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 Where the Committee considers it appropriate, it may by motion recommend that a member’s rights and privileges be withdrawn to such extent and for such period as are specified in the motion.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 (until 24.05.2013)
George Adam (from 16.05.2013)
Cameron Buchanan (10.09.2013)
Helen Eadie (Deputy Convener)
John Lamont (until 10.09.2013)
Richard Lyle
Margaret McCulloch (until 03.09.2013)
Margaret McDougall (from 03.09.2013)
Fiona McLeod
Dave Thompson (Convener)
Committee Clerking Team:

Clerk to the Committee
Alison Walker
Gillian Baxendine

Senior Assistant Clerk
Alastair Macfie
Neil Stewart

Support Manager
Sam Currie
Standards, Procedures and Public Appointments Committee

7th Report, 2013 (Session 4)

Committee Substitutes

The Committee reports to the Parliament as follows—

1. The Standards, Procedures and Public Appointments Committee has considered several issues which have been brought to its attention in connection with committee substitutes.

2. This report discusses these issues and makes recommendations for changes to Standing Orders in several areas. Background information about the rules for committee substitutes can be found at annexe A.

Flexibility of rules on committee substitutes

3. The first issue considered by the Committee was whether the current rules on the use of committee substitutes could be made more flexible. For example, currently only one member can be designated as a substitute per committee for a political party. This may cause problems when that member is unable to attend a meeting.

4. Some options for change were assessed by the Committee.

The requirement for named substitutes

5. Standing Orders currently requires a party’s substitute on a committee to be a named MSP. A nomination of a committee substitute must be made in writing to the Parliamentary Bureau. Members nominated become committee substitutes if appointed by the Parliament on a motion of the Parliamentary Bureau.

6. The Committee considered an alternative approach of removing the requirement for a substitute to be named. Instead a substitute could be drawn from a larger pool of potential substitutes from each party. The members of the pool would not be restricted to substituting for a particular committee.

7. A system of un-named substitutes could increase the likelihood that a substitute would be available. However, the Committee noted that such an arrangement may have several significant drawbacks—
• If substitutes were un-named, the identity of the substitute might not be known until the point of substitution. As well as a lack of transparency for members and other participants at committee meetings, this could give rise to practical administrative issues (for example, the provision of committee papers and travel arrangements).

• Committee substitutes have the right to receive private committee papers on a routine basis. If a larger pool of un-named substitutes were used, this could lead to private committee papers being more widely circulated, which might not be desirable.

• At present, substitute MSPs have some opportunity to learn about the work of their committees. Under a system of un-named substitutes, this might not be possible, thereby potentially affecting their contributions at committee meetings.

• A system of un-named substitutes would arguably give more power to parties than at present. Committee substitutes would no longer be appointed to each committee by the Parliament on a motion of the Bureau. Parties would be able to pick and choose which substitute would attend a particular meeting, depending upon the subject matter under consideration. This could affect the continuity of membership on committees.

More than one substitute per party on each committee
8. The Committee also considered an approach of allowing each party to have more than one substitute per committee. Under such an arrangement, each of the substitutes would be named and restricted to substituting on a particular committee. Currently each party can only have one substitute for each committee on which it is represented.

9. The Committee noted that allowing more than one substitute per party on each committee could lead to more flexibility. If a member of a political party could not attend a committee meeting, there would be two (or more) substitutes, any of whom could substitute in their place. A system involving named substitutes would also address some of the potential disadvantages associated with un-named substitutes.

10. However, the Committee had sympathy with the arguments put forward by the previous Procedures Committee in 2002, which did not support an increase in the number of substitutes, noting—

“The Committee considered that there was no need for more than one substitute per Party per Committee in a "named" system. To have two or more named MSPs on call keeping abreast of developments of the work of the Committee on which they are liable for substitution appeared excessive, certainly given the overall number of MSPs.”

http://archive.scottish.parliament.uk/business/committees/historic/procedures/reports-02/prr02-02-01.htm
11. The Committee also noted that such an arrangement raised practical questions. For example, should it be permissible for two members of the same party to both send substitutes to the same meeting? This might have implications if, for example, two parties each deployed two substitutes. This would mean four substitutes participating in the same meeting, which might impact on the committee as these members might not be as familiar with its on-going work.

**Conclusion**

12. The Committee has considered options for increasing the flexibility of the rules on substitutes. The Committee was not, however, persuaded that any advantages of increasing flexibility would outweigh the disadvantages of the changes. Specifically, the Committee had concerns about the lack of transparency if a system of un-named substitutes were to be introduced. The Committee also considered that permitting more than one substitute per party on each committee could make it more difficult for the substitutes to follow the committee’s work. For these reasons, the Committee has decided not to recommend changes to these rules on committee substitutes.

13. The Committee acknowledged that, on occasion, a member will be unable to carry out the role of a substitute. However, these cases are likely to be the exception rather than the rule and, in the view of the Committee, do not warrant the rules on substitutes being relaxed. Should a member be unable to act as a substitute on a regular basis, an appropriate solution might be for that member to be replaced as a substitute on a permanent basis.

**Enforcement of the rules**

14. A second issue considered by the Committee was the enforcement of the substitutes rules, which are intended to ensure that committee substitutes only attend meetings for legitimate reasons. The Committee was not aware of any significant problem with enforcement of the rules, but wished to satisfy itself that they were working as effectively as possible.

15. Rule 12.2A.1 of Standing Orders provides that a committee substitute may participate at a committee meeting in place of a committee member of the same party should that member be unavailable for a committee meeting or unable to act as a committee member at any other time because of illness, family circumstances, adverse travel conditions beyond the member’s control, a requirement to attend to other Parliamentary business or urgent constituency business. Section 7 of the Code of Conduct states that members must comply with the requirements of Standing Orders.

16. The Guidance on Committees states that—

“It is important to note that a committee substitute is entitled to attend only where the member cannot attend for one of these specified reasons; having a member on a committee and a substitute does not give a party the right to decide which of them attends on a particular occasion.”

17. The current practice is that the responsibility to comply with the rules on committee substitutes is a matter for the parties and members themselves. An
analogy can be made with members’ compliance with the Code of Conduct, where members are themselves responsible for their own conduct under the Code.

18. The Committee considered that these current arrangements have generally worked satisfactorily. The Committee does not consider it would be practicable for members’ reasons for sending a substitute to be proactively ‘policed’. It is unclear who would carry out such a policing role, and how it would work in practice.

19. However, the Committee also considers it is important that all members understand the rules of committee substitution, to minimise the chances of a breach, even an inadvertent one. To this end, the Committee believes that it would be good practice for members to notify the convener in writing or in an email of their intention to send a substitute, and their reason for doing so. This would act as a prompt to the member to consider the reason why they were sending a substitute, as well as assisting the convener in the management of the meeting.

20. The Committee recommends that guidance for members should be updated to encourage members to give advance notice in this way. The Committee considered whether to make this a requirement in Standing Orders. However, the Committee noted that it might not always be possible for advance notification to be given of a substitution, for example, should a member become unwell at short notice. The Committee therefore concluded that the rules should retain some flexibility.

21. The Committee considers that the most appropriate place for this updated guidance to appear is in the Guidance on Committees. This document is prepared by the Committee Office of the Scottish Parliament and is publicly available online.

Public Audit Committee

22. The Committee has also considered two other minor issues relating to committee substitutes. The first concerns the membership of the Public Audit Committee (PAC).

23. Rule 12.2A.1(b) allows a committee substitute to participate in place of a newly appointed minister who is no longer a committee member but has not yet been replaced on the committee.

24. Rule 6.3.5 sets out the circumstances in which a member would no longer be a member of a committee—

“A committee member shall serve as a member of a committee for the duration of that committee unless—

(a) that member resigns from that office by intimating resignation to the Presiding Officer on behalf of the Parliamentary Bureau;

(b) that member is removed from that office by the Parliament on a motion of the committee; or

(c) that member ceases to be a member of the Parliament otherwise than by virtue of a dissolution.”
25. In addition, rule 6.7.2 states that in relation to the Public Audit Committee (PAC)—

“No member of the Scottish Government or junior Scottish Minister may be a member of the Committee...”

26. Rule 6.7.2 suggests that, should a member of the PAC be appointed as a minister, the member would cease to be a member of the Committee. However, there is no reference to rule 6.7.2 in the list of circumstances in rule 6.3.5 in which a member would no longer be a member of a committee.

27. The Committee has agreed that, for the avoidance of doubt, it would be helpful to include a cross-reference to rule 6.7.2 in rule 6.3.5, to clarify that should a member of the PAC become a minister, they would cease to be a member of that committee. A draft rule change which gives effect to this change is set out at annexe B.

Standards, Procedures and Public Appointments Committee


29. The SPPA Committee will periodically be required to consider complaints against members, including potentially the question of whether or not to impose sanctions against a member.

30. Should a member who is the subject of a complaint happen also to be a member of the SPPA Committee, that member might not wish to take part in the committee consideration of the complaint (although they would be entitled to do so). In the event that the member decided not to attend these committee meetings, a committee substitute would not be entitled to attend in his or her place (unless one of the circumstances set out in 12.2A.1 happened to apply). The SPPA Committee would therefore be required to meet with one fewer member than might otherwise be the case, which could impact on its work.

31. The Committee has considered this issue and has agreed that Standing Orders should be amended to provide that a substitute is able to participate at a meeting of the SPPA Committee on behalf of another member when the committee is considering whether the conduct of that member is in accordance with Standing Orders or the Code of Conduct for members, or any related question of sanctions.

32. Draft rule changes giving effect to these changes are attached at annexe B.

33. It is important to bear in mind that the new rules would not affect the right of a SPPA Committee member to attend a meeting when they were the subject of a complaint, if they so wished, and to make representations regarding a complaint if appropriate. The rules also provide (in an amendment to Rule 12.2A.3) that, even if a substitute participates in place of a member, the member can participate for the other agenda items at the meeting.
Substitutes for independent members on a group

34. The Committee has also received representations on the issue of committee substitutes for independent members of a group represented on the Parliamentary Bureau under rule 5.2.2. Only members of a political party are currently permitted to have a committee substitute.

35. The Committee felt that it would be helpful to consider the question of committee substitutes for independent members of a group in the wider context of the status of groups. The Committee has agreed to take forward work on the status of groups issue separately.

Recommendation

36. The Committee recommends the changes to Standing Orders, set out at annexe B, to the Parliament.
ANNEXE A: BACKGROUND INFORMATION ON COMMITTEE SUBSTITUTES

RULES

1. Rule 6.3A of Standing Orders states—

“A political party represented by 2 or more members of the Parliament may nominate a member of that party to be a substitute (referred to as a “committee substitute”) for the members of that party on a particular committee.”

2. Rule 12.2A.1 sets out the circumstances where a committee substitute may participate at a committee meeting in place of a member.

“Where a committee member—

(a) is unavailable for a committee meeting (or any committee activity taking place other than at a meeting) because of illness, family circumstances, adverse travel conditions beyond the member’s control, a requirement to attend to other Parliamentary business or urgent constituency business; or

(b) has ceased to hold that office and a replacement committee member has yet to be appointed,

a committee substitute from the same political party may, subject to Rule 9.13A, participate in place of that member.”

3. A party can nominate only one substitute per committee on which it has a member and a member cannot be nominated to be a committee substitute for more than two committees (or for a committee of which he or she is already a member) (Rule 6.3A). Nominations are made to the Bureau, which then proposes the substitutes’ names to the Parliament in a motion.

4. When a committee substitute attends a meeting (or other committee activity), he or she assumes the full rights of an ordinary member of the committee. In particular, the substitute can attend meetings (or parts of meetings) held in private, and can vote. Substitutes are entitled to receive all committee papers, including private papers.
ANNEXE B: PROPOSED STANDING ORDERS CHANGES

CHAPTER 6: COMMITTEES

Rule 6.3 Membership of committees

In Rule 6.3.5(b), omit “or” and after that sub-paragraph insert-

“(ba) in the case of the Public Audit Committee, that member ceases to be a member of that committee by virtue of Rule 6.7.2; or”.

CHAPTER 12: COMMITTEE PROCEDURES

Rule 12.2A Participation by substitutes

In Rule 12.2A, after paragraph 2 insert-

“2A. Where the Standards, Procedures and Public Appointments Committee is considering whether the conduct of a member of that Committee is in accordance with these Rules or with any Code of Conduct for members, or any related question of sanctions, a committee substitute from the same political party may participate in place of that member in that consideration.”.

In Rule 12.2A.3, after sub-paragraph (b) insert-

“(c) paragraph 2A, the committee member may participate in that capacity during any other part of the same meeting (or activity) which does not involve consideration of the matters referred to in that paragraph.”.

In Rule 12.2A.4, for “1 or 2” substitute “1, 2 or 2A”.
ANNEXE C: EXTRACT FROM MINUTES

2nd Meeting, 2013 (Session 4), Thursday 31 January 2013

Decision on taking business in private: The Committee agreed to take items 5 and 6 in private.

Committee substitutes (in private): The Committee considered a note by the Clerk and agreed to write to Patrick Harvie for further information.

6th Meeting, 2013 (Session 4), Thursday 25 April 2013

Committee substitutes (in private): The Committee considered a note by the Clerk and agreed to write to Patrick Harvie MSP on the issues he raised. The Committee also agreed that any further papers and Standing Order rule changes would be considered in private at future meetings.

9th Meeting, 2013 (Session 4), Thursday 6 June 2013

Committee substitutes (in private): The Committee considered a note by the Clerk and agreed to produce guidance for substitutes.

11th Meeting, 2013 (Session 4), Thursday 12 September 2013

Decision on taking business in private: The Committee agreed that its consideration of policy papers on the Members' Interests Act, approach papers on the Committee's inquiries into European scrutiny and Hybrid Bills and draft reports on Committee substitutes and PO/DPO elections should be taken in private at future meetings.

12th Meeting, 2013 (Session 4), Thursday 26 September 2013

Committee substitutes (in private): The Committee agreed a draft report.
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.