Standards, Procedures and Public Appointments Committee

6th Report, 2012 (Session 4)

Public Bodies Act orders - Standing Order rule changes

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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.

*(Standing 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 Baxendine

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. This report recommends Standing Order rule changes which would put in place a procedure for the Parliament to consent to orders affecting devolved interests brought forward under sections 1-5 of the UK Public Bodies Act 2011.

Background

2. The UK Public Bodies Act 2011 gives UK Ministers the authority to abolish, merge or transfer the functions of public bodies listed in schedules to the Act. The Act is largely enabling legislation and any changes to public bodies would take place via secondary legislation, with orders being brought forward at Westminster.

3. Most of the bodies listed in the schedules to the Act operate wholly in reserved areas or do not operate in Scotland at all. However, the public body landscape across the UK includes bodies operating in both the reserved and devolved areas, commonly referred to as 'Cross-Border Public Authorities'. Section 9 of the Public Bodies Act requires orders to be consented to by the Scottish Parliament where they make provision which would be within the legislative competence of the Parliament or which would modify the functions of the Scottish Ministers.

4. On 4 November 2011 the Presiding Officer wrote to the Standards, Procedures and Public Appointments (SPPA) Committee to invite it to consider the arrangements for Parliament to consent to these orders and what changes may be required to Standing Orders.

5. During the period since the Public Bodies Act came into force, the arrangements for the Parliament to consent to orders have been a matter of convention. The SPPA Committee has taken the opportunity to consider how well these interim arrangements have worked in practice, in advance of bringing forward the Standing Order changes set out at the annexe to this report.
Interim arrangements

6. The interim arrangements for Parliament to give consent to orders under section 9 of the Public Bodies Act were agreed by the Parliamentary Bureau on 20 December 2011.

7. As the Public Bodies Act represents the first occasion that the Scottish Parliament has been required to consent to UK secondary legislation before it can come into force, it was agreed to adapt the procedure currently used for the Parliament to consent to UK primary legislation: the legislative consent motion procedure.

8. The interim arrangements involved the Scottish Government laying a memorandum which gave its views on the order. The memorandum was accompanied by a copy of the order, plus all the relevant accompanying documents required under the UK Act. A lead committee and the Subordinate Legislation Committee then considered the memorandum and reported to the Parliament. The Parliament finally debated an LCM-style motion and voted on whether to give its consent to the order.

9. The first order which triggered section 9 of the Public Bodies Act 2011 was laid at Westminster on 19 January 2012: the Draft Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012, which abolished the National Endowment for Science, Technology and the Arts and reconstituted it as a charitable trust in the public sector.

10. Other orders which have been considered by the Parliament are the Draft Advisory Committee on Hazardous Substances (Abolition) Order 2012, the Draft British Waterways Board (Transfer of Functions) Order 2012, and the Draft Inland Waterways Advisory Council (Abolition) Order 2012.

SPPA Committee consideration

11. The SPPA Committee has considered the interim arrangements for considering Public Bodies Act orders which have been based on the existing legislative consent motion procedure. The Committee has concluded that these arrangements have provided an effective model for scrutiny of this type of legislation. In each case the relevant subject committee and the Subordinate Legislation Committee have been in a position to scrutinise the order, report to the Parliament, and the Parliament has taken the decision on whether to consent to the order.

12. The Committee therefore proposes that a procedure for consenting to Public Bodies Act orders based on the existing legislative consent motion procedure is included within Standing Orders. Proposed Standing Orders changes are set out in the Annexe to this report, along with explanatory notes.

13. The main provision is a new chapter of Standing Orders, Chapter 9BA, covering the procedure for consenting to Public Bodies Act orders. This largely mirrors the legislative consent motion procedure set out in Chapter 9B, with
appropriate modifications to reflect the fact that the motions relate to secondary legislation.

14. The remit of the Subordinate Legislation Committee in rule 6.11 is also amended to allow it to consider the orders. In addition there are several consequential changes resulting from the new procedure, including changes to rule 5.4 on the Business Programme, rule 5.9 on the Business Bulletin and rule 16.3 on the Journal of the Scottish Parliament. Finally the opportunity is taken to correct a minor drafting problem in rule 9B.2.2.

Recommendation

15. The Committee recommends to the Parliament the changes to Standing Orders set out in the Annexe.
ANNEXE: STANDING ORDER CHANGES

CHAPTER 5: THE PARLIAMENTARY BUREAU AND MANAGEMENT OF BUSINESS

Rule 5.4 Business programme

In Rule 5.4.2, after sub-paragraph (aa) insert----

“(ab) any Public Bodies Act consent memorandum or Public Bodies Act consent motion;”.

[This amendment is consequential on the insertion of new Chapter 9BA below, which provides for memorandums and motions in relation to the question whether the Parliament should consent to any order under the UK Public Bodies Act 2011. It enables the Parliament’s Business Programme to include the timetable for consideration of any such memorandum or motion.]

Rule 5.9 Business Bulletin

In Rule 5.9.2, after sub-paragraph (ga) insert----

“(gb) notices of any Public Bodies Act consent memorandums;”.

[Similarly, this amendment requires the Business Bulletin to include notice of any memorandum lodged in connection with an order under the UK Public Bodies Act 2011.]

CHAPTER 6: COMMITTEES

Rule 6.11 Subordinate Legislation Committee

For Rule 6.11.1(a)(i) substitute---

“(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;”.

[Rule 6.11.1 is amended so as to extend the remit of the Subordinate Legislation Committee to include consideration of orders under the UK Public Bodies Act in respect of which the Parliament’s consent is required.]
CHAPTER 9B: CONSENT IN RELATION TO UK PARLIAMENT BILLS

Rule 9B.2 Legislative consent motions

In Rule 9B.2.2, omit “in accordance with Rule 9B.3.5 below”.

[This amendment corrects a minor drafting problem in Rule 9B.2.2. Currently this refers to the lead committee’s report being published “in accordance with Rule 9B.3.5”, but that paragraph does not contain any provision on publication. The amendment removes the cross-reference].

After Chapter 9B insert-----

“CHAPTER 9BA

CONSENT IN RELATION TO ORDERS UNDER THE PUBLIC BODIES ACT 2011

Rule 9BA.1 Orders under the Public Bodies Act 2011 requiring the Parliament’s consent

1. In this Chapter, a “Public Bodies Act order” is a draft order under sections 1 to 5 of the Public Bodies Act 2011 (c. 24) (“the Act”) which requires the consent of the Parliament under section 9 of the Act.

Rule 9BA.2 Public Bodies Act consent motions

1. A motion seeking the Parliament’s consent to a Public Bodies Act order shall be known as a Public Bodies Act consent motion. A Public Bodies Act consent motion shall identify the relevant Public Bodies Act order by reference to its title and the date on which it was laid before the UK Parliament.

2. A Public Bodies Act consent motion shall not normally be lodged until after the publication of the lead committee’s report.

3. Every Public Bodies Act consent motion lodged shall be taken in the Parliament. The Parliament shall not normally take such a motion earlier than the fifth sitting day after the day on which the lead committee’s report under Rule 9BA.3.5 is published.

Rule 9BA.3 Public Bodies Act consent memorandums

1. A member of the Scottish Government shall lodge with the Clerk a memorandum (“a Public Bodies Act consent memorandum”) in relation to
any Public Bodies Act order, normally no later than one week after it is laid before the UK Parliament.

2. Any member (other than a member of the Scottish Government) who intends to lodge a Public Bodies Act consent motion in relation to a Public Bodies Act order shall first lodge with the Clerk a Public Bodies Act consent memorandum, but shall not normally do so until after a member of the Scottish Government has lodged a Public Bodies Act consent memorandum in respect of that order.

3. A Public Bodies Act consent memorandum shall----
   (a) be accompanied by a copy of the relevant Public Bodies Act order;
   (b) summarise what the order does and its policy objectives;
   (c) explain which provisions of the order give rise to the requirement for the consent of the Parliament under section 9 of the Act and why such consent is required;
   (d) in the case of a memorandum lodged by a member (including a member of the Scottish Government) who intends to lodge a Public Bodies Act consent motion, set out a draft of the motion and explain why the member considers it appropriate for those provisions to be made and for them to be made by means of the order; and
   (e) in the case of a memorandum lodged by a member of the Scottish Government who does not intend to lodge a Public Bodies Act consent motion, explain why not.

4. Notice of any Public Bodies Act consent memorandum lodged shall be given in the Business Bulletin. The Clerk shall arrange for the memorandum and the copy order to be published.

5. The Parliamentary Bureau shall refer any Public Bodies Act consent memorandum to the committee within whose remit the subject matter of the relevant provisions falls. That committee (referred to as “the lead committee”) shall consider and report on the memorandum. Where the subject matter of the relevant provisions falls within the remit of more than one committee the Parliament may, on a motion of the Parliamentary Bureau, designate one of those committees as the lead committee. The other committee or committees (“the secondary committee or committees”) may also consider the memorandum and report its or their view to the lead committee.

6. The Parliamentary Bureau shall refer any Public Bodies Act order to the Subordinate Legislation Committee, which shall consider the order and
report to the Parliament and the lead committee normally no later than 20 days, and in any event no later than 22 days, after the relevant Public Bodies Act consent memorandum is lodged (excluding any time during which the Parliament is dissolved or is in recess for more than 4 days). In considering the order, the Committee shall determine whether the attention of the Parliament should be drawn to it on any of the grounds mentioned in Rule 10.3.1, so far as applicable.

7. In preparing its report, the lead committee shall take into account the reports of the Subordinate Legislation Committee and any secondary committee which has submitted its views under Rule 9BA.3.5.

[The Public Bodies Act 2011 enables UK Ministers to make orders abolishing or merging certain public bodies, or modifying aspects of their governance. Where such an order contains any provision within devolved competence, the consent of this Parliament must be obtained. New Chapter 9BA sets out a procedure for Public Bodies Act orders requiring consent. This is based on the existing legislative consent motion procedure in Chapter 9B of Standing Orders, whereby the Scottish Government is required to lodge a memorandum, any member wishing to lodge their own consent motion must also lodge a memorandum, and the Parliament will signify its consent by motion following on from such a memorandum and from a report on the memorandum given by the lead committee. The procedure in Chapter 9B is adapted to take account of the fact that the motion relates to subordinate legislation, and provides for the Subordinate Legislation Committee to report to the lead committee on the order.]

CHAPTER 16: REPORTING OF PROCEEDINGS

Rule 16.3 Journal of the Scottish Parliament

In Rule 16.3.2, after sub-paragraph (ab) insert----

“(ac) notice of any Public Bodies Act consent memorandum lodged in accordance with Rule 9BA.3, which notice shall give the name of the member lodging the memorandum, the title of the Public Bodies Act order to which the memorandum refers and the date on which the memorandum was lodged;”.

[This amendment is also consequential on new Chapter 9BA and requires the Journal of the Scottish Parliament to include notice of any Public Bodies Act consent memorandum.]
Members who would like a printed copy of this Numbered Report to be forwarded to them should give notice at the Document Supply Centre.