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Standards, Procedures and Public Appointments Committee

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

Standing Orders Rule changes – Committee name and remit and miscellaneous changes



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Contents

Introduction	1
Constitution, Europe, External Affairs and Culture Committee remit	2
Background	2
Miscellaneous amendments	5
Background	5
Rule 9.7.8B – Ensuring consistency: revised Financial Memorandum	5
Rule 9.17A.4 – Updating cross-references: Scottish Law Commission Bills	5
Rule 9A.14.2 and Rule 9C.16.2 – Updating cross-references: Financial Memorandums	5
Rule 9C.11.17 – Ensuring consistency: Supplementary/Revised Delegated Powers Memorandums (DPMs) for Hybrid Bills	5
Rule 9C.11.17 – Drafting error	6
Recommendation	7
Annexe A: Standing Order rule changes	8
Annexe B: letter from Clare Adamson, Convener of the Constitution, Europe, External Affairs and Culture Committee to the Convener of the SPPA Committee.	10
Annexe C: letter from Clare Adamson, Convener of the Constitution, Europe, External Affairs and Culture Committee to the Presiding Officer.	11
Annexe D: Extract from minutes	12

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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Committee Membership



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Scottish Labour



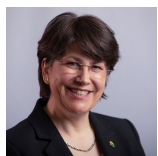
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Scottish Conservative
and Unionist Party



Tess White
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Introduction

1. Under Rules 17.1 and 17.1A of Standing Orders, the Standards, Procedures and Public Appointments (SPPA) Committee is responsible for recommending amendments to Standing Orders. If the Parliament agrees these changes, they come into force.
2. This report proposes an extension to Temporary Rule 4, which was agreed at the beginning of the session on a Parliamentary Bureau motion. Temporary Rule 4 provided for an amendment to the Standing Orders in relation to the name and remit of the Constitution, Europe and External Relations Committee.
3. The report also contains a number of miscellaneous changes to Standing Orders that are related to amendments made to the rules at the end of Session 5.

Constitution, Europe, External Affairs and Culture Committee remit

Background

4. The remits of certain committees, known as 'mandatory committees', are set out in Standing Orders. They cannot be changed unless Standing Orders is changed.
5. The remit of the Europe and External Relations Committee as set out in Standing Orders Rule 6.8 is the following:

Rule 6.8 Europe and External Relations

1. 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)—
 - (a) proposals for European Union legislation;
 - (b) the implementation of European Communities and European Union legislation;
 - (c) any European Communities or European Union issue;
 - (d) the development and implementation of the Scottish Administration's links with countries and territories outside Scotland, the European Union (and its institutions) and other international organisations; and
 - (e) co-ordination of the international activities of the Scottish Administration.
2. The Committee may refer matters to the Parliamentary Bureau or other committees where it considers it appropriate to do so.
3. The convener of the Committee shall not be the convener of any other committee whose remit is, in the opinion of the Parliamentary Bureau, relevant to that of the Committee.
4. The Parliamentary Bureau shall normally propose a person to be a member of the Committee only if that person is a member of another committee whose remit is, in the opinion of the Parliamentary Bureau, relevant to that of the Committee.
6. The Committee notes that in the past it has been a matter of standard practice at the beginning of each new parliamentary session to add "additional matters" or vary the remits of a committee for the whole session of the Parliament to reflect the portfolios of Cabinet Secretaries. In Session 5, the Parliament agreed a revision to the name and remit of the Equal Opportunities Committee to include "human rights" for the whole of that session of the Parliament.
7. In previous sessions, the SPPA Committee has proposed rule changes at the beginning of the session to vary the remits of mandatory committees to ensure that they fully cover the portfolios of Cabinet Secretaries and allow the Committee to hold the Cabinet Secretary to account.

8. The changes required to the Europe and External Relations Committee remit to ensure that it could scrutinise the portfolio of the Cabinet Secretary for the Constitution, External Affairs and Culture could not be made by adding "additional matters" so the Bureau agreed a temporary rule change until 31 December 2021 to allow time for the SPPA Committee to consider and propose a Standing Orders rule change.
9. The initial Temporary Rule 4 agreed by the Parliament on 15 June 2021 (S6M-00392) is set out below:

Temporary Rule 4 Change to Mandatory Committee Remit and Name

1. This rule applies to the committee mentioned in Rule 6.8. It ceases to apply when the Parliament has taken a decision to amend rule 6.8 in accordance with Rule 17.1 or on 11 February 2022, whichever is the earlier.

2. Where provisions contained in this temporary rule are in conflict with other standing order provisions, those in the temporary rule have precedence.

Constitution, Europe, External Affairs and Culture Committee


3. 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)—

(a) the Scottish Government's EU and external affairs policy;

(b) policy in relation to the UK's exit from the EU;

(c) the international activities of the Scottish Administration, including international development; and

(d) any other matter falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture and any matter relating to inter-governmental relations within the responsibility of the Deputy First Minister.

10. This is the first parliamentary session that there has been a provision to make temporary rule changes from the beginning of the session because Rule 17.1A on Temporary amendment to Standing Orders was only agreed towards the end of Session 5. Rule 17.1A provides that the Parliamentary Bureau may, on a motion, recommend that standing orders are amended on a temporary basis, but it is for the SPPA Committee to review and amend Temporary Rules, including their duration.
11. The Convener of the Constitution, Europe, External Affairs and Culture (CEEAC) Committee wrote to the SPPA Committee in November to request that the duration of the temporary rule change be extended to the end of the current session (Annexe B).
12. The Convener of the CEEAC Committee explained that the extension of the temporary rule would:
 ... allow the Committee time to consider the impact of the UK leaving the EU on a number of scrutiny procedures outlined in the Standing Orders and the remit of the mandatory Europe and External Relations Committee as set out in Rule 6.8.

13. The Committee considered this request at its meeting on 25 November 2021 and wrote to the Parliamentary Bureau to seek its view on the proposed extension to this rule until the end of the current session as, under Rule 6.1.2, it is for the Parliamentary Bureau to "propose the establishment, membership, remit and duration of a committee".
14. The Parliamentary Bureau requested more information from the Convener of the CEEAC Committee on the reasons for an extension to the end of the session. The response from the CEEAC Committee Convener is attached at Annexe C. The Bureau agreed to extend the duration of Temporary Rule 4 until 11 February 2022 to allow time for the Committee to consider the matter further.
15. The Committee has considered the request of the CEEAC Committee and notes its Convener's view that the remit in the Temporary Rule 4 "allows for full scrutiny of the Scottish Government for the duration of the current session my Committee is content with the remit and will allow for continuity in our ongoing work."
16. The Committee is of the view that it is essential for parliamentary committees to be able to scrutinise the Scottish Government fully and therefore proposes that Temporary Rule 4 be amended so it is extended until the Parliament has taken a decision to amend rule 6.8 in accordance with Rule 17.1 or on the date of dissolution, whichever is the earlier.
17. The Committee considers that this approach is consistent with the approach taken to committee names and remits in previous sessions.
18. However, the Committee notes that as the UK is no longer a member of the European Union, there is a need to review Rule 6.8. For that reason, the Committee will engage with the CEEAC Committee to develop a proposal to amend Rule 6.8.
19. **The Committee proposes that the Parliament agrees to the extension of Temporary Rule 4 for the whole session of the Parliament (as set out in Annexe A).**

Miscellaneous amendments

Background

20. At the end of Session 5, the Parliament agreed a range of amendments relating to the Financial Memorandums and Hybrid Bills. Following these changes, the Guidance on Public Bills was updated.
21. As a result of these two processes, a number of miscellaneous amendments to Standing Orders have been identified and are set out below:

Rule 9.7.8B – Ensuring consistency: revised Financial Memorandum

22. Rule 9.3.2, which relates to the Financial Memorandum published at Bill introduction, was updated at the end of last session to refer to "savings and changes to revenues" as well as to "costs".
23. The first sentence of Rule 9.7.8B, which relates to a revised Financial Memorandum after Stage 2, continues to refer only to "costs". It is proposed to update this to mirror Rule 9.3.2 for consistency and completeness.

Rule 9.17A.4 – Updating cross-references: Scottish Law Commission Bills

24. This rule still refers to Rule 9.7.10 which was removed at the end of last session and incorporated into Rule 9.7.9. It is proposed to update this rule to reflect this change.

Rule 9A.14.2 and Rule 9C.16.2 – Updating cross-references: Financial Memorandums

25. At the end of last session, consequential changes to paragraph numbers were made in Rule 9.12.2 to reflect the addition of new paragraphs on financial resolutions. It is proposed to make the same changes to Rules 9A.14.2 and 9C.16.2, which relate to the same rules for private and hybrid Bills. Rather than referring to "paragraph 3 or 4", the rules should refer to "paragraph 3, 3A, 3B, 3C or 4".

Rule 9C.11.17 – Ensuring consistency: Supplementary/Revised Delegated Powers Memorandums (DPMs) for Hybrid Bills

26. Rule 9C.3.2 (on hybrid bills) was altered at the end of last session to ensure parity with corresponding rules in Chapter 9 (on public bills). Paragraph (ga) was added to

this rule which provides that a Delegated Powers Memorandum is required when a Bill "contains any provision conferring power to make subordinate legislation, or conferring power on the Scottish Ministers to issue any directions, guidance or code of practice". However, the underlined words are not present in the Stage 2 requirement for a supplementary DPM for a hybrid bill in Rule 9C.11.17. It is therefore proposed that these words be inserted so that the rules for hybrid bills are the same as for public bills.

Rule 9C.11.17 – Drafting error

27. A full-out line is missing after sub-paragraph (ii) of Rule 9C.11.17 which should read: "a revised or supplementary Delegated Powers Memorandum". It is proposed to make this change, which is simply a drafting error resulting from changes to the rule last session
28. **The Committee proposes that the Parliament agree to the miscellaneous rule changes to Rules 9.7.8B, 9.17A.4, 9A.14.2, 9C.11.17 and Rule 9C.16.2**

Recommendation

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

Annexe A: Standing Order rule changes

Amendments to Temporary Rule 4

Temporary Rule 4: Change to Mandatory Committee Remit and Name

1. This rule applies to the committee mentioned in Rule 6.8. It ceases to apply when the Parliament has taken a decision to amend rule 6.8 in accordance with Rule 17.1 or **on the date of dissolution**, ~~on 31 December 2021~~, whichever is the earlier.

2. Where provisions contained in this temporary rule are in conflict with other standing order provisions, those in the temporary rule have precedence.

Constitution, Europe, External Affairs and Culture Committee

3. 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)—

(a) the Scottish Government's EU and external affairs policy;

(b) policy in relation to the UK's exit from the EU;

(c) the international activities of the Scottish Administration, including international development; and

(d) any other matter falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture and any matter relating to inter-governmental relations within the responsibility of the Deputy First Minister.

Miscellaneous amendments

Rule 9.7 Stage 2 ¶

8B. If a Bill is amended at Stage 2 so as to substantially alter any of the costs, ~~savings, and changes to revenues~~ set out in the Financial Memorandum that accompanied the Bill on introduction, the member in charge shall lodge with the Clerk, not later than whichever is the earlier of—¶

(a) the tenth sitting day after the day on which Stage 2 ends; ¶

(b) the end of the second week before the week on which Stage 3 is due to start, ¶

a revised or supplementary Financial Memorandum. The revised Financial Memorandum (or supplementary Financial Memorandum, when read in conjunction with the original Financial Memorandum) shall set out, in relation to the amended Bill, the information required under Rule 9.3.2 in relation to the Bill on introduction. ¶

Rule 9.17A Scottish Law Commission Bills ¶

4. Where a Scottish Law Commission Bill which has been referred to the committee mentioned in Rule 6.11 at Stage 2 has been amended at that Stage so as to insert or substantially alter provisions conferring powers to make subordinate legislation, or conferring powers on the Scottish Ministers to issue any directions, guidance or code of practice, Rule 9.7.9(b) does not apply, but a revised or supplementary memorandum shall be lodged and published ~~under Rule 9.7.9(a) as if Rule 9.7.10 applied.~~ ¶

Rule 9A.14 Financial Resolutions ¶

2. The Presiding Officer shall decide in every case whether a resolution is required for a Private Bill under paragraph 3, ~~3A, 3B, 3C~~ or 4 of this Rule. ¶

Rule 9C.11 Stage 2 ¶

17. If the Bill has been amended at Stage 2 so as to insert or substantially alter provisions conferring powers to make subordinate legislation, ~~or conferring power on the Scottish Ministers to issue any directions, guidance or code of practice—~~ ¶

(a) the member in charge shall lodge with the Clerk, not later than whichever is the earlier of—¶

(i) the tenth sitting day after the day on which Stage 2 ends; ¶

(ii) the end of the second week before the week on which Stage 3 is due to start, ¶

~~a revised or supplementary Delegated Powers Memorandum.~~ ¶

(b) the committee mentioned in Rule 6.11 shall consider and report to the Parliament on those provisions. ¶

Rule 9C.16 Financial Resolutions ¶

2. The Presiding Officer shall decide in every case whether a resolution is required for a Hybrid Bill under paragraph 3, ~~3A, 3B, 3C~~ or 4 of this Rule. ¶

Annexe B: letter from Clare Adamson, Convener of the Constitution, Europe, External Affairs and Culture Committee to the Convener of the SPPA Committee.

Dear Martin,

I am writing to you on behalf of the Constitution, Europe, External Affairs and Culture Committee in relation to the Committee's remit. At the beginning of this session, a Temporary Rule was agreed by the Parliament to change the name and remit of the committee mentioned in Rule 6.8 (the Europe and External Relations Committee). The Temporary Rule change revised the remit to reflect the portfolio of the Cabinet Secretary for the Constitution, External Affairs and Culture. The Parliament agreed this rule change until 31 December 2021 or when the Parliament has taken a decision to amend the rule, whichever was the earlier.

I would like to request that the Standards, Procedures and Public Appointments Committee propose that the duration of this temporary rule be extended until the end of the current session. This will allow the Committee time to consider the impact of the UK leaving the EU on a number of scrutiny procedures outlined in the Standing Orders and the remit of the mandatory Europe and External Relations Committee as set out in Rule 6.8.

It will also allow for continuity in the Committee's remit and its ongoing work.

Yours sincerely

Clare Adamson, Convener of the Constitution, Europe, External Affairs and Culture Committee

Annexe C: letter from Clare Adamson, Convener of the Constitution, Europe, External Affairs and Culture Committee to the Presiding Officer.

Dear Alison,

Thank you for your letter, dated 16 December, asking for some additional information regarding our request for an extension of the temporary rule setting out our committee's remit.

As stated in my letter to the SPPA Committee, this extension would allow the Committee more time to consider the impact of the UK leaving the EU on a number of scrutiny procedures outlined in the Standing Orders. This includes the remit of the mandatory Europe and External Relations Committee as set out in Rule 6.8.

This work needs to be completed so that the remit set out in Temporary Rule 4 does not inadvertently revert to the remit in Rule 6.8 which is now moribund due to the UK no longer being an EU Member State.

The review of EU related Standing Orders will require a considerable amount of work in discussion with the Scottish Government and is likely to evolve as the impact of the UK leaving the EU on how devolution works becomes clearer.

For clarity this work does not relate to the remit set out in Temporary Rule 4 which reflects the portfolio of the Cabinet Secretary for Constitution, External Affairs and Culture. Given this allows for full scrutiny of the Scottish Government for the duration of the current session my Committee is content with the remit and will allow for continuity in our ongoing work.

Our understanding is that in previous sessions the remits of mandatory committees have been changed for the duration of the session to reflect the portfolio of the relevant cabinet secretary to enable scrutiny.

Yours sincerely

Clare Adamson, Convener of the Constitution, Europe, External Affairs and Culture Committee

Annexe D: Extract from minutes

9th Meeting 2021 (Session 6), Thursday 25 November 2021

Standing Order Rule changes (in private): The Committee considered its approach to draft Standing Order Rule changes

3rd Meeting 2022 (Session 6), Thursday 27 January 2022

Standing Order Rule Changes (in private): The Committee agreed a draft report and draft Standing Order Rule Changes.

