

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

Tuesday 30 September 2008

Session 3

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## **STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE** **17<sup>th</sup> Meeting 2008, Session 3**

### **CONVENER**

\*Keith Brown (Ochil) (SNP)

### **DEPUTY CONVENER**

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

### **COMMITTEE MEMBERS**

\*Robert Brown (Glasgow) (LD)

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

Jamie McGrigor (Highlands and Islands) (Con)

\*Christina McKelvie (Central Scotland) (SNP)

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

### **COMMITTEE SUBSTITUTES**

Trish Godman (West Renfrewshire) (Lab)

Alasdair Morgan (South of Scotland) (SNP)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

Elizabeth Smith (Mid Scotland and Fife) (Con)

\*attended

### **THE FOLLOWING GAVE EVIDENCE:**

David Cullum (Scottish Parliament Directorate of Clerking and Reporting)

### **CLERK TO THE COMMITTEE**

Gillian Baxendine

### **SENIOR ASSISTANT CLERKS**

Mary Dinsdale

Jane Williams

### **ASSISTANT CLERK**

Catherine Fergusson

### **LOCATION**

Committee Room 6



## Scottish Parliament

### Standards, Procedures and Public Appointments Committee

*Tuesday 30 September 2008*

[THE CONVENER opened the meeting at 14:15]

### Decision on Taking Business in Private

**The Convener (Keith Brown):** Welcome to the 17<sup>th</sup> meeting in 2008 of the Standards, Procedures and Public Appointments Committee. As usual, I ask everyone present to switch off their mobile phones and BlackBerrys. I have received one apology, from Jamie McGrigor. I take it that Christina McKelvie is on her way. In any event, we will crack on.

Under agenda item 1, I seek the committee's approval to take agenda item 3—consideration of our work programme—in private. Such items are usually taken in private, as they involve discussing the relative merits of the different aspects of the committee's work. Do members agree to take that in private?

**Members** indicated agreement.

## Members' Bills

14:16

**The Convener:** At its meeting on 9 September 2008, the committee agreed that a possible rule change in relation to the cut-off date for the introduction of members' bills should be progressed as a priority within its work programme. The matter was identified at the end of session 2, when the Health Committee and the Communities Committee wrote to the Procedures Committee, suggesting that the cut-off date for the introduction of members' bills, which currently stands at the end of September in the year prior to an election, is too late. Both those subject committees had had referred to them bills that were introduced immediately before the deadline, and so found themselves with insufficient time to consider them—given their other commitments—and to complete what they regarded as adequate stage 1 scrutiny.

David Cullum, head of the non-Executive bills unit, will now provide some background information. Welcome, and thank you for coming today. After that, we will proceed to questions.

**David Cullum (Scottish Parliament Directorate of Clerking and Reporting):** Thank you very much for the invitation to come to the committee today. I will try to set the scene briefly by considering three areas by way of introduction: the background to the current member's bill system and the rules as they stand, what a member's bill is, and the timescales for developing and preparing members' bills.

Starting with the background, we can go all the way back to the work of the consultative steering group. One of its firm recommendations on power sharing was that members and committees should have the right to introduce their own legislation. That was also viewed as a key principle of power sharing by the Procedures Committee when it reported in session 1. Standing orders allow each member the right to introduce two members' bills per session.

When Parliament was first set up, no support at all was available to members for producing their own proposed legislation. Following requests to the Scottish Parliamentary Corporate Body, I was recruited in 2000 to set up the non-Executive bills unit. Our role is to assist members and committees through the bill development process, including the drafting of the bill, and thereafter to provide assistance as the bill goes through the parliamentary process. We are not an exclusive service: members are free to go elsewhere if they can find assistance from other sources and a number have done so and have been supported

by the Government, or Executive, in progressing their members' bills. That applies to a couple of bills at present.

Demand for our services grew quickly. Despite our resources increasing—it is fair to say that the non-Executive bills unit's resources have more than doubled since we started—we struggled to meet the demands that were placed upon us in sessions 1 and 2. At that point, the Scottish Parliamentary Corporate Body became involved in assisting us with determining priorities and in 2005 it introduced a debate in Parliament to agree the priorities and to determine which bills the non-Executive bills unit should support. In the motion and debate, the corporate body set out what it thought were appropriate prioritisation criteria for making recommendations as to which bills to help.

Broadly speaking, a bill had to be within the competence of the Parliament. That is the first consideration. Secondly, the corporate body said that there should be no likelihood that legislative action by the Government—either here or at Westminster—would do more or less the same thing as the member's bill. The corporate body would then consider the potential size, scope and complexity of the measure that the member was suggesting. Finally, it would look at the breadth of support for the bill—the number of members and parties supporting it.

Changes to standing orders were made following an inquiry by the session 2 Procedures Committee in 2004. That committee's report led to the current rules for members' bills. To introduce a member's bill, a member must lodge a draft proposal. With that proposal, the member must lodge a consultation document, which should set out the member's intention and seek the views of a wide range of bodies. That mirrors the Government's approach. Before introducing legislation, the Government carries out consultation both formally and, at an earlier stage, through white or green papers; it may also be enacting Scottish Law Commission reports. There is one exception to the requirement to lodge a consultation document as a starting point: members are allowed to lodge a statement of reasons and to appear before the lead committee to argue that there is no need to consult, either because there has been sufficient consultation on a subject in the recent past or because the subject is so narrow that it does not lend itself to consultation.

When consultation is required, it must last for a minimum of 12 weeks. At the end of that period, the member is required to analyse the responses and to write a report. That report, along with a consultation summary, is lodged with a final proposal. Members seek support from other members only on the final proposal. The current

rules require that a proposal must have the support of 18 members, covering at least half the parties that are represented on the Parliamentary Bureau. Once members have reached that threshold, they have the right to introduce a bill that would give effect to their proposal, provided that the Government has not indicated that there is the intention to legislate in the same area in the current session here, or at Westminster. Under the current rules, any bill must be introduced by the end of September in the year before the next general election is due.

Standing orders are silent on what a member's bill is, so anything can be a member's bill. However, we have some working assumptions that pick up the corporate body's criteria. The criteria on size and scope suggest that a member's bill should be small and be single-focused. I will pre-empt a possible question from the committee by saying that I do not know what is meant by "small". The smallest proposal that we look at always seems to end up as 20 sections; there are few very small bills any more. However, the size of a bill is important, because the work involved increases exponentially with its size. As bills get bigger, they get far more complicated.

The issue is linked to the corporate body's criteria on complexity. When I say that a bill should be single-focused, I mean that it should have one purpose. The Dog Fouling (Scotland) Bill, the Prohibition of Smoking in Regulated Areas (Scotland) Bill, the Environmental Levy on Plastic Bags (Scotland) Bill, the proposed sunbed licensing (Scotland) bill and the Scottish Register of Tartans Bill were all single-focused pieces of legislation.

The members' bills that we produce are generally self-contained and do not require Government regulations to make them work. However, we often allow for future uprating by giving Government powers—for example, to increase penalties in the future. It is worth reiterating that we continually stress to members that they are not required under standing orders to use the non-Executive bills unit—everyone is free to utilise external resources.

My final subject in this introduction is timings. Broadly speaking, it will take a minimum of 12 months from our first meeting with a member to a bill being handed to the member for introduction. I stress that that period is a minimum. Nobody believes me when I say that, so I will break it down: it tends to take at least two months for the member to draft a consultation; the consultation then takes three months; it then takes a month or two to analyse the responses, although it can take longer if there are many responses; and the final proposal lies in the *Business Bulletin* for a month. To take us up to the 12 months, that leaves us

only five months or so to draft the bill and all the accompanying documents. So 12 months from the first meeting with the member is really fairly optimistic.

How much work is involved? Small and uncomplicated measures—dog-fouling, the tartan register, prescription charges and the others that I mentioned—have each taken from 800 to 1,000 hours of NEBU staff time—that is just our staff time.

I hope that that introduction has been helpful. I appreciate that it was not directly on the point in the paper that members are considering, but I will be happy to try to answer any questions that members may have.

**The Convener:** Thank you, David. That introduction has been very useful for me and, I am sure, for the new members of the Parliament in particular.

You spoke about a minimum period of 12 months. If we were to make changes, what would you judge to be a reasonable time limit to apply?

**David Cullum:** The time limit relates to the point of introduction. An awful lot of the work—at least seven months, and probably most of the 12 months that I mentioned—is done prior to a bill's introduction. So the date that you would be considering would relate to the time that it takes the bill to go through Parliament. I note that your paper contains a lot of information on the time it has taken members' bills and Executive bills to go through Parliament.

Ideally, members' bills have a single focus and are smaller and less complicated than Executive bills. On the other hand, however, the consultation on members' bills may not have been as good, and the bills may not have been as well researched and prepared. We will hold our hands up in the non-Executive bills unit: we do our best, but we are not experts and we are not steeped in the subject matter, so we do not have the background and experience that policy units in the Executive—the Government—have. It may therefore be argued that a little more scrutiny is required for non-Executive bills. I would always argue the opposite, but realistically it probably is required.

I have not answered your question, but that was deliberate. I am sorry.

**The Convener:** You say that seven months of the 12-month period would already be taken up. I am sorry, but I did not follow that.

**David Cullum:** I am sorry. The whole 12-month period that I referred to is prior to a bill's introduction—prior to the bill going before Parliament and prior to committees having the chance to consider it. To be sure of having a bill

that is ready to go through Parliament, a member will have to come to us at least 12 months before whatever date you set as the cut-off date.

**Cathie Craigie (Cumbernauld and Kilsyth)**

**(Lab):** I appreciate that you might not wish to comment on some issues. However, is a period of six months—from the September before a general election to dissolution at the end of March—a realistic time to allow a member's bill to go through the parliamentary process? I am not talking about drafting; I am just talking about the process of scrutiny by committees and by the Parliament.

**David Cullum:** The paper that is before committee members is in two parts: if you look at the annex on Executive legislation, you will see that most legislation seems to have been dealt with within a six-month period. However, that is programmed legislation: the committees knew it was coming and had built it into their timetables. Committees will also know about legislation that comes through the non-Executive bills unit, because we will be in contact with them and will give the clerks fairly early warning of when a bill is coming. However, committees do not necessarily have the same amount of forewarning of the members' bills that do not come through us. It may be that such bills are sprung upon committees at the very last minute and are an addition to their normal work programme. Six months seemed to be enough time for programmed legislation, but when the rest of the work was piled on, the timescale created difficulties. I have read what the committees have said and I understand their position.

14:30

**Cathie Craigie:** So, although six months is perhaps reasonable for properly scrutinising proposed legislation, the problem could be the work programme. Would it help if there was a mechanism for giving committees early warning that a member's bill might come before them? In the previous session, several bills fell because of timing. Is there a mechanism that we could use to flag up to committees that legislation might be coming their way?

**David Cullum:** That question might be best answered by the committee clerks, because they are closely involved with the work programme and understand how far in advance it is prepared, which may be a year or more. There is plenty of forewarning for Executive legislation.

We are here today because the system did not work in the previous session. If you are asking me how long should be allowed, we could speculate that the whole of the year leading to dissolution would be realistic for committees—under the current system—to scrutinise members' bills and

be given a fair crack at them. Equally, though, if you did that, you might think, "Well, if we're bringing the date back, should we give members a bit more certainty that their bill will be scrutinised?" I do not know how that would be achieved.

**Dave Thompson (Highlands and Islands) (SNP):** You explained in great detail your involvement until the bill is handed over to the member. What is your involvement after that, in the final phase?

**David Cullum:** We try to support the member in the same way as Government ministers are supported by civil servants. We help them up until the introduction of their bill, and we usually draft the documents for them to sign off. I frequently appear before committees beside members, to support them. When they appear before committees, we usually give members a briefing pack to remind them about the background to their bill. We also try to anticipate areas of questioning from the committee. We do all the negotiations with the authorities in the Parliament over dates and timetabling, and, if the member wants us to, we write speeches for stage 1 and, hopefully, stage 3.

At stages 2 and 3, if the member wants to amend their bill, we produce amendments for them. We also provide comments for the member on any amendments from elsewhere. It is the same package that is available to ministers, but smaller and probably less professional.

**Dave Thompson:** Obviously, if a number of member's bills come through all at once in the six-month period between September and dissolution, the pressure is on your unit. If there was only one bill, would you be able to cope with it in the six-month period?

**David Cullum:** The main workload and the hardest part of our job is the drafting of the bill and the documents. By the time we take it through the Parliament, we have done all the hard miles. It is a case of spreading ourselves around the committees. We had about five bills in the last year of the first session. It was tiring, but we managed it.

**Dave Thompson:** So the pressure on your unit in the six months is not a major problem in terms of getting the bills through. The issue is getting them before committees and so on, and the scrutiny process.

**David Cullum:** If I have enough staff to produce the bills, I have certainly got enough staff to support their passage. The bigger pressure is perhaps on the committees, in their scrutiny of the bills.

**Dave Thompson:** If we moved to having a cut-off date for introducing members' bills of 12

months before the election, and you need 12 months in the run-up to the bill's introduction, anyone who wanted to introduce a member's bill would need to approach you two years before the election. In the current parliamentary session, that would mean that anyone wanting to introduce a member's bill would need to approach you by March next year.

**David Cullum:** Under that scenario, if they came to us as late as March, they would struggle. They would probably need to have at least started the consultation process by March.

**Robert Brown (Glasgow) (LD):** I think that David Cullum will be able to comment on this point. In the discussion so far, it has been assumed that bills that are introduced have a reasonable chance of being passed. However, it is fair to say that a number of more political members' bills have been introduced to implement manifesto commitments of one or more parties—for example, on school meals—despite slightly different things being done at the hand of the Executive, so the chance of those bills being passed was not great. That distinction should perhaps be drawn. In short, are not some bills designed to make a political point by obtaining publicity and putting pressure on ministers? Not all members' bills are designed to go through the process right to the end.

**David Cullum:** I am not sure that I should answer that directly, but I can answer it in this way.

Part of the original impetus behind setting up the non-Executive bills unit was the Parliament's experience with the Protection of Wild Mammals (Scotland) Bill. As some members may recall, a committee was occupied full time with that bill for the best part of a year, partly because the bill's policy direction and intention had not been prepared. On the face of it, that bill was actually quite small, but the policy was not fully worked through at the outset and was not specified in the policy memorandum. That involved a committee in quite a lot of work. That does not happen with the bills that we produce. Frankly, if we do not understand the policy, it is difficult for us to draft the bill. We spend a lot of time with members—we probably give them a lot of earache—to ensure that we can get to the bottom of the matter. I can say fairly categorically that the bills that we produce are fit for purpose. I do not know whether the other bills are.

Following a change that was introduced by the Procedures Committee in session 2, committees that are faced with bills such as the ones that Robert Brown described now have powers to throw them out without much scrutiny. That has certainly happened in the past.

**Robert Brown:** I have a further question, on prioritisation. The criteria that were introduced by the Scottish Parliamentary Corporate Body—of which I was a member at the time—allowed NEBU to prioritise to some degree which bills receive support, the extent of that support and when that support is given. Has that presented any practical difficulties? Has it worked reasonably well as a method of sorting out which bills are most likely to proceed and which bills are most worthy of support?

**David Cullum:** At the end of the day, prioritisation is a matter for the corporate body. In the previous parliamentary session, the SPCB took the issue to the Parliament. Prioritisation is not really an issue for us unless and until demand exceeds supply. Even within that prioritisation, we still aim to help every member up to the point at which the final bill proposal is lodged. We will help everyone through the consultation process and we will help them all to prepare a final proposal.

**Robert Brown:** Broadly speaking, given the experience so far, does demand exceed supply only in the latter period of the session? Does NEBU come under pressure only then, or are there always peaks and troughs? What is the pattern of activity?

**David Cullum:** In sessions 1 and 2, demand built up. In year 3 of session 2, we had to ask the corporate body for further guidance. At the moment, I do not see that issue on the horizon. So far this session, we have looked at 44 separate ideas. By comparison, we looked at 78 separate ideas in session 2 and 58 in session 1. The work involved can range from a five-minute meeting or telephone conversation right through to quite a lot of work. Some of the bills that Robert Brown has referred to were introduced by members with whom we spent up to about 100 hours during the early stages, working on the proposals.

At the moment, I do not know whether demand for our services will exceed supply this session, but there might be more Executive-sponsored members' bills, if I can call them that, which were not a feature of last session—at least two such bills have already been introduced. There were a few of those in the first session, I think.

**Robert Brown:** Do you mean members' bills to which the Executive has given its backing?

**David Cullum:** Yes. We do the drafting and provide the support for such bills. So far, the dynamics are completely different this session.

**The Convener:** As there are no more questions, I thank David Cullum very much for coming along. It has been a useful and informative session, the impetus for which seems to have come from the committee side rather than from NEBU. We will

have further discussion on the issue and we will take it from there.

The committee can now take a view on how it wants to progress matters. We could take further evidence on what a realistic cut-off date would be for the introduction of members' bills, but we would need to consider from whom we should get such information. There are two areas of pressure—the parliamentary process and the committee consideration process. Both the representations that were received on the issue came from committee conveners, who felt under a bit of stress at the end of the previous session. We might want to seek the views of the Parliamentary Bureau and the Conveners Group. Given that the issue is not overly complicated, I imagine that we could obtain their views quite quickly. We could ask for written evidence.

**Cathie Craigie:** Could we also seek their views on the programming of legislation? I found it quite interesting that when we asked David Cullum how long the process should take, he said that although Executive bills can go through the parliamentary process in six months, that does not seem to be possible for members' bills. Perhaps we could ask whether committees' consideration of members' bills could be programmed in some way, as that could influence any decision that we take about a cut-off point. I had thought that the issue was black and white and that the cut-off point had to be brought forward, but now that I have listened to David Cullum, I do not think that the issue is quite as black and white as I thought it was.

**Dave Thompson:** On that point, the Executive had a majority in the previous two sessions. We might find that Government bills no longer go through as quickly as they did before. We are in a new situation, and we do not know what will happen to Government bills until we see through the rest of the session. They might not go through as quickly as they used to, because the Government does not have a majority on committees.

**The Convener:** It is also likely that any decision that we take on a deadline should be related to when committees fix their work programmes. The tenor of the letters from the conveners of the Health Committee and the Communities Committee related to the fact that work that those committees had planned to do was disrupted by a late avalanche of non-Executive bills. Do members agree to consult the Parliamentary Bureau and the Conveners Group, and to reconsider the issue once we have received their views? Do members also agree to consider in private any future draft reports on the issue?

**Members indicated agreement.**

**The Convener:** I close the public part of the meeting.

14:43

*Meeting continued in private until 15:47.*

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