

# **STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE**

Tuesday 11 December 2007

Session 3

£5.00

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## STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE 4<sup>th</sup> Meeting 2007, Session 3

### CONVENER

\*Keith Brown (Ochil) (SNP)

### DEPUTY CONVENER

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

### COMMITTEE MEMBERS

\*Marlyn Glen (North East Scotland) (Lab)

\*Jamie McGrigor (Highlands and Islands) (Con)

\*Christina McKelvie (Central Scotland) (SNP)

\*Hugh O'Donnell (Central Scotland) (LD)

\*Dave Thompson (Highlands and Islands) (SNP)

### COMMITTEE SUBSTITUTES

Trish Godman (West Renfrewshire) (Lab)

Alison McInnes (North East Scotland) (LD)

Alasdair Morgan (South of Scotland) (SNP)

Elizabeth Smith (Mid Scotland and Fife) (Con)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Jackie Baillie (Dumbarton) (Lab)

Robert Brown (Glasgow) (LD)

Patrick Harvie (Glasgow) (Green)

Pauline McNeill (Glasgow Kelvin) (Lab)

### CLERK TO THE COMMITTEE

Peter McGrath

### SENIOR ASSISTANT CLERKS

Mary Dinsdale

Jane Sutherland

### ASSISTANT CLERK

Catherine Fergusson

### LOCATION

Committee Room 5



## Scottish Parliament

### Standards, Procedures and Public Appointments Committee

*Tuesday 11 December 2007*

[THE CONVENER opened the meeting at 14:16]

### Cross-party Groups

**The Convener (Keith Brown):** Welcome to this meeting of the Standards, Procedures and Public Appointments Committee.

Under item 1, the committee is asked to agree to re-establish four session 2 cross-party groups. Members will be aware that, in considering whether to approve proposed cross-party groups, we should take account of a range of matters, such as the group's purpose, as well as whether the group is being formed on the basis of public interest.

The first proposed cross-party group that we are considering today is the proposed cross-party group on sexual health. I welcome Patrick Harvie to the committee. Patrick, would you like to make any comments?

**Patrick Harvie (Glasgow) (Green):** No. The remit has not changed significantly since the group operated in the previous session. The only reason why we are being treated as making a new registration is that we did not quite get our act in gear in time to meet the 90-day deadline. However, the group is essentially the same as the one that existed in the previous session.

**The Convener:** If members have no questions for Patrick Harvie, do we agree to approve the establishment of the group?

*Members indicated agreement.*

**The Convener:** The second proposed cross-party group that we are considering today is the cross-party group on learning disability. I welcome Jackie Baillie and Pauline McNeill to the committee. Jackie Baillie is the group's convener. Do you have any comments that you wish to make, Jackie?

**Jackie Baillie (Dumbarton) (Lab):** No. I think that you have all the information in the papers before you, convener.

**The Convener:** Do members have any questions on the establishment of the cross-party group?

**Hugh O'Donnell (Central Scotland) (LD):** I have no questions, but I should declare an

interest, in that I am a member of the proposed group.

**Christina McKelvie (Central Scotland) (SNP):** I am also a member of the proposed group.

**The Convener:** If members have no questions, do we agree to approve the establishment of the group?

*Members indicated agreement.*

**The Convener:** The third group seeking our approval today is the proposed cross-party group on Palestine. I welcome Pauline McNeill, the group's convener, to the meeting.

As members will be aware, this proposed group has requested a waiver of rule 2 of section 6.3 of the code of conduct. That rule requires that each cross-party group should have a minimum of five MSP members and that each party that is represented on the Parliamentary Bureau should be represented in the group's membership.

A note from Pauline McNeill that sets out the steps that have been taken to attract a Conservative MSP to the group's membership has been circulated to members. Pauline, would you like to comment?

**Pauline McNeill (Glasgow Kelvin) (Lab):** The group began in 1999 or thereabouts, and I took over as convener in 2001. We have periodically had problems in getting members of all the main parties to sign up to what is an important group—certainly, despite my best efforts, I cannot persuade members of the Conservative party to join us this year. Members will see from the remit that, essentially, we have been raising awareness and, in particular, making links with regard to devolved issues—it is quite a specific remit. We have a fair representation from other parties, and I ask the committee to note that, of the two vice-conveners, one is from the Green party and the other is Margo MacDonald, the only independent member in the Parliament. Unfortunately, I am unable to get anyone from one of the main parties, the Conservative party, to sign up, but I have virtually everybody else signed up to the group and I hope that the committee will take that into consideration.

**The Convener:** Thank you. Before we take questions, will you tell us the purpose of the £1 membership subscription? That is a question that has come up with other groups as well.

**Pauline McNeill:** We decided to introduce that subscription in this session—we had not done it in previous sessions. It is mainly because we wanted to make it clear who was able to vote should a dispute ever arise, which it never has—there has only been one argument, which was with a member who joined but did not really sign up to the aims of the cross-party group. The

subscription is a way to ensure that everyone who joins clearly understands the aims of the cross-party group—when they make the commitment to join, they pay a nominal fee of £1 and that entitles them to vote on any matters that arise.

**The Convener:** Okay. Do members have any questions?

**Hugh O'Donnell:** I thank Pauline McNeill for the detail that she has given us on the matter. Again, I declare an interest, as my name appears on the group's membership list.

Are we setting a precedent by allowing a group to be set up that does not meet the rule to which you referred?

**The Convener:** I will ask the clerks. I know that the group was agreed to on that basis in the previous session.

**Peter McGrath (Clerk):** You are not setting a precedent—each case is dealt with individually on its own merits. I understand that there was at least one occasion in session 2 on which a cross-party group that did not have members from each of the parties represented on the Parliamentary Bureau was approved.

**Hugh O'Donnell:** Thank you.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** MSPs from all parties except one have indicated an interest in forming the group, which has very laudable aims. I propose that, in this case, we grant approval to the establishment of the cross-party group on Palestine.

**Dave Thompson (Highlands and Islands) (SNP):** I was going to say the same thing. There is coverage across all parties, apart from the Conservative party, and the independent member is involved too. That shows that there is good cross-party support for the group within the Parliament.

**Marlyn Glen (North East Scotland) (Lab):** I express my agreement as well, and I declare an interest, as I am a member of the group. I also apologise for not declaring that I am a member of the first cross-party group that we discussed. I second Cathie Craigie's proposal.

**The Convener:** If there are no other comments from members, are we agreed that the cross-party group be established and that we waive the rule in question?

**Members indicated agreement.**

**The Convener:** The final proposed cross-party group is on visual impairment. I welcome Robert Brown, the group's convener, to the committee.

**Robert Brown (Glasgow) (LD):** I will not say a great deal. The cross-party group on visual

impairment is another group that has existed since the early years of the first session of Parliament. It represents a broad range of interests in the area and has done so throughout the period. I have been a member on and off before becoming convener in this session. We have a good turnout, with regular attendance at meetings.

**The Convener:** Thanks very much. Does anyone have any questions for Robert Brown?

**Cathie Craigie:** The group has declared £4,000 in section 5 of the registration form. Can you tell the committee a wee bit about that?

**Robert Brown:** Yes. RNIB Scotland, which is one of the main supporters of the cross-party group, has, since the early years of the Parliament, received a donation from the education fund of Eli Lilly and Company. RNIB Scotland administers that donation, so it is not a direct grant to the cross-party group but it pays for the group's routine running expenses—sandwiches and things at lunch time, and so on. Importantly, it pays the travel expenses of blind and visually impaired people who attend the group, as there are different challenges in that regard.

I gather that the whole £4,000 has not usually been required. The money is part of the funds that RNIB Scotland raises. Probably only £1,000 a year has been spent on the group in any one year. It depends on what the demands are. We do not have control of the money; in effect, RNIB Scotland pays for the administrative costs of the group with the money. Nonetheless, it was thought right to declare the money—both the amount and where it comes from—for the sake of openness.

**Dave Thompson:** Is this the first time that such a sum of money has been received by the group, or has it been received in previous years?

**Robert Brown:** I have not been involved with the money directly before, but I understand that a similar donation has been made every year since the beginning of the Parliament. RNIB Scotland has a large fundraising potential, and the money is part of the funding that goes to the organisation. Its initial purpose is to support the cross-party group. It cannot be guaranteed indefinitely, however. Such funding is often made available for a certain period and another funding source has to be found later on but, so far, the cross-party group has been funded in that way.

**The Convener:** Are there any conditions attached to the grant?

**Robert Brown:** I do not think so. In a sense, it is at one remove from the cross-party group because it is a grant to RNIB Scotland rather than to the group. It is to be used for broad educational purposes. I understand that it was requested

specifically to support the cross-party group, but there has usually been money left over that goes towards RNIB Scotland's more general purposes. Some of the funds that it receives are restricted in their use, but I do not think that this donation is.

**The Convener:** Okay. There are no more questions. Is the committee minded to approve the application?

**Members** *indicated agreement.*

## Scottish Parliamentary Corporate Body

14:28

**The Convener:** Item 2 is on the elections to the Scottish Parliamentary Corporate Body. It relates to a possible change to rule 3.7 of the standing orders to provide for a longer period for elections to the SCPB following a general election in order to avoid difficulties when the elections might precede the election of the First Minister. The experience following previous general elections demonstrated that the current timeframe for SPCB elections—10 sitting days following the general election—can be problematic when there is a delay in the formation of a Government because a period of up to 28 days is allowed for the nomination of a First Minister. That could have resulted in the SPCB election preceding the election of the First Minister, which could have caused parties difficulties in establishing their ministerial and shadow ministerial teams.

Although the situation was addressed, in the past, by closing the office of the clerk in order to ensure that the 10-sitting-day period continued beyond the nomination of a First Minister, the committee felt that it might be possible for a simple rule change to address the issue and written evidence was sought on the practical implications of such a change. Three responses to the committee's request for written evidence have been received, and those are attached to the paper that has been circulated to committee members. The responses indicate general support for the introduction of measures to allow greater flexibility in the timing of the SPCB elections.

Before we agree what we will do, do members have any questions on the paper?

**Jamie McGrigor (Highlands and Islands) (Con):** I ask for some clarification. Is a calendar day one of any seven days, rather than another sort of day, or does it take public holidays and things into consideration?

**The Convener:** I think that calendar days follow regardless of what the day is, but I will check that with the clerk.

**Peter McGrath:** That is right, as I understand it.

**Jamie McGrigor:** And the First Minister must be elected within 28 calendar days of an election. Is there any reason why calendar days are used for that rule but working days are used for SPCB elections? That seems rather odd.

**Peter McGrath:** It is unlikely that there is any particular reason for that. It is just that some statutes cite calendar days and some cite working

days, which they then give a definition of. The draftsman might use either, depending on the drafting convention.

14:30

**Jamie McGrigor:** Would 20 working days be enough to cover the 28-calendar-day rule?

**The Convener:** Yes—a period of 20 sitting days is longer than a period of 28 calendar days. The issue becomes complicated in election law, in which the term “dies non” or “non days”—in other words, days that are not counted—is used. Such matters are quite arcane.

**Jamie McGrigor:** I just think that it is rather odd that calendar days have been used for one election and working days have been used for another. I wondered whether there was a reason for that.

**The Convener:** None that we can gather.

At this stage, are members happy to agree to recommend extending the timescale for SPCB elections? In addition, do you agree to consider a draft report on the recommendation at the committee's next meeting?

**Members indicated agreement.**

**Peter McGrath:** Can I just clarify that a period of 20 working days has been agreed to?

**The Convener:** Yes, as recommended in the paper, we have agreed to extend the relevant period to 20 working days.

**Cathie Craigie:** Twenty sitting days.

**Christina McKelvie:** Are sitting days just Wednesdays and Thursdays?

**Peter McGrath:** No—Mondays to Fridays, but not bank holidays.

**Jamie McGrigor:** Those are sitting days?

**The Convener:** Those are not sitting days.

**Cathie Craigie:** Under standing orders, the Parliament could sit on any day from Monday to Friday, if it chose to do so. The period of 20 sitting days will comprise Mondays to Fridays, unless there is a Monday or a Friday holiday, because holidays are excluded.

**The Convener:** The important point is that 20 sitting days—the period that we have agreed to recommend—will stretch beyond 28 calendar days.

## Equalities Inquiry

14:32

**The Convener:** We move on to agenda item 3. Paper 3 outlines the proposal that was submitted to the Procedures Committee in session 2 for a rule change that would require committees to carry out a review of their work on equal opportunities at the end of each session. The Equal Opportunities Committee would co-ordinate the reviews. We agreed that consideration of the proposal should be included in our work programme.

As part of our inquiry, the committee will want to consider whether other options to achieve the same end should be considered. For example, is a rule change definitely required, given that the Equal Opportunities Committee already has the discretion to ask committees to carry out equalities reviews and report the results to it?

The paper suggests that, before we proceed with an inquiry, the committee might want to seek the views of the Equal Opportunities Committee and the Conveners Group, either through spoken or written evidence. I ask members for their views on that proposal.

**Cathie Craigie:** My first question is whether a rule change is required. If a rule change is required, why is that the case? I understood that all our activity in the Scottish Parliament was to be underpinned by, and have running through it, equalities. I imagine that all the Parliament's committees take equalities issues into account when they produce a report or do a piece of work, legislative or otherwise. I understood that the Procedures Committee took that proposal to the Conveners Group during the Parliament's second session and that it was agreed that it would be up to each committee to ensure that equalities were taken into account in every report that it wrote, whether on the budget or otherwise. At that stage, the information was that implementing that proposal did not require a rule change. My information on that could be wrong, but we need clarity.

**The Convener:** The clerk will answer that, after which Hugh O'Donnell wants to come in.

**Peter McGrath:** If it was to be mandatory for each committee to report annually on equal opportunities, a rule change to standing orders would be required. It is a pertinent question for any inquiry that the committee carries out whether such a rule change is needed or whether the intended effect can be achieved without one. That is not something that I can answer; the committee might want to consider the issue as part of its inquiry.



**Hugh O'Donnell:** First, I must declare an interest as a member of the Equal Opportunities Committee, although I speak for myself.

Issues have come to light during the equal opportunities monitoring of the current budget. One difficulty is that the monitoring is not evidence based. The purpose of mainstreaming equal opportunities—regardless of the principles—is that it is fundamental that the tools for equalities proofing are applied to everything that we do, both within the Parliament and in our scrutiny of the Government. Those tools are equalities impact assessments, and the reason for the equalities reviews is to encourage all committees to use the tools when analysing their procedures or scrutinising any legislation that comes before them. It would appear that that is not being done equally across all committees, and the lack of evidence that the tools are being applied has instigated the suggestion that a rule change be considered to make equalities reviews mandatory.

**Marlyn Glen:** I want to underline what Hugh O'Donnell said. Equal opportunities is taken to be mainstreamed, but it is questionable whether every member of the public, never mind every member of the Scottish Parliament, understands what that means.

A rule change is the way forward. It would help committees to focus on equal opportunities from the beginning of their deliberations, whatever they are. That is preferable to asking for a review at the end, when people would be working with hindsight. A rule change would ensure that everybody was aware of equalities from the beginning.

I realise that the previous Conveners Group agreed to have equalities reviews and recommended that committees produce them, but I think that it would be a mistake to have that discussion every session. We could take evidence if that is needed, but I think that it would be a good idea to make the rule change. It would ensure that all committees were clear, from the word go, about what was expected of them.

**The Convener:** Given what has been said, there is obviously a strong case for a rule change, but at this stage we are agreeing only to crack on with the inquiry, during which it can be considered.

If we agree to launch an inquiry, the question is whether we want to take the views of the Equal Opportunities Committee and the Conveners Group as part of it, given the fact that the membership of both has changed since the previous session—although I think that Trish Godman was convener of the Conveners Group in the previous session as well. Do we want to take the views of the Conveners Group and the Equal Opportunities Committee as part of the inquiry?

**Hugh O'Donnell:** It is certainly not for me to speak for the rest of the Equal Opportunities Committee, but I think that that would be a productive way forward—we would certainly get a clearer picture of that committee's position. As for the Conveners Group, it is not for me to say.

**Marlyn Glen:** Given that the subject was discussed last year, would it be enough to take written evidence?

**Hugh O'Donnell:** I would have said so.

**The Convener:** It is up to us. We can either have hearings or, if members think that it would be quicker, just crack on with written evidence. I have no objection to that.

**Marlyn Glen:** I think that written evidence would be sufficient, as the subject has been thoroughly discussed already.

**The Convener:** It will make things quicker. If everyone is happy to take just written evidence, I confirm that we will begin the inquiry and take written evidence from the Equal Opportunities Committee and the Conveners Group as a starting point. Is that agreed?

**Members indicated agreement.**

## Decision on Taking Business in Private

14:39

**The Convener:** Item 4 is to decide whether to take three items in private. That may surprise folk, as there are only two more items on today's agenda.

The first item relates to the budget process. It has been past practice—and I think that we have now established that it is our practice—to discuss items relating to the work programme in private. The second item is item 6 on the agenda, which relates to the request for direction from the Standards Commissioner. The final item refers to our earlier discussion about elections to the Scottish Parliamentary Corporate Body. Are we agreed to have our discussion on that in private at our next meeting? Those are the three items to be taken in private.

**Jamie McGrigor:** What was the third one again?

**The Convener:** It is on the elections to the corporate body, which we discussed earlier. We agreed to discuss the report at our next meeting, and it is practice that we agree at this meeting whether we want to do that in private.

**Dave Thompson:** I am curious about why we should take that particular item in private. I would not have thought that the report was particularly sensitive. We have already discussed the issues of sitting days, working days, calendar days and so on. I would rather that we dealt with that item in public, although I am quite happy for the other two to be taken in private.

**The Convener:** I think that the only reason is that it is accepted practice to deal with draft reports in private. However, the decision is up to the committee.

**Hugh O'Donnell:** I take it that it makes sense to deal with draft reports in private in case we need to adjust or modify anything.

**Dave Thompson:** I do not follow that logic. People will know that a draft report is just a draft report and is subject to changes, following discussion, before it becomes a formal report. I still do not see the need to deal with it in private.

**The Convener:** In anticipation of this discussion—because I remembered that we had previously had a similar discussion—I asked the clerks to give their view. I do not want to misrepresent their position but, basically, they said that they would like that general rule to be upheld because it works in the interests of the committee, as members are able to have a freer debate on

the matter. However, they also said—to use the exact words—that they would not go to the wall on that matter in relation to this report, as it does not deal with a contentious issue and we have discussed the issue in public before.

**Dave Thompson:** I accept the general presumption, but I do not see the case in relation to this report.

**Marlyn Glen:** Having spent a good hour in another committee looking at a draft report, I beg to differ. There are very good reasons for dealing with draft reports in private. It might be that we simply okay this report because there is nothing wrong with it. However, I do not think that it would be helpful to dot the i's and cross the t's of every report in public. We should stick to the general rule of having a look at them in private first.

**Hugh O'Donnell:** In my limited experience—I am only a new member—consideration of draft reports can become an editing exercise that deals with style, grammar and so on. Some of us are more fixated on those matters than others, and I apologise for that. Considering the draft report in private is a better way of dealing with those stylistic elements. The point is well made that this report does not deal with a contentious issue, but the danger is that we might set a precedent that would result in our having a difficulty in relation to a report on an issue that is a little more contentious.

**Dave Thompson:** I do not think that hiding the bad grammar or style of someone who drafted a report is a good reason for dealing with it in private.

**Hugh O'Donnell:** There is considerably more to it than that. During consideration of a draft report in private, you can influence the focus and emphasis of passages much more freely than you can in a public session.

I take the point that you have made about this report; I agree that it is not contentious. However, there are instances in which considering a draft report in public could present problems.

**The Convener:** I would rather not go to a division on this matter—conveners are given guidance that they should try to work out such differences of opinion without dividing.

The clerks have agreed that there is nothing particularly contentious in the report. Although you never know how a discussion will go, nothing contentious arose when we took evidence on the issues.

Cathie Craigie, our deputy convener, has more experience of these matters than most of the rest of us. Perhaps she has a comment to make.

**Cathie Craigie:** I should have asked earlier, when we were talking about the change in the days, but will what comes forward be a draft rule change rather than a draft report?

**Peter McGrath:** The proposed rule change is accompanied by a report making the proposal. As you can imagine, it will be quite a short report.

14:45

**Cathie Craigie:** If we decide today that we want to take the item in private, could we decide later—at the meeting on whose agenda the report features—that, because we can see that the report is not controversial and that there will be no big discussion about it, we will deal with it in public or are we tied into the decision once the agenda is set?

**Peter McGrath:** I do not see why you could not do that. Obviously, there is a slight housekeeping issue. The item would be publicised as being one that would be taken in private and, if a decision were made to take it in public, there would be short notice of that decision. Ideally, it is best to decide in advance whether to take the item in private or public. I think that that helps the official report as well.

**Cathie Craigie:** It is useful for any committee to be able to discuss their draft reports in private before they finally send them off. Since the clerk has confirmed that there will be a report as well as a rule change, I think that we should continue with the procedure whereby we deal with draft reports in private.

**The Convener:** Would anyone else like to comment?

**Hugh O'Donnell:** I have said my piece.

**Dave Thompson:** It is obvious that I am in the minority, so I will not push the issue. I will go with the flow.

**The Convener:** It is useful to have someone on the committee who is concerned about the public's access to information. Those views are shared by us all but, on this occasion, we will keep with convention.

As was mentioned by the deputy convener, we can change our mind on the day, although that would mean that people would not know in advance that the matter would be dealt with in public. If they did know about it in advance, we would, of course, print a couple of hundred extra copies of the draft report for the massed ranks of the public that would come to see our deliberations.

Do we agree to take the item in private at our next meeting?

**Members indicated agreement.**

**The Convener:** We will now continue our meeting in private.

14:47

*Meeting continued in private until 15:42.*



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