Standards, Procedures and Public Appointments Committee

5th Report, 2012 (Session 4)

Scotland Act 2012 Standing Order rule changes - Legislative Competence Statements

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Standards, Procedures and Public Appointments Committee

Remit and membership

Remit:

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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.

(Spending Orders of the Scottish Parliament, Rule 6.4)

Membership:

Brian Adam (from 18 September 2012)
Margaret Burgess (until 5 September 2012)
Helen Eadie (Deputy Convener)
John Lamont
John Mason (from 18 September 2012)
Margaret McCulloch
Fiona McLeod
Dave Thompson (Convener)
Paul Wheelhouse (until 5 September 2012)

Committee Clerking Team:

Clerk to the Committee
Alison Walker
Gillian Baxendale

Senior Assistant Clerk
Roz Wheeler
Alastair Macfie

Support Manager
Sam Currie
Standards, Procedures and Public Appointments Committee

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The Committee reports to the Parliament as follows—

Introduction

1. The Scotland Act 2012 (the Act) made a number of changes which need to be reflected in the Parliament’s standing orders. This report recommends standing order rule changes in relation to section 6 of the Act which requires that all bills introduced to the Scottish Parliament are accompanied by a statement of legislative competence from the person in charge.

Section 6 – legislative competence

2. Section 6 of the Act requires that any person in charge of a bill must, on or before introduction, provide a statement that, in that person’s view, the provisions of the bill would be within the legislative competence of the Parliament. At present this requirement only applies to Scottish Government bills (including hybrid bills). After section 6 is commenced, this requirement will extend to all bills including members’ bills, committee bills and private bills.

3. The commencement order made by the UK Government in July brings section 6 into force on 15 October of this year. The Parliament is bound to comply with section 6 from that date, since the Act takes precedence over standing orders. To avoid any confusion, it is therefore highly desirable for the standing order rule changes to come into effect on the same date.

4. Proposed standing order rule changes are at Annexe A of this report.
Calman Commission recommendation 6.6

5. The SPPA Committee also considered recommendation 6.6 of the Calman Commission. This recommendation proposed that “the Explanatory Notes published with a Bill should give a general account of the main considerations that informed the statement on legislative competence”.

6. The Committee recognises the desire for transparency which led to this recommendation. However, after discussing the implications with the Scottish Government, the Committee concluded that it does not support this recommendation. In particular, the Committee considers that:

- the existing mechanisms – a statement from the person in charge and from the Presiding Officer – provide a sufficient safeguard, alongside the provisions in the Scotland Act which allow the competence of a bill to be challenged before it is enacted. Requiring a fuller explanation of the legislative competence statement carries the risk of diverting scrutiny from the policy merits of a bill. If significant doubts about competence arise during the passage of a bill, it is of course still open to a committee to seek further information from the member in charge or other witnesses;

- the Scotland Act provides that the Parliament has the right to legislate unless a provision is outwith competence. Once the bill has been provided with a statement of legislative competence from the Presiding Officer, the onus should be on those who believe a bill is not competent to argue that position. The member in charge should not be required to provide material which might serve to encourage legal challenges from opponents of the bill’s policy.

7. The Committee also noted the Scottish Government’s concern that a requirement to publish an explanation of the legislative competence statement might prejudice the exemption in the Freedom of Information (Scotland) Act 2002 which protects the confidentiality of legal advice.

8. The proposed rule changes at Annexe A therefore only implement the requirements of the Act and not the further Calman Commission recommendation.

Recommendation

9. The Committee recommends to the Parliament the standing order rule changes in Annexe A.

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ANNEXE A: STANDING ORDER RULE CHANGES – LEGISLATIVE COMPETENCE STATEMENTS

Public Bill Procedures – member’s statement

After Rule 9.3.1 insert –

“1A. A Bill shall on introduction be accompanied by a written statement signed by the member introducing the Bill which states that in that member’s view the provisions of the Bill would be within the legislative competence of the Parliament.”

[Section 31 of the Scotland Act 1998 requires a member of the Scottish Government in charge of a Bill, before introduction, to state that in his or her view the provisions of the Bill would be within the legislative competence of the Parliament. This requirement is amended by section 6 of the Scotland Act 2012 so that it now extends to any person introducing a Bill. It therefore covers not just Bills introduced by Ministers but extends also to Members’ Bills, Committee Bills and Private Bills. The inserted Rule 9.3.1A takes account of that legislative change. In doing so it provides that the written statement is to be signed by the member who introduces the Bill. The opportunity is also taken to adjust the layout of Rule 9.3, which deals with the various accompanying documents for a Bill, each now being accorded separate mention within a self-contained paragraph of the Rule.]

Public Bill Procedures – accompanying documents and Policy Memorandum

For Rule 9.3.3 substitute –

“3. A Government Bill shall also be accompanied by a Policy Memorandum which sets out –
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(a) the policy objectives of the Bill;
(b) whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the Bill was adopted;
(c) the consultation, if any, which was undertaken on those objectives and the ways of meeting them or on the details of the Bill and a summary of the outcome of that consultation; and
(d) an assessment of the effects, if any, of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and any other matter which the Scottish Ministers consider relevant.”

In Rule 9.3.3A, the references to “paragraph 3(c)” and “paragraph 3(c)(iv)” are replaced by references to “paragraph 3” and “paragraph 3(d)”, respectively.

[The opportunity is taken to tidy up the layout of Rule 9.3.3. The restructured Rule 9.3.3 deals with the requirement which is specific to a Scottish Government Bill, concerning the provision of a Policy Memorandum. As a result of the restructuring of Rule 9.3.3, a consequential adjustment is made to Rule 9.3.3A.]

Members’ Bills – Presiding Officer’s statement

In Rule 9.14.18(b), for “terms of the Presiding Officer’s statement” substitute “statements” and after “Rule 9.3.1” insert “and Rule 9.3.1A”.

[This revisal is made as a consequence of the new provision introduced at Rule 9.3.1A concerning the member’s statement on legislative competence. The lead committee is now required to take this statement into account, as well as the]
Presiding Officer’s statement, in considering whether a member’s bill is within legislative competence.

Private Bill Procedures – promoter’s statement

In Rule 9A.2.3, before sub-paragraph (a) insert –

“(za) a written statement signed by the promoter which states that in the promoter’s view the provisions of the Bill would be within the legislative competence of the Parliament;”.

[Rule 9A.2 makes provision for the Accompanying documents which are to be provided with a Private Bill. A requirement for a written statement on legislative competence is added, consistent with the requirement for such a statement in regard to all Bills, as provided for by section 6 of the Scotland Act 2012. In the case of a Private Bill the written statement is to be signed by the promoter of the Bill.]

Hybrid Bill Procedures – member’s statement

In Rule 9C.3.2(d), for “in charge” substitute “introducing the Bill”.

[An adjustment is made in regard to the statement on legislative competence for a Hybrid Bill. In line with revisals made for other Bills, this is now to be made by the member introducing the Bill.]
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