



The Scottish Parliament  
Pàrlamaid na h-Alba

# Standards, Procedures and Public Appointments Committee

## MEETING DETAILS

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7th meeting 2019, Session 5

**Thursday 16 May 2019** 9.30 am in the  
Adam Smith Room (CR5)

## ADDITIONAL INFORMATION

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[Meeting papers and Official Reports  
from previous meetings](#)

## COMMITTEE PAPERS

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**Agenda**

**Cross-Party Group application**

**Annual report**

**Correspondence**

## NOTICES

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**Next meeting:**

30 May 2019

**Future Meetings:**

6 June 2019

20 June 2019



The Scottish Parliament  
Pàrlamaid na h-Alba

## STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

### AGENDA

8th Meeting, 2019 (Session 5)

Thursday 16 May 2019

The Committee will meet at 9.30 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.
2. **Cross-Party Group:** The Committee will consider an application for recognition from the proposed Cross-Party Group on USA, and take evidence from—  
  
Dean Lockhart, Convener of the proposed CPG on USA.
3. **Cross-Party Group - approval:** The Committee will decide whether to accord recognition to the proposed Cross-Party Group on USA.
4. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 12 May 2018 to 11 May 2019.
5. **Correspondence:** The Committee will consider correspondence it has received.
6. **Standing Order rules changes:** The Committee will consider a draft report and draft Standing Order rule changes.

Katy Orr  
Clerk to the Standards, Procedures and Public Appointments Committee  
Room Tower T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5239  
Email: [Katy.Orr@parliament.scot](mailto:Katy.Orr@parliament.scot)

The papers for this meeting are as follows—

**Agenda item 2**

Note by the clerk

SPPA/S5/19/8/1

**Agenda item 4**

Annual Report

SPPA/S5/19/8/2

**Agenda item 5**

Note by the Clerk

SPPA/S5/19/8/3

**Agenda item 6**

PRIVATE PAPER

SPPA/S5/19/8/4 (P)

**Standards, Procedures and Public Appointments Committee**

**8th Meeting 2019 (Session 5), Thursday 16 May 2019**

**Cross-Party Group Application**

**Introduction**

1. In accordance with the provisions on Cross-Party Groups (CPGs) set out in section 6 of the Code of Conduct (the Code), proposals for the establishment of CPGs in the Scottish Parliament must be submitted to the Standards, Procedures and Public Appointments Committee (the Committee) for its approval.
2. There is one proposed Group for the Committee's consideration.

**Proposed CPG on USA**

3. The registration form submitted by the proposed Group is attached as an Annexe to this note.

*Consideration by the Standards, Procedures and Public Appointments Committee*

4. Paragraph 18 of Section 6 of the Code states "...one of the proposed Group's MSP office bearers (usually the Convener) will be invited to attend a meeting of the Committee to explain the justification for the proposed Group." Dean Lockhart MSP has been invited to the meeting to discuss registration of the proposed Group.

*Purpose*

5. Paragraph 19 Section 6 of the Code states "the Committee will pay particular attention to a proposed Group's purpose. If the Committee considers that a proposed Group is not in the public interest but is intended, for example, to further particular commercial interests, the Group will not be accorded recognition. The Committee will also consider whether the purpose of a proposed Group overlaps the remit of an existing Group. If there is any overlap Groups are asked to provide justification as to why their aims could not effectively be achieved within an existing Group".

6. The stated purpose of the proposed Group is—

- to promote relations between Scotland and the USA.

7. The Group does not consider its remit overlaps with any other existing Group.

*Membership*

8. Paragraph 8 of Section 6 of the Code requires group membership to include at least five MSPs, with at least one MSP from each of the parties or groups represented on the Parliamentary Bureau. The Committee has previously agreed that there should be a general waiver of this Rule in the current Session and Groups are now required to have five MSPs from the majority of parties represented on the Parliamentary Bureau. The proposed Group meets this requirement.

9. The MSP membership (by party) of the proposed Group is as follows—

- 4 Scottish Conservative and Unionist Party
- 2 Scottish Labour Party
- 1 Scottish Liberal Democrat

10. Paragraph 9 of Section 6 of the Code entitles groups to contain members from outwith the Parliament. The proposed Group has listed four non-MSP members in the individual category and four in the non-MSP member organisations.

*Office Bearers*

11. Paragraph 10 of Section 6 of the Code requires one MSP to be Convener of the Group and there to be at least one other MSP office bearer. The proposed Group meets this requirement: Dean Lockhart MSP is the Convener of the Group and Anas Sarwar MSP and Alexander Burnett MSP are the Deputy-Conveners of the Group.

*Financial Benefits and Subscription*

12. The registration form indicates that the Group will not receive any financial benefits.

13. The registration form also indicates that members will not be charged a subscription, although this is under review.

**Next Steps**

14. At agenda item 2 the Committee is invited to discuss any aspects of the application for recognition of the proposed Cross-Party Group on USA with Dean Lockhart MSP

15. At agenda item 3 the Committee will discuss whether to accord recognition to the proposed Group.

**Sam Currie**  
**Support Manager**  
**Standards, Procedures and Public Appointments Committee**  
**May 2019**

## CROSS-PARTY GROUP REGISTRATION FORM

<b>NAME OF CROSS-PARTY GROUP</b>
Cross-Party Group on USA
<b>PURPOSE OF THE GROUP AND PROPOSED DISCUSSION TOPICS</b>
<ol style="list-style-type: none"> <li>1. Please state the purpose of the Group.</li> <li>2. Please also provide a brief explanation of the purpose of the Group and why the purpose is in the public interest.</li> <li>3. Please also provide details of any overlaps with the purpose of existing Cross-Party Groups and an explanation of why, regardless of any such overlap, the Group should be established.</li> <li>4. Please also provide an indication of the topics which the Group anticipates discussing in the forthcoming 12 months.</li> </ol>
<p>The Cross-Party Group on USA seeks to promote relations between Scotland and the USA.</p> <p>The Group seeks to work with organisations and authorities to increase cultural, educational and economic exchange between the two countries, to engage with the Consulate General of USA in Edinburgh and other interested organisations.</p> <p>Topics:</p> <ul style="list-style-type: none"> <li>- Educational exchanges</li> <li>- Inspiring young people in Scotland to engage with the USA</li> <li>- Cultural Exchanges</li> <li>- Exploring joint initiatives in Life Sciences and Technology, increasing economic exchanges.</li> </ul> <p>The Group does not consider there to be any overlap with any other group.</p>
<b>MSP MEMBERS OF THE GROUP</b>
Please provide names and party designation of all MSP members of the Group.
<p>Dean Lockhart MSP Conservative</p> <p>Anas Sarwar MSP Labour</p> <p>Rachael Hamilton MSP Conservative</p> <p>Alexander Burnett MSP Conservative</p> <p>Willie Rennie MSP Liberal Democrat</p> <p>Kezia Dugdale MSP Labour</p> <p>Murdo Fraser MSP Conservative</p>

<b>NON-MSP MEMBERS OF THE GROUP</b>	
For organisational members please provide only the name of the organisation, it is not necessary to provide the name(s) of individuals who may represent the organisation at meetings of the Group.	
Individuals	Lesley-Anne Campbell Julia McIntyre Thomas Heald William Stirling
Organisations	Edinburgh Chambers of Commerce Edinburgh University Stirling University Carnegie Institute
<b>GROUP OFFICE BEARERS</b>	
Please provide names for all office bearers. The minimum requirement is that two of the office bearers are MSPs and one of these is Convener – beyond this it is a matter for the Group to decide upon the office bearers it wishes to have. It is permissible to have more than one individual elected to each office, for example, co-conveners or multiple deputy conveners.	
Convener	Dean Lockhart MSP
Deputy Convener	Anas Sarwar MSP/Alexander Burnett MSP
Secretary	Lesley-Anne Campbell
Treasurer	NA
<b>FINANCIAL BENEFITS OR OTHER BENEFITS</b>	
Please provide details of any financial or material benefit(s) the Group anticipates receiving from a single source in a calendar year which has a value, either singly or cumulatively, of more than £500. This includes donations, gifts, hospitality or visits and material assistance such as secretariat support.	
None	
<b>SUBSCRIPTION CHARGED BY THE GROUP</b>	
Please provide details of the amount to be charged and the purpose for which the subscription is intended to be used.	
None	

<b>CONVENER CONTACT DETAILS</b>	
Name	Dean Lockhart MSP
Parliamentary address	Room M2.12, The Scottish Parliament, Edinburgh, EH99 1SP
Telephone number	0131 348 5993

<b>STATEMENT ON COMPLIANCE WITH THE CODE OF CONDUCT</b>	
I declare that the Cross-Party Group on <SUBJECT> is constituted and will comply with the terms of Section 6 of the Code of Conduct for Members of the Scottish Parliament.	
Signed	Dean Lockhart MSP
Date	24/04/2019

**Standards, Procedures and Public Appointments Committee**

**8th Meeting 2019 (Session 5), Thursday 16 May 2019**

**Annual Report 2018-19**

This report covers the work of the Standards, Procedures and Public Appointments Committee (the Committee) during the Parliamentary year from 12 May 2018 to 11 May 2019.

**Sam Currie  
Support Manager  
Standards, Procedures and Public Appointments Committee  
May 2019**

# Introduction

1. This report covers the work of the Standards, Procedures and Public Appointments Committee (the Committee) during the Parliamentary year from 12 May 2018 to 11 May 2019.

## Membership changes

2. Previous Members of the Committee during the reporting year:
  - Tom Arthur (SNP) (8 June 2016 - 6 September 2018)
  - Patrick Harvie (Green) (8 June 2016 – 4 September 2018)
  - Clare Haughey (SNP) (16 November 2017 - 28 June 2018)
  - Alexander Stewart (Conservative) (8 June 2016 - 17 May 2018)
  - David Torrance (SNP) (19 April 2018 - 6 September 2018)

# Inquiries and Reports

## Commission on Parliamentary Reform

3. The Committee was responsible for implementing some of the recommendations that were made by the Commission on Parliamentary Reform. The Presiding Officer established the Commission to consider how the Scottish Parliament could engage better with the people of Scotland and how its work could be improved to deliver better scrutiny.
4. The Committee considered a number of the recommendations made by the Commission and agreed the following:
  - **Speaking in Debates:** the Committee agreed that implementing the recommendation that the Presiding Officer should, in exceptional cases of high demand, be able to extend statements and decision time by up to 20 minutes to accommodate more speakers could be done without any specific changes to Standing Orders.
  - **First Ministers Questions:** the Committee agreed to endorse the recommendation that the practice of using scripted diary questions by party leaders should cease, with party leaders moving straight to their questions. In addition, the Committee agreed that the Guidance on Parliamentary Questions should be updated to place the opportunities for open questioning at First Ministers Questions on a more formal footing.
  - **Portfolio and general questions:** the Committee agreed that an additional portfolio question time should take place each week, with the three portfolio question times of 20 minutes providing the opportunity for each ministerial portfolio to be covered every three weeks. The Committee also agreed that the number of questions drawn for each portfolio would be reduced from ten to eight.
  - **Urgent questions:** the Committee agreed to progress Standing Order rule changes to give effect to the change from “emergency” to “urgent” questions.
  - **Standing Orders:** the Committee agreed to establish a log of Standing Order rule changes to provide a centralised system for recording non-urgent changes.
5. The rule changes agreed by the Committee will be set out in reports for agreement by the Parliament.

## Sexual harassment and inappropriate conduct

6. The Committee concluded its inquiry into Sexual harassment and inappropriate conduct and reported to Parliament on 5 June 2018.

7. The Committee reviewed current practices and procedures and took evidence on arrangements for preventing, reporting and investigating reports of sexual harassment in the workplace. The Committee made the following key recommendations:
  - A central policy on sexual harassment applying to all campus users;
  - Ongoing monitoring and reporting of work to reduce the incidence and promote the reporting of sexual harassment;
  - Regular reporting about complaint numbers and outcomes;
  - Encouraging positive culture change through mandatory training;
  - Further detailed consideration of whether to establish an independent investigatory body;
  - Further consideration of an ultimate sanction for MSPs akin to dismissal for gross misconduct; and
  - Further consideration of a process for suspension of MSPs.
8. The Committee agreed that it could not, itself, deliver a complete review and replacement of all existing policies and procedures which apply to sexual harassment as responsibility for the majority of these policies rests with the Scottish Parliamentary Corporate Body (the SPCB).
9. The report explored some of the weaknesses and shortcomings identified with current arrangements and proposed some possible solutions which would need to be developed by the relevant parties working together.
10. This report did not, therefore, represent the conclusion of the Parliament's work in this area but marked the beginning of further detailed work to deliver a new set of policies and procedures with the following aims:
  - reducing the incidence of unacceptable behaviour;
  - encouraging reporting where unacceptable behaviour occurs;
  - providing greater clarity about the procedures which apply to such cases including greater clarity for both complainers and accused individuals; and
  - providing some consistency with regard to sanctions where possible.

### **Confidentiality of reports from the Commissioner for Ethical Standards for Public Life in Scotland**

11. The Committee was concerned about breaches of the Code of Conduct in relation to disclosure and confidentiality. There had been several occasions where a Member publicised their intention to make a complaint against another Member in the media and there were leaks throughout the Committee's consideration of a high profile sexual harassment complaint.
12. At its meeting on 27 September 2018, the Committee agreed to issue a report to Parliament drawing its attention to the disclosure and confidentiality requirements surrounding the investigations and reports of the Commissioner for Ethical Standards in Public Life in Scotland.

13. The Committee stated its intention to take action against future breaches of these Code of Conduct provisions and indicated that it would not view ignorance of the Rules as a mitigating factor in deciding what action to take against a Member.
14. The Committee also stated its intention to amend the Code of Conduct to make it absolutely clear that confidentiality is expected until the Committee has reported on the outcome of a complaint.

### **Code of Conduct for MSPs – revisions to Rules on Confidentiality of the Complaints Process**

15. This work was undertaken in response to the appearance in the media of reports about complaints which were being considered by the Committee. The Committee stated that “reporting of and commentary about details of complaints prior to and during the Committee's consideration can unhelpfully overshadow the Committee's work and may discourage victims from coming forward in the future.”
16. At its meeting on 14 March 2019 the Committee approved changes to the Code of Conduct to strengthen these rules. The changes to the Code were approved by Parliament on 2 April 2019 and came into force on 24 April 2019.

### **Commissioner Complaints**

17. The Committee has considered five reports from the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) in this parliamentary year.
18. The first report was a complaint against Liz Smith MSP. The complaint was from complainers whose identity has not been disclosed at their own request and centred on Liz Smith's disclosure of information which was sent to her on a confidential basis by the complainer. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Liz Smith had not breached the Code of Conduct for MSPs.
19. The Committee was unanimous in the decisions it reached on the complaint. It agreed with the conclusion of the Commissioner that there had not been a breach of the Code of Conduct.
20. The Committee did differ from the Commissioner on one significant finding however. The Commissioner took the view that Liz Smith was not dealing with the correspondence provided by the complainers in her role as an MSP. The Committee took a different view on this point, since Liz Smith was approached in her capacity as a Committee member. However, the Committee accepted that this did not have a bearing on the Commissioner's final conclusion in relation to the Code of Conduct.
21. The second complaint the Committee considered was a complaint from James Dornan MSP about Mark McDonald MSP. The complaint alleged that a

female member of staff employed by the complainer was a “targeted victim of harassment and sexual innuendo at the hands of” the respondent. In examining information relating to the complaint, the Commissioner was made aware of Mark McDonald's conduct towards another staff member and decided that this was relevant to the complaint under consideration.

22. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Mark McDonald was in breach of section 7.2.3 of the Code of Conduct for MSPs (6th Edition, 29 April 2016).
23. The Committee was unanimous in the decisions reached on the complaint. Firstly, it agreed with both the findings in fact and the conclusion of the Commissioner that Mark McDonald failed to treat one witness with respect, and that his conduct towards her involved sexual harassment, and that he also failed to treat a second witness with respect in relation to a financial matter. The Committee agreed with the Commissioner's finding that both behaviours were in breach of the Code of Conduct for MSPs. The Committee also considered that the breaches justified the imposition of sanctions on Mark McDonald.
24. The Committee recommended that the Parliament should agree to-
  - exclude Mark McDonald from proceedings of the Parliament for a period of one month which would not overlap with any period of recess;
  - withdraw his salary for a period of one month to coincide with his exclusion from proceedings of the Parliament;
  - withdraw his right of access as a member to the Holyrood Parliamentary complex for the period of one month to coincide with his exclusion from the proceedings of the Parliament; and
  - withdraw his rights to any representational, ceremonial and related privileges until dissolution.

These sanctions were agreed by Parliament.

25. The Committee also considered a complaint from Gail Ross MSP about Annie Wells MSP. The complaint was that Annie Wells sought political advantage by making advance public comment on the Equalities and Human Rights Committee's report on “Prisoner Voting in Scotland”. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Annie Wells had breached paragraphs 12, 15 and 16 of Section 7 of the Code of Conduct for MSPs.
26. The Committee was unanimous in the decisions reached on the complaint. Firstly, it agreed with the findings in fact and conclusion of the Commissioner that Annie Wells breached paragraphs 12, 15 and 16 of Section 7 of the Code of Conduct for MSPs. Secondly, the Committee considered that the breaches justified the imposition of sanctions on Annie Wells. The Committee recommended that Annie Wells be excluded from all meetings of the Parliament and its committees for five sitting days. This sanction was agreed to by Parliament.

27. The fourth complaint the Committee considered was a complaint from Mr Ricky Taylor about Peter Chapman MSP. The complaint was that Peter Chapman may have breached the Code of Conduct for MSPs by failing to disclose his shareholding in Aberdeen Northern Marts Group (ANM Group) when making representations on behalf of the company to members of the Garioch Area Committee of Aberdeenshire Council. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Peter Chapman had not breached the Code of Conduct for MSPs.
28. The Committee was unanimous in the decision reached on the complaint. It agreed with the findings in fact and conclusion of the Commissioner that there was no evidence to suggest that Peter Chapman's actions amounted to paid advocacy, as prohibited by Section 4 of the Code of Conduct for MSPs and by the Interests of Members of the Scottish Parliament Act.
29. The final complaint the Committee considered in this Parliamentary year was a complaint from Kenny McCartney about Rachael Hamilton MSP. The complaint was that Rachael Hamilton failed to make an oral declaration of a registered interest when asking a Parliamentary Question. The Commissioner for Ethical Standards in Public Life in Scotland investigated the complaint and found that Rachael Hamilton had not breached the Code of Conduct for MSPs.
30. The Committee was unanimous in the decisions reached on the complaint. It agreed with the findings in fact and conclusion of the Commissioner that Ms Hamilton did not breach the statutory requirements or the terms of the Code of Conduct for MSPs to make an oral declaration of her interests.

# Equalities

## Sexual harassment and sexist behaviour

31. In light of reports about sexual harassment in institutions such as the House of Commons, the Scottish Parliament launched a survey about sexual harassment and sexist behaviour. A Joint Working Group on sexual harassment (JWG) was then established to consider and agree any actions that need to be taken on a joint or individual basis between the Parliament and political parties in light of the survey. When the SPPA Committee conducted its inquiry into Sexual Harassment and Inappropriate Conduct, it recognised that it would need to consider changes to the Code of Conduct in order to respond to the JWG's recommendations.
32. The Committee is considering the following themes based upon the recommendations emerging from the JWG's report:
  - The Role of the SPPA Committee;
  - Anonymity and confidentiality;
  - Excluded complaints and Treatment of Members' own staff;
  - MSPs' responsibility for the conduct of their own staff;
  - Right to make representations;
  - The procedure for considering older complaints.
33. The Committee will seek to revise the current conduct regime in a number of ways including:
  - Changes to the Code of Conduct which are formulated and recommended by the Committee for agreement by the Parliament as a whole;
  - Changes to the Guidance on the Code which can be made by the Committee;
  - Revisions to the Directions to the Commissioner which can be made by the Committee; and
  - Changes to the Commissioner's Act which would involve a Committee Bill.

## Cross-Party Groups

34. A total of 106 Cross-Party Groups are now active and eight Groups have been accorded recognition by the Committee in this parliamentary year.
35. In December 2018 the Committee considered an annual monitoring report on Groups' compliance with the Code of Conduct. The Committee was pleased with the high level of compliance with the Code of Conduct but requested that Groups ensure they provide an explanation for any instances on non-compliance.

## Meetings

36. The Committee met 20 times during the parliamentary year. Six meetings were held entirely in private, one meeting was held entirely in public and 13 meetings included items in private.
37. The items considered in private included the Committee's work programme, consideration of complaints, draft Committee reports and draft Standing Order rule changes.

**Standards, Procedures and Public Appointments Committee**

**8th Meeting 2019 (Session 5), Thursday 16 May 2019**

**Correspondence – Law Officers Answering Questions in the Chamber**

**Introduction**

1. At its meeting on 28 February, the Committee discussed two pieces of correspondence, from Mike Rumbles MSP and Adam Tomkins MSP, about the Law Officers answering questions in the Chamber.
2. Mike Rumbles and Adam Tomkins both believed the rules governing when and how the Law Officers answer oral questions in the Chamber needed to be changed.

**Background**

3. This issue was raised after Mike Rumbles asked the following question in the Chamber on 23 January 2019 at Portfolio Question Time—

To ask the Scottish Government what the Lord Advocate's position is on its competency to authorise another referendum on Scottish independence without another section 30 order. (S5O-02801)

4. This question was answered by the Minister for Parliamentary Business and Veterans, Graeme Dey MSP, despite the Lord Advocate being present in the Chamber.
5. Standing Orders Rule 13.7.1 states that—

...An oral question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Government. Other oral questions may be answered by any member of the Scottish Government or a junior Scottish Minister...

6. Mr Rumbles and Professor Tomkins felt that the rules in Standing Orders should be changed so there was an opportunity for Members to question the Law Officers directly.
7. Mike Rumbles' view is that Rule 13.7.1 is designed to ensure that if a particular Minister or Law Officer is not available then another Minister can respond for the Scottish Government. However, he further stated that in "normal circumstances this would not be a problem as I would have fully understood that the Lord Advocate might not have been available", but he "was present in the chamber and was indeed available to answer my question". Mr Rumbles made the case that while this conforms with the Standing Orders, it was not "in the spirit of our standing orders".

8. In addition, both Mr Rumbles and Professor Tomkins considered that the Lord Advocate's involvement in the UK Withdrawal from the European Union (Legal Continuity)(Scotland) Bill provided a precedent in providing Members with the opportunity to question the law officers on matters other than the "operation of the systems of criminal prosecution and investigation of deaths" as set out in Standing Orders.

### **Correspondence**

9. Following initial discussion of the correspondence from the two Members, the Committee agreed to write to the Scottish Government to ask for its views on the points raised, as well as the proposal that Standing Orders should be amended. The Committee also agreed to seek information from the Scottish Government on how it is decided which oral questions are answered by the Law Officers and which by other Ministers.

10. The Convener's letter to the Scottish Government is attached at Annexe A. The letter also includes the original correspondence from Mr Rumbles and Professor Tomkins.

11. The response from Graeme Dey, Minister for Parliamentary Business and Veterans, can be found at Annexe B. In summary, the Scottish Government's position is that it—

“...considers that relevant Standing Orders are fit for purpose. They reflect accurately the constitutional responsibilities of the Scottish Law Officers and the accountability of Scottish Ministers to Parliament for the decisions that are taken in relation to their portfolios.”

### **Recommendation**

12. The Committee is invited to consider the exchange of correspondence between the Convener and the Minister and consider whether any further action is required.

**Alastair Macfie**  
**Senior Assistant Clerk**  
**Standards, Procedures and Public Appointments Committee**  
**May 2019**

**ANNEXE A: LETTER TO THE SCOTTISH GOVERNMENT**

Dear Minister

**Law Officers – Answering Questions in the Chamber**

The Standards, Procedures and Public Appointments Committee recently received two pieces of correspondence, from Mike Rumbles MSP and Adam Tomkins MSP, about the rules governing Law Officers answering oral questions in the Chamber. This correspondence can be found annexed to this letter [*SEE EMAILS IN BOX BELOW*].

The Committee has now had an opportunity to consider this correspondence at its meeting on 28 February 2019.

The Committee agreed to write to the Scottish Government to ask for its views on the points raised in the two items of correspondence, and the proposal that Standing Orders should be amended. The Committee also agreed to seek information from the Scottish Government on how it is decided which oral questions are answered by the Law Officers and which by other Ministers.

I would be grateful for the views of the Scottish Government on these matters, which will inform the Committee's decision as to how to respond to this correspondence.

I look forward to receiving your response in due course.

Bill Kidd MSP  
 Convener  
 Standards, Procedures and Public Appointments Committee

*Email from Mike Rumbles MSP*

Dear Bill

You may be aware of the point of order I raised in the chamber yesterday and the advice I received from the Presiding Officer to write to you as Convener of the SPPA Committee. I am doing so because I am concerned that our standing orders are not fit for purpose in dealing with questions in the chamber to the Lord Advocate and Solicitor General and I am making a request of the Committee to examine standing orders to ensure they are fit for purpose.

As you know I was first elected to the Parliament back in 1999 and for nearly 20 years the Lord Advocate and Solicitor General have appeared on numerous occasions to answer questions in the chamber from MSPs. They have until last year restricted their appearances to dealing with legal matters as part of the prosecution service. Indeed I am sure that is exactly what the Scotland Act and our own standing orders envisaged. However this practice changed last year when the Scottish Government put forward The Lord Advocate to answer questions in the chamber on the Scottish Governments European Continuity Bill.

So, the convention established over the last 20 years of restricting the Lord Advocates role in the chamber to responding to questions in his role as head of the prosecution service changed.

Last week I lodged a question to the Scottish Government asking what the Lord Advocates view is of a particular issue. The Minister for Parliamentary Business answered my question in the chamber yesterday while the Lord Advocate was present. I had of course expected that the Lord Advocate would respond to my question.

Standing Orders make clear that any Scottish Minister can answer any oral question in the chamber. This is well understood but the purpose of our standing orders here is to ensure that if the particular Minister or Law Officer is not available then another Minister can respond for the Scottish government.

In normal circumstances this would not be a problem as I would have fully understood that the Lord Advocate might not have been available. However, the Lord Advocate was present in the chamber and was indeed available to answer my question. I said in the chamber that while this procedure did indeed conform to our standing orders the Scottish governments response was not in the spirit of our standing orders.

It is my view that our standing orders are not fit for purpose in this instance and request that the SPPA Committee which you convene examine this issue in order to ensure that MSPs can indeed have a direct response from our Law Officers when oral questions are lodged in the usual way.

I look forward to hearing from you.

Yours sincerely  
Mike

*Email from Adam Tomkins MSP*

Dear Bill

I understand that Mike Rumbles has written to you in your capacity as Convener of the SPPA Committee following his points of order in the chamber yesterday (Wednesday 23 January). As you may be aware, the need for points of order arose after the Minister for Parliamentary Business and Veterans, Graeme Dey, responded to a question from Mr Rumbles during portfolio question time originally intended for the Lord Advocate, who was present in the chamber at the time and therefore in a position to provide a reply. I both witnessed this exchange and asked the minister a supplementary question on the same issue.

Having examined the Scottish Parliament's Standing Orders, I echo Mr Rumbles' view that further clarity is required over the participation of the Scottish law officers in parliamentary proceedings, but especially oral questions.

Mr Rumbles' question adhered to the Standing Orders, which explicitly state that

the Scottish law officers can participate in any of the proceedings of the Parliament (rule 4.5), and that oral questions can be any member of the Scottish Government (rule 13.7, paragraph 1). This suggests that there is no procedural impediment to the Lord Advocate responding to oral questions from members. Mr Rumbles' question also did not seek to solicit the content of legal advice the Lord Advocate had provided to the Scottish Government. The loophole, then, seems to be that the Scottish Government can apply paragraph 1 of rule 13.7 to prevent members from questioning the law officers directly.

Especially given the Lord Advocate's involvement in the UK Withdrawal from European Union (Legal Continuity) (Scotland) Bill last year, it seems that there is scope to consider whether the Standing Orders are fit for purpose in ensuring that Members can question the law officers directly. I therefore seek the SPPA Committee's view on this matter, and look forward to receiving your response in due course.

Yours sincerely

Adam Tomkins MSP  
MSP for Glasgow

## **ANNEXE B: RESPONSE FROM THE MINISTER FOR PARLIAMENTARY BUSINESS AND VETERANS**

Dear Bill

### **Law Officers – Answering Questions in the Chamber**

Thank you for your letter of 5 March regarding the above.

Your letter advised that the Committee had recently considered correspondence it received from Mike Rumbles MSP and Adam Tomkins MSP on the rules governing Law Officers answering oral questions in the Chamber. I was grateful for sight of that correspondence and welcome the Committee's invitation for the Government to comment on the issues raised.

The Government would firstly wish to address the proposition that the Law Officers have a duty to answer in the Chamber any question which purports to be addressed to them, or that either Standing Orders as currently cast or indeed the statutory framework provided for by the Scotland Act 1998, imply that position. The Government considers that the existing frameworks for answering questions by a specific Minister reflect the fact that, while specific functions may be conferred specifically on the First Minister or on the Lord Advocate/Law Officers, functions of the Scottish Ministers are exercised by the Scottish Ministers collectively. In cases involving functions of the Scottish Ministers collectively it is for the Government to consider which of its Ministers is best placed to answer to the Parliament on any given issue.

As Mr Rumbles highlights in his letter, the primary reason for the Law Officers being able to participate in the proceedings of Parliament is because of the Lord Advocate's responsibilities as head of the systems of criminal prosecution and investigation of deaths (and the role of the Solicitor General for Scotland in that regard under the terms of the Law Officers Act 1944). As section 48(5) of the Scotland Act makes clear, these functions continue to be exercised by the Lord Advocate independently of any other person. That constitutional position is reflected in Standing Order Rule 13.7.1:

*".....An oral question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland shall normally be answered by the Lord Advocate or the Solicitor General for Scotland but may exceptionally be answered by another member of the Scottish Government. Other oral questions may be answered by any member of the Scottish Government or a junior Scottish Minister."*

And also in Standing Order Rule 13.5 (Written Questions):

*"...A written question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland may be answered only by the Lord Advocate or the Solicitor General for Scotland."*

The provisions relating to the answering of questions concerning the operation of the systems of criminal prosecution and investigation of deaths enable the Lord Advocate to be account to Parliament for the exercise of those functions. The flexibility offered in Rule 13.7.1. allows for instances when a Law Officer may not be available to attend proceedings in the Chamber. The Government would also wish to point out the provisions of section 27(3) of the Scotland Act which empowers the Law Officers not to answer questions which might prejudice criminal proceedings or otherwise be contrary to the public interest.

In relation to other matters, there is no procedural impediment to the Lord Advocate or the Solicitor General for Scotland, as Ministers in the Scottish Government, responding to oral or written questions. However, it is generally unlikely to be appropriate for a Law Officer to respond on such matters. It is the relevant portfolio Minister who will normally answer to Parliament for decisions falling within that Minister's portfolio responsibilities - decisions which will have been informed by appropriate analysis of the relevant legal considerations.

The Law Officers give legal advice to the Scottish Government, not the Scottish Parliament. Legal advice is confidential for good reasons: it enables a client to consult a legal adviser fully and frankly. There is also a long-established convention, reflected in the Ministerial Code and FOI law, that the Scottish Government does not, other than in exceptional circumstances, disclose the fact that legal advice has or has not been given to the Government by or sought from the Law Officers or the content of any such advice. These principles have been repeatedly acknowledged by courts and tribunals; and it has been recognised that they support the Government's collective commitment, set out in the Ministerial Code, to acting lawfully. Questions

about the Lord Advocate's view on any particular matter or legal question would tend to undermine both those principles.

Mr Tomkins refers to the Lord Advocate's involvement in the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill last year. It is a matter of public record, in terms of paragraph 3.4 of the Ministerial Code, that when the Government presents a Bill to Parliament, the Minister's statement of legislative competence will have been cleared by the Law Officers. In that specific context, and in the exceptional circumstance that the Presiding Officer had issued a certificate to the effect that the Bill was not within competence, the Scottish Ministers considered that the Lord Advocate should make a statement to the Parliament setting out the basis upon which Ministers had nevertheless concluded that the Bill was within competence, and the Lord Advocate, for his part, agreed that this was appropriate in those exceptional circumstances.

In conclusion, the Government considers that relevant Standing Orders are fit for purpose. They reflect accurately the constitutional responsibilities of the Scottish Law Officers and the accountability of Scottish Ministers to Parliament for the decisions that are taken in relation to their portfolios.

**GRAEME DEY**

**Minister for Parliamentary Business and Veterans**