



The Scottish Parliament
Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

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By email

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Dear Minister

Law Officers – Answering Questions in the Chamber

The Standards, Procedures and Public Appointments Committee recently received two pieces of correspondence, from Mike Rumbles MSP and Adam Tomkins MSP, about the rules governing Law Officers answering oral questions in the Chamber. This correspondence can be found annexed to this letter.

The Committee has now had an opportunity to consider this correspondence at its meeting on 28 February 2019.

The Committee agreed to write to the Scottish Government to ask for its views on the points raised in the two items of correspondence, and the proposal that Standing Orders should be amended. The Committee also agreed to seek information from the Scottish Government on how it is decided which oral questions are answered by the Law Officers and which by other Ministers.

I would be grateful for the views of the Scottish Government on these matters, which will inform the Committee's decision as to how to respond to this correspondence.

I look forward to receiving your response in due course.

Bill Kidd MSP
Convener
Standards, Procedures and Public Appointments Committee

ANNEXE A: Email from Mike Rumbles MSP

Dear Bill

You may be aware of the point of order I raised in the chamber yesterday and the advice I received from the Presiding Officer to write to you as Convener of the SPPA Committee. I am doing so because I am concerned that our standing orders are not fit for purpose in dealing with questions in the chamber to the Lord Advocate and Solicitor General and I am making a request of the Committee to examine standing orders to ensure they are fit for purpose.

As you know I was first elected to the Parliament back in 1999 and for nearly 20 years the Lord Advocate and Solicitor General have appeared on numerous occasions to answer questions in the chamber from MSPs. They have until last year restricted their appearances to dealing with legal matters as part of the prosecution service. Indeed I am sure that is exactly what the Scotland Act and our own standing orders envisaged. However this practice changed last year when the Scottish Government put forward The Lord Advocate to answer questions in the chamber on the Scottish Governments European Continuity Bill.

So, the convention established over the last 20 years of restricting the Lord Advocates role in the chamber to responding to questions in his role as head of the prosecution service changed.

Last week I lodged a question to the Scottish Government asking what the Lord Advocates view is of a particular issue. The Minister for Parliamentary Business answered my question in the chamber yesterday while the Lord Advocate was present. I had of course expected that the Lord Advocate would respond to my question.

Standing Orders make clear that any Scottish Minister can answer any oral question in the chamber. This is well understood but the purpose of our standing orders here is to ensure that if the particular Minister or Law Officer is not available then another Minister can respond for the Scottish government.

In normal circumstances this would not be a problem as I would have fully understood that the Lord Advocate might not have been available. However, the Lord Advocate was present in the chamber and was indeed available to answer my question. I said in the chamber that while this procedure did indeed conform to our standing orders the Scottish governments response was not in the spirit of our standing orders.

It is my view that our standing orders are not fit for purpose in this instance and request that the SPPA Committee which you convene examine this issue in order to ensure that MSPs can indeed have a direct response from our Law Officers when oral questions are lodged in the usual way.

I look forward to hearing from you.

Yours sincerely,
Mike

ANNEXE B: Letter from Adam Tomkins MSP

Dear Bill

I understand that Mike Rumbles has written to you in your capacity as Convener of the SPPA Committee following his points of order in the chamber yesterday (Wednesday 23 January). As you may be aware, the need for points or order arose after the Minister for Parliamentary Business and Veterans, Graeme Dey, responded to a question from Mr Rumbles during portfolio question time originally intended for the Lord Advocate, who was present in the chamber at the time and therefore in a position to provide a reply. I both witnessed this exchange and asked the minister a supplementary question on the same issue.

Having examined the Scottish Parliament's Standing Orders, I echo Mr Rumbles' view that further clarity is required over the participation of the Scottish law officers in parliamentary proceedings, but especially oral questions.

Mr Rumbles' question adhered to the Standing Orders, which explicitly state that the Scottish law officers can participate in any of the proceedings of the Parliament (rule 4.5), and that oral questions can be any member of the Scottish Government (rule 13.7, paragraph 1). This suggests that there is no procedural impediment to the Lord Advocate responding to oral questions from members. Mr Rumbles' question also did not seek to solicit the content of legal advice the Lord Advocate had provided to the Scottish Government. The loophole, then, seems to be that the Scottish Government can apply paragraph 1 of rule 13.7 to prevent members from questioning the law officers directly.

Especially given the Lord Advocate's involvement in the UK Withdrawal from European Union (Legal Continuity) (Scotland) Bill last year, it seems that there is scope to consider whether the Standing Orders are fit for purpose in ensuring that Members can question the law officers directly. I therefore seek the SPPA Committee's view on this matter, and look forward to receiving your response in due course.

Yours sincerely

Adam Tomkins MSP
MSP for Glasgow