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Standards, Procedures and Public Appointments Committee

**Comataidh Inbhean, Dòighean-obrach is Cur-an-dreuchd
Poblach**

Standing Order Rule changes - Urgent questions to the Scottish Parliamentary Corporate Body



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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;
- (ab) a proposal for a Bill relating to the arrangements for financial assistance to non-Government political parties represented in the Parliament;
- (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;
- (e) matters relating to the regulation of lobbying; and
- (f) matters relating to Scottish general elections falling within the responsibility of the Cabinet Secretary for Government Business and Constitutional Relations.



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Introduction

1. This report proposes that a new Rule should be added to Standing Orders to allow for urgent questions to be made to the Scottish Parliamentary Corporate Body (SPCB).
2. The proposal originates in correspondence from Gordon MacDonald MSP, who wrote to the Committee at the end of 2019 to ask it to consider a change to Standing Orders to enable urgent questions to be put to the SPCB. In a letter to the Committee, he stated, "I believe that such a mechanism is necessary for when there are occasions when urgent questions need to be raised with the SPCB."
3. The Committee considered that such a provision could be valuable in circumstances where there was a desire to ask questions of the SPCB about urgent matters within the SPCB's remit. Under the Scotland Act 1998 the SPCB's functions are to provide the Parliament, or ensure the Parliament is provided, with the property, staff and services required for the Parliament to carry out its purposes.
4. Following an initial consultation of the SPCB and the Parliamentary Bureau on the proposal to change Standing Orders to provide for urgent questions to the SPCB (responses attached at Annexe B), the Committee agreed that draft Rule changes and selection criteria should be developed as a basis for a consultation of Members, the SPCB and the Parliamentary Bureau.
5. A consultation on an approach and selection criteria took place in early 2021. The responses from the SPCB and the Parliamentary Bureau are attached at Annex B.

Current Rules

6. In considering the proposal, the Committee noted that it is not currently possible under Standing Orders for urgent questions to be put to the SPCB in the same way that urgent questions are put to the Scottish Government under Rule 13.8.
7. Instead, under Rule 13.9, there are currently two formal means of raising issues with the SPCB: Members can submit written questions which are expected to receive an answer within 10 working days, and Members can submit oral questions. SPCB Question time normally takes place in the Chamber three times a year (usually in March, June and November), although this is not subject to Standing Orders, so could in effect take place at any time or frequency and could be therefore be brought forward in response to an urgent issue. Fifteen minutes is allocated to each SPCB question time.
8. Any Member can submit a question for answer at SPCB Question Time and any question not reached receives a written answer (following the same practice for oral questions to the Scottish Government).
9. In the Presiding Officer's response to the Committee's initial consultation of the of the SPCB on the proposal for an urgent question process (Annexe B), he emphasised that—
 - ” There are a number of existing routes for MSPs to ask questions of the SPCB. If an MSP considers he requires information more quickly than the existing written or oral PQ process achieves, they can approach any individual member of the Corporate Body, including myself as chair, or the SPCB secretariat directly. Many MSPs take this opportunity and we always aim to respond promptly.

A new urgent question process

10. The Committee considered that an urgent question process could be used to provide a vehicle for raising urgent matters in the Chamber should an urgent issue emerge. The Committee considered that as with urgent questions to the Scottish Government, an urgent question to the SPCB would need to raise a matter which must be addressed immediately in order to be selected.
11. The Committee was of the view that given the long gaps between SPCB Questions, there could also be merit also in scheduling an additional question time outwith the usual cycle. It raised this possibility with the SPCB and the Parliamentary Bureau. The SPCB noted that:
 - ” the volume and nature of questions raised during the session did not tend to support this. However we very much welcomed the consideration by the Committee and the Bureau of the option where, in some circumstances, it might be more appropriate and effective to schedule an additional SPCB question time to allow Members to raise pressing matters with the SPCB. The Corporate Body would support such an option and be happy to help facilitate this as appropriate.
12. The Bureau indicated that it "would be content to consider this approach where appropriate, while noting that this would require a temporary variation to Standing Orders to be able to set a shorter deadline for the lodging of questions."
13. The Committee would welcome the potential for an additional question time to be scheduled should there be a number of questions relating to an SPCB matter that would make such an approach the most appropriate course of action.

Selection criteria

14. In response to the Committee's initial consultation of the SPCB and the Bureau, concerns were raised about a potential conflict of interest for the Presiding Officer in selecting urgent SPCB questions, given his role as chair of the SPCB. In relation to that issue, the Parliamentary Bureau proposed that clear guidance and criteria for selection be developed to ensure that there was no perceived conflict of interest. The Bureau also highlighted the specific role and functions of the SPCB:
 - ” The first point that the Bureau considers important to take into account is the role and functions of the SPCB, and that the SPCB conducts its business on a consensual basis. It has become apparent since the Parliament's creation that those MSPs serving on the SPCB do so in the interests of the Parliament rather than any political party. The Bureau considers that any procedure, in its design or use, should take this into account.
15. The Committee therefore developed selection criteria which sought to take into account these views. The selection criteria are set out below:

In making a selection, the Presiding Officer will consider—

- whether the subject has arisen since the last SPCB Question Time or there have been significant developments to a subject that has already been discussed;
- whether a question is, in fact, sufficiently urgent or whether there is more appropriate means to raise the issue;
 - other means of raising the issue may include—
 - lodging a written SPCB question
 - waiting for the next scheduled SPCB Question Time to take place
 - raising the matter directly with the Presiding Officer or any Member of the SPCB, or the Chief Executive
 - the Parliamentary Bureau could be invited to consider scheduling an additional SPCB Question Time outwith the usual cycle
- whether questions on the same issue have been lodged by a number of Members; and
- any other factors that the Presiding Officer considers appropriate.

To be urgent, questions should—

- address an issue of relevance for which the Corporate Body has general responsibility;
- clearly deal with a specific issue in relation to which there has been a recent development;
- address an issue which is demonstrably of concern/significance to all Members and is consistent with the consensual basis on which the SPCB conducts its business. In doing so, cross-party support for the question would need to be demonstrated;
- not address an issue that has not yet been reported but which a Member believes may become urgent or an event that is scheduled but has not yet taken place; and
- be accompanied by a note from the Member providing background information on the question and its urgency to assist the Presiding Officer in making a selection.

16. The Committee consulted all MSPs on the selection criteria and wrote to the SCPB and the Parliamentary Bureau to seek their views.
17. The SPCB's response indicated that while the Corporate Body continued to have "reservations about the need to introduce an additional procedure for raising urgent questions" and the "nature of questions that may be raised", it was reassured by the proposed selection criteria and the potential for other routes for Members to receive a response on SPCB matters.
18. The SPCB also indicated that it would be helpful to have its remit set out as part of any procedural guidance:
 - ” Under the Scotland Act 1998 the SPCB's functions are to provide the Parliament, or ensure the Parliament is provided, with the property, staff and services required for the Parliament to carry out its purposes.
19. In relation to the selection of questions, the SPCB considered that the criteria proposed by the Committee could mitigate any concerns over a perceived conflict of

interest of the Presiding Officer chairing the SPCB and selecting questions. The SPCB therefore felt it would be appropriate for the Presiding Officer to continue in the role of selecting Questions rather than delegating this function to a Deputy Presiding Officer.

20. The Bureau response indicated that it did not have any specific comments to make on the proposed selection criteria, although it welcomed "the way in which the draft criteria appeared to recognise the role and functions of the SPCB, as well as how it conducts its business."
21. In recognition of the consensual basis on which the SPCB conducts its business, the proposed selection criteria include a requirement that a member lodging an urgent question should be able to demonstrate that the question has cross-party support.
22. The Committee therefore proposes that the selection criteria set out above should be part of a process for urgent questions to the SPCB.


A new Rule in Standing Orders

23. In order for urgent questions to be put to the SPCB, a new Rule is required in Standing Orders.
24. A proposed new Rule 13.9A is set out in the box below. The new Rule is based on Rule 13.8 on Urgent Questions to the Scottish Government but modified to reflect that its focus is on urgent questions to the SPCB. Paragraphs 1 to 3 of the proposed new rule are specifically focused on urgent questions to the SPCB and paragraph 4 incorporates paragraphs 4-7 from Rule 13.8.
25. Paragraph 1 of the proposed new Rule includes the same requirement as Rule 13.8 for an urgent question to be lodged by 10:00 on a day on which there is a meeting of the Parliament.
26. Paragraph 2 provides for the Presiding Officer to allow the question if, in the opinion of the Presiding Officer, it is sufficiently urgent and the most appropriate way of raising the issue concerned. The selection criteria would be used by the Presiding Officer to inform the decision as to whether to allow the question to be taken. If the Presiding Officer allows the question, it would be put and answered at an appropriate point at the meeting of the Parliament that day.
27. Paragraph 3 recognises that the SPCB portfolio member responsible for the area relevant to the question might not be present in Parliament on the day that the question is lodged, and provides for the question to be put to, and answered by, any member of the SPCB.

Rule 13.9A Urgent Questions to the Scottish Parliamentary Corporate Body

1. Where an oral question on any matter concerning the Parliamentary corporation is of an urgent nature the member lodging it may, if it is lodged by 10:00 on a day on which there is a meeting of the Parliament, request that it be answered that day. The Clerk shall notify the Presiding Officer of the lodging of such a question as soon as possible after it is lodged. Such a question is referred to as "an urgent question to the SPCB".
2. If such a question to the SPCB is, in the opinion of the Presiding Officer, both sufficiently urgent and the most appropriate way of raising the issue concerned, the Presiding Officer shall allow the question to be put and answered at an appropriate point during the meeting of the Parliament and shall make any necessary alteration to the daily business list. Members shall be notified that any such question is to be put and of any subsequent alteration to the daily business list.
3. An urgent question under this Rule may be put to and answered by any member of the Parliamentary corporation.
4. Paragraphs 4 to 7 of Rule 13.8 shall apply also to this Rule.

Review of the new provision for Urgent Questions to the SPCB

28. The Bureau suggested to the Committee that there should be a review of the new procedure after two years:
-  should the Parliament agree to introduce a procedure for urgent questions to the SPCB, the use and operation of the procedure should be reviewed after a period of around two years. It suggested a two-year review period on the basis that it anticipates that the proposed procedure would be used infrequently.
29. The Committee intends to recommend in its legacy report that such a review should take place.

Recommendation

30. **The Standards, Procedures and Public Appointments Committee recommends to the Parliament the changes to Standing Orders set out at Annexe A of this report.**

Annexe A: Standing Order rule changes

Rule 13.9A Urgent Questions to the Scottish Parliamentary Corporate Body

1. Where an oral question on any matter concerning the Parliamentary corporation is of an urgent nature the member lodging it may, if it is lodged by 10:00 on a day on which there is a meeting of the Parliament, request that it be answered that day. The Clerk shall notify the Presiding Officer of the lodging of such a question as soon as possible after it is lodged. Such a question is referred to as "an urgent question to the SPCB".

2. If such a question to the SPCB is, in the opinion of the Presiding Officer, both sufficiently urgent and the most appropriate way of raising the issue concerned, the Presiding Officer shall allow the question to be put and answered at an appropriate point during the meeting of the Parliament and shall make any necessary alteration to the daily business list. Members shall be notified that any such question is to be put and of any subsequent alteration to the daily business list.

3. An urgent question under this Rule may be put to and answered by any member of the Parliamentary corporation.

4. Paragraphs 4 to 7 of Rule 13.8 shall apply also to this Rule.

Annexe B: Initial responses from the Scottish Parliament Corporate Body and the Parliamentary Bureau on the SPPA's proposal to change Standing Orders to provide for urgent questions to the SPCB

Response from the Presiding Officer in his capacity as Chair of the SPCB

7 February 2020

Dear Bill,

Thank you for your letters dated 18 December 2019 in which you seek the views of the SPCB and the Parliamentary Bureau on proposals for changing Standing Orders to facilitate urgent questions to the SPCB. This response reflects the SPCB's consideration of your letter. I am sorry that the Parliamentary Bureau has not yet had an opportunity to discuss the matter, but it is on the agenda for the Bureau's next meeting on 18 February and I will write shortly thereafter setting out its position.

There are a number of existing routes for MSPs to ask questions of the SPCB. If an MSP considers he requires information more quickly than the existing written or oral PQ process achieves, they can approach any individual member of the Corporate Body, including myself as chair, or the SPCB secretariat directly. Many MSPs take this opportunity and we always aim to respond promptly.

You mention that the Committee considered the option of extending the process for urgent questions to the Scottish Government to include the SPCB. This would create a potential conflict for me as Presiding Officer given my role in the process of selecting the questions. It is worth noting that I have no role in the current process for selecting questions for the oral SPCB Question Times as all questions are automatically selected for answer.

Given the number of routes already available for MSPs to raise questions with the SPCB, in order to assist further consideration of the Committee's letter, it would be helpful if you could provide an example of possible scenarios and/or questions which it is felt could not be adequately dealt with through the existing arrangements.

Yours sincerely

Rt Hon Ken Macintosh MSP

Presiding Officer

Response from the Presiding Officer in his capacity as Chair of the Parliamentary Bureau

3 September 2020

Dear Bill,

Thank you for your letter seeking the views of the Bureau on the introduction of a mechanism for urgent questions to be raised with the SPCB, and please accept my apologies for the delay in responding.

The Bureau has discussed the matter and a number of business managers see merit in exploring the proposal further. The Bureau would also offer some observations for your Committee's consideration.

The first point that the Bureau considers important to take into account is the role and functions of the SPCB, and that the SPCB conducts its business on a consensual basis. It has become apparent since the Parliament's creation that those MSPs serving on the SPCB do so in the interests of the Parliament rather than any political party. The Bureau considers that any procedure, in its design or use, should take this into account.

Current rules in relation to urgent questions allow for the Presiding Officer to determine whether or not a question is sufficiently urgent to require to be answered on the day it is lodged. This rule is supplemented by guidance on the criteria for selection of urgent questions. Recognising that the Presiding Officer is also Chair of the SPCB, in order to avoid any perceived conflict of interest, the Bureau considers that any procedure for urgent SPCB questions should be accompanied by clear selection criteria on which the Presiding Officer can base a decision about the urgency of a question.

Similarly, the selection criteria should also offer sufficient guidance for Members who may wish to ask an urgent question. This could assist Members in deciding whether or not it would be more appropriate to use the other mechanisms that are available to raise issues with the SPCB, such as through the relevant SPCB portfolio member, the Presiding Officer or the Parliament's Chief Executive.

The Bureau also noted that there might be merit in an inquiry into this issue being carried out now, but the final decision on making such a change being a matter for consideration by the next Parliament.

I hope these comments are helpful in your further consideration of this matter.

Yours sincerely

Rt Hon Ken Macintosh MSP

Presiding Officer

Annexe C - Responses from the Scottish Parliament Corporate Body and the Parliamentary Bureau on the SPPA Committee's proposed approach and selection criteria for urgent questions to the SPCB

Response from the Presiding Officer in his capacity as Chair of the SPCB

15 February 2021

Dear Bill,

Thank you for your recent letter seeking the views of the Parliamentary Bureau in relation to draft selection criteria for a proposed procedure which would enable urgent questions to put to the SPCB.

The Bureau considered the draft criteria at its meeting on 9 February. The Bureau does not have any specific comments to make on the proposed selection criteria. However, we did welcome the way in which the draft criteria appeared to recognise the role and functions of the SPCB, as well as how it conducts its business.

Business Managers also discussed whether, in some circumstances, it might be more appropriate and effective to schedule an additional SPCB question time to allow Members to raise pressing matters with the SPCB. The Bureau would be content to consider this approach where appropriate, while noting that this would require a temporary variation to Standing Orders to be able to set a shorter deadline for the lodging of questions.

The Bureau would also suggest to the Committee that, should the Parliament agree to introduce a procedure for urgent questions to the SPCB, the use and operation of the procedure should be reviewed after a period of around two years. It suggested a two-year review period on the basis that it anticipates that the proposed procedure would be used infrequently.

I hope this is helpful to your Committee's consideration of this matter.

Yours sincerely

Rt Hon Ken Macintosh MSP

Presiding Officer

Response from the Presiding Officer in his capacity as Chair of the Parliamentary Bureau

17 February 2021

Dear Bill,

Thank you for your recent letter seeking the views of the Corporate Body on the Committee's further proposals for a procedure to enable urgent questions to be put to the SPCB.

The Corporate Body considered your letter at its meeting on 4 February and while members continue to have reservations about the need to introduce an additional procedure for raising urgent questions, we welcome the opportunity to comment on the draft selection criteria and other related issues.

Selection criteria

The SPCB continues to have concerns about the nature of questions that may be raised but we were reassured by the proposed selection criteria to be applied as set out in your letter as it recognises the other routes that members can go through to receive responses to SPCB matters. The Corporate Body also felt it would be helpful to have a clear definition of its remit set out as part of any procedural guidance:

Under the Scotland Act 1998 the SPCB's functions are to provide the Parliament, or ensure the Parliament is provided, with the property, staff and services required for the Parliament to carry out its purposes.

Selection of questions

My SPCB colleagues considered that the selection criteria the Committee is proposing could mitigate any concerns over a perceived conflict of interest of the Presiding Officer chairing the SPCB and selecting questions. They therefore felt it would be appropriate for the Presiding Officer to continue in the role of selecting Questions rather than delegating this function to a Deputy.

Scheduling of additional SPCB Question Times

The SPCB discussed the potential for scheduling more frequent routine question times, but noted that the volume and nature of questions raised during the session did not tend to support this. However we very much welcomed the consideration by the Committee and the Bureau of the option where, in some circumstances, it might be more appropriate and effective to schedule an additional SPCB question time to allow Members to raise pressing matters with the SPCB. The Corporate Body would support such an option and be happy to help facilitate this as appropriate.

I hope these comments are helpful to the Committee.

Yours sincerely

Rt Hon Ken Macintosh MSP

Presiding Officer

Annexe D: Extract from minutes

23rd Meeting 2019 (Session 5), Thursday 5 December 2019

Correspondence (in private): The Committee considered correspondence it had received from Gordon MacDonald MSP on changing the Standing Orders to enable urgent questions to be put to the Scottish Parliamentary Corporate Body and changing the Code of Conduct for MSPs to prohibit MSPs from working for companies that primarily engage in lobbying, parliamentary advice or parliamentary strategy. The Committee agreed to write to the SPCB and the Parliamentary Bureau in relation to the Standing Orders, and to further consider SPPA/S5/19/23/M the request to revise the Code of Conduct.

19th Meeting 2020 (Session 5), Thursday 29 October 2020

Correspondence (in private): The Committee considered correspondence it has received.

2nd Meeting, 2021 (Session 5) Thursday 28 January 2021

Standing Order Rule changes (in private): The Committee considered the rules relating to questions to the SPCB and agreed to consult with all MSPs, the SPCB and the Parliamentary Bureau on proposed changes to the Rules.

6th Meeting 2021 (Session 5), Thursday 4 March 2021

Standing Order Rule Changes (in private): The Committee agreed a draft report and a draft Standing Order Rule Change in relation to SPCB urgent questions.

