Standards, Procedures and Public Appointments Committee

Standing Order Rule Changes
- Admissibility of Petitions and Minor Rule Changes
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Standards, Procedures and Public Appointments Committee

1. The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—
   a. the practice and procedures of the Parliament in relation to its business;
   b. whether a member’s conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
   c. the adoption, amendment and application of any Code of Conduct for members; and
   d. matters relating to public appointments in Scotland.

2. Where the Committee considers it appropriate, it may by motion recommend that a member’s rights and privileges be withdrawn to such extent and for such period as are specified in the motion.
Committee Membership

**Convener**
Stewart Stevenson
Scottish National Party

**Deputy Convener**
Mary Fee
Scottish Labour

**Cameron Buchanan**
Scottish Conservative and Unionist Party

**Patricia Ferguson**
Scottish Labour

**Fiona McLeod**
Scottish National Party

**Michael Russell**
Scottish National Party

**Dave Thompson**
Scottish National Party
Introduction

1. This report considers several issues which require changes to Standing Orders and which have been brought to the attention of the Standards, Procedures and Public Appointments (SPPA) Committee.

2. Some proposed changes to Standing Orders on the admissibility of petitions and some other minor rule changes can be found at the annexes to this report.

Admissibility of Public Petitions

Introduction

3. The remit of the Public Petitions Committee (PPC) includes a reference to keeping the operation of the petitions system under review.

4. The PPC wrote to the SPPA Committee in June 2015 to request that it makes some changes to the rules on the admissibility of petitions. The letter from the (then) convener of the PPC is at annexe B.

5. The current rules on admissibility of petitions are set out in rule 15.5 of Standing Orders. Rule 15.5 states that a petition is admissible unless it—

   (a) does not comply with Rule 15.4.2 or is otherwise not in proper form;

   (b) contains language which is offensive;

   (c) requests the Parliament to do anything which the Parliament clearly has no power to do; or

   (d) is the same as, or in substantially similar terms to, a petition brought by or on behalf of the same person, body corporate or unincorporated association during the same session of the Parliament and which was closed less than a year earlier.

6. Rule 15.4.2 requires a petition to clearly indicate the name and address of the petitioner and any supporters of the petition.

Proposed new rules

7. The PPC wished to introduce some new rules, to formalise in Standing Orders certain long-standing practices adopted by the committee which are currently set out in guidance.

8. These proposed new rules are explained below.
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<th>Proposed new rule</th>
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<tr>
<td>1. A petition must not breach any law or refer to any matter in relation to which legal proceedings are active.</td>
<td>The PPC explains &quot;it would be clearer and more consistent with rules elsewhere in standing orders (for example in relation to motions) to include a reference to the need for petitions to comply with the law. The Parliament publishes petitions but there is nothing in the rules about compliance with the law, for example in relation to defamation, data protection or sub judice. To date, this has been flagged up in guidance however the Committee feels that consideration should be given to formalising this in rules.‖</td>
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<tr>
<td>2. A petition making a frivolous request (anything that is clearly not serious in content) is inadmissible.</td>
<td>The PPC states that this change would help “avoid needless administrative or parliamentary time being spent on proposals that are clearly not intended to be taken seriously. At the moment they are dealt with administratively but in the absence of anything in the rules, there is nothing that formally prevents them being published with the risk of potentially trivialising the work of the Committee and indeed the Parliament.”</td>
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<td>3. A petition calling for the same, or substantially similar, action within a year of closure of a previous petition on the issue is inadmissible.</td>
<td>According to the PPC, this “represents a slight adjustment to existing rule 15.5.1(d) to remove the reference to the petition being by the same person with the result that it should simply relate to the issue under consideration.”</td>
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<td>4. A petition that fails to raise an issue of national policy or practice is inadmissible.</td>
<td>The PPC believes that this would &quot;bring into the rules what has been practice over the years; that although a petition may derive from a local issue it must raise an issue of national policy or practice in order for it to be admissible.”</td>
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9. The Committee considered the PPC’s request at a meeting in November 2015.

10. The Committee notes that part of the PPC’s remit is to review the operation of the petitions system. It is therefore appropriate that the PPC should take the lead in proposing these new rules. However, it remains the case that any Standing Orders changes need to be brought forward formally by the SPPA Committee and then approved by the Parliament.

11. The Committee has considered each of the four new rules proposed by the PPC.

12. The Committee notes that the first two proposed changes are relatively technical, and are designed to rule as inadmissible petitions which breach the law or are clearly frivolous. These changes seem to the Committee to be sensible and appropriate.
13. The last two proposed changes would formalise in Standing Orders two PPC conventions about the admissibility of petitions.

14. These proposed new rules would restrict certain types of petitions from being considered by the PPC. However, in practice, the PPC already does not consider these types of petitions. This rule simply translates into Standing Orders the longstanding working habits of the PPC.

15. The Committee suggests that the PPC should produce updated guidance to explain why the new rules on admissibility of petitions have been introduced. In particular the guidance could explain the reasons for restricting petitions to issues of national policy or practice and give details of how it expects this rule will operate in practice. The Committee believes this additional information will assist members of the public who are looking to lodge petitions.

16. The Committee considers that changing Standing Orders should make the rules clearer and more transparent for people wishing to lodge petitions.

17. Annexe A contains some draft rule changes which give effect to the new rules proposed by the PPC. The rules are accompanied by some explanatory notes.
Other minor rule changes

Consolidation bills – referrals

18. Standing Orders were recently changed to allow the Delegated Powers and Law Reform Committee to consider Consolidation Bills, as an alternative to a specially appointed Consolidation Committee.

19. The rules now provide that the Parliamentary Bureau may by motion propose the referral of a Consolidation Bill to the Delegated Powers and Law Reform (DPLR) Committee.

20. The Committee has become aware that a cross-reference in the new rules needs to be amended. Rule 6.11.1(i) refers to a Consolidation Bill being referred to the DPLR Committee by the Parliamentary Bureau in accordance with Rule 9.18.3. However Rule 9.18.3 makes it clear that the referral is by a motion of the Parliament rather than a direct referral by the Bureau.

21. A draft rule change to clarify this position can be found at annexe A.

Rule changes consequential to the Members’ Interests Act

Background

22. The Interests of Members of the Scottish Parliament (Amendment) Act (‘the Act’) was passed on 17 December 2015. The Act makes changes to the regime for registering interests and to sanctions for breaching the Act.

23. A number of Standing Order rule changes are required as a consequence of the revised sanctions. Firstly, the Act introduces a new sanction of “motion of censure”. The proposed Standing Orders changes include provision for this sanction. Secondly, the Act introduces some new sanctions for breaching the Act, including exclusion of a member from the Parliament, withdrawal of a member’s right to use the facilities and services of the Parliament and withdrawal of salary and allowances.

24. As with withdrawal of rights and privileges under Rule 1.7, the procedure for imposing such sanctions is the lodging of a motion by the SPPA Committee followed by debate and vote in the Chamber. This procedure is provided for in the proposed new rules. Small consequential amendments are also made to rules 1.8.1 and 1.8.4.

Resolutions and determinations

25. The Committee is proposing a change to rule 1.8.3. This rule requires the SPPA Committee to consult other members about a proposed determination or resolution made under the Act. The proposed change to Standing Orders clarifies
that it is the effect of the determination or resolution which is to be consulted on and not the wording of the motion itself.

Questions from the DPLR Committee

26. When the DPLR Committee examined the Interests of Members of the Scottish Parliament (Amendment) Bill they identified two issues.

27. The first question was:

_Whether any changes to the Standing Orders are contemplated in implementation of the Bill, in light of the resolution making power in section 17, to include specific provision for appropriate Parliamentary scrutiny of any such resolution? An example of such provision can be found in the Standing Orders, in respect of motions seeking modification of the parliamentary pension scheme or grants scheme._

28. Section 17 of the Act contains alternative and supplementary provisions on commencement of the Act. The intended provisions for commencement are set out in section 16 of the Act. The Committee expects the provisions under section 16 to come to fruition. The contingency set out in section 17 allows for a delay in the commencement of the relevant legislation at Westminster to allow dual reporting of financial interests to end for MSPs. The Committee Clerks have been working with the Electoral Commission to ensure that the relevant provisions are in place to allow the commencement to happen as set out in section 16.

29. Given that it is unlikely that the provisions set out in section 17 will be invoked, the Committee does not consider it necessary to provide a procedure for scrutinising that resolution making power.

30. The second question from the DPLR Committee was:

_Whether any changes to the Standing Orders are contemplated in respect of a resolution of the Scottish Parliament to change the registrable interests set out in the Schedule to the Interests of Members of the Scottish Parliament Act 2006, to include specific provision for appropriate Parliamentary scrutiny of any such resolution?_

31. The Standing Orders currently provide, in rule 1.8, that resolutions under the Interests of Members of the Scottish Parliament Act 2006 (with the exception of motions to exclude a member from Parliamentary proceedings) are made by the Parliament on a motion from the SPPA Committee, which must consult members before lodging a motion.

32. The Committee considers this to be a broadly satisfactory procedure, which delivers appropriate Parliamentary control of any members’ interests related changes and, importantly, gives members the opportunity to be consulted on any changes before they go to Parliament as a whole. The Committee does not intend to change the procedure for scrutiny of these resolutions.
Conclusion

33. The Committee recommends to the Parliament the Standing Order rule changes in annexe A of this report.
Annexe A: Draft Standing Order Rule Changes

PUBLIC PETITIONS

Rule 15.5 Admissibility of petitions

In Rule 15.5.1, after sub-paragraph (a) insert-
“(aa) is frivolous;
(ab) breaches any enactment or rule of law;
(ac) refers to any matter in relation to which legal proceedings are active;”.

In Rule 15.5.1, after sub-paragraph (b) insert-
“(ba) fails to raise issues of national policy or practice;”.

In Rule 15.5.1(d), omit the words from “by” to “association”.

After Rule 15.5.1 insert-
“(1A). For the purposes of paragraph 1(ac), legal proceedings are active in relation to a matter if they are active for the purposes of section 2 of the Contempt of Court Act 1981 (c.49).”.

[These rule changes strengthen the admissibility criteria for public petitions, to exclude “joke” petitions, petitions breaching any statutory provision or rule of law (such as the law of defamation or data protection) and petitions referring to any matter in relation to which legal proceedings are active (in line with Rule 7.5 of Standing Orders on sub judice). In addition, petitions which fail to raise any issue of national policy or practice are rendered inadmissible. This brings Standing Orders into line with guidance, which already makes it clear that petitions should not deal with matters properly dealt with at a local level. Rule 15.5.1(d) currently prevents a petitioner from renewing their petition during the same Parliamentary session and within a year of their previous petition having been closed. These rule changes extend this provision to a second petition brought by a different petitioner, both to prevent avoidance of the rule (by finding someone else to put in a second petition) and to avoid the need to reconsider issues which were already considered in connection with the previous petition.]
CONSOLIDATION BILLS

In Rule 6.11.1(i) omit “by the Parliamentary Bureau”

INTERESTS OF MEMBERS OF THE SCOTTISH PARLIAMENT (AMENDMENT) ACT

CHAPTER ONE: MEMBERS

After Rule 1.7 insert-

“Rule 1.7A Motion of censure


Rule 1.7B Other sanctions under Interests Act

1. The Parliament may, on a motion of the Standards, Procedures and Public Appointments Committee, impose on a member any of the sanctions referred to in section 17A(1)(a) and (b) and (2) of the Interests Act, in accordance with the terms of section 17A.”.

Rule 1.8 Members’ interests: Parliamentary determinations and resolutions

In Rule 1.8.1, for the words from “of” where first occurring to “(asp 12)” substitute “Act”.

In Rule 1.8.3, before “proposed” insert “effect of the”.

In Rule 1.8.4, for “2006 Act” substitute “Interests Act”.

[Section 17A of the Interests of Members of the Scottish Parliament Act 2006 (as inserted by section 12 of the Interests of Members of the Scottish Parliament (Amendment) Act) introduces new statutory sanctions for breach of the members’ interests regime (exclusion from Parliamentary premises, withdrawal of facilities and services, withdrawal of salary and/or allowances, motion of censure). New Rules 1.7A and 1.7B specify the procedure for imposing these sanctions. Minor consequential amendments are made to Rules 1.8.1 and 4. The amendment to Rule 1.8.3 ensures that consultation on a proposed determination or resolution under the Interests Act may be on the substance of what is intended to be effected rather than e.g. the precise text of the proposed resolution.]
Annexe B: Correspondence

Letter from PPC to SPPA Committee

The Public Petitions Committee has been considering its working practices. Standing order rules about bringing petitions and their admissibility are contained in Chapter 15. In addition to the rules, the Committee publishes guidance providing more detail on its practices and has, for the first time, recently agreed to publish a determination on proper form as provided for in rule 15.4.3.

Part of the Committee’s remit is to keep under review the operation of the petitions system. To ensure that the rules and guidance adequately and consistently reflect practice and legislative requirements, the Committee considered a paper at its meeting on 9 June 2015.

It was agreed that I should write to you to invite the Standards, Procedures and Appointments Committee to consider the need for a small number of rule changes in relation to the admissibility of petitions to provide for the following:

- A petition must not breach any law or refer to any matter in relation to which legal proceedings are active.
- A petition that fails to raise an issue of national policy or practice is inadmissible.
- A petition calling for the same, or substantially similar, action within a year of closure of a previous petition on the issue is inadmissible.
- A petition making a frivolous request (anything that is clearly not serious in content) is inadmissible.

The view of the Committee is that firstly it would be clearer and more consistent with rules elsewhere in standing orders (for example in relation to motions) to include a reference to the need for petitions to comply with the law. The Parliament publishes petitions but there is nothing in the rules about compliance with the law, for example in relation to defamation, data protection or sub judice. To date, this has been flagged up in guidance however the Committee feels that consideration should be given to formalising this in rules.

In relation to the other three suggestions, Committee practice and procedure has developed over the four sessions of the Parliament. The view of the Committee is that long-standing practice, currently set out in guidance could now helpfully be formalised in the rules. The aim of the second suggestion therefore is to bring into the rules what has been practice over the years; that although a petition may derive from a local issue it must raise an issue of national policy or practice in order for it to be admissible. The third suggestion represents a slight adjustment to existing rule 15.5.1(d) to remove the reference to the petition being by the same person with the result that it should simply relate to the issue under consideration. The aim of the fourth suggestion is to avoid needless administrative or parliamentary time being spent on proposals that are clearly not intended to be taken seriously. At the moment they are dealt with administratively.
but in the absence of anything in the rules, there is nothing that formally prevents them being published with the risk of potentially trivialising the work of the Committee and indeed the Parliament.

I hope this letter is helpful in setting out the Committee’s thinking.

I look forward to hearing back from you.

John Pentland MSP
Convener, Public Petitions Committee
Letter from DPLR Committee to SPPA Committee

Interests of Members of the Scottish Parliament (Amendment) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 1 September and a report outlining its conclusions will be published later today. Of particular note are two queries that the Committee has concerning possible changes to Standing Orders, in order to implement the Bill, which are outlined below.

The Bill, as you know, contains one delegated power to make commencement, alternative and supplementary arrangements by way of resolution. However, unlike equivalent SSIs there is no need or opportunity for scrutiny along the lines of the Interpretation and Legislative Reform Act by the Delegated Powers and Law Reform Committee. This is also the case for the existing Interests Act where in paragraph 10 of the Schedule, the Scottish Parliament can by resolution make changes to the registrable interests covered by the members’ interest regime, which it considers necessary or expedient.

The Committee therefore invites the Standards, Procedures and Public Appointments Committee’s views on the following questions:

(1) Whether any changes to the Standing Orders are contemplated in implementation of the Bill, in light of the resolution making power in section 17, to include specific provision for appropriate Parliamentary scrutiny of any such resolution? An example of such provision can be found in the Standing Orders, in respect of motions seeking modification of the parliamentary pension scheme or grants scheme.

(2) Whether any changes to the Standing Orders are contemplated in respect of a resolution of the Scottish Parliament to change the registrable interests set out in the Schedule to the Interests of Members of the Scottish Parliament Act 2006, to include specific provision for appropriate Parliamentary scrutiny of any such resolution?
Response from SPPA Convener to the DPLR Committee

Interests of Members of the Scottish Parliament (Amendment) Bill at Stage 1

I am replying to your letter of 2 September in which you ask two questions about this Bill.

(1) Whether any changes to the Standing Orders are contemplated in implementation of the Bill, in light of the resolution making power in section 17, to include specific provision for appropriate Parliamentary scrutiny of any such resolution?

(2) Whether any changes to the Standing Orders are contemplated in respect of a resolution of the Scottish Parliament to change the registrable interests set out in the Schedule of the Interests of Members of the Scottish Parliament Act 2006, to include specific provision for appropriate Parliamentary scrutiny of any such resolution?

The Standing Orders currently provide, in rule 1.8, that resolutions under the Interests of Members of the Scottish Parliament Act 2006 (with the exception of motions to exclude a member from Parliamentary proceedings) are made by the Parliament on a motion from the Standards, Procedures and Public Appointments Committee, who must consult members before lodging a motion.

We consider this to be a broadly satisfactory procedure, which delivers appropriate Parliamentary control of any members’ interests related changes and, importantly, gives members the opportunity to be consulted on any changes before they go to Parliament as a whole.

However, we do plan to review the detail of the Standing Order rule at the same time as we revise the Code of Conduct in the light of this Bill. Any changes would be to Standing Orders rather than to the bill itself, and we intend to have any changes in place before the start of next session. We would be happy to consider the DPLR Committee’s points further when we come to review the rule.
Annexe C: Extract from minutes

20th Meeting 2015 (Session 4), Thursday 26 November 2015

Decision on taking business in private: The Committee agreed to take items 3 and 4 in private.

Public Petitions Committee (in private): The Committee considered correspondence from the Public Petitions Committee.

2nd Meeting 2016 (Session 4), Thursday 28 January 2016

Decision on taking business in private: The Committee agreed to take item 3 in private. The Committee agreed to take item 4 in public.

Admissibility of Petitions and Minor Rule Changes (in private): The Committee considered a draft report and draft Standing Order Rule changes. The Committee agreed to finalise its report by email.