

# Explanatory Notes

## *Introduction*

1. These notes have been prepared by Scott Martin, Solicitor to the Scottish National Party to allow delegates to better understand the drafting of the resolution incorporating a revised constitution. If the resolution is passed, these notes may also provide future assistance to members in interpreting the constitution. Where the words of any paragraph in the constitution are clear, that takes precedence over any explanation provided in these notes.

## *The Constitution, and the Rules of the Party*

2. Constitutions should only contain fundamental provisions. The SNP's constitution should be about what makes the Party the party it is and the principal structures and mechanisms which exist to achieve its aims.
3. Our constitution was last reviewed in 2004. One of the main achievements of that constitution was to strip it down to the essentials, removing provisions which had built up since the constitutions of 1948 and 1973 were adopted and placing them in the Rules of the Party.<sup>1</sup> The correct role for rules is to expand on the constitution and contain details inappropriate for a constitution because of the need for flexibility around non-core aspects of the party.
4. The 2004 Constitution was passed at a Special National Conference with rules later approved at a meeting of National Council. The constitution contains a number of references to named rules. Many of the paragraphs merely signpost the existence of rules. This is unnecessary unless there is further specification in the constitution on the content of those rules. A member looking for information on branch processes will consult the branch rules, rather than go to the constitution. Paragraphs which merely reference the existence of rules without any further specification have therefore been removed in the proposed revised constitution. The intention in looking at a new format for rules is to incorporate a preamble with the applicable constitutional provisions, allowing members to see everything they need to see in one document.

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<sup>1</sup> The founding constitution of the Scottish National Party was in relatively brief terms and was approved on 7 April 1934. It was structurally similar to the Constitution of the National Party of Scotland. The 1948 Constitution was the cause of controversy, as it banned membership of other political parties. The rationale for adopting a new constitution in 1973 was removing inconsistencies which had built up over time. The 1973 Constitution was itself subject to many revisions over the years, including at a Special Conference in February 1985 which considered the Report of a Commission of Inquiry ordered by the Party Chairman to review the structures and organisation at national and local level. The Constitution adopted in 2004 contained a number of innovations, the most notable being the introduction of One Member One Vote for elections of the Leader, the Depute Leader, and for the selection of all candidates for public office.

## *General Drafting*

5. The opportunity provided by the review has been taken to revise the constitution to reflect the modern drafting practices as seen in Scottish Parliament Bills.<sup>2</sup> This includes:
  - Using plain language;
  - Drafting in the present tense throughout;<sup>3</sup>
  - Replacing the legalistic imperative 'shall' with 'must';<sup>4</sup>
  - Removing conflicting provisions; and
  - Reviewing the text for gender neutrality, including acceptability to non-binary persons.
6. The ordering of paragraphs in the constitution has also been revisited for logical order and grouping. Broad section headings have been introduced. The headings are designed to make it easier for readers of the constitution to locate what they need, rather than to provide any interpretative aid to the constitution. Throughout, the constitution has been reviewed against practice to ensure alignment.

## *Detailed Commentary on the Resolution and the Proposed Revised Constitution*

### *Resolution*

7. The resolution contains a proposed revised Constitution of the Scottish National Party. Some of the new constitutional arrangements can be introduced immediately. Others, including the new National Office Bearers and Regional Members for NEC will require elections and a transition from our current arrangements. The revised constitution contains a new power to allow directions to be made to transition from current arrangements to the new constitutional position and it is this power referred to in the resolution.
8. The main text of the resolution also restates the membership subscription levels, branch dividend payment and the parliamentary levy from the resolutions on "Central Membership Systems" and "Parliamentary Levy" passed at Annual National Conference at Inverness in 2003. The rate for ordinary associate members of the SNP who are under 16 was not part of that resolution, but is included in the current resolution. Annual National Conference in 2009 also passed a resolution allowing asylum-seekers who were living under the voucher scheme who wished to join the SNP to be given free associate membership until such time as they have access to funds.

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<sup>2</sup> See [Drafting Matters](#), Parliamentary Counsel Office / Scottish Government, August 2016.

<sup>3</sup> There is tendency for drafters of constitutions and other legal documents to write using the future tense because that is when the document will apply. This creates awkward and stilted phraseology and ignores the legal rule that the law is 'constantly speaking' – See 'The future tense' and 'The time problem' in Plain Language for Lawyers, Michèle M Asprey, The Federation Press, Fourth Edition, 2010, pps 149-153 & 184-186.

<sup>4</sup> See 'Overuse of "shall"' in Modern Legal Drafting – A Guide to Using Clearer Language, Peter Butt & Richard Castle, Second Edition (2007), Cambridge University Press, pps 131-137.

9. Affiliated Organisations of the Party are listed in the resolution. These include existing organisations and ones to be added following the “drafting instructions” resolution passed at National Conference in June 2018.

#### *The Party [Paragraphs 1-3]*

10. No material changes are being proposed to the first three central paragraphs in the constitution, other than general drafting improvements. The first paragraph illustrates why modern present tense drafting removes odd and illogical language. The current constitution reads “The Party shall be named the Scottish National Party”. Neither the existing 2004 Constitution nor the proposed new constitution created or creates the SNP. We have been here since 1934. It therefore makes no sense to draft as if the constitution is bringing a party named the Scottish National Party into existence.
11. The name of the Party registered with the Electoral Commission was changed from simply “Scottish National Party” to “Scottish National Party (SNP)” in 2011. That was to allow the initials to appear after the name on ballot papers. The name of the party for internal constitutional purposes remains “Scottish National Party” and it is not proposed to change the name to the registered name of the Party.

#### *Membership Principles and Benefits of Party Membership [Paragraph 4]*

12. Paragraph 4.3 of the current constitution contains “principles which shall govern the Membership Rules”. A more direct drafting approach is appropriate for such a key paragraph in the constitution. Membership has been reframed as a series of rights of members of the party, eligibility rules and requirements on members of the Party.
13. The constitution does not currently set out the benefits of party membership. A list of high-level membership rights is appropriate in a modern party constitution. The rights are broadly stated and subject to further detailed provision, but these rights are useful as an introduction to the constitution.

#### *Membership – Acceptance by ‘appropriate body’ [Paragraph 4.3(e) of the 2004 Constitution]*

14. The current constitution includes as a principle governing the Membership Rules that “A member shall have been accepted into the Party by the appropriate body, as defined in the Membership Rules.” The Membership Rules do not define the ‘appropriate body’ for the purpose of positively accepting members, but it is likely that the Branch or Constituency Branch was in the mind of the drafters. The provision pre-dates centralised membership back to a time when branches issued membership cards to members and there was a more formal process of members being accepted into the party. This might have involved new members being introduced to the branch at meetings or their names being read out, with the branch then accepting them into membership. The 1948 Constitution refers to members

being elected into membership of a branch or group, which as a process is a marker of small clubs of an exclusive character. We are certainly not that.

15. The reality of a mass membership party in the digital age is that members overwhelmingly join online. In a practical sense, there is no possibility of members being positively accepted into the branch in any meaningful way, particularly during membership surges, such as recently occurred after the Westminster walk out in June 2018. The draft therefore removes the formal requirement for members to be accepted into a body of the Party as reflective of earlier periods in the Party's history and not being in accord with current realities and practice.
16. On removing the formalities of 'acceptance', there remains the issue of members who attempt to join the Party who should not be in the Party, including members who have previously publicly resigned or have been expelled. Under Rules 2.3 and 2.4 of the Membership Rules, the National Executive Committee is stated to have reserved the right to declare any membership invalid for a period of ninety days after first subscriptions are paid or a Direct Debit put in place. Branches may make representations on such matters. There is also provision in the Membership Rules on Re-admission of members following a public resignation. These details will continue to be dealt with in Rules of the Party, as anticipated in the proposed revised constitution.

#### *Conduct of Members [Paragraph 5]*

17. We currently have a single Code of Conduct which covers all members. Codes of Conduct have been issued in the past to candidates. Standing Orders for the Parliamentary Groups and for Council Groups have their own standards and processes. It is right that office bearers of the Party, including local office bearers, candidates and elected politicians are held to a higher standard than ordinary members of the Party. The amendments look to having codes with additional standards required of members in these categories.
18. Under the 'drafting instructions' codes are to be updated to expand on the references to discrimination and to deal with sexual harassment, inappropriate conduct, social media abuse and bullying in all forms. There will be further discussions on the content of these codes, which will continue to be drawn up and maintained by the National Executive Committee. The Code of Conduct for Members will require to be approved by National Conference.
19. A flexible sanctioning scheme was also part of the resolution passed by National Conference. The proposed revised constitution sets out the additional sanctioning powers to allow a sanction to better fit the breach. The proposal also renames the Disciplinary Committee as the Member Conduct Committee to emphasise that the committee's role is not just to discipline members but to work in improving future conduct through its new powers, which include requiring a member to undertake appropriate training connected to the breach.

20. There is currently a level of confusion in the party between the Appeals Committee, which is elected by National Conference and hears appeals from the current Disciplinary Committee, and the Appeal Panel, whose Chair is appointed by the National Executive Committee and considers appeals against decisions on approval of candidates. The existing Appeals Committee is renamed the Conduct Appeals Committee in the revised constitution, with the Appeal Panel becoming the Candidate Appeals Panel.
21. Another part of the resolution provided that “The role of the National Secretary in relation to complaints against individuals will be transferred to a Standards Fiscal, with the National Secretary retaining a role in relation to the broad standards framework.” This remains the intention. The proposed revised constitution includes a new specific power of National Officer bearers to delegate their responsibilities to other persons. The National Secretary will require to carry out the roles currently provided for until a Standards Fiscal can be appointed. New Rules of the Party setting out the processes before the new committees will be have to be in place before a Standards Fiscal will be able to take on their new role. Using a Scheme of Delegation route will allow the National Secretary to better define which of their existing responsibilities are to be transferred to the Standards Fiscal in line with the resolution passed in June 2018.

#### *Approval and Selection of Candidates [Paragraphs 7-10]*

22. The Party currently has a section on ‘Mainstreaming Equality of Opportunity’ in the Vetting and Selection Rules. Given the importance of equality issues in the Party and in society more generally, these provisions have been moved into the constitution as their more appropriate home.
23. There used to be two separate sets of rules on the approval and selection of candidates – one for parliamentary elections and another for local authority elections. The processes are now much more in alignment. The paragraphs in the constitution dealing with approval and selection of parliamentary and local government candidates have been merged in the proposed revised constitution to fully reflect these changes. The word ‘vetting’ is also removed as being potentially more suggestive of a check to ensure that a candidate has no ‘skeletons in the cupboard’ (technically, ‘negative vetting’), than what the process actually is – a positive approval of the candidate as suitable for standing for public election on behalf of the Party.
24. As well as the Vetting and Selection Rules and the provisions in the constitution, before each scheduled election the National Executive Committee promulgates a document on selection processes containing timetables and rules, including rules on how candidates may contact members through the online membership hub and by other approved means. In practice, the document produced by the National Executive Committee has incorporated the necessary parts from both the constitution and the Vetting and Selection Rules in the text. The Vetting and Selection Rules have somewhat sat in the shadow of the Selection

document issued by the National Executive Committee. Members seeking selection find it useful to have everything in one document. Rather than have the current position of rules in three places and duplicated, the proposed revised constitution sets out what may be included in a single document. The intention is that there will be standing documents to cover by-elections and individual documents issued for each other election.

25. A new provision is included in the proposed revised constitution to cover vacancies on a Scottish Parliament regional list. Legislation effectively gives the nominating officer of the Party (currently our Chief Executive), the power to decide who is returned from the party list when a vacancy arises during a Scottish Parliamentary term. Issues could arise over the suitability of the next person on the list to serve as a parliamentarian for the party. The paragraph confirms that any decision which needs to be taken on certification of a candidate is to be made by the National Executive Committee, rather than the statutory nominating officer of the Party.

#### *Minimum Branch Membership Levels [Paragraph 11.2(a)]*

26. The current requirement in the constitution is that a branch must have not fewer than twenty members. This figure dates from the 1948 Constitution. Membership of the Party has increased massively since 1948, and a number of additional office bearers have been added to the requirements in the branch rules. Having the minimum number in the constitution makes for inflexibility. The consultation with branches favoured a flexible constitution with numbers removed, where possible. The draft therefore removes the number from the constitution, allowing it to be fixed in branch rules. Any adjustment to the number can be debated when new branch rules are presented for approval.

#### *Branch Boundaries [Paragraphs 11.1, 11.3 & 14.2-14.4]*

27. The paragraphs on branches are partly reflective of the time when the SNP did not have a full branch network in Scotland. The constitution now needs to set out processes for changing existing arrangements, rather than creating new organisations in areas where the SNP had not previously organised. The proposed revised constitution does that, reflecting what organisational restructuring is now possible, and current party practice on changes to structures.
28. The existing paragraph on branches in the constitution also contained some repetition and inconsistency with rules. Rule 8.1 of the Constituency Association Rules gives the association responsibility for determining the boundaries of branches within the constituency while Paragraph 5.5 of the Constitution has that responsibility resting with the National Executive Committee after consultation with the Constituency Association in accordance with the Branch Rules. There is currently nothing in the Branch Rules which regulate branch boundary change.

29. Before centralised membership, it would have been possible for branch boundaries to be adjusted locally. With centralised membership, a very high proportion of members join online, and systems require new members, and members who move, to be accurately allocated to their branch. The proposed revised constitution aligns with party practice and has the National Executive Committee as the body maintaining the list of which branches operate in which area of Scotland.

#### *Replacement of Liaison Committees [Paragraphs 15-17]*

30. The 2004 Constitution created generic liaison committees which the National Executive Committee tasked with responsibility for different levels of election. To better focus the role of these arrangements, particularly as the proposed revised constitution also creates Regional Steering Committees, the mention of generic liaison committees has been replaced in the draft with Westminster Campaign Committees (the name used prior to the 2004 Constitution and by many members) and Council Campaign Committees.
31. Constitutional amendments in 2004 created some confusion over the continued existence and powers of City Associations.<sup>5</sup> The revised constitution would create an additional power of the National Executive Committee to approve local campaigning organisations, other than the bodies mentioned in the constitution.

#### *Regional Steering Committees [Paragraph 18]*

32. Eight new regional steering committees are established under the proposed revised constitution with roles set out in the constitution. In practice, this is likely to be a developing space and each region may well decide to co-ordinate between local organisations in different ways.
33. The members who have a vote on these new committees are set out in the paragraph, as well as members entitled to attend. The provision is drafted in a way which does not preclude other members from being invited to meetings, in whole or in part, if they have appropriate experiences or proposals to share.

#### *National Assembly [Paragraph 19]*

34. The paragraph on National Assembly has been redrafted in accordance with the resolution from Conference in June 2018. National Assembly remains national in character but meets around the country. The resolution specifically provided that the National Assembly “will be organised and financed centrally”. Finance is not specified at each point in the constitution. It is therefore unnecessary to carry over this drafting instruction from the resolution as it is already implicit in the constitution.

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<sup>5</sup> City Associations were first established in 1985 in Aberdeen, Edinburgh, Dundee and Glasgow on District and Regional Associations being abolished. The reference to City Associations was removed in the 2004 Constitution, but some have continued to meet as City Associations, rather than as Local Authority Liaison Committees.

35. The intention is that the National Executive Committee will become peripatetic, meeting on the same day as National Assembly and inviting regional leaders to share their local experience and activities.

*National Council [Paragraph 10 of the 2004 Constitution]*

36. The paragraphs on National Council are removed from the constitution in implementation of the 'drafting instructions' resolution. A number of the functions of National Council, for instance its role in calling National Conference, have been reallocated under the proposed new constitution.

*National Conference as "Supreme governing body" [Paragraph 20.1]*

37. The resolution proposes explicitly adding "policy-making" to the description of National Conference as "the supreme governing body of the Party". The current characterisation of National Conference can be traced to the 1931 Constitution of the National Party of Scotland, with the phrase being copied over from that document into the 1934 Constitution of the Scottish National Party.
38. Our Party and its predecessor were very different parties in the 1930s than the Party is today. An active branch network covering all of Scotland and a fully staffed professional headquarters came many years later. National Conference would have spent much more time on organisational practicalities than it does today.
39. Most of conference is now taken up with policy resolutions rather than pure issues of governance. The internal sessions where National Office Bearers are called to account by the delegates form a core part of the agenda, but the greater time of conference is occupied by policy debates. To reflect this reality, and to emphasise that National Conference remains the sovereign forum for policy, the proposal to add "policy-making" is made.

*National Conference and Annual National Conference [Paragraphs 20.3-20.7]*

40. The resolution passed in June 2018 requires there to be one conference each year on the existing basis of delegate entitlement and at least one other conference which can have a smaller entitlement. This is implemented in the draft with one addition – to recognise the essential role that our local councillors have in the Party's success they now have an automatic right to be a delegate to Annual National Conference.

*Policy Development Committee and Conferences Committee [Paragraphs 21-22]*

41. The June resolution also required the creation of two new committees. The Policy Development Committee at its heart is aimed at making sure we get the right resolutions for debate at National Conference. There is a renewed focus on initiatives coming directly from members.



42. The Conferences Committee would take on much of the role of the existing Standing Orders and Agenda Committee. This includes a role in the Standing Orders of National Conference which, despite its name, is not technically a current responsibility of SOAC under our constitutional arrangements.

*National Office Bearers [Paragraph 23 & 31.1(d)+(e)]*

43. Three new National Office Bearers are added to our existing ones as agreed at June National Conference – Equalities Convener, BAME Convener and Disabled Members’ Convener. One of the amendments to the resolution would add a fourth – Member Support Convener. The Disabled Members’ Convener was added as a post by acclaim of conference following a suggestion by the Business Convener, although it was not originally included in the printed resolution.
44. The roles of National Office Bearers are currently contained in the Rules Providing National Officer Bearers’ Job Descriptions, including the roles of the core office bearers. This means that the roles of the core office bearers, including that of the Leader of leading election and other campaigns and articulating the argument for Scottish Independence are not stated in the constitution, where they properly should be.
45. The approach of the proposed revised constitution is to take the roles of President, Leader, Deputy Leader, National Secretary, National Treasurer and Business Convener from the existing rules and place them in the constitution. The roles of other office bearers are to be agreed by the National Executive Committee. Overall, the approach gives core National Office Bearer tasks the correct place in the constitution, while giving flexibility for other roles to develop. As well as job descriptions, the National Executive Committee is to be given a new explicit power of agreeing workstreams with all National Office Bearers.

*Leader and Deputy Leader Roles [Paragraphs 25 & 26]*

46. The reference in the current constitution to the leader also being the registered leader of the party has been removed from the revised version, as that is a legal requirement under the relevant legislation and therefore does not require to be repeated in the constitution.<sup>6</sup>
47. The Deputy Leader directs the party’s policy-making processes. The Party’s manifesto for elections is an extremely important document, but is not currently mentioned in either the Constitution or the Rules of the Party. The practice has been for the Deputy Leader to have the key role in the preparation of the manifesto with the Party Leader having ultimate sign off as the person who leads the election campaign. The proposed revised constitution recognises this practice by explicitly giving the Deputy Leader responsibility for the preparation of manifestos for parliamentary elections. The role in local government

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<sup>6</sup> [Section 24](#) of the Political Parties, Elections and Referendums Act 2000.

elections will primarily lie with the Local Government Convener in the capacity of giving advice to SNP Groups on local authorities and to Council Election Committees.

#### *Election of Leader and Depute Leader [Paragraph 30.3]*

48. Paragraph 15.7 of our current constitution states that the Leader and Depute Leader are to be elected on an annual basis. This is more reflective of the position before the 2004 Constitution when the Leader was elected by delegates to Annual National Conference. The better way of stating the reality is that the office of Leader and the office of Depute Leader are both open for election each year in the run up to Annual Conference if a challenger has collected the required signatures by the close of nominations. This is the drafting approach now adopted.
49. Neither the current version of the constitution nor the Leadership Election Rules deals with the situation of a Leader or Depute Leader being elected otherwise than by a vote in the run up to Annual National Conference. The proposal is to amend this to require the National Executive Committee to set out a timetable and process when a vacancy arises, in accordance with current practice.

#### *Other National Office Bearers [Paragraphs 27-29]*

50. The traditional position of the National Secretary as the “guardian of the Constitution of the Party” is explicitly recognised in the rules for the first time. As guardian, the National Secretary ensures that the principles in the Constitution at the core of the Party continue to be observed. The phrase is deliberately guardian of the Constitution, rather than guardian of the “Constitution and Rules”<sup>7</sup> or the guardian of the “Constitution, Standing Orders and Rules of the Party”. This is because the constitution is the Party’s primary document and Rules of the Party which are inconsistent with the Constitution of the Party are of no effect. The National Secretary would also be expected to act as guardian of the Rules of the Party in the usual situation where these rules are entirely consistent with the Constitution.
51. The Constitution now incorporates the practice of the National Treasurer in convening the Finance and Audit Committee of the Party. This committee reviews budgets and procurement processes and can make recommendations to the Party to ensure good governance. The Party also has external auditors for its national accounts. The ability of the National Treasurer to provide guidance and directions to other Treasurers in the Party is also made a specific power of the National Treasurer.

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<sup>7</sup> Longer-standing members sometimes refer to the “Constitution and Rules of the Party”. Until 2004, there was a combined document with Part 1 containing core constitutional provisions and Part 2 being the more detailed Rules of the SNP. Under the 1949 Constitution, Part 2 could be amended by National Council, while Part 1 required National Conference to amend. The Rules of the Party are now in a separate series of documents. Rules of the Party dealing with debates and other aspects of the operation of the Parliamentary Groups and other bodies, such as National Conference are in documents referred to as “Standing Orders”.

### *Decision-making by the National Executive Committee [Paragraph 31]*

52. An expanded National Executive Committee, with 16 regional members replacing the existing the six ordinary members who are not parliamentarians, additional National Office Bearers and representatives from all Affiliated Organisations makes it even more important that there is clarity on how the committee uses its decision-making powers.
53. Local authorities and many boards have Schemes of Delegation setting out at which level decisions are ordinarily taken. The proposal has the National Executive Committee working in such a manner with the Scheme being agreed by each new committee elected at Annual National Conference. National Office Bearers with specified powers under the proposed revised constitution can similarly delegate any appropriate power. Delegating powers does not delegate overall responsibilities. In some instances, the National Executive Committee may choose to delegate powers only in certain situations, such as ones where no controversy arises or in an emergency. National Office Bearers will be responsible for deciding themselves whether any of their powers are to be delegated, and in what circumstances.

### *Equalities and the National Equalities Forum [Paragraphs 14.1, 34 & 37.5]*

54. The revised constitution would establish a National Equalities Forum to bring together representatives from each of the party's networks representing groups which have been under-represented in the past. Other equality-related issues introduced into the constitution is a requirement that meetings of the party are held in appropriate and accessible venues and the ability of the National Executive Committee to provide finance to disabled members to remove the barriers to equal participation in the activities of the Party.

### *Use of the term "Members' Associations" [Paragraph 16 of the Constitution of 2004]*

55. The 2004 Constitution added a section on "Members' Associations". These are associations which are formed by members 'wishing to cater for a specific interest'. "Members association" has a particular legal definition in the Political Parties, Elections and Referendums Act 2000.<sup>8</sup> Under the Party's Financial Scheme under that Act, some party bodies are to be regarded as Members associations under the legislation, even although they are not "Members' Associations" under the constitution. The proposed revision to the constitution uses "Members' Interest Group" for better clarity and to avoid confusion with a term of art used in the law of political party regulation.

### *Members' Interest Groups and Affiliated Organisations (Paragraphs 35 & 36)*

56. The constitution provides that both Affiliated Organisations and what are currently termed Members' Associations have their status reviewed annually at National Conference. That is not something which has happened in practice and there is nothing in the constitution or

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<sup>8</sup> See Paragraph 1(6) of [Schedule 7](#).

any rules which gives an indication of what a review is to involve. Receiving reports from Affiliated Organisations is one of the specified responsibilities of National Conference. The requirement for review has been removed from the revised constitution. It has not been thought necessary to review the status of any of these organisations in the past and National Conference retains the power to dissolve any Members' Interest Group and to disaffiliate any Affiliated Organisation.

57. Both types of organisation are required to have a constitution conforming to either the Members' Association Rules or the Affiliated Organisation Rules. These two sets of rules do not provide any detailed clauses. The general requirements in these rules are to include provisions, such as appointing a treasurer, which would be expected to appear anyway in any properly drafted constitution. Rather than have a set of rules which say what should be in the constitution of these organisations, the revised constitution adopts the simpler approach of having the National Executive Committee approve the constitution and any amendments to the constitution of these bodies. It would be expected that before any constitution was presented to the National Executive Committee there would be a discussion on these issues with the organisation concerned.
58. To underline that it is not just a matter of being able to satisfy the National Executive Committee that these organisations have an appropriate constitution on paper, the amendments add a requirement that Members' Interest Groups and Affiliated Organisations must operate in terms of their constitution.

#### *Finance [Paragraphs 39-41]*

59. The General Financial Provisions and the paragraph on Borrowing and Debt largely follow our existing constitution. The operation of the 'Branch Dividend', membership fees and the payment of the Parliamentary Level are currently based on resolutions passed at Annual Conference in 2003. It is appropriate for these resolutions to be incorporated into the constitution.
60. The mechanism for the funding of regional activities was remitted back by National Conference in June 2018, largely on the basis of concerns over the employment status and rights of the proposed regional organisers. The revised constitution would give Regional Steering Committees the power to decide to divert branch dividend from Branches and Constituency Branches within their area to purposes agreed with the National Executive Committee. A Working Group has discussed the funding of Regional Co-ordinators employed by the Party centrally. The National Executive Committee has agreed that if a Regional Steering Committee commits to a diversion of half of the branch dividend this will be match funded centrally for the purposes of employing a Regional Co-ordinator. Details are in the National Treasurer's report to conference. The voting members of Regional Steering Committees are two delegates from each Constituency Association and Constituency Branch in the region.

61. Branches were generally in favour of giving the bodies currently known as Westminster Liaison Committees the same power as Constituency Associations to call on funds at election time. An amendment to that effect is provided, which recognises that there will be a need to make an apportionment for Branches, Constituency Branches and Constituency Associations which do not fall wholly within a UK Parliamentary constituency. The Scottish Parliament process is also clarified to make it apply from the issuing of the notice of election. As in the past, it is expected that local party bodies will agree how much they will contribute to each parliamentary campaign, rather than have the power explicitly invoked.

#### *Group Standing Orders [Paragraph 42]*

62. Until the 2004 Constitution, the SNP Parliamentary Groups maintained their own Standing Orders, amending them as required under their own procedures. Since the 2004 Constitution, amendment has been by resolution passed at National Conference. There are references remaining in Standing Orders to issues which arose during the first session of the Scottish Parliament. Faced with the option of having Standing Orders which have become outdated or having to go through the full process of an amendment and taking up the valuable time of National Conference, the option has generally been for the groups to work within the existing Standing Orders. Parliamentary Groups have therefore requested a reversion to the pre-2004 position.
63. The revised constitution provides a mechanism for Parliamentary Group Standing Orders to be revised by a two-thirds vote in the group followed by a two-thirds vote by the National Executive Committee. As National Conference remains the supreme governing (and policy-making) body of the party, nothing in the proposed revision to the constitution precludes a resolution being passed by National Conference to amend any group standing orders.
64. Standing Orders for Council Groups have similarly suffered from not being subject to updating and review by National Conference. Standing Orders were drafted when the SNP was not the force it now is in local government. The proposed mechanism for amending Council Group Standing Orders parallels the arrangement for the parliamentary groups with any proposal coming from the Association of Nationalist Councillors.

#### *Rules and Standing Orders [Paragraph 43]*

65. The National Executive Committee is given a general power to draw up and maintain the Rules of the Party. Exceptions are the rules for the conduct of debates at National Conference, which are kept under review by Conferences Committee, and the rules and procedures for elections at Annual National Conference. Codes of Conduct for Members and the rules for the basic organisational structures of the Party: Branch, Constituency Branch and Constituency Association, may only be amended by National Conference.
66. National Conference retains the power to amend all Standing Orders and Rules of the Party, including those rules which will ordinarily be drawn up and amended by the National

Executive Committee. If National Conference chooses to amend a provision in one of these rules, the National Executive Committee is barred from reversing the decision of National Conference. In this situation, the National Executive Committee could only propose a resolution to Conferences Committee for debate at a subsequent National Conference.

67. There is a requirement that all Standing Orders and Rules of the Party must be based on the principles laid down in the Constitution “read widely”. A wide reading of a provision requires a reading which goes beyond a narrow textual consideration and looks at the wider intent behind the text.

#### *Amending the Constitution [Paragraph 44]*

68. Legislation doesn’t normally come into force automatically. It comes into force through a power given by Parliament to the Government to make commencement orders. They allow legislation to be brought in on specified dates and in a stated orderly manner – providing for some transition between the old and the new.
69. The amendment proposes that our Parliament (National Conference) gives our Government (the National Executive Committee) the power to transition constitutional changes when necessary. It is important that this power is a limited one. The proposal is that the power given to the National Executive Committee to transition any change does not extend beyond the next Annual National Conference of the party.
70. The power to make Transitional Directions will not apply if a resolution specifies when it is to commence. So, if a resolution says that the constitutional amendment is to take effect immediately, or on a specified date, that is what will happen, and the National Executive Committee will have no constitutional power to change that. If this part of the resolution is passed by Conference, then the new Conferences Committee will be expected to ensure that in drafting constitutional amendments, proposers are made aware of the options they have to allow for transition, or to fix in the resolution when it is to have effect. In practice, Transitional Directions are most likely to be required for major constitutional changes.

#### *Interpretation [Paragraph 45]*

71. The nature of a party constitution for an unincorporated association,<sup>9</sup> and of any rules properly made under the authority of the constitution, is of an agreement between each of

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<sup>9</sup> The legal nature of the Scottish National Party, and most other major parties, is that of an unincorporated association. This is an organisation of individuals “bound together for one or more common purposes... by mutual undertakings, each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and upon what terms, and which can be joined or left at will” [Classic modern definition in [Conservative and Unionist Central Office v Burrell](#), [1982] 1 WLR 522 (CA)]. Unlike a company or a partnership or other corporate bodies, an unincorporated association has no legal existence separate from the individual members. Branches of the Scottish National Party do not have an existence separate from the party as a whole – [Newtongrange Branch of the Scottish National Party v Scottish National Party](#), Lord Osborne, Outer House, 10 July 1999. The Scottish Law Commission reviewed the law in its [Report on Unincorporated Associations](#) in 2009.

the members of the Party. These documents are construed in the same manner as applies in respect of contracts in general.<sup>10</sup>

72. The constitution provides for conveners of meetings to make reasonable rulings on any issue which arises before them, with issues of interpretation arising between meetings the responsibility of the National Secretary, if asked to interpret the Party's rules and regulations. The National Secretary may also be expected to bring any clarifying amendments or more general changes required to the National Executive Committee or to National Conference.

#### *Availability of Rules [Paragraph 46]*

73. As there would be some rules under the proposed revised constitution, such as Standing Orders of the Parliamentary Groups, which will no longer go through National Conference, a new obligation is created in the Constitution to require an updated version of all of the various Party rules and rulings to be made available to members on the Party's website.

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<sup>10</sup> For a recent example of the courts in Scotland interpreting the rules of a party see *Asim Khan v Scottish Executive Committee of the Scottish Labour Party* [2018] CSOH 68 (challenge to Labour Party selection processes in Glasgow South West). For a more general case on the rules of an unincorporated association see *Crocket v Tantallon Golf Club* [2005] CSOH 37, 2005 SLT 663. For a discussion of the some of the principles which applies to interpreting party rules see *Evangelou & Others v McNicol* [2016] EWCA Civ 817 (case on the 2016 Labour Party Leadership election) at paragraphs 18-24.