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Standards, Procedures and Public Appointments Committee

Mandatory Committee remits - Standing Order rule changes



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Standards, Procedures and Public Appointments Committee

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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.



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Committee Membership



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Scottish Green Party



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Clare Haughey
Scottish National Party



Daniel Johnson
Scottish Labour



John Scott
Scottish Conservative
and Unionist Party



Alexander Stewart
Scottish Conservative
and Unionist Party

Introduction

1. This report proposes Standing Order rule changes relating to the remits of certain mandatory committees in response to a decision by the Parliamentary Bureau and the enactment of legislation.

Mandatory committee remits

2. On 13 June 2016 the Presiding Officer wrote, on behalf of the Parliamentary Bureau, to the Standards, Procedures and Public Appointments Committee (“the SPPA Committee”) about the establishment of committees. A copy of the letter is included as Annexe C.
3. The Parliamentary Bureau expressed a desire to establish a committee structure with “committee remits reflecting Cabinet Secretary portfolios”. It stated that it was “committed to the subject matter covered by the current remits of the mandatory committees, as set out in Standing Orders”, but wished the remits of a number of them to be expanded.
4. The Parliamentary Bureau proposed that the remit of the Finance Committee should be expanded to include constitutional matters; the remit of the European and External Affairs Committee should be expanded to include culture and tourism; the Public Audit Committee remit should be expanded to include post-legislative scrutiny; and the Equal Opportunities Committee remit should be expanded to include human rights. The remits of other mandatory committees would remain unchanged.
5. The SPPA Committee was asked to consider these proposals as a “matter of urgency”. More information can be found in the letter.

Equal Opportunities Committee

6. The SPPA Committee also received a letter from the Convener of the Equal Opportunities Committee, dated 16 June 2016, seeking a change to its title to become the Equalities and Human Rights Committee. A subsequent letter, dated 13 September 2016, sought a definition of “human rights” which captured all of the matters in relation to which that Committee may have an interest. Both letters are reproduced in Annexe D.

Post-legislative scrutiny

7. In response to the proposal from the Parliamentary Bureau to expand the remit of the Public Audit Committee remit to include post-legislative scrutiny, the Convener of the Justice Committee wrote to the SPPA Committee on 7 September 2016 to express the view that subject committees should retain the right of initiative in

respect of post-legislative scrutiny, and that there should be a way of ensuring that clashes or duplication of work are avoided. The letter is reproduced in Annexe D.

Lobbying

8. A change to the remit of the Standards, Procedures and Public Appointments Committee is required so that it can play a role in the implementation of the Lobbying (Scotland) Act 2016 and to ensure that the Parliament's statutory responsibilities under the Act are met.
9. It is envisaged that the Standards, Procedures and Public Appointments Committee will play a key role in scrutinising and approving guidance and the code of conduct for lobbyists, determining details of the regime through subordinate legislation and issuing directions to the Commissioner for Ethical Standards in Public Life. There is presently no reference to lobbying within the Committee's remit.

Approach to Standing Order rule changes

Mandatory Committee remits

10. The Committee proposes that Chapter 6 of Standing Orders be revised in order to give effect to the proposals from the Parliamentary Bureau in respect of committee remits. A number of consequential changes are also required. Details of the rule changes are set out in Annexe A.
11. A new Rule (6.1.5A) is proposed which would create a power for the Parliament, on a motion of the Parliamentary Bureau, to add additional matters to the remit of a mandatory committee, for example adding "Constitution" to the remit of the Finance Committee. Provision is also made allowing those additional matters to be varied or removed. This is broadly equivalent to the procedure which presently exists for establishing or varying the remits of the various subject committees. It is an approach that will allow for flexibility while protecting the existing mandatory aspects of mandatory committee remits.

Parliamentary Bureau

12. Following the Parliament's consideration and decision on the proposed Standing Order rule changes, the Parliamentary Bureau will need to propose a motion to the Parliament to give effect to the changes to mandatory committee remits.
13. Annexe B to this report sets out in draft the text of a motion which the Committee invites the Parliamentary Bureau to consider.

Equal Opportunities Committee

14. The Committee proposes that the Parliament agrees to the request from the Equal Opportunities Committee to change its title to become the Equalities and Human Rights Committee.

Post-legislative scrutiny

15. The Committee's proposed Standing Order rule changes set out in Annexe A will allow the Parliament to expand the remit of the Public Audit Committee to include post-legislative scrutiny.
16. We have considered the representations from the Convener of the Justice Committee about the relationship between the Public Audit Committee and subject committees regarding post-legislative scrutiny. In our view this can be managed most effectively by the Public Audit Committee liaising with relevant subject committees about its planned work on post-legislative scrutiny in order to ensure complementarity. We do not propose a specific Standing Order rule to govern this process. The rule changes we have proposed place no restriction on the right of subject committees to conduct post-legislative scrutiny at their own initiative.
17. In order to enhance the transparency of this process and provide a record of post-legislative scrutiny work, we consider that it would be helpful for subject committees to capture in their annual reports details of any post-legislative scrutiny carried out during the preceding parliamentary year.

Lobbying

18. In Rule 6.4, which sets out the matters to be included in the remit of the Standards, Procedures and Public Appointments Committee, it is proposed to add an additional sub-paragraph—

“(e) matters relating to the regulation of lobbying”.

Conclusion

19. The Committee recommends to the Parliament the Standing Order rule changes in Annexe A.

Annexe A – Standing Order rule changes

Draft Standing Order rule changes

CHAPTER 6 COMMITTEES

Rule 6.1

For Rule 6.1.5 substitute—

“In addition, the Parliament shall, on a motion of the Parliamentary Bureau, establish the mandatory committees mentioned in Rules 6.4 to 6.11.”.

[This change replaces existing Rule 6.1.5 and requires the Parliament to establish the mandatory committees referred to in Rules 6.4 to 6.11. It adjusts the previous version of Rule 6.1.5 to take account of the fact that the names of the mandatory committees are no longer set out in the Standing Orders expressly. This gives the Parliament some flexibility to adjust the name of a mandatory committee, without necessitating a formal Standing Order rule change.]

After Rule 6.1.5 insert—

“5A. The Parliament may, on a motion of the Parliamentary Bureau, add any matter (referred to as an “additional matter”) to the remit of a mandatory committee, provided that it is not specified in Rules 6.4 to 6.11 as being the remit or part of the remit of a mandatory committee. An additional matter may be varied or removed by the Parliament on a motion of the Parliamentary Bureau.”.

[New Rule 6.1.5A enables the Parliament to add any “additional matter” to the remit of a mandatory committee, on a motion of the Parliamentary Bureau. This new Rule preserves those matters that are specified in the Standing Orders as being the remit or part of the remit of the Parliament’s individual mandatory committees. A power to vary or remove an “additional matter” is also incorporated.]

In Rule 6.1.6—

(a) for “Standards, Procedures and Public Appointments and Finance Committees” substitute “mandatory committees mentioned in Rules 6.4 and 6.6”;

(b) omit “mentioned in paragraph 5”.

[This is a consequential amendment, inserting a cross-reference to the committees established in accordance with Rules 6.4 (Standards, Procedures and Public Appointments) and 6.6 (Finance).]

Rule 6.3

In Rule 6.3.5(ba), for “Public Audit Committee” substitute “the committee mentioned in Rule 6.7”.

[This is a consequential amendment, inserting a cross-reference to the committee established in accordance with Rule 6.7 (Public Audit).]

Rule 6.4

In Rule 6.4.1—

- (a) for “The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—” substitute “There shall be a committee, the remit of which is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—”;
- (b) at the end of sub-paragraph (c) omit “and”;
- (c) at the end of sub-paragraph (d) insert “; and
- (e) matters relating to the regulation of lobbying”.

[This change adds matters relating to the regulation of lobbying to the remit of the committee established in accordance with Rule 6.4 (Standards, Procedures and Public Appointments). It also adjusts Rule 6.4.1 to take account of the fact that the names of the mandatory committees are not being set out in Standing Orders.]

Rule 6.6

In Rule 6.6.1, for “The remit of the Finance Committee is to consider and report on—” substitute “There shall be a committee, the remit of which is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—”.

Rule 6.7

In Rule 6.7.1, for “The remit of the Public Audit Committee is to consider and report on—” substitute “There shall be a committee, the remit of which is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—”.

Rule 6.8

In Rule 6.8.1, for “The remit of the European and External Relations Committee is to consider and report on—” substitute “There shall be a committee, the remit of which is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—”.

Rule 6.9

In Rule 6.9.1—

- (a) for “The remit of the Equal Opportunities Committee” substitute “There shall be a committee, the remit of which”;
- (b) after “Parliament” insert “(and any additional matter added under Rule 6.1.5A)”.

Rule 6.10

In Rule 6.10.1—

- (a) for “The remit of the Public Petitions Committee” substitute “There shall be a committee, the remit of which”;
- (b) after “Rules” insert “(and any additional matter added under Rule 6.1.5A)”.

Rule 6.11

In Rule 6.11.1, for “The remit of the Delegated Powers and Law Reform Committee is to consider and report on—” substitute “There shall be a committee, the remit of which is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—”.

[This consequential amendment inserts a cross-reference to the rules in accordance with which the mandatory committees are established. It also restates the existing requirement that the duration of a mandatory committee (once established) is for a whole Parliamentary session.]

Rule 6.12

For Rule 6.12.1 substitute—

“Once established, in accordance with Rule 6.1.5 and Rules 6.4 to 6.11, the mandatory committees shall subsist for the whole session of the Parliament.”.

[This is a consequential amendment, inserting a cross-reference to the rules in accordance with which the mandatory committees are established.]

Adjustment of titles in Chapter 6

The title of—

- (a) Rule 6.4 becomes “**Standards, Procedures and Public Appointments**”;
- (b) Rule 6.6 becomes “**Finance**”;
- (c) Rule 6.7 becomes “**Public Audit**”;
- (d) Rule 6.8 becomes “**Europe and External Relations**”;
- (e) Rule 6.9 becomes “**Equalities**”;
- (f) Rule 6.10 becomes “**Public Petitions**”;

(g) Rule 6.11 becomes “**Delegated Powers and Law Reform**”.

CONSEQUENTIAL CHANGES

REFERENCES TO MANDATORY COMMITTEES

CHAPTER 1 (MEMBERS)

In Rules 1.6.1, 1.7.1, 1.7A.1, 1.7B.1, 1.8.2 and 1.8.3, for “Standards, Procedures and Public Appointments Committee” substitute “committee mentioned in Rule 6.4”.

CHAPTER 3A (PARLIAMENTARY CORPORATION SUPPORTED BODIES)

In Rule 3A.2.1, for “Standards, Procedures and Public Appointments Committee” substitute “committee mentioned in Rule 6.4”.

In Rule 3A.2.2, for both occurrences of “Standards, Procedures and Public Appointments Committee” substitute “committee mentioned in Rule 6.4”.

In Rules 3A.3.1, 3A.3.2, 3A.3.3 and 3A.3.4, for “Standards, Procedures and Public Appointments Committee” substitute “committee mentioned in Rule 6.4”.

CHAPTER 5 (THE PARLIAMENTARY BUREAU AND MANAGEMENT OF BUSINESS)

In Rule 5.8.2, for “Finance Committee” substitute “committee mentioned in Rule 6.6”.

CHAPTER 8 (MOTIONS AND POINTS OF ORDER)

In Rule 8.11A.6, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 8.11A.7, for both occurrences of “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 8.11A.8, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 8.11B.2—

(a) for “Delegated Powers and Law Reform Committee” in the first place where it occurs substitute “committee mentioned in Rule 6.11”;

(b) for the second sentence substitute “The committee making the proposal shall report it to the committee mentioned in Rule 6.11.”.

In Rules 8.11B.3 and 8.11B.4, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 8.11B.5—

(a) for “Delegated Powers and Law Reform Committee” in the first place where it occurs substitute “committee mentioned in Rule 6.11”;

(b) for “the Delegated Powers and Law Reform Committee” in the second place where it occurs substitute “that committee”.

CHAPTER 9 (PUBLIC BILL PROCEDURES)

In Rule 9.6.2, for both occurrences of “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 9.6.3, for “Finance Committee” substitute “committee mentioned in Rule 6.6”.

In Rule 9.7.9, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 9.7.10, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

For Rule 9.15.8 substitute—

“At Stage 1 of a Committee Bill the Bill shall be referred to the committee mentioned in Rule 6.6 (unless it has been introduced to give effect to a proposal made by that committee), which shall consider and report to the Parliament on the Bill’s Financial Memorandum.”.

Immediately after Rule 9.15.8 insert—

“8A. Rule 9.6.2 shall not apply to any Committee Bill introduced to give effect to a proposal made by the committee mentioned in Rule 6.11. But if any other such Bill is considered by that committee under Rule 9.6.2, that committee shall report to the Parliament.

8B. A report on the Bill’s general principles by a committee shall not be required.”.

In Rule 9.16.3—

(a) for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”;

(b) for “Finance Committee” substitute “committee mentioned in Rule 6.6”.

In Rule 9.17A.3, for both occurrences of “Delegated Powers and Law Reform Committee”, substitute “committee mentioned in Rule 6.11”.

In Rules 9.17A.4 and 9.18.3, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 9.18.5, for both occurrences of “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rules 9.18.6, 9.21.5 and 9.21.6, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

CHAPTER 9B (CONSENT IN RELATION TO UK PARLIAMENT BILLS)

In Rule 9B.3.6, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

CHAPTER 9BA (CONSENT IN RELATION TO ORDERS UNDER THE PUBLIC BODIES ACT 2011)

In Rule 9BA.3.6, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 9BA.3.7, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

CHAPTER 9C (HYBRID BILL PROCEDURES)

In Rule 9C.10.9, for both occurrences of “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 9C.10.10, for “Finance Committee” substitute “committee mentioned in Rule 6.6”.

In Rule 9C.11.17, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 9C.11.18, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

CHAPTER 10 (SUBORDINATE LEGISLATION PROCEDURE)

In Rules 10.1.3, 10.3.1 and 10.3.2, for “Delegated Powers and Law Reform Committee” substitute “committee mentioned in Rule 6.11”.

In Rule 10.3.3, for both occurrences of “Delegated Powers and Law Reform Committee”, substitute “committee mentioned in Rule 6.11”.

The title of Rule 10.3 becomes “**Subordinate legislation scrutiny**”.

CHAPTER 12 (COMMITTEE PROCEDURES)

In Rule 12.2A.2A, for “Standards, Procedures and Public Appointments Committee” substitute “committee mentioned in Rule 6.4”.

In Rule 12.6.2, for “Equal Opportunities Committee” substitute “committee mentioned in Rule 6.9”.

CHAPTER 15 (OPENNESS AND ACCESSIBILITY)

In Rule 15.4.3—

(a) for “Public Petitions Committee” substitute “committee mentioned in Rule 6.10”;

(b) for “(the Committee)” substitute “(the committee)”.

CHAPTER 17 (MISCELLANEOUS)

In Rule 17.1.1, for “Standards, Procedures and Public Appointments Committee” substitute “committee mentioned in Rule 6.4”.

Annexe B – Draft Parliamentary Bureau motion

Motion S5M-0XXXX:

Name and remit of committees

That the Parliament agrees, under Rule 6.1, that the names and remits of the following mandatory committees be amended—

Name of Committee: Finance Committee

New name: Finance and Constitution Committee

Remit: To the remit set out in Rule 6.6 shall be added—

Constitutional matters falling within the responsibility of the Cabinet Secretary for Finance and Constitution

Name of Committee: Public Audit Committee

New name: Public Audit and Post-legislative Scrutiny Committee

Remit: To the remit set out in Rule 6.7 shall be added—

Post-legislative scrutiny

Name of Committee: European and External Relations Committee

New name: Culture, Tourism, Europe and External Relations Committee

Remit: To the remit set out in Rule 6.8 shall be added—

Culture and tourism matters falling within the responsibility of the Cabinet Secretary for Culture, Tourism and External Relations

Name of Committee: Equal Opportunities Committee

New name: Equalities and Human Rights Committee

Remit: To the remit set out in Rule 6.9 shall be added—

Human rights, including Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

Annexe C – Letter from Presiding Officer

Convener
Standards, Procedures and Public Appointments Committee
C/o
Douglas Wands
Clerk Team Leader
Committee Office
TG.01

13 June 2016

Dear Convener

As I indicated in my letter to all Members on the establishment of committees, I am writing to your committee on behalf of the Parliamentary Bureau setting out some changes we believe are required to Standing Orders.

The Bureau's aim was to have a cohesive committee structure and we believe that having committee remits reflecting Cabinet Secretary portfolios is an effective way of achieving that aim. While we remain committed to the subject matter covered by the current remits of the mandatory committees, as set out in Standing Orders, we would like the remits of a number of them to be expanded in this session to better reflect portfolios and ensure that a number of other important areas are covered.

We would like the remit of the Finance Committee expanded so that it becomes the Finance and Constitution Committee. We also think that the remit of European and External Affairs Committee should be expanded to include culture and tourism.

The Bureau was keenly aware of the desire to ensure the Parliament's committees carry out post-legislative scrutiny. We believe having a committee with post-legislative scrutiny as an explicit part of its remit would raise the status and profile of such scrutiny. This would not preclude subject committees from undertaking their own inquiries if they wished and indeed, we would want to see such a committee working in partnership with subject committees. We believe the most appropriate committee to take on this role would be the Public Audit Committee, given the nature of its work.

Finally, we believe that the issue of human rights should be explicitly incorporated into an existing committee remit. We know that subject committees do scrutinise human rights issues within their work but we believe it is important, in much the same way as we do with post-legislative scrutiny, that this issue should be given greater status. We believe that the most appropriate committee to take on this issue is the Equal Opportunities Committee.

As I have stated, the Bureau appreciates why mandatory committee have remained relatively constant. However, with new powers and with the Bureau's desire for a cohesive committee structure, we believe it is necessary to look again at the remits of mandatory committees.

Standards, Procedures and Public Appointments Committee

Mandatory committee remits - Standing Order rule changes, 3rd Report, 2016 (Session 5)

We believe that the changes outlined would allow this to happen and I would be grateful if your committee was in a position to consider these proposals as a matter of urgency, so helping all of us in the Parliament to agree our new committee structure as soon as possible.

Yours sincerely

KEN MACINTOSH

Annexe D – Letters from Committees

Equal Opportunities Committee

Christina McKelvie MSP

Convener

Clare Adamson MSP
Convener
Standards, Procedures and
Public Appointments Committee

TG.01
The Scottish Parliament
Edinburgh
EH99 1SP

Tel: 0131-348-5216
<mailto:equal.opportunities@parliament.scot>

16 June 2016

Dear Clare,

Proposal to extend the remit of mandatory committees – name change

I am writing with regard to the Presiding Officer's letter of 31 May to all MSPs concerning the establishment of committees for this Parliamentary session and the extension of a number of the mandatory committees' remits.

At our Committee meeting today we discussed the relevance and appropriateness of the term 'equal opportunities'. It is understood the term 'equal opportunities' originates from a policy to encourage more women into the workplace in the 1970s.

As such the Committee wishes to invite your Committee to give consideration to the name by which the Equal Opportunities Committee will be known when it looks at the proposal to extend the remit of the Committee to include human rights.

Nowadays, many of the Scottish, UK and international organisations consider equal opportunities under the heading of 'equalities'. Also, the most recent UK equalities' legislation, the Equality Act 2010¹, is described as providing a legal framework to protect the rights of individuals and advance 'equality of opportunity for all'.

It is the Committee's view the words 'equal opportunity' should be replaced by the term 'equalities', as we believe this term better reflects modern day debate on the issues. As such, our preferred name for the Committee is 'the Equalities and Human Rights Committee'.

¹ [The Equality Act 2010](#)

Standards, Procedures and Public Appointments Committee

Mandatory committee remits - Standing Order rule changes, 3rd Report, 2016 (Session 5)

I am of course happy to provide the Committee with any further background you consider necessary. I would also like to emphasise our willingness to assist the SPPA Committee in its deliberations.

Yours sincerely,

Christina McKelvie

Convener

Equal Opportunities Committee

Equal Opportunities Committee

Christina McKelvie MSP

Convener

Clare Adamson MSP
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Tel: 0131-348-5216

<mailto:equal.opportunities@parliament.scot>

13 September 2016

Dear Clare,

Proposal to extend the remit of mandatory committees

Further to my letter of 16 June concerning the name of the Committee following the remit change, the Committee has given further consideration to the proposal to extend the remit of the Equal Opportunities Committee to include human rights.

During our business planning event we received presentations from the Equality and Human Rights Commission and the Scottish Commission for Human Rights. We found this extremely helpful in gaining a better understanding of the breadth of the subject matter, particularly given human rights has previously featured across a number of committee remits and ministerial portfolios.

We welcome a more centralised focus on human rights and acknowledge the potential synergies between the equal opportunities and the human rights aspect of the Committee's proposed remit. We will endeavour to explore the new remit and will report back on any lessons learned from our experience.

In terms of defining the remit, we are keen the definition of "human rights" captures all of the matters in relation to which the Committee may have an interest, including matters above and beyond Convention rights, which are the rights set out in the European Convention on Human Rights (ECHR). To give an example, the Committee might wish to consider the Scottish Government's record of compliance with the UN Convention on the Rights of the Child or some other similar instrument. A remit that defined human rights by reference only to Convention rights would prevent the Committee from doing that.

A remit that reflects wider, more policy-oriented view of human rights is also desirable to enable the Committee to consider broader issues such as proposals for changing the legislative framework which governs human rights in Scotland, for example, the UK

Government's proposed 'British Bill of Rights' or how human rights are given effect in law or made real for people.

The Committee considers these are important principles to establish at the outset and that any definition of "human rights" should not be drawn too tightly so as to fetter the Committee's ability to undertake this kind of work.

For the sake of completeness I can confirm the Committee is content with the definition of "equal opportunities" as set out in Standing Orders.

Yours sincerely,

Christina McKelvie
Convener
Equal Opportunities Committee

Justice Committee

Clare Adamson MSP
Convener
SPPA Committee

By email

All correspondence c/o:
Justice Committee Clerks
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Edinburgh
EH99 1SP

Tel: 0131 348 5195
Textphone: 0800 092 7100
justicecommittee@parliament.scot

7 September 2016

Post-legislative scrutiny by committees

I am writing to you in relation into your Committee's current work on mandatory committee remits, on which, I understand, you will soon report. I note that this work arises from the Presiding Officer's letter of 27 June in which, on behalf of the Bureau, he proposed a number of changes to the remits of mandatory committees. This includes a proposal to widen the remit of the Public Audit Committee to enable it to carry out post-legislative scrutiny. Although it was not expressly set out in the Presiding Officer's letter (this may be a matter that your Committee is considering in more detail), the Justice Committee takes it to be implicit that what is proposed is to give the PAC a general power to scrutinise any Act, relating to any subject matter, passed by the Scottish Parliament. This therefore gives the PAC the ability to inquire into matters that would otherwise be within the remit of other committees.

The Justice Committee has no collective view on the merits of this proposal and each of us as individuals looks forward to considering your Committee's report when it is published. Justice Committee Members are in agreement with the underlying aim of maximising opportunities for post-legislative scrutiny within the committee system. We also see merit in subject committees continuing to have a lead role in examining the effectiveness of Acts of the Scottish Parliament, given the level of subject knowledge that they tend to be accumulated and retained within them. The Justice Committee has already identified one Act on which it is likely to carry out post-legislative scrutiny later in the autumn, and hopes to be able to do more of this throughout the session.

The Committee is also keen to ensure that any proposal that would lead to a significant increase in the overlap of committee remits should be workable in practice. The Presiding Officer's remarks in his 27 June letter that widening the PAC's remit should not preclude subject committees from undertaking post-legislative scrutiny.

His comments that he would wish to see the PAC work "in partnership" with subject committees are also helpful. However, Justice Committee Members agreed that I should write to you to set out our views, in advance of you concluding your report. In particular, I invite you to note views that subject committees should retain the right of initiative in respect of post-legislative scrutiny, and that there should be a way of ensuring that clashes or duplication of work are avoided. It may be helpful to clarify as

a principle that the PAC should not undertake scrutiny of a particular Act before ascertaining from the relevant subject committee that it has no immediate plans either to scrutinise that Act itself or to carry out any other work , such as an inquiry, in relation to which the efficacy of that legislation is a central consideration.

I should be grateful if you would take account of these observations in relation to your current work.

A copy of this letter is being sent to the Convener of the Public Audit Committee and to Deputy Presiding Officer Christine Grahame in her capacity as chair of the Conveners Group.

Margaret Mitchell MSP
Convener, Justice Committee

Annexe E – Extract from Minutes

4th Meeting, 2016 (Session 5) Thursday 15 September 2016

Mandatory Committees' remits (in private): The Committee considered draft Standing Order rule changes.

5th Meeting, 2016 (Session 5), Thursday 22 September 2016

Mandatory Committees' remits (in private): The Committee agreed a draft report and draft Standing Order rule changes.

