Standards, Procedures and Public Appointments Committee

1st Report, 2011 (Session 4)

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 Where the Committee considers it appropriate, it may by motion recommend that a member’s rights and privileges be withdrawn to such extent and for such period as are specified in the motion.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

Margaret Burgess
Bob Doris
Helen Eadie (Deputy Convener)
Margaret McDougall
Nanette Milne
Dave Thompson (Convener)
Paul Wheelhouse
Committee Clerking Team:

Clerks to the Committee
Gillian Baxendine
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Catherine Fergusson

Support Manager
Sam Currie
Standards, Procedures and Public Appointments Committee

1st Report, 2011 (Session 4)

Minor Standing Orders Rule Changes

The Committee reports to the Parliament as follows—

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 Committee.

2. The changes proposed are relatively minor and so the Committee has not considered it necessary to carry out a full inquiry prior to the publication of this report.

3. The Committee’s consideration of the issues is set out below. A number of Standing Orders changes proposed by the Committee can be found at Annexe A.

Committee substitutes

4. The first proposed change to Standing Orders relates to committee substitutes. Rule 6.3A.4 states—

“A member cannot be a committee substitute for more than one committee at the same time. A member cannot be a committee substitute for a committee of which that person is a member.”

5. The Presiding Officer wrote to the Committee on 10 August 2011 on behalf of the Parliamentary Bureau asking the Committee to review the rules in relation to committee substitutes.

6. The Parliamentary Bureau had expressed the view that smaller parties in the Parliament can face difficulties when trying to find a number of substitutes to cover all or the majority of parliamentary committees. The Bureau was of the view that it would be possible for a member to be a substitute for more than one committee.

7. The Committee noted the concerns expressed by smaller parties and acknowledged the challenges they face when finding members to fill various parliamentary positions, including the roles of committee members and serving on other bodies such as the SPCB and the Parliamentary Bureau.
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8. The Committee also noted that, in practice, substitutes are deployed relatively infrequently and only in the circumstances specified in Rule 12.2A.1, and so it is likely that a member could serve as a substitute on more than one committee. However the Committee also considered that there may be merit in restricting the number of committees on which a member could serve as a substitute, as there could be practical difficulties associated with a member being a substitute on several committees at once. The Committee also noted that the more committees on which a member served as a substitute, the more challenging it may be for that member to monitor the work of these committees on an ongoing basis.

Proposed rule change

9. The Committee was persuaded of the case for a more flexible approach being taken to the use of committee substitutes. The Committee believes that increasing the number of committees on which a member could be designated as a substitute from one to two, would allow a reasonable balance to be reached between increasing flexibility but not creating the practical difficulties associated with a member being a substitute on too many committees at once.

10. The Committee therefore recommends the following rule change—

In rule 6.3A.4 the words “one committee” should be replaced by the words “two committees”.

Conveners group quorum

11. The second change proposed to Standing Orders relates to the quorum of the Conveners Group.

12. Rule 6A.3.3 provides for the Conveners Group to have a quorum. The Rule states—

“The Conveners Group shall not consider any business unless the number of members of the Group who are present is 5 or more and the members present include representatives of 3 or more political parties.”

13. An issue has arisen in session 4 of the Parliament in relation to the Conveners Group which has caused some practical difficulties. The current balance of party representation in this session means that only one Convener represents a party other than the Scottish Labour Party or the Scottish National Party.

14. In practice this means that the convener of the Economy, Energy and Tourism Committee must attend Conveners Group meetings if they are to be quorate.

15. A situation where the ability of the Conveners Group to meet is dependent on the attendance of one specific convener may give rise to difficulties. There may be occasions when it is not possible for that convener to attend and in these circumstances the meeting could not go ahead.
16. The Parliament has agreed to suspend Rule 6A.3.3 (under Rule 17.2) until 31 October 2011, in order to address temporarily this requirement. This, however, is not a long term solution. The Presiding Officer therefore wrote to the Committee to request that it considers this rule further with a view to addressing the difficulties experienced in this session in relation to the Conveners Group quorum.

17. The Committee has considered this issue further and believes that a new formulation for the Conveners Group quorum is needed to address the particular circumstances of session 4. The Committee notes a suitable revision could be to reduce the “party representation” quorum from three to two.

18. The Committee notes, however, that it is possible that in the future conveners may be drawn from a wider range of parties (as in sessions 1 to 3), in which case the quorum of “2 or more political parties” could be seen as too low a threshold to be reached. The Committee therefore recommends amending the rule so that the quorum will remain at three, but providing for a reduced quorum of two to apply in the particular circumstances experienced in this session.

19. The Committee therefore recommends making the following rule change to Rule 6A.3 (new words are in italics)—

   Rule 6A.3.3:

   The Conveners Group shall not consider any business unless the number of members of the Group who are present is 5 or more and, subject to paragraph 3A, the members present include representatives of 3 or more political parties.

   New rule 6A.3.3A:

   Where—

   (a) the membership of the Conveners Group is drawn from 3 or fewer political parties; and

   (b) any of those political parties has only one member on the Conveners Group,

   the requirement that 3 or more political parties be represented is reduced to 2 or more political parties.

20. The Committee believes that this is a fairly straightforward approach in the circumstances, and it is also relatively future-proof as the “party representation” quorum will return to three in the event that conveners are drawn from a wider range of parties in future sessions.

Subordinate legislation: referrals to lead committees

21. The Committee has become aware of the need to make a minor adjustment to Rule 10.1 in relation to lead committee consideration of instruments not subject to parliamentary control.
Background

22. The introduction of a default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 (the “2010 Act”) has meant that a number of instruments are now being laid before the Parliament that would not previously have been laid (prior to the commencement of changes in the 2010 Act at 6 April 2011). Further to changes in the 2010 Act, the Standards, Procedures and Public Appointments Committee in session 3 introduced amended Standing Order rules which came into force at the start of this session.

23. Under Rule 10.1.3, any instrument or draft instrument that is laid before the Parliament must be referred to the lead committee for consideration. As the 2010 Act and associated Standing Order changes have been implemented, it has become apparent that one consequence of the new default laying requirement is that lead committees are obliged to consider some instruments not subject to parliamentary control which they would not have had to consider previously. Commencement orders are affected, as are Rules of Court (Acts of Adjournal and Sederunt) which fall within the remit of the Justice Committee. These instruments can be numerous but are usually regarded as non-contentious in policy terms.

Proposed rule change

24. The Committee does not believe that there should be an obligation on a lead committee to consider instruments which are not subject to parliamentary control. This may lead to lead committees being unnecessarily required to devote time to considering these instruments. The Committee is persuaded of the need to amend Standing Orders to remove this obligation. The Committee notes, however, that on occasion a lead committee may wish to consider one of these instruments and so the Committee would not wish to prevent this happening. These instruments would still be referred to lead committees, but the obligation to consider them would be removed. The Subordinate Legislation Committee would continue to scrutinise them as a matter of course.

25. The Committee therefore recommends making the following rule change to Rule 10.1 (new words are in italics)—

Rule 10.1:

3. Where any instrument or draft instrument is laid before the Parliament, the Clerk shall give members notice of that fact in accordance with Rule 10.9. Subject to paragraph 4, the Clerk shall refer the instrument or draft instrument for consideration to—

(a) the Subordinate Legislation Committee; and

(b) the lead committee, or where the Parliament, on a motion of the Parliamentary Bureau, decides that the instrument or draft instrument is to be considered by the Parliament, the Parliament.

4. Where an instrument or draft instrument that is not subject to any of the forms of Parliamentary control mentioned in Rules 10.4.1, 10.5.1 or 10.6.1 is referred to the lead committee, the lead committee is not required to consider it (other than as required by Rule 10.3A).
Convention Rights (Compliance) (Scotland) Act 2001: consideration by the Subordinate Legislation Committee

26. The Committee has considered an issue which has arisen in relation to the time which the Subordinate Legislation Committee has to scrutinise certain instruments where a longer period of parliamentary consideration applies. Emergency instruments that cannot remain in force beyond a stated period, unless they are approved by resolution of the Parliament, are particularly affected.

Background

27. Under Standing Order Rule 6.11, the consideration of any subordinate legislation laid before the Parliament falls within the remit of the Subordinate Legislation Committee (SLC).

28. Instruments normally have a 40-day period for Parliamentary consideration and, under Rule 10.3.2, the SLC has to report its decision on an instrument to the Parliament and the lead committee “normally no later than 20 days, and in any event no later than 22 days, after the instrument or draft instrument is laid”. This reporting timescale ensures that the report from the SLC is available to the lead committee before it considers the instrument.

29. For some statutory instruments, however, a different timescale applies. An example is subordinate legislation made under section 14 of the Convention Rights (Compliance) (Scotland) Act 2001 (“the 2001 Act”) which enables the Scottish Ministers to bring forward an urgent remedial order to address an incompatibility with the European Convention on Human Rights.

30. The procedure for an order under section 14 requires the Scottish Ministers to have regard to any observations on the order submitted in writing within the period of 60 days beginning with the day on which it is made. Following this 60-day period, the Parliament has a further 60 days in which to approve the order by resolution, otherwise the order ceases to have effect. A total of 120 days is therefore available to the Parliament to scrutinise the instrument. Yet, the standard SLC reporting period of 20 days, and no later than 22 days, still applies.

31. In 2010, the Parliament considered such an order to amend the Sexual Offences Act 2003. The lead committee (the Justice Committee) agreed not to consider the order during the 60-day consultation period but to do so during the subsequent 60-day period available for parliamentary approval. There was therefore no urgent need for the SLC to report to the Justice Committee within the standard 20-day timescale.

32. The instrument was of a complex nature, and as there was no urgent need to report within the normal 20 day timescale, the Parliamentary Bureau recommended to the Parliament that Rule 10.3.2 be suspended in relation to this order.

33. The Committee understands the reasons why the standard timescale for the SLC to report on instruments applies. However, the Committee notes that in the case of instruments where a longer period for parliamentary consideration applies,
the extended timetable is often provided because the matter is likely to be complex or sensitive and to require additional scrutiny.

Proposed rule changes

34. The Committee is therefore of the view that additional time should be provided for SLC scrutiny of instruments to which Rule 10.6.1(c) applies (those that cannot remain in force beyond a stated period without parliamentary approval), where a longer period for parliamentary consideration applies.

35. The Committee proposes that where such instruments have a stated period of more than 44 days, the period for SLC scrutiny is set at half of that stated period. The 44 day figure ensures that the SLC has at least 22 days in which to report.

36. The Committee therefore recommends making the following rule change—

   After Rule 10.3.3, insert—

   “4. Where an instrument to which Rule 10.6.1(c) applies has a stated period that is greater than 44 days, the 22 day period in paragraphs 2 and 3 is replaced with the number of days amounting to half the stated period (rounded up to the nearest whole number). The normal reporting period of 20 days does not apply to such an instrument.”

Legislative consent memorandums – requirement to print

37. Under Rule 9B.3.4 there is a requirement for legislative consent memorandums to be “printed and published” by the Clerk.

38. In practical terms, wherever the term “printed” is used in Standing Orders, there is a requirement for the relevant document to be produced as a printed, hard copy. In contrast, when the term “published” is used, there are a range of options available and the Parliament is able to determine the most appropriate method of publication. This can include being published only in electronic form, but does not preclude the publication of hard copies of the document.

39. The Committee has noted that at present an LCM will be printed when it is laid before the Parliament and then again as part of the lead committee’s report. It may be felt that it is sufficient for the LCM when it is laid simply to be made available on the Parliament’s website since it will later be printed in the report to Parliament.

40. The Committee is therefore of the view that Rule 9B.3.4 should be amended so that legislative consent memorandums are required to be published only. (As mentioned above this does not preclude the Parliament’s ability to print where it considers it an appropriate method of publication.) The Committee therefore recommends the following change to Standing Orders—

   In Rule 9B.3.4, delete the words “printed and”.


Determinations and resolutions under the Interests of Members of the Scottish Parliament Act 2006

41. An issue has arisen in relation to the requirement under Standing Orders Rule 1.8.3 for the Standards, Procedures and Public Appointments Committee to consult members when a resolution is lodged in order to invite the Parliament to agree to the terms of determinations and the Schedule to the Interests of Members of the Scottish Parliament Act 2006.

Background

42. Under the Interests of Members of the Scottish Parliament Act 2006, the Parliament is given certain powers to make determinations and pass resolutions. In particular, a determination is required on the form of the written statement (the form members complete to register their interests) and a resolution is required to modify the Schedule to the Act, which defines registrable interests.

43. Under Standing Orders Rule 1.8, such determinations or resolutions can only be agreed by the Parliament on a motion of the Standards, Procedures and Public Appointments Committee. This was done for the first time at the end of last session when an amended Schedule was put in place.

44. At this time, concerns were identified about the operation of Standing Orders Rule 1.8.3 which states that—

“The Standards, Procedures and Public Appointments Committee shall consult other members about the terms of the proposed determination or resolution before a motion under paragraph 2 is lodged.”

45. One of the consequences of this rule was that the Committee was required to consult with members on the terms of the resolution, despite it having already consulted other members extensively, first on what changes they would like to see to the Schedule, again on the precise terms of the Schedule and a third time on the determinations. The Standing Orders rule still required consultation on the actual terms of the resolution, however, even though this was purely procedural and all the substance (in the Annexes) had already been subject to consultation.

Proposed rule change

46. The Committee notes that it is likely that this rule will come into operation again following any amendments to the Interests of Members of the Scottish Parliament Act in the course of this session. The Committee is of the view that Rule 1.8.3 should be amended to clarify that consultation with members is to be on the substance of any determination or resolution rather than (necessarily) the precise terms of the final version.

47. The Committee therefore recommends making the following rule change to Rule 1.8—

In Rule 1.8.3 delete “the terms of”.

48. Under this proposal, Rule 1.8.3 would now read as follows—
“The Standards, Procedures and Public Appointments Committee shall consult other members about the terms of the proposed determination or resolution before a motion under paragraph 2 is lodged.”

References to the Judicial Committee of the Privy Council

49. The Committee notes that there are a number of references to the Judicial Committee of the Privy Council in the Chapters in Standing Orders on Public Bills, Private Bills and Hybrid Bills. The Judicial Committee of the Privy Council has, however, been replaced by the UK Supreme Court, under the Schedule 9 of the Constitutional Reform Act 2005, the relevant provisions of which came into force on 1 October 2009.

50. The Committee is of the view that the references in Standing Orders to the Judicial Committee of the Privy Council should be updated to reflect this change.

51. The Committee recommends that the changes set out in Annexe A are made to Standing Orders.

Timescales

52. The Committee has given consideration as to when it would be appropriate for the rule changes proposed in this report to come into effect.

53. The Committee is aware that two of the changes proposed are reasonably urgent in nature: the changes to the rules on the Conveners Group quorum and the changes proposed to the rule on committee substitutes.

54. Other changes proposed in this report are arguably less urgent. The Committee notes that some of these less urgent changes would also involve a significant number of small amendments being made to Standing Orders which are likely to require the complete document to be republished, rather than one or two pages.

55. The Committee is currently undertaking an inquiry into parliamentary reform, which may result in further changes being made to Standing Orders early in the new year. In the view of the Committee, it would not be best use of parliamentary resources if Standing Orders was to be republished in full following the debate on this minor rule changes report, only for the document to be reprint again once the results of the parliamentary reform inquiry are known in early 2012.

56. For that reason, the Committee proposes that, subject to the agreement of the Parliament, only the rule changes on the Conveners Group quorum and committee substitutes will come into effect immediately following the debate. This will involve replacing several pages of Standing Orders, rather than a full reprint of the document. Once the result of the Committee’s parliamentary reform inquiry is known, and any consequential changes required to Standing Orders become apparent, a full reprint of Standing Orders can take place in early 2012. This reprint will include the outstanding minor rule changes set out in this report.
Conclusion

57. The Committee recommends the changes to Standing Orders, set out at Annexe A, to the Parliament.
ANNEXE A: DRAFT STANDING ORDERS CHANGES

Committee substitutes

In rule 6.3A.4, delete “one committee” and insert “two committees”.

Conveners Group quorum

In Rule 6A.3.3, after “and” insert “, subject to paragraph 3A,”.

After Rule 6A.3.3, insert—

“3A. Where—
(a) the membership of the Conveners Group is drawn from 3 or fewer political parties; and
(b) any of those political parties has only one member on the Conveners Group,
the requirement that 3 or more political parties be represented is reduced to 2 or more political parties.”

Subordinate legislation: referrals to lead committees

In Rule 10.1.3, delete the first “and” and insert “. Subject to paragraph 4, the Clerk”

After Rule 10.1.3, insert—

“4. Where an instrument or draft instrument that is not subject to any of the forms of Parliamentary control mentioned in Rules 10.4.1, 10.5.1 or 10.6.1 is referred to the lead committee, the lead committee is not required to consider it (other than as required by Rule 10.3A).”

Convention Rights (Compliance) (Scotland) Act 2001: consideration by the Subordinate Legislation Committee

After Rule 10.3.3, insert—

“4. Where an instrument to which Rule 10.6.1(c) applies has a stated period that is greater than 44 days, the 22 day period in paragraphs 2 and 3 is replaced with the number of days amounting to half the stated period (rounded up to the nearest whole number). The normal reporting period of 20 days does not apply to such an instrument.”

Legislative consent memorandums – requirement to print

In Rule 9B.3.4, delete “printed and”.

Interests of Members of the Scottish Parliament Act 2006

In Rule 1.8.3, delete “the terms of”.

References to the Judicial Committee of the Privy Council

In the following Rules, the words “Judicial Committee of the Privy Council” or “Judicial Committee” should be replaced by the words “Supreme Court”—

Rule 9.9.1(a) and (b);
Rule 9.9.2(a);
Rule 9.9.4;
Rule 9A.11.1(a) and (b);
Rule 9A.11.2(a);
Rule 9A.11.4;
Rule 9C.13.1(a) and (b);
Rule 9C.13.2(a);
Rule 9C.13.4.
ANNEXE B: EXTRACT FROM MINUTES

3rd Meeting, 2011 (Session 4), Tuesday 13 September 2011

Decision on taking business in private: The Committee agreed to take items 5, 6, 7 and 8 in private.

Minor changes to Standing Orders (in private): The Committee considered a note by the Clerk and agreed to consider draft Standing Order rule changes at a future meeting.

4th Meeting, 2011 (Session 4), Tuesday 27 September 2011

Decision on taking business in private: The Committee agreed that its consideration of its report on minor changes to Standing Orders should be taken in private at future meetings.

5th Meeting, 2011 (Session 4), Tuesday 25 October 2011

Minor changes to Standing Orders (in private): The Committee agreed its 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.