

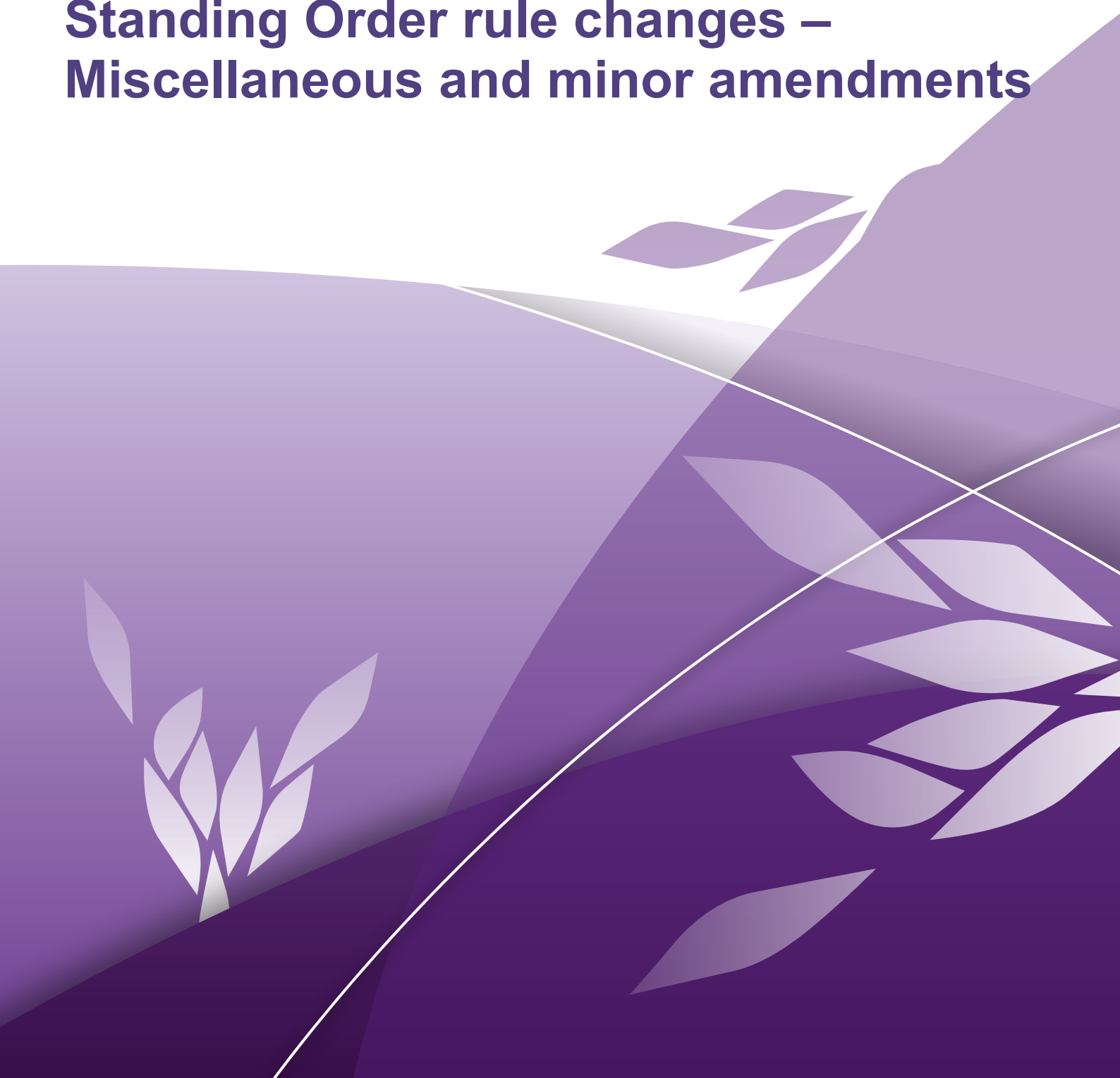


The Scottish Parliament
Pàrlamaid na h-Alba

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Standards, Procedures and Public Appointments Committee

Standing Order rule changes – Miscellaneous and minor amendments



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Standards, Procedures and Public Appointments Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (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;
- (d) matters relating to public appointments in Scotland;
- (e) matters relating to the regulation of lobbying; and
- (f) matters falling within the responsibility of the Minister for Parliamentary Business.

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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion."



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Background

1. The Committee has received several requests for miscellaneous and minor rule changes to be made to Standing Orders to take effect from the start of the next Parliamentary session.
2. The Committee has considered these requests and has agreed to recommend changes to Standing Orders. Further information on the recommended changes is detailed in this report. The proposed changes to Standing Orders are attached as the annexe to this report.

EU-related rules in Standing Orders

3. The Convener of the Constitution, Europe, External Affairs and Culture (CEEAC) Committee wrote to the Committee in June 2024ⁱ with the outcome of its review of the EU-related rules in Standing Orders.
4. The CEEAC Committee recommended that all references to the EU should be deleted from the Standing Orders, as the Committee considered that in each case these rules (or aspects of rules) are no longer applicable to the Scottish Parliament in the post-EU context.
5. The correspondence from the Convener of the CEEAC Committee detailed the specific EU-related rules that are no longer applicable and require deletion. The Committee agrees with these proposals in full.
6. The CEEAC Committee also recommended that further consideration be given by Parliament to Rule 6.8 which provides for the mandatory Europe and External Relations Committee remit. The SPPA Committee has agreed to consult the CEEAC Committee further on this issue and report to Parliament in due course.

ⁱ Letter from Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee. 13 June 2024.

Minor rule changes

7. Parliamentary officials have recently been working to produce and revise guidance documents, including those for Chamber business to support the work of the Parliament. During the course of this work a series of potential rule changes were identified that could be made to bring the rules in lines with long-established practice, clarify rules that are currently open to conflicting interpretations, and delete rules that are no longer required.
8. Following consideration of these proposals the Committee has agreed to recommend changes to the following rules.

Election of Presiding Officer – restriction on party

9. Paragraph 5 of Schedule 3 to the Scotland Act 1998 requires standing orders to make provision to ensure that the Presiding Officer (PO) and the deputy Presiding Officers (DPOs) are not all from the same political party.
10. One of the Rules that gives effect to this requirement is Rule 3.2.7, which says that where there are two DPOs of the same party, a member of that party is not eligible to stand for election as PO.
11. The Rule delivers the correct result where a new PO is elected mid-session, and there are 2 DPOs of the same party already in post.
12. But the Rule, as drafted, also applies at the beginning of a new session, when the DPOs from the previous session are still in post at the time a new PO needs to be elected. Should the previous-session DPOs be from the same party, the Rule would prevent the Parliament electing another MSP from that party to be PO
13. However, that is not how it should work. Under the Act, the previous-session DPOs automatically lose office as soon as a new PO is elected – so there is no need for their party-affiliation to restrict which MSPs are eligible to stand for election as PO. Instead, it should be the other way around – that is, once someone has been elected as the new PO, it is that person's party affiliation that should limit who can stand to be a DPO.
14. The annexe to this report sets out a proposed change to Standing Order Rule 3.2.7 to give effect to this change.

Election of Presiding Officer – requirement to take oath

15. Rule 3.2.8 says that a person nominated as a candidate for the office of Presiding Officer must take the oath (or affirm) before the beginning of the voting period.
16. This makes sense at the beginning of a new session, but with a mid-session PO election, it seems to imply that a candidate must take the oath again before the voting period – which is unnecessary.

17. Rule 3.2.8 is in any case unnecessary – since Rule 1.2.1 already ensures that a person who has not taken the oath or made a solemn affirmation cannot participate in any other proceedings.
18. The annexe to this report sets out a proposed change to Standing Order Rule 3.2.8 to give effect to this change.

Re-appointments of Commissioners and other office-holders

19. Rule 3.11 sets out the process for Parliamentary approval of certain public appointments.ⁱⁱ This is supplemented by Rule 3.11A which provides for the same process to apply in a case of re-appointment.
20. Similarly, Rule 3A.1 sets out the process for Parliamentary approval of the appointment of the Commissioner for Ethical Standards in Public Life in Scotland and members of the Standards Commission for Scotland. Paragraph 5 of that Rule provides that the same process applies in a case of re-appointment of members of the Standards Commission.
21. Since Rule 3.11A was added (in 2006), the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and the Public Services Reform (Scotland) Act 2010 have removed the possibility of re-appointment for all of the posts covered by the Rule. As a result, Rule 3.11A is now redundant.
22. The two Acts of 2010 mentioned above also removed the possibility of re-appointment to the posts covered by Rule 3A.1, except by allowing a member of the Standards Commission who was already in post at that time to be reappointed for up to 8 years (reduced by any time already spent in post).
23. Also in 2010, Rule 3A.1.5 was included to allow the Parliament to consider the re-appointment of a member of the Standards Commission. But in its report, the Committee noted that this provision “will become unnecessary once the existing members have all exhausted their permitted term in office. The Committee therefore recommends that a successor Committee identifies an opportunity to remove this provision at an appropriate time in the future.”ⁱⁱⁱ
24. That time has now come, since (more than 8 years later) there cannot any longer be any member of the Standards Commission who is eligible for re-appointment.
25. The annexe to this report sets out a proposed change to Standing Order Rules 3.11A and Rule 3A.1 to give effect to this change.

ii These posts are: the Auditor General for Scotland, the Scottish Parliamentary Services Ombudsman, the Scottish Information Commissioner, the Children and Young Persons Commissioner for Scotland, the chair of the Scottish Human Rights Commission, the Scottish Biometrics Commissioner and the Patient Safety Commissioner for Scotland.

iii SPPA Committee, 10th Report, 2010, paragraph 21.

Annual reports and strategic plans of SPCB-supported bodies

26. Rule 3A.6 requires the annual reports or strategic plans of various SPCB-supported bodies that are laid before the Parliament to be referred to a relevant committee
27. However, there are two problems with the current Rule.
28. Firstly, paragraph 2 is now redundant, as it cross-refers to a Rule (14.2) which was deleted in 2018.
29. Second, the list of bodies in paragraph 3 of the Rule hasn't kept pace with recent legislation. Specifically, it omits reference to the Scottish Biometrics Commissioner and the Patient Safety Commissioner for Scotland, both of whose posts are SPCB-supported and who statutory obligations include laying before the Parliament annual reports and strategic plans.
30. To avoid the need to keep the Rule updated in future, the suggestion is to remove the list of "supported bodies" altogether and instead rely on a definition of "supported bodies" that will capture not only those bodies already listed, but any future bodies that may be established.
31. The annexe to this report sets out a proposed change to Standing Order Rule 3A.6 to give effect to this change.

Forms of address

32. Rule 7.6 requires MSPs to be referred to in proceedings by their name (which can include a title, if that is how the MSP wishes to be referred to). It also provides for various post-holders (the Presiding Officer, a Deputy Presiding Officer and a Minister) to be referred to by their role-titles (as well as, or instead of, being referred to by name).
33. The current rules are not explicit with regards to how some other roles are commonly referred to in parliamentary proceedings. This includes:
 - Deputy Presiding Officer, when chairing, to be referred to as "Presiding Officer" (as is common practice)
 - The Scottish Law Officers, who are normally referred to by their titles (e.g. "the Lord Advocate") rather than by name
 - Committee conveners, who are sometimes referred to in the Chamber by that title (e.g. in a committee-led debate)
34. The annexe to this report sets out a proposed change to Standing Order Rule 7.6.1 to give effect to this change.

Referral of Bills at Stage 2

35. Rule 9.7.1 reads as follows:

“If the Parliament has agreed to the Bill’s general principles, the Parliamentary Bureau shall—

(a) refer the Bill back to the lead committee to take Stage 2 of the Bill; or

(b) by motion propose that Stage 2 of the Bill be taken, in whole or in part, by a Committee of the Whole Parliament or a committee or committees other than the lead committee.”

36. As currently drafted, paragraph (b) allows the Bill to be referred only to a Committee of the Whole Parliament, or to a committee other than the lead committee (or to be split between two such committees).

37. But it doesn’t allow for referral of the Bill (in part) to the lead committee and (in part) to another committee or committees – despite this being the only likely option if the Bill needs to be referred to more than one committee.

38. The annexe to this report sets out a proposed change to Standing Order Rule 9.7.1 (b) to give effect to this change.

Appointment of SPCB members

39. The procedure for electing MSPs onto the SPCB is set out in Rule 11.10A. This Rule covers any situation where the number of candidates exceeds or equals the number of vacancies, but it does not cover a situation where there are not enough candidates to fill the vacancies. It also does not cover the situation where enough candidates are validly nominated but not enough are elected to fill the vacancies (e.g. because the last remaining candidate does not secure a simple majority, or withdraws).

40. Paragraph 19 of Rule 11.10A states that, where an election process leaves a vacancy unfilled, another election under that Rule shall be held. But Rule 3.8.1 says that, if any SPCB vacancy is not filled in accordance with Rule 3.7, the Presiding Officer may appoint a member onto the SPCB (i.e. without an election being required), and shall do so if the office remains vacant for 28 days.

41. Taken together, these Rules leave it unclear at what point the PO is entitled to stop holding elections and resort instead to directly appointing a new SPCB member. It would be helpful to clarify this.

42. The suggested approach is to qualify the requirement (in Rule 11.10A.19) that a further election immediately be held – and instead make this subject to the PO’s discretion. This avoids the need for a further election if, in the PO’s opinion, doing so would be pointless (e.g. because it is already clear that there are no further MSPs willing to put themselves forward for election, or that the only MSPs willing to put themselves forward won’t secure a simple majority).

43. The annexe to this report sets out a proposed change to Standing Order Rule 11.10A to give effect to this change.

Recommendation

44. The Standards, Procedures and Public Appointments Committee recommends to the Parliament the Standing Order rule changes in the annexe.

Annexe: Proposed Standing Order Rule Changes

45. Rule 3.2 Election of the Presiding Officer

In Rule 3.2.7 delete “Where”

insert at the beginning

“In the case of the election of a Presiding Officer under paragraph 2, where”

Delete paragraph 3.2.8

Rule 3.11A Nomination of individuals for reappointment by His Majesty

Delete Rule 3.11A

Rule 3A.1 Appointment of the Commissioner for Ethical Standards in Public Life in Scotland and Members of the Standards Commission for Scotland

In Rule 3A.1, delete paragraph 5.

Rule 3A.6 Annual reports and strategic plans

In Rule 3A.6 delete paragraph 2

and replace with:

“2. In paragraph 1, “supported body” means any body that, under the enactment that established the body, is supported by the Parliamentary corporation and is required to lay before the Parliament an annual report or a strategic plan.”

In Rule 3A.6 delete paragraph 3

Rule 5.4 Business Programme

In Rule 5.4.2 (ab) insert at end:

“or”

In Rule 5.4.2 delete paragraph (b)

Rule 6.2 Functions of all committees

In Rule 6.2.2(c) delete:

“any European Union legislation or”

Chapter 7.6 Forms of address

In Rule 7.6 delete paragraph 1

and replace with:

“1. Each member shall normally be referred to in any proceedings of the Parliament by name, except that—

- (a) the Presiding Officer shall normally be referred to as “Presiding Officer”;
- (b) a deputy Presiding Officer, when acting in that capacity, shall normally be referred to as “Presiding Officer”;
- (c) the First Minister, the Lord Advocate and the Solicitor General for Scotland shall normally be referred to by those titles;
- (d) other members of the Scottish Government, when acting in that capacity, shall normally be referred to by the titles of their ministerial roles or as “Cabinet Secretary” or “Minister”;
- (e) junior Scottish Ministers, when acting in that capacity, shall normally be referred to by the titles of their ministerial roles or as “Minister”;
- (f) the convener (or acting convener or deputy convener) of a committee, when participating in proceedings of the Parliament on behalf of the committee, shall normally be referred to as the convener (or acting convener or deputy convener) of the committee in question.”

Rule 9.7 Stage 2

In Rule 9.7.1. delete paragraph (b) and replace with:

“(b) by motion propose that Stage 2 of the Bill be taken by—

- (i) a Committee of the Whole Parliament,
- (ii) a committee other than the lead committee, or
- (iii) more than one committee, in which case the motion should normally specify the provisions of the Bill to be taken by each committee.”

Chapter 10A Proposals for European Union Legislation

Delete Chapter 10A

Rule 11.10A Election of members of the Parliamentary corporation

In Rule 11.10A delete paragraph 19

and replace with:

“19. If an election under this Rule ends with a vacancy unfilled, the Presiding Officer shall decide whether to hold a further election under Rule 3.7 or to appoint a member under Rule 3.8.1, and announce that decision.”

Rule 12.6 Reporters

In Rule 12.6 delete paragraph 2

