



The Scottish Parliament
Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

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Dear Joe

Super-majorities – Scotland Act 2016

The SPPA Committee has been considering how to translate into Standing Orders the new super-majority requirement for legislation on certain protected subject matters, which was introduced in the Scotland Act 2016.

At its meeting on 2 March 2016 the Committee considered and agreed in principle some proposed Standing Order rule changes on this subject.

The new rules have been drawn up in order to meet the requirement in the Scotland Act 2016 that the Presiding Officer shall decide whether any provision of a bill relates to a protected subject-matter and state his or her decision.

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. However, the Committee noted 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.

The Committee agreed that it wished to share the draft rules with you, in order to establish whether the Scottish Government is content with the approach being proposed. I attach the draft rules to this letter.

I am aware that the new Standing Orders need to be put in place at an early opportunity, so that the new powers over Scottish Parliament elections etc. can be commenced and transferred to the Scottish Parliament. For that reason, it would be helpful to receive a response by Thursday 9 March.

I look forward to hearing from you.

Yours sincerely

Clare Adamson MSP
Convener
Standards, Procedures and Public Appointments Committee

ANNEXE – DRAFT STANDING ORDER RULE CHANGES: SUPER-MAJORITY REQUIREMENT

(in preparation for commencement of section 11 of the Scotland Act 2016)

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, after the first occurrence of “Parliament” insert “, other than a Bill in respect of which, following a reference to the Supreme Court under section 32A(2)(a), the Court has decided (whether before or after the end of the session) that no provision that is subject to the reference relates to a protected subject-matter,”.

Rule 9.8 Stage 3

After Rule 9.8.5D insert-

“5E. After any amendments have been disposed of and before the debate on the motion that the Bill be passed, 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. Thereafter the member in charge of the Bill (or, in the case of a non-Government Bill, that member or a member of the Scottish Government with general responsibility for the subject matter of the Bill) may by motion make a proposal described in paragraph 5C.”.

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 stated under paragraph 5E that in his or her view any provision of the Bill relates to a protected subject-matter, a super-majority is required.”

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. In the case of a Bill other than one referred to in paragraph 2(c) the Presiding Officer shall state, after any amendments have been disposed of, 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. Where the statement is that in the Presiding Officer’s view any provision of the Bill relates to a protected subject-matter, a super-majority is required.”.

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. The Parliament shall consider and decide by division the question whether to approve the Bill.”.

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, after the first occurrence of “Parliament” insert “, other than a Private Bill in respect of which, following a reference to the Supreme Court under section 32A(2)(a), the Court has decided (whether before or after the end of the session) that no provision that is subject to the reference relates to a protected subject-matter,”.

Rule 9A.10 Final Stage

After Rule 9A.10.5 insert-

“5A. After any amendments have been disposed of and before the debate on the motion that the Private Bill be passed, 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. Thereafter the Convener of the Private Bill Committee may by motion make a proposal described in paragraph 5.”.

For Rule 9A.10.8 substitute-

“8. The question on the motion that the Private Bill be passed 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 stated under paragraph 5A that in his or her view any provision of the Private Bill relates to a protected subject-matter, a super-majority is required.”

Rule 9A.11 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. In the case of a Private Bill other than one referred to in paragraph 2(c) the Presiding Officer shall state, after any amendments have been disposed of, 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. Where the statement is that in the Presiding Officer’s view any provision of the Private Bill relates to a protected subject-matter, a super-majority is required.”.

After Rule 9A.11 insert-

“9A.11ZA Reconsideration of Private Bills rejected

1. The Convener of the Private Bill Committee 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. The Parliament shall consider and decide by division the question whether to approve the Private Bill.”.

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, after the first occurrence of “Parliament” insert “, other than a Hybrid Bill in respect of which, following a reference to the Supreme Court under section 32A(2)(a), the Court has decided (whether before or after the end of the session) that no provision that is subject to the reference relates to a protected subject-matter,”.

Rule 9C.12 Stage 3

After Rule 9C.12.10 insert-

“10A. After any amendments have been disposed of and before the debate on the motion that the Hybrid Bill be passed, 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. Thereafter the convener of the Hybrid Bill Committee or the member in charge may by motion make a proposal described in paragraph 9.”.

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 stated under paragraph 10A that in his or her view any provision of the Hybrid Bill relates to a protected subject-matter, a super-majority is required.”

Rule 9C.13 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. In the case of a Hybrid Bill other than one referred to in paragraph 2(c) the Presiding Officer shall state, after any amendments have been disposed of, 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. Where the statement is that in the Presiding Officer’s view any provision of the Hybrid Bill relates to a protected subject-matter, a super-majority is required.”.

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. The Parliament shall consider and decide by division the question whether to approve the Hybrid Bill.”.

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 Simple, absolute 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.”