change what we accept in questions.

11:15

**The Convener:** Christine Grahame raised the issue. Given that she intends to respond to our response, can we proceed to the next item?

**Karen Gillon:** What is the point? We have the information. The question is whether we want to proceed with a rule change on the basis of the views of one member, who has a particular political perspective. Do we wish to hold a consultation on the matter? Christine Grahame's views might well be important, but they are no more important than those of other members. We cannot pursue the matter with just one member; we would have to pursue it with all members of the Parliament. I would like a steer from the committee as to whether we will ultimately change the rules, rather than just going off on a nice wee hunt for the philosophical definitions of government and executive, because we have far more important things to get on with.

**Mr McFee:** With respect, convener, that was not the first question that I posed. I am sure that Karen Gillon heard the first question, which was whether we require the rules to be changed in order to be able to call the Executive the "Scottish Government", and whether the current interpretation is based on the political perspective of an individual or group of individuals. Does what we are being asked to do require a rule change? I submit that it might not.

**The Convener:** Out of courtesy to Christine Grahame, we should allow her to respond. I take Karen Gillon's point. It is not Christine Grahame's issue, so to speak, but she raised it and we have responded. Although there might have been some delay on her part, which goes back quite a long way, we should give her every chance to respond. When we get her reply, we can decide whether we wish to pursue the matter. We are not pre-empting any decision by doing that.

**Cathie Craigie:** I do not know whether you are aware of this, convener, but sometimes other members criticise the Procedures Committee for making mountains out of molehills with some of the issues that are thrown at us. Paper PR/S2/06/8/6 states clearly the statutory position. I suggest that we agree with what is said under "Options" in paragraph 11 on page 2, which is that

"the rules as they currently stand reflect the statutory position and do not require any amendment."

We should leave it at that. We have work to get through that is important to the majority of members of the Parliament. We do not need to take any further information or receive further comments from the member who raised the matter with us. The statutory position is clear.

**Mr McFee:** I refer members to paragraph 4 of the paper, which states:

"The Rules in Chapter 13 impose a number of relatively prescriptive constraints on the wording of questions – and Rule 13.3 refers directly to 'questions to the Scottish Executive'. It is on this basis that the Chamber Desk expects Parliamentary Questions to begin: 'To ask the Scottish Executive'."

That suggests that the chamber desk, or whoever instructs it, has said that it expects a question to begin that way. The paper does not say that questions must begin that way, but that the chamber desk expects them to begin that way.

Paragraph 7 states:

"Both 'Scottish Executive' and 'the Scottish Ministers' are therefore statutory terms, and are synonymous."

Could questions therefore start, "To ask the Scottish Ministers"? Is referring to the Scottish Executive a rule because that is what is expected, or because that is set down somewhere in legislation. Clearly, the latter is not the case; the rule is based on expectation. Is a rule change required because somebody expects us to do something in a particular way?

**The Convener:** Can we go back to the proposition that, out of courtesy, we should allow Christine Grahame the opportunity to respond? We could then have a discussion based on the report and on her response at the next meeting. The alternative view, presumably, is to close down the issue now. However, I suggest that we allow Christine Grahame to respond and then discuss the matter.

**Cathie Craigie:** Convener, there is no way that I wish to be discourteous to any member of the Parliament in my suggestion—I make that clear. However, I feel that the rules as they stand are sufficient and that they reflect the statutory position. I do not wish to divide the committee over the issue, but we must be aware that there is a paper trail attached to it and that we seem to continue matters for what are not always the best of reasons. That is why I feel we should agree today to accept the second option in paragraph 11 of the paper.

**Mr McFee:** I do not see the statutory position to which you referred. Can you perhaps enlighten us?

**Cathie Craigie:** What you are doing, Bruce, is dancing on the head of a pin. We are coming down again to the constitutional issue of whether to address the Scottish Executive as such, or as the "Scottish Government". The suggestion is that people out there do not know what we are talking about when we refer to the Scottish Executive, but I think that that is wrong. We have established rules and members know clearly to whom they can address questions, whether that is the First Minister or the Scottish ministers.

**Mr McFee:** Cathie Craigie said that I was dancing on the head of a pin, but the First Minister referred to the “Scottish Government” in relation to the Commonwealth games bid for Glasgow, so it wisnae me that first used that particular expression. But we are being invited—

**Cathie Craigie:** There is nothing to prevent the First Minister from using that term.

**Mr McFee:** Fine. I see nothing in the rules or in statute that prevents a member from using the term “Scottish Government”. I have asked for clarification of where in statute it says that we cannot use that term and I am waiting for an answer. I do not think there is anything in statute that says that we cannot use the term.

**Richard Baker:** I do not want to protract this discussion, but surely the point is that we cannot ask a question of a body that does not exist in law. The term “Scottish Government” has no legal position.

**Mr McFee:** Speak to the First Minister about that one.

**Richard Baker:** But he does not address questions to the Scottish Government.

**Karen Gillon:** Bruce, when the First Minister refers to the Scottish Government, he is not asking a question of a legal entity but making a political statement—as you are. We must be clear that, in terms of our standing orders, members may put a question to the Scottish Executive, which is defined in the Scotland Act 1998 as having powers conferred on it as the Scottish Executive. We can argue the semantics of whether the Executive is the Scottish Government or whether it is part of the Government of Scotland—or whatever you want to call it. I would accept that the Executive is part of the Government of Scotland, as is the United Kingdom Government and the local authorities. However, it does not choose to call itself that. If we want to get into semantics, the fact is that the Scottish Executive is a legal entity that has powers conferred on it under that name. Therefore, we ask questions of the Scottish Executive.

**Mr McFee:** I disagree with that part of it.

**Karen Gillon:** Which part do you disagree with?

**Mr McFee:** I disagree with—

**Karen Gillon:** Is the Scottish Executive a legal entity?

**Mr McFee:** Of course the Scottish Executive is a legal entity. Ministers are a legal entity as individuals.

**Karen Gillon:** Do they have powers conferred on them as the Scottish Executive?

**Mr McFee:** Yes. I know the line that you wish to pursue; however, they are legal entities as individuals, yet we do not address the questions to them as individuals. I am asking whether rule 13.3 means that members must refer to the Scottish Executive in their questions. We have established that members may refer to the Scottish Executive in motions—

**Karen Gillon:** The “Scottish government”.

**Mr McFee:** We have established that members may refer to the “Scottish government” in motions, although Karen Gillon maintains that it does not exist.

**Karen Gillon:** It does not exist.

**Mr McFee:** That term seems to be acceptable—and the Presiding Officer seems to accept it as valid—in motions or amendments.

**Richard Baker:** Such a motion would bind nobody.

**Karen Gillon:** The Executive is not the “Scottish Government”, even though you might wish it to be; it is part of the Government of Scotland, as is the UK Government.

**Mr McFee:** The paper refers to motions and amendments that talk about the “Scottish government”. I suspect that, if that body did not exist, the Presiding Officer would rule the motion incompetent.

**Karen Gillon:** Who is the “Scottish Government”, Bruce?

**Mr McFee:** In terms of the—

**Karen Gillon:** Who is the “Scottish Government”?

**Mr McFee:** So, you are—

**Karen Gillon:** Who is it?

**Mr McFee:** You are not part of it, then? It does not exist?

**Karen Gillon:** Who is the “Scottish Government”? I am part of the Government of Scotland.

**Mr McFee:** I think that we know who is dancing on the head of a pin.

**Karen Gillon:** Are you suggesting that the UK Government is not part of the Government of Scotland?

**Mr McFee:** It is part of the Government of Scotland, but is it the “Scottish Government”?

**Karen Gillon:** Why?

**Mr McFee:** I asked, “Is it?” I did not say that it is.

**Karen Gillon:** It is part of the Government of Scotland.



**Mr McFee:** Fine.

**Karen Gillon:** As is the Scottish Executive.

**Mr McFee:** Fine. But it can also be referred to as the “Scottish Government”.

**Karen Gillon:** So, I could refer to the UK Government as the “Scottish Government” in a motion to the Parliament.

**Mr McFee:** No. You asked whether it was part of the Government of Scotland, and I said that it was.

**Karen Gillon:** If a motion of the Parliament refers to the “Scottish government”, on whom does that motion confer responsibility?

**Mr McFee:** You would not understand that.

**Karen Gillon:** Does it confer responsibility on the Executive or on the UK Government?

**Mr McFee:** Members of the Scottish Parliament do not ask questions of the UK Government; they have to ask the Scottish ministers to ask questions of the UK Government. That resolves the problem immediately.

**Karen Gillon:** But members can lodge motions that are not within the competence of the Scottish Parliament; therefore, they can use the term “Scottish Government” without conferring responsibility on anybody. We can debate anything that we like.

**Mr McFee:** Do you believe that, if you said “Scottish Government”, the public out there would think that you were referring to Westminster?

**Karen Gillon:** I think that the public know what the Scottish Executive is; we are kidding ourselves if we think that they do not.

**The Convener:** Can we go back to my suggestion that we allow Christine Grahame to respond? I hope that we will then not have this discussion all over again. Is that agreed?

**Members indicated agreement.**

## Motions and Decisions

11:28

**The Convener:** There has been a survey of opinion to which there was not a huge response, as is normal on these occasions. The paper that members have sets out the responses. Since the paper was prepared, a response has been received from Margaret Curran on behalf of the Executive, which generally supports the propositions in the paper but makes the specific point that business managers should be given two weeks’ notice to allow them to take motions to their groups and to discuss matters with the members concerned before agreeing the removal of motions rather than, as happens under the present arrangement, receiving the bureau papers on the Friday prior to the Tuesday meeting. The Executive is saying that it wants two weeks’ notice to be given under the procedure that we are suggesting. That letter could be included in our paper.

There has been a small amount of opposition to our efforts to put into the standing orders what has hitherto been customary practice. One or two people have disagreed in principle, but on the whole there has been support for the proposition. The argument was put that, if customary practice works, we do not need it to be in standing orders. However, it was our view that, to avoid any troubles in the future, we should encapsulate the present way of doing things in standing orders. Do members agree to ask the clerk to produce a formal paper on the issue—a draft report—that we will consider in private at our next meeting? Traditionally, we discuss such reports in private.

**Members indicated agreement.**

**The Convener:** Bruce McFee raised another matter. The paper “Voting thresholds—application to committees” sets out the issues and, in effect, acknowledges the point that Bruce made. It proposes that the rule change that was suggested be dropped. The member gets one brownie point.

**Mr McFee:** There we go.

**The Convener:** I thank Bruce McFee for his helpful suggestion.

## Crown Appointments

11:30

**The Convener:** There is another matter that I wish to raise. On behalf of the committee, I complained that the Crown appointments issue was twice scheduled for debate in the Parliament and that it was put back on both occasions. The clerk, a few other people and I had a meeting with the Minister for Parliamentary Business. At that meeting, we explained that the issue had been promoted by the Scottish Parliamentary Corporate Body, which felt that we needed a decision by 18 May at the latest, so that the next round of appointments could take place in a sensible manner. The minister was not aware of the time issue. She was concerned that, since we started looking at the matter, it had become somewhat more complicated because of arguments about the Scottish Commissioner for Human Rights Bill and the Finance Committee's scrutiny of commissioners. She was keen for us to go ahead with the debate and necessary rule changes, but she indicated that the Executive would reserve its position on the policy aspects of our proposals and discuss the issue of appointments in the light of other events. I saw that as a reasonable compromise.

The position is that the Parliamentary Bureau will meet today. At that meeting, the minister will suggest that there should be a debate on 18 May, so that we meet our timetable. However, some of the longer-term issues that we discussed will be held back until the Scottish Commissioner for Human Rights Bill has been passed and the Finance Committee has finished its inquiry.

**Mr McFee:** Are you implying that other commissioners are about to go through this process? I am not aware that that is the case.

**The Convener:** In the first place, deputy ombudsmen are being appointed. If, under the system that we suggest, the conclusion is reached that someone should not be reappointed, that must happen early enough for there to be a full appointment process for a new postholder. The decision must be made reasonably soon.

**Mr McFee:** Do we know when the terms of office are up?

**The Convener:** In September.

**Mr McFee:** So there will be time to go through a full appointment process.

**The Convener:** Yes.

**Mr McFee:** That is fine.

**Karen Gillon:** That is why I am keen for us to have the debate.

**Mr McFee:** I understand, but in the meantime we have gone through a reappointment.

**The Convener:** There are a lot of strong feelings around about the Scottish Commissioner for Human Rights Bill, which may be amended in various ways. The Executive wants to get that out of the way. Is the proposal that I have outlined acceptable? I hope that the clerk and I represented the committee reasonably at the meeting.

I thank members for their attendance.

*Meeting closed at 11:35.*

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