

# **PROCEDURES COMMITTEE**

Tuesday 19 September 2006

Session 2

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## PROCEDURES COMMITTEE

### 14<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)

\*Chris Ballance (South of Scotland) (Green)

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

\*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

#### THE FOLLOWING GAVE EVIDENCE:

Elizabeth Watson (Scottish Parliament Directorate of Clerking and Reporting)

#### CLERK TO THE COMMITTEE

Andrew Mylne

#### SENIOR ASSISTANT CLERK

Mary Dinsdale

#### LOCATION

Committee Room 4



## Scottish Parliament

### Procedures Committee

*Tuesday 19 September 2006*

[THE CONVENER *opened the meeting at 10:17*]

### Guidance on Committees

**The Convener (Donald Gorrie):** Karen Gillon has indicated that she will not be here. I am not sure about Bruce McFee and Richard Baker, but I hope that they will come.

The first item is guidance on committees, which we discussed at our previous meeting, when we agreed that members should have another week to read through the document and to prepare any comments. A paper with three comments on it has been circulated by Elizabeth Watson, and I invite her to make some introductory remarks.

**Elizabeth Watson (Scottish Parliament Directorate of Clerking and Reporting):** In response to some written comments from the convener, suggesting that three of the paragraphs could be clarified, I have attempted a redraft of paragraphs 2.18, 3.7 and 4.45, which I hope takes on board the points that the convener made.

**The Convener:** I read through the document and made some notes. I suggest that we go through it page by page. Members who have comments on any page should say so.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I have a comment on page 5. Last week, I raised a question about why, if our standing orders are clear, it is necessary to have guidance. I was advised that the guidance is a useful tool for those who must ensure that the business of committees moves smoothly—the conveners and clerks of committees—and I accept that, but we should make it clear in the introduction and the foreword that the committees are bound by standing orders. I do not know whether that should be in paragraph 1.1 or perhaps in paragraph 1.5—I am happy to leave that with you, convener. I just want to underline the fact that the standing orders govern the work of the Parliament.

**Alex Johnstone (North East Scotland) (Con):** Last week, I took the view that it was important that the status of the document was clarified. Having read through it again, I think that without putting paragraph 1.4 in letters an inch high across the front of the document, it is probably pretty well defined in that paragraph.

**The Convener:** In documents such as this, is it ever the habit to put important bits in heavy type, or do you not really go in for that?

**Elizabeth Watson:** Andrew Mylne is probably more familiar with the style and layout of the rest of the material than I am, but I am sure that we could either move that paragraph up or put something into one of the earlier paragraphs that would address the points that have been made.

**The Convener:** That is helpful. Two people have made the same point in different ways.

There was a typo in the note at the bottom of page 7. It refers to

“each party that has more than five MSPs”,  
but it should refer to “five or more”.

There is also a reference to committee substitutes, but we will deal with that later. Elizabeth Watson’s document reflects the current position and if that position changes, the guidance will presumably also be changed.

**Elizabeth Watson:** Yes.

**Alex Johnstone:** As I read through the document, one point came to mind in relation to committee substitutes. I suppose that I was playing devil’s advocate, or perhaps I was just a bit sleepy on the train. Paragraph 2.29 is fairly clear and straightforward, but it appears to indicate that parties with five or more members are able to appoint substitutes regardless of whether they have a member on the committee. That is how it reads.

**Elizabeth Watson:** I will certainly look at that.

**Cathie Craigie:** That is a good point. The guidance would have to state that such parties can appoint substitutes for those committees on which they have members.

**Chris Ballance (South of Scotland) (Green):** I also had a query about paragraph 2.29, which relates to the continuing question of what is down to the rules and what is custom. The second sentence states:

“A party can nominate only one substitute per committee and a member cannot be nominated to be a committee substitute for more than one committee”.

Is that a rule or is that custom? It does not say that it is a rule.

**Elizabeth Watson:** That is a rule.

**Chris Ballance:** That begs the question whether the document should be more precise about when something is a rule.

**The Convener:** We could presumably add, “Under standing order” and the relevant number. That is a fair point.

To go back to page 10, there is new wording for paragraph 2.18 on the other sheet of paper that has been circulated, which I think covers the position. Karen Gillon and other members were

concerned about the previous wording, but the new wording elegantly deals with the issue. The party that is to nominate the convener is chosen by the Parliament using the d'Hondt system, but when it comes to the crunch, the choice is made by the committee. The newly worded paragraph states:

"Should more than one eligible member seek the position, it would be for the committee as a whole to choose between them."

Therefore, committee members can exercise some judgment within the Parliament's decision on party affiliation. That new version of paragraph 2.18 is helpful.

The practice regarding substitutes is mentioned, but we will talk about that later. The guidance probably correctly explains the current position.

On paragraph 3.7, on page 14, I have been a member of the Conveners Group only briefly, but I wonder about the statement:

"The Bureau must consult with the Conveners' Group before proposing such a motion".

Does that happen? Have I been asleep when it has happened?

**Elizabeth Watson:** The situation has not yet arisen in practice, but the mechanism exists should it ever be needed.

**The Convener:** So I have not missed it. Thank you.

**Chris Ballance:** On the footnote at the bottom of page 14, although the document provides entirely comprehensive guidance on areas with which we are all very familiar, it skirts over an issue such as the Conveners Group in only two sentences. I do not know very much about what the Conveners Group does; how often it meets; whether its recommendations are binding on committees or are advisory; and, if they are binding, whether they bind committees for ever or for a parliamentary session. I wonder why the document is short on such information.

**Alex Johnstone:** The group used to operate on the dark fringes of the Parliament, but I believe that its status is more established now.

**The Convener:** Its status appears to have risen with experience.

**Elizabeth Watson:** The original conveners liaison group was an informal grouping that was not covered by standing orders. However, that position has changed. It is not included in this document simply because the document was always intended to be guidance on the operation of subject and mandatory committees. The Conveners Group is not even a committee, let alone a subject or mandatory committee. There

might be a case for producing a separate volume or perhaps a note on the Conveners Group.

**Chris Ballance:** There might be no need for a separate volume.

**Elizabeth Watson:** I think that it would probably be a note.

**Chris Ballance:** I note, for example, that paragraph 1.10 says:

"The Conveners' Group has agreed that consideration of equalities issues should be mainstreamed into the work of all committees."

I very much hope that that is the case, but is that agreement binding on committees? Does it last for ever until the Conveners Group makes another decision? Does the group have power over parliamentary committees? The document is entirely silent on such interesting questions.

**Elizabeth Watson:** Perhaps I could ask the group whether it would find such a note helpful.

**The Convener:** Will the document be read primarily by committee staff?

**Elizabeth Watson:** The document is aimed primarily at members and committee staff.

**The Convener:** So it would be quite helpful for members to have more of an understanding of the Conveners Group. Chris Ballance's point might be met if a bit more explanation were provided. After all, the fewer the causes for suspicion, the better. Such suspicions are usually unjustified, but they can have important effects.

I should have asked the committee whether it agrees to the new wording of paragraph 3.7.

**Members indicated agreement.**

**The Convener:** Do members have any comments on page 15?

**Cathie Craigie:** Paragraph 4.5 on page 15 says:

"A committee normally meets either weekly or fortnightly to deliver its work programme."

When I first joined the committee, it was envisaged that, like the Standards and Public Appointments Committee, it would meet monthly. I wonder whether the phrase "either weekly or fortnightly" should be changed to "as appropriate".

**Richard Baker (North East Scotland) (Lab):** Some committees meet more than once a week.

**The Convener:** Perhaps your point could be covered by changing the sentence to, "A committee meets as appropriate, but most frequently weekly or fortnightly."

**Cathie Craigie:** Again, it is up to committees to decide their agenda and how they manage their business. For example, the Procedures Committee might decide to start at 9 am and go on

to 1 pm to take care of two weeks' business. There is no standing order that stipulates that a committee should meet either weekly or fortnightly.

10:30

**The Convener:** Perhaps it could be said that committees will decide what their work programme is but, historically, most committees have met weekly or fortnightly. That is helpful.

**Chris Ballance:** Footnote 13 on page 16 states:

"For further information on travel, see paragraphs 176 to 178."

Where are they?

**Elizabeth Watson:** The numbering in the footnote requires to be changed. The footnote is probably left over from an earlier draft in which there was a different numbering system for the paragraphs. I will correct that. Thank you.

**Chris Ballance:** Footnote 14 on page 16 refers to the paragraph on privilege on page 20. I thought that I knew exactly where we were with privilege in the Parliament—that is, we do not have it. However, having read the paper, I do not know. Paragraph 4.44 defines exactly what privilege is. It states:

"Section 41 of the Scotland Act 1998 provides that any statements made in committee meetings are ... absolutely privileged".

However, the footnote on page 20 states:

"The Parliament does not have parliamentary privilege".

I am lost.

**The Convener:** Which parts of the paper are you referring to?

**Chris Ballance:** I mentioned footnote 14, which follows paragraph 4.15 on page 16 and paragraph 4.44 and footnote 19 on page 20, all of which relate to privilege. I do not know whether I understand things now.

**Elizabeth Watson:** Paragraph 4.44 states what privilege means in the Scottish Parliament. Statements that are made under the authority of the Parliament and in parliamentary proceedings, including committee proceedings, are privileged, which means that there is a defence if somebody tries to sue a person, including a member, for making such statements. However, I will discuss footnote 19 with our lawyers and ask whether the statement on privilege in the United Kingdom Parliament can be clarified and whether there can be better wording to distinguish between the two situations.

**Chris Ballance:** Yes. The footnote clearly states:

"The Parliament does not have parliamentary privilege as such",

which contradicts what is said above it.

**The Convener:** That will be clarified. We are now on page 20. Do members want to comment on anything else before page 20?

**Cathie Craigie:** Page 19 mentions references to the convener. I always refer to the convener in any committee as "convener", but the paper says:

"Members normally address each other by name rather than by their title."

Has that been done in committee meetings? That is certainly not my experience.

**Elizabeth Watson:** I am sorry, but which paragraph are you referring to?

**Cathie Craigie:** I am referring to paragraph 4.40, which starts at the bottom of page 19 and continues on page 20.

**Elizabeth Watson:** The paragraph states that members normally use names in meetings. The statement is based on observation of meetings.

**Cathie Craigie:** You may prove me wrong, but I do not think that members normally do so.

**Alex Johnstone:** What are you talking about, Cathie?

**Cathie Craigie:** I agree that we normally use a member's name when we talk to that member, but we normally address the convener as "convener". The paragraph deals with how the convener is addressed.

**Richard Baker:** The beginning of paragraph 4.40 states:

"During committee meetings, the convener is generally referred to by title",

so the convener is covered. The point is that we do not refer to members in the Westminster way, as, for example, "the member for North East Scotland".

**Cathie Craigie:** Okay, sorry. I think that—

**Alex Johnstone:** There is more than one member for North East Scotland.

**Richard Baker:** That is true.

**Cathie Craigie:** I just want us to make sure that everyone has their due place and recognition.

**The Convener:** There is new wording in paragraph 4.45. I had a quibble about the original wording, but the new wording makes it clear that, because the marshalled list of amendments is different from the groupings, the order of voting is different from the order of debate. We do not always vote on an amendment immediately after it is moved; we vote on it when it comes up in the

marshalled list. The new wording covers that point clearly, which is helpful.

**Alex Johnstone:** I have a point on paragraph 4.49. Again, it just hair-splitting but, as it confused me or raised a question in my mind, we may as well deal with it now. It concerns the difference between a simple and an absolute majority. The guidance states:

“An absolute majority ... means that more than half the total number of committee members vote in favour of that outcome.”

Does that refer to the number of committee members who are present or to the total number of members of the committee? Should we clarify that?

**Andrew Mylne (Clerk):** The rules are clear. It means more than half of the number of seats on the committee, whether or not those seats are occupied. Elizabeth Watson might consider tweaking the wording slightly to put that beyond doubt, but that is certainly what the rules say.

**Alex Johnstone:** The wording certainly raised a question in my mind and it would be good to make sure that it is not raised in anybody else's.

**The Convener:** Yes, so it is just an addition to the wording

“more than half the total number of committee members”.

Elizabeth Watson might need to put it negatively; it does not mean the number of members who are present. It means the ones on the overall list. A little bit of thought will be needed about the wording, but I think you get the point. It is fair for it to be made as clear as possible. I think that the matter has arisen before.

**Cathie Craigie:** I have a comment on paragraph 4.65 on page 23. It seems to have become a practice for committees, when they prepare their annual reports, to be advised by the clerks that they have to keep them to two sides of A4, or maybe even to one side of A4. There is nothing in standing orders that dictates the length of committees' annual reports, but conveners and committees feel bound by the practice that has developed. This is an appropriate time to ask for clarification on how the practice has developed and why we have to constrain our comments to two sides of A4.

**Elizabeth Watson:** The practice developed because of an agreement by the Conveners Group to recommend that committees' annual reports should be limited to 750 words. As a result of consideration by the Procedures Committee, the Conveners Group is to consider that again. You are right: there is nothing in standing orders that requires that. Standing orders do not say anything about the form or content of annual reports except that they must contain information

about the number of meetings that have been held, the business that has been taken and the number of meetings that have been held in private. Standing orders do not prescribe the style or form of annual reports, but the Conveners Group will consider that again.

**The Convener:** The issue was raised as to whether we need annual reports at all, but we decided that we do. Will the Conveners Group produce advice or guidance on the matter in due course?

**Elizabeth Watson:** The matter is on the agenda for the next meeting of the Conveners Group.

**The Convener:** Okay. I think that we got up to page 25 of the draft guidance.

**Chris Ballance:** The same errant paragraph numbering that we discussed before occurs in the footnote on page 24.

**The Convener:** Apart from typos, which I have already passed on, I have run out of issues. Do members have any further queries?

**Alex Johnstone:** I found section 6 interesting, particularly on negative and affirmative procedure. We should all read it before we discuss the Transport and Works (Scotland) Bill.

**Chris Ballance:** I have another query. It says in paragraph 5.52 on page 33:

“Advisers are not permitted to participate in committee proceedings and cannot themselves ask questions”.

Is that a rule in the standing orders?

**Andrew Mylne:** I understand that it is based on legal advice. Under legislation, members of the Parliament have a unique status in relation to direct participation in proceedings. If a committee invites a witness to give evidence, their status is that of invited participant, but an adviser, like other members of staff, does not have the same status as a member when it comes to participating in proceedings. The guidance simply reflects that legal advice.

**Chris Ballance:** I ask because I have been on a committee with an adviser who clearly participated in the discussion and, I think, questioned witnesses.

**Richard Baker:** Yes, it was Wolfgang Michalski.

**Chris Ballance:** It was not queried at the time, which is why I wondered whether it is a rule that advisers may not speak. If it is a rule, perhaps it ought to be highlighted as such because it never occurred to anyone on that committee to question the adviser's participation.

**Richard Baker:** In fact, it was useful for the adviser to be able to ask questions in that informal



inquiry situation. Committee members found it helpful.

**Alex Johnstone:** It is similar to what happens when committees choose to have round-table discussions in which witnesses find themselves openly discussing issues across the table.

**Chris Ballance:** But such informal sessions are not usually recorded in the committee report, which confers a different status.

**Elizabeth Watson:** There is a clear distinction between the position of witnesses, who are there to provide information to the committee, albeit that in the round-table format there might be some interchange between the witnesses, and the position of the committee adviser, who is not there as a witness. Certainly, the legal advice that we had before the Parliament was created was that other than witnesses, only members can participate in committee proceedings, and that it would constitute participation if an adviser were to ask a question directly. The point is not made in the standing orders; it is a statutory point.

**The Convener:** When the Scotland Bill was going through at Westminster, several of us pressed quite hard for committees to be allowed to co-opt people, but the strong Government line was that they should not be allowed to. When the rules were drawn up here, that debate at Westminster was reflected, but perhaps people were too cautious and it might be that we can now soften the rules a wee bit. If people are not leaping up and down saying that the procedure is all wrong, I presume that it is up to each committee to decide whether to allow its adviser a bit of latitude.

**Andrew Mylne:** There are ways in which a committee that has an adviser can bring the expertise of the adviser to bear without necessarily having them question witnesses directly. The adviser can have input into questions that are asked and there are various other practical mechanisms. The guidance is not intended to stifle the effective use of advisers; it simply reflects the legal advice that we had about the status of members.

**The Convener:** So the stuff in the draft guidance correctly reflects the legal advice and the status quo.

**Richard Baker:** That is fair enough.

**The Convener:** If we want to change it, we can.

**Chris Ballance:** The legal advice is not the status quo.

10:45

**The Convener:** On page 44, the draft guidance correctly reflects the changed rules about legislative consent motions rather than how we

dealt with such things in the past. For example, the Executive now has to explain why a law must be changed and why the legislative consent motion is the way to deal with it; the Executive did not always do that in the past. I hope that we can stick to what is stated in the guidance.

As no one has any more comments about the guidance, I congratulate members on the assiduity with which they have read what is quite a serious document. I thank Elizabeth Watson for her attendance and flexibility in responding to our points.

**Chris Ballance:** Where do we go from here? Do we just agree the document and get on with it, or do we have to see another copy?

**The Convener:** Perhaps the couple of members who are not here might be allowed to pass on to Elizabeth Watson any minor tweaks that might occur to them. Basically, we have to agree the guidance. As I understand it, Karen Gillon has indicated her basic support for it, but she might wish to make one or two suggestions. As far as the committee is concerned, the guidance is agreed, but members may suggest minor tweaks if they wish.

## Committee Substitutes

10:47

**The Convener:** The next item is about committee substitutes. The item has grown as it has proceeded because there is now an issue with substitutes for all committees and not just bill committees. The original point about substitutes on bill committees was agreed and does not need to be revisited. Therefore, we are talking about substitution on normal committees. The points raised are covered in the clerk's paper. They ask whether the reasons for substitution are sensible. For example, should

"a requirement to attend to other business in the Parliament"

refer to "other Parliamentary business" and should "adverse weather conditions" be extended to cover travel difficulties such as delayed trains?

The responses from various committee conveners and business managers support such changes. However, the clerks point out that the interpretation of "parliamentary business" could bring up more problems. To try for an exhaustive list would not be all that helpful because things would be bound to be left out.

I have a personal suggestion on which I would like to hear the committee's opinion. I thought that the rules could give more authority to the convener to judge whether the application for a substitute was reasonable. If the rules left it up to the convener to decide the issue, using the points on the list as guidance but not as absolute instructions, we would be able to rely on the convener using his or her common sense and we would not have to come up with an exhaustive list of qualifying reasons. What do members think about changing the rules to enable the convener to act as a sort of umpire with regard to whether any request is reasonable?

**Alex Johnstone:** The suggestion is initially appealing, but I think that the imposition of another responsibility on conveners might be seen as a burden by many. My view is that we ought to take a simplistic view and that, rather than wading in and making wholesale changes, we should, in the first instance, approve the suggested changes relating to other parliamentary business and transport failures. Subsequent to that, if we come to believe that the liberalisation of the rules has led to their being abused, we can consider some of the things that are included in the paper.

Rather than having a committee convener making individual judgments, I believe that, as is the case at the moment, clarification ought to be in the hands of the Presiding Officer, who could review behaviour in relation to the procedure and

express any concerns that he—or she, in the future—might have regarding the use and abuse of the privilege of substitution.

**Cathie Craigie:** I agree with Alex Johnstone. I would be happy to go along with that.

**Richard Baker:** I also agree with Alex Johnstone. In a perfect world, we would be able to have the convener deciding such things and that would be respected. However, inevitably, if the convener has the power to make a decision that affects somebody from another political party, they could end up in a difficult position. That is the nature of this place.

**The Convener:** I should say that, if you want a quick decision, you cannot always rely on the Presiding Officer to be available.

**Alex Johnstone:** My suggestion was that we should accept the proposed subtle changes to the way in which the rules on substitution are operated by accepting the suggestions relating to other parliamentary business and transport failures. If the fears that are expressed in the paper about opening the system up to abuses appear to be justified, we should ensure that the Presiding Officer reviews the operation of the system and refers it back to us if he has any concerns about the system.

**The Convener:** Is the wording adequate to reflect the desire of the previous Procedures Committee that there should be a balance and that it should not be too easy to get a substitute? I thought that one of the advantages of getting the convener to decide would be that he or she would know whether someone was a habitual skiver. I am sure that none of our colleagues is an habitual skiver, but there might be some in the future.

**Andrew Mylne:** The view that the previous Procedures Committee took is relevant to an understanding of why the rules are as they are. Obviously, it is up to this committee and the Parliament to consider whether they wish to continue to strike that balance. However, if the committee does what Alex Johnstone suggests and makes a couple of specific and modest changes to the exhaustive list, the balance would be kept pretty much as the previous Procedures Committee wanted it to be.

**The Convener:** The proposal is that we produce proposals to change the standing orders from

"to attend to other business in the Parliament"

to

"to attend to other parliamentary business"

and include points about adverse weather conditions and travel difficulties. Do we need to mention adverse weather conditions, or would the

issue of travel difficulties include it and other such matters?

**Andrew Mylne:** If the committee agrees the general approach, the officials to the committee will come up with a precise form of words. The committee has already seen and otherwise approved a list of standing order changes in the wider inquiry; all that the committee is considering at this point are some further suggestions about how the rules might be changed to reflect the particular points that we are talking about. The committee would have an opportunity to sign off the exact wording, but it would be based on what is outlined in the paper. I would not want to commit myself to any exact words at the moment.

**The Convener:** Is that acceptable?

**Members** *indicated agreement.*

**The Convener:** Would the wording relating to substitutions during the consideration of bills appear at the same time?

**Andrew Mylne:** Yes. The list that the committee has already seen covers all the other policy issues that the committee has agreed in relation to this wider inquiry. I should also add that, although the committee has signed off the report, in so far as it covers those wider issues, there will need to be some additional wording to cover the point that we are discussing. The committee will have an opportunity, in its report, to say how it expects the new wording to be interpreted. That would be a starting point in relation to the point that Alex Johnstone made.

**The Convener:** The clerks have made good progress in arranging meetings in Westminster to discuss with the Speaker of the House of Commons and the Leader of the House the way in which their system now works. On Thursday, we put to the Conveners Group a proposal that Cathie Craigie and I, accompanied by a clerk, go to London to conduct those meetings and come back the next day.

Finally, I should say that our fifth committee report of 2006, the consultation report on parliamentary time, on which we have laboured for a long time, has been published today. For those of us who like that sort of thing, it is available in paper form as well as on a machine. We should thank the clerks for all the work that they have done in order to get some level of reasonable agreement on the document.

*Meeting closed at 10:58.*



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