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Standards, Procedures and Public Appointments Committee Comataidh Inbhean

Scotland Act 2016 - Standing Order rule changes



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Standards, Procedures and Public Appointments Committee

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; and
- (e) matters relating to the regulation of lobbying.



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Introduction

1. Under the Scotland Act 2016, there will be a new “super-majority” requirement for legislation on particular protected subject matters.
2. The matters which are considered to be protected are—
 - the persons entitled to vote as electors at an election for membership of the Parliament,
 - the system by which members of the Parliament are returned,
 - the number of constituencies, regions or any equivalent electoral area, and
 - the number of members to be returned for each constituency, region or equivalent electoral area.
3. Any bill which includes provisions in these areas, whether at introduction or following amendment, will require a two-thirds majority of MSPs (a super-majority) to be passed by the Parliament.
4. The Committee does not anticipate that, in practice, many bills will trigger the super-majority requirement as the list of protected subject matters is fairly tightly defined. Nevertheless, there is a requirement to update the Parliament’s procedures in order to reflect the new super-majority rules.

Consideration by the Committee

5. The Standards, Procedures and Public Appointments Committee has considered carefully how the requirements in the Scotland Act relating to super-majorities should be translated into Standing Orders.
6. Draft rules are attached at Annexe A. The proposed rules introduce into Standing Orders the following requirements.

Requirement for a statement

7. The Committee noted that section 11(4) of the Scotland Act 2016 inserts a new subsection (2A) into section 31 of the Scotland Act 1998, which states—

” (2A) The Presiding Officer shall, after the last time when a Bill may be amended but before the decision whether to pass or reject it, decide whether or not in his view any provision of the Bill relates to a protected subject-matter and state his decision.”
8. The Presiding Officer is therefore required to make a statement about whether a bill requires a super-majority to be passed. The Committee proposes that this statement will be made after all amendments have been disposed of at stage 3, prior to the final vote on whether to pass a bill, in order to meet the requirements of the revised Scotland Act 1998.
9. The proposed rules also provide that Parliament is required to vote on every bill after the conclusion of the stage 3 debate in order to formally record the result.
10. The Committee is aware that the Scotland Act provides that the Presiding Officer’s decision cannot be taken until after all amendments have been considered at stage 3.
11. The Committee noted, however, that at each stage of the legislative process, advice will be available to members from the clerks, supported by legal advisers, as to whether a bill, or particular amendments to a bill, might trigger the super-majority requirement.

Referrals to the Supreme Court

12. The draft rules include procedures which take account of the possibility of the bill being referred to the Supreme Court where there is disagreement with the Presiding Officer’s decision on the super-majority issue. For example, the Presiding Officer could decide that a super-majority was not required, but the Supreme Court could rule that it was. In these circumstances, if the bill had not previously been passed with a super-majority, the Scotland Act allows the opportunity for the bill to be reconsidered.

Application to different categories of bills

13. The super-majority procedure will apply to three categories of bills: public bills, private bills and hybrid bills. Most bills are public bills – bills introduced by MSPs and dealing with matters of public policy and the general law. The Committee does not anticipate it is likely, in practice, that a private or hybrid bill will trigger a super-majority requirement. However in order to provide for this possibility, the draft rules at Annexe A introduce broadly the same super-majority procedure for each type of bill, with minor adjustments made for each category.

Correspondence with Scottish Government

14. The Committee agreed to share an early draft of the rules with the Scottish Government, in order to establish whether it was content with the approach being proposed.
15. The response from the Scottish Government is attached at Annexe B. The Committee welcomed the minor and technical drafting points identified by Scottish Government officials, which have been taken into account in the final draft agreed by the Committee.
16. The Scottish Government indicated it took a different view from the Committee as to whether bills which had been referred back from the Supreme Court on protected subject matter grounds could be amended at that point. The Committee's understanding of the Scotland Act is that they can not. However, the Scottish Government did not envisage that the proposed rules would create practical problems for delivery of its legislative programme and so was content to accept the drafting proposed by the Committee.
17. Finally the Scottish Government response made the point that it would be helpful for the Government, committees, individual MSPs and all those with an interest in a bill to understand whether or not a bill or amendment is likely to trigger the requirement for a super-majority vote. The Scottish Government therefore welcomed the Committee's comments that advice on these matters will be available to MSPs.

Recommendation

18. The Committee considers it is important that new Standing Orders are put in place at an early opportunity, so that the new powers over Scottish Parliament elections can be commenced and transferred.
19. The Committee therefore recommends to the Parliament the proposed rule changes set out at Annexe A.

Annexe A: Standing Order rule changes

CHAPTER 9

PUBLIC BILL PROCEDURES

Rule 9.5 Stages of Bills

In Rule 9.5.2, omit “Reconsideration Stage” and substitute “Reconsideration of Bills passed”.

After Rule 9.5.2 insert-

“2A. A Bill which has been rejected by the Parliament may be subject to reconsideration at a further stage in the circumstances described in Rule 9.9A (Reconsideration of Bills rejected).”.

In Rule 9.5.4, at the beginning insert “Subject to Rule 9.9A,”.

In Rule 9.5.5, for “it has not been passed” substitute “a decision whether or not to pass it has not been taken”.

Rule 9.8 Stage 3

After Rule 9.8.5B insert-

“5BA. After any amendments have been disposed of, the Presiding Officer shall state whether or not in his or her view any provision of the Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk.”.

In Rule 9.8.5C, omit “last amendment has been disposed of” and substitute “Presiding Officer has made the statement referred to in paragraph 5BA”.

In Rule 9.8.5D, at the end add: “After any amendments have been disposed of, the Presiding Officer shall state whether or not in his or her view any provision of the Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk.”.

For Rule 9.8.9 substitute-

“9. The question on the motion that the Bill be passed must be decided by division.”.

For Rule 9.8.10 substitute-

“10. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Bill shall be treated as rejected.”.

After Rule 9.8.10 insert-

“11. Where the Presiding Officer has made a statement that in his or her view any provision of the Bill relates to a protected subject-matter, the Bill is passed only if a super-majority is achieved and is otherwise treated as rejected.

12. If the Presiding Officer has made more than one statement as to whether or not in his or her view any provision of the Bill relates to a protected subject-matter, only the most recent statement is to be used in applying paragraph 11.”.

Rule 9.9 Reconsideration of Bills passed

In Rule 9.9.2(a), at the end omit “or”.

In Rule 9.9.2, after sub-paragraph (b) insert-

“; or

(c) the Supreme Court decides on a reference made in relation to the Bill under section 32A(2)(b) that any provision of the Bill relates to a protected subject-matter.”.

In Rule 9.9.4-

after “Court” insert “referred to in paragraph 2(a)”, and

at the end, add “In the case of a Bill referred to in paragraph 2(c) no amendment may be made at Reconsideration Stage.”.

For Rule 9.9.5 substitute-

“5. The Presiding Officer shall state, after any amendments have been disposed of and before the debate on the motion that the Bill be approved, whether or not in his or her view any provision of the Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk. The Parliament shall then consider and decide by division, on a motion of the member in charge of the Bill, the question whether to approve the Bill. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Bill shall be treated as rejected. Where the statement is that in the Presiding Officer’s view any provision of the Bill relates to a protected subject-matter, the Bill is not approved unless a super-majority is achieved.”.

After Rule 9.9 insert-

“9.9A Reconsideration of Bills rejected

1. The member in charge of a Bill may, after the Bill is rejected, by motion propose that the Parliament resolve to reconsider the Bill if, following a reference to the Supreme Court under section 32A(2)(a), the Court has decided that no provision that is subject to the reference relates to a protected subject-matter.

2. Proceedings at Reconsideration Stage shall be taken at a meeting of the Parliament. The Bill may not be amended at Reconsideration Stage.

3. Before the debate on the motion that the Bill be approved the Presiding Officer shall state whether or not in his or her view any provision of the Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or

in writing, and if made in writing shall be published by the Clerk. The Parliament shall then consider and decide by division, on a motion of the member in charge of the Bill, the question whether to approve the Bill. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Bill shall be treated as rejected.”.

CHAPTER 9A

PRIVATE BILL PROCEDURES

Rule 9A.7 Stages of Private Bills

In Rule 9A.7.2, omit “Reconsideration Stage” and substitute “Reconsideration of Private Bills passed”.

After Rule 9A.7.2 insert-

“2A. A Private Bill which has been rejected by the Parliament may be subject to reconsideration at a further stage in the circumstances described in Rule 9A.11.ZA (Reconsideration of Private Bills rejected).”.

In Rule 9A.7.4, at the beginning insert “Subject to Rule 9A.11.ZA,”.

In Rule 9A.7.5, for “it has not been passed” substitute “a decision whether or not to pass it has not been taken”.

Rule 9A.10 Final Stage

In Rule 9A.10.5, omit “After any amendments have been disposed of, the Parliament shall debate the Final Stage motion. The Convener of the Private Bill Committee may, immediately after the last amendment is disposed of,” and substitute-

“5A. After any amendments have been disposed of, the Presiding Officer shall state whether or not in his or her view any provision of the Private Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk.

5B. Immediately after the Presiding Officer has made the statement, the Convener of the Private Bill Committee may”.

In new paragraph 5B (which runs from the paragraph numbered 5B as inserted by the preceding amendment to the end of paragraph 5 as it stood before that amendment), after “at Final Stage.”, add-

“After any amendments have been disposed of, the Presiding Officer shall state whether or not in his or her view any provision of the Private Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk.”.

For Rule 9A.10.8 substitute-

“8. The question on the Final Stage motion must be decided by division.”.

For Rule 9A.10.9 substitute-

“9. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Private Bill shall be treated as rejected.”.

After Rule 9A.10.9 insert-

“10. Where the Presiding Officer has made a statement that in his or her view any provision of the Private Bill relates to a protected subject-matter, the Private Bill is passed only if a super-majority is achieved and is otherwise treated as rejected.

11. If the Presiding Officer has made more than one statement as to whether or not in his or her view any provision of the Private Bill relates to a protected subject-matter, only the most recent statement is to be used in applying paragraph 10.”.

Rule 9A.11

The title of the Rule becomes **“Reconsideration of Private Bills passed”**

In Rule 9A.11.2(a), at the end omit “or”.

In Rule 9A.11.2, after sub-paragraph (b) insert-

“; or

(c) the Supreme Court decides on a reference made in relation to the Private Bill under section 32A(2)(b) that any provision of the Private Bill relates to a protected subject-matter.”.

In Rule 9A.11.4-

after “Court” insert “referred to in paragraph 2(a)”, and

at the end, add “In the case of a Private Bill referred to in paragraph 2(c) no amendment may be made at Reconsideration Stage.”.

For Rule 9A.11.5 substitute-

“5. The Presiding Officer shall state, after any amendments have been disposed of and before the debate on the motion that the Private Bill be approved, whether or not in his or her view any provision of the Private Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk. The Parliament shall then consider and decide by division, on a motion of the Convener of the Private Bill Committee, the question whether to approve the Private Bill. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Private Bill shall be treated as rejected. Where the statement is that in the Presiding Officer’s view any provision of the Private Bill relates to a protected subject-matter, the Private Bill is not approved unless a super-majority is achieved.”.

After Rule 9A.11 insert-

“9A.11ZA Reconsideration of Private Bills rejected

1. Any member may, after the Private Bill is rejected, by motion propose that the Parliament resolve to reconsider the Private Bill if, following a reference to the Supreme Court under section 32A(2)(a), the Court has decided that no provision that is subject to the reference relates to a protected subject-matter.
2. Proceedings at Reconsideration Stage shall be taken at a meeting of the Parliament. The Private Bill may not be amended at Reconsideration Stage.
3. Before the debate on the motion that the Private Bill be approved the Presiding Officer shall state whether or not in his or her view any provision of the Private Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk. The Parliament shall then consider and decide by division, on a motion of the Convener of the Private Bill Committee, the question whether to approve the Private Bill. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Private Bill shall be treated as rejected.”.

CHAPTER 9C

HYBRID BILL PROCEDURES

Rule 9C.9 Stages of Hybrid Bills

In Rule 9C.9.2, omit “Reconsideration Stage” and substitute “Reconsideration of Hybrid Bills passed”.

After Rule 9C.9.2 insert-

“2A. A Hybrid Bill which has been rejected by the Parliament may be subject to reconsideration at a further stage in the circumstances described in Rule 9C.13A (Reconsideration of Hybrid Bills rejected).”.

In Rule 9C.9.7, at the beginning insert “Subject to Rule 9C.13A,”.

In Rule 9C.9.8, for “it has not been passed” substitute “a decision whether or not to pass it has not been taken”.

Rule 9C.12 Stage 3

After Rule 9C.12.8 insert-

“8A. After any amendments have been disposed of, the Presiding Officer shall state whether or not in his or her view any provision of the Hybrid Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk.”.

In Rule 9C.12.9, omit “last amendment has been disposed of” and substitute “Presiding Officer has made the statement referred to in paragraph 8A”.

In Rule 9C.12.10, at the end add: “After any amendments have been disposed of, the Presiding Officer shall state whether or not in his or her view any provision of the Hybrid Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk.”.

For Rule 9C.12.14 substitute-

“14. The question on the motion that the Hybrid Bill be passed must be decided by division.”.

For Rule 9C.12.15 substitute-

“15. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Hybrid Bill shall be treated as rejected.”.

After Rule 9C.12.15 insert-

“16. Where the Presiding Officer has made a statement that in his or her view any provision of the Hybrid Bill relates to a protected subject-matter, the Hybrid Bill is passed only if a super-majority is achieved and is otherwise treated as rejected.

17. If the Presiding Officer has made more than one statement as to whether or not in his or her view any provision of the Hybrid Bill relates to a protected subject-matter, only the most recent statement is to be used in applying paragraph 16.”.

Rule 9C.13

The title of the Rule becomes **“Reconsideration of Hybrid Bills passed”**

In Rule 9C.13.2(a), at the end omit “or”.

In Rule 9C.13.2, after sub-paragraph (b) insert-

“; or

(c) the Supreme Court decides on a reference made in relation to the Hybrid Bill under section 32A(2)(b) that any provision of the Hybrid Bill relates to a protected subject-matter.”.

In Rule 9C.13.4-

after “Court” insert “referred to in paragraph 2(a)”, and

at the end, add “In the case of a Hybrid Bill referred to in paragraph 2(c) no amendment may be made at Reconsideration Stage.”.

For Rule 9C.13.6 substitute-

“6. The Presiding Officer shall state, after any amendments have been disposed of and before the debate on the motion that the Hybrid Bill be approved, whether or not in his or her view any provision of the Hybrid Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk. The Parliament shall then consider and decide by division, on a motion of the member in charge of the Hybrid Bill, the question whether to approve the Hybrid Bill. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Hybrid Bill shall be treated as rejected. Where the statement is that in the Presiding Officer’s view any

provision of the Hybrid Bill relates to a protected subject-matter, the Hybrid Bill is not approved unless a super-majority is achieved.”.

After Rule 9C.13 insert-

“9C.13A Reconsideration of Hybrid Bills rejected

1. The member in charge of a Hybrid Bill may, after the Hybrid Bill is rejected, by motion propose that the Parliament resolve to reconsider the Hybrid Bill if, following a reference to the Supreme Court under section 32A(2)(a), the Court has decided that no provision that is subject to the reference relates to a protected subject-matter.
2. Proceedings at Reconsideration Stage shall be taken at a meeting of the Parliament. The Hybrid Bill may not be amended at Reconsideration Stage.
3. Before the debate on the motion that the Hybrid Bill be approved the Presiding Officer shall state whether or not in his or her view any provision of the Hybrid Bill relates to a protected subject-matter within the meaning of section 31(4). This statement may be made orally or in writing, and if made in writing shall be published by the Clerk. The Parliament shall then consider and decide by division, on a motion of the member in charge of the Hybrid Bill, the question whether to approve the Hybrid Bill. The result of such a division is valid only if the number of members who voted (whether for the motion, against it, or to abstain) is more than one quarter of the total number of seats for members of the Parliament. If the result is not valid the Hybrid Bill shall be treated as rejected.”.

CHAPTER 11

DECISIONS AND VOTING

Rule 11.6 Divisions

In Rule 11.6.1, before “11.4.3” insert “9.8.9, 9.9.5, 9.9A.3, 9A.10.8, 9A.11.5, 9A.11ZA.3, 9C.12.14, 9C.13.6, 9C.13A.3,”.

Rule 11.11

The title of the Rule becomes **“Simple majority, absolute majority and super-majority”**

After Rule 11.11.3 insert-

“4. A super-majority means that the number of members voting for a proposition is at least two-thirds of the total number of seats for members of the Parliament.”.

Annexe B: Letter from the Scottish Government

Dear Clare

Thank you for your letter of 2 March 2017 and for sight of draft Standing Order rule changes which will allow Parliamentary processes to take account of new super-majority requirements in relation to certain protected subject-matter, once relevant provision in the Scotland Act 2016 is brought into force. I am grateful for the opportunity to comment on implementation of the new super-majority requirements.

The Government's view is that it would be helpful for the Government, Committees, individual MSPs and all those with an interest in a Bill to understand whether or not a Bill or amendment is likely to trigger the requirement for a super-majority vote. I therefore welcome the Committee's assurance that advice to MSPs will be available at each stage of the legislative process on this matter, in advance of the Presiding Officer's determination at Stage 3 on whether a super-majority vote is required.

I am of the view that the provisions in the Scotland Act on reconsideration of Bills referred back from the Supreme Court on protected subject matter grounds do not preclude amendments being made at that point. I note that the draft Standing Orders take a different approach. Having reflected on the matter, I do not envisage the draft Rules will create practical problems for delivery of the legislative programme and I am therefore content to accept whatever conclusion the Committee reaches on this matter at the end of its inquiry.

There are some minor and technical drafting points which I think the Committee might wish to consider in relation to the draft Rules and my officials have been in contact with officials at the Parliament to discuss these directly.

Finally, it would be very helpful for everyone involved with and interested in Bills if the published Guidance on Public Bills were to be updated to reflect these new Rules and my officials would be happy to assist the Committee in that process.

Yours sincerely,

Joe FitzPatrick MSP

Minister for Parliamentary Business

