The Committee will meet at 10.15 am in Committee Room 2.

1. **Guidance for Conveners:** The Committee will consider draft Guidance and take evidence from—

   Elizabeth Watson, Clerk to the Conveners’ Group.

2. **Non-Executive Bills:** The Committee will consider a summary of evidence received and options for what system of prioritisation, if any, to recommend.

3. **Bills – timescales and Stages:** The Committee will consider a paper on Bills suitable for using as case studies in the inquiry and possible oral witnesses.

Andrew Mylne
Clerk to the Committee
Room 5.19 PHQ
Ext 85175
andrew.mylne@scottish.parliament.uk
The following papers are attached for this meeting:

**Agenda item 1**
Note by the Clerk (draft Guidance attached) PR/S2/04/5/1

**Agenda item 2**
Summary of evidence PR/S2/04/5/2
Options paper (note by the Clerk) PR/S2/04/5/3
Citizens’ juries (note by the Assistant Clerk) PR/S2/04/5/4
Letter to the Convener from Scottish Council for Voluntary Organisations PR/S2/04/5/5
Written evidence from Joyce McMillan PR/S2/04/5/6
Supplementary evidence from Barry Winetrobe PR/S2/04/5/7

**Agenda item 3**
Note by the Clerk PR/S2/04/5/8

The following papers are attached for information:

Letter from Robert Brown MSP, Convener of the Education Committee, concerning this Committee's legislation inquiry PR/S2/04/5/9
Note of meeting with Irish delegation PR/S2/04/5/10
Minutes of the last meeting PR/S2/04/4/M
Introduction

1. Attached (as an Annex) is draft Guidance for Conveners which was agreed by the Conveners’ Group at its last meeting (26 February).

2. An earlier Guidance document on this subject (Guidance on the Role of Committee Convener) was published in May 2000. However, since the formal establishment of the Conveners’ Group, and the accumulation of a great deal more experience of committee operation, it was felt that an entirely new version was necessary.

3. The new Guidance covers all the areas on which the Conveners indicated they felt that guidance would be helpful to them. It can be regarded as a dynamic document which can be added to as necessary – it is not intended to be comprehensive and, in particular, it is not intended simply to cover the ground covered in the Guidance on the Operation of Committees (which itself will be revised during this year).

4. The main audience for this Guidance is the conveners themselves. It is not aimed at the general public. The Conveners’ Group has decided that it should be published on the CG page of the website and included in the FOI Publications Scheme (that is, the list of documents the Parliament publishes or intends to publish which the SPCB must submit for approval to the Scottish Information Commissioner under section 23 of the Freedom of Information (Scotland) Act 2002).

Consideration by Procedures Committee

5. Paper PR/S2/04/3/4, circulated for the Committee’s meeting on 10 February, outlined the system of published Guidance and the Committee’s role in clearing it prior to publication.

6. Although the Guidance for Conveners is in a slightly different category from the main volumes of Guidance referred to in that note (which are aimed at all MSPs, clerks and the public), it is suggested that the Committee’s role is broadly similar. That is, the Committee’s role is to consider and offer comments on the draft so that when the final version is published, it will carry an additional stamp of authority that it would not otherwise have. However, final responsibility for the text rests with the Clerking and Reporting Directorate, who prepare and update the Guidance. In this instance, the Committee will wish to take account of the fact that the attached draft has already been cleared by the Conveners’ Group.
7. Elizabeth Watson, who is Clerk to the Conveners’ Group as well as Head of the Committee Office, will attend to answer any questions members may have about the draft Guidance.

**Points to note**

8. At its meeting on 18 December the Group considered a draft of the attached Guidance. It agreed to the sections of the guidance covering the following matters:

- Sources of information
- Duration of appointment
- The Committee Clerk
- Forms of address
- Suspension and closure of meetings
- Conveners and the media
- Legislation

9. The Group made a number of comments in relation to other sections of the Guidance which have been incorporated into the final draft. These were:

*Role and function of conveners (paragraphs 5-7)*

10. The Group’s view was that the role of the convener is to facilitate debate whilst acknowledging that there are underlying differences in opinion between committee members.

*Temporary Conveners (paragraph 11)*

11. The Group requested that a paragraph be inserted giving information about the circumstances in which a temporary convener could be appointed.

*Correspondence (paragraph 17)*

12. The Group requested that this section should make it clear that it is good practice to circulate correspondence where a committee has asked the convener to write on its behalf.

*Committee work programmes/agendas (paragraph 27)*

13. The Group requested that this section give more information about the circumstances in which a convener could amend an agenda after publication.

*Timetable for consideration of Bills (paragraph 28-35)*

14. Members asked for guidance on the consequences of a committee failing to complete consideration of a Bill within the agreed timetable.
Conduct of committee meetings (paragraph 36-47)

15. The Group asked for these paragraphs to reflect the particular difficulties encountered by a convener who is his or her party’s sole representative on the committee. The section is cross-referenced to the section of the guidance which deals with a convener handing over the chair of a meeting to the deputy convener. This can provide some assistance to conveners who wish to participate fully in debate on a particular topic.

Managing witnesses (paragraphs 48-49)

16. The Group asked that these paragraphs should emphasise that it could be necessary for conveners to adopt a robust approach with witnesses who exceed their allotted time if invited to make an opening statement.

Meeting/items in private (paragraphs 54-56)

17. These paragraphs now set out the publicly expressed views of the Conveners’ Group on the benefits of taking draft reports in private. The Guidance does, however, stop short of recommending this approach. To make such a recommendation would go further than is permitted by the current Standing Orders which make it clear that decisions must be taken by committees on the facts and circumstances of each case. It is, accordingly, not appropriate to produce guidance which appears to argue that a category of business should be taken in private or which could appear to be trying to fetter the exercise of discretion.

Decision taking and voting (paragraph 62)

18. This paragraph includes a reference to the Group’s view that it is good practice for a convener to indicate in advance the basis on which the casting vote will be exercised.

Conveners leaving the chair (paragraphs 63-64)

19. The Group asked that this section should give practical information about how conveners should hand the chair over to the deputy convener and resume the chair during the meetings.

Informal information gathering (paragraph 70)

20. The Group asked that the section should emphasise the importance of fact-finding as part of a committee’s scrutiny function. The section explains the circumstances in which information might be gathered by means of a briefing session as opposed to a formal evidence taking session.

Amendments in the name of the convener (paragraphs 79-82)

21. Further advice has been obtained on the position of a convener called upon to determine a dispute relating to the admissibility of his or her own amendment. The clear advice that has been received is that if the convener considers it
appropriate, he or she can take the view that he or she in unable to undertake the function of determining the dispute and can ask the deputy convener to step in. This is a departure from the advice previously tendered. The basis of the new advice is that being asked to rule on the admissibility of his or her own amendment places the convener in a conflict which, in terms of the Code of Conduct requires to be resolved in the public interest. Accordingly, whereas there is no reason in Standing Orders why a convener should not rule in such a situation, he or she would be in danger of breaching the Code of Conduct. In such circumstances, a convener could consider him or herself unable to act, in which case the deputy convener could take the decision.

_Speaking in debates (paragraphs 86 & 87)_

22. The Group suggested that a section should be added dealing with the role of conveners when speaking in plenary debates on matters relevant to the work of their committees.
DRAFT GUIDANCE FOR CONVENERS

Sources of information

1. The primary source of information about procedures in the committees of the Scottish Parliament is the Standing Orders and, in particular, chapters 6 and 12 which deal with “Committees” and “Committee Procedures” respectively.

2. Further guidance is contained on the “Guidance on the Operation of Committees” which is available electronically on the committee pages of the Parliament’s website and in the “Guidance on Public Bills” and “Guidance on Private Bills” which are also published on the website.

3. This Guidance covers issues of particular relevance to committee conveners and expands on other guidance material.

4. Any conveners seeking advice on the operation of the Standing Orders or on the application of the guidance should seek advice from the committee clerks who can advise on all aspects of procedure and practice in relation to the work of the committees.

Role and function of conveners

5. Rule 12.1 of Standing Orders deals with the appointment of conveners and their role and functions.

6. Each committee must have a convener and the convener’s duties are to convene and chair the meetings of the committees.

7. It is important to note that, unlike the Presiding Officer, conveners are not required to be impartial and that it is normal practice for conveners to participate in the committee meetings by, for example, asking questions of witnesses, in addition to their duties in chairing the meeting. However in purely practical terms, it may be difficult for a convener to participate fully due to his or her role in keeping order and calling speakers. (For more information on the procedures to be followed in committee meetings see paragraphs 36-47 below). It is the role of the convener to facilitate debate and, where possible, allow the committee to reach a consensus view, whilst acknowledging that that there will be differences in the views of members

Deputy Conveners

8. Chapter 12 of Standing Orders contains provisions to allow the Parliament to decide that committees shall have deputy conveners. The allocation of deputy convenerships across the political parties is determined by the Parliament on a motion by the Bureau and, as with committee convenerships, the allocation must have regard to the balance of the political parties in the Parliament. In practice, this means that it is possible that the convener and deputy convener will be drawn from different political parties.

9. A deputy convener can chair a meeting or part of a meeting if the convener is not available or leaves the chair during the meeting (see also paras 63-64). The
deputy convener can also carry out the functions of the convener if, at any time other than during a meeting, a convener is unable to act in his or her capacity as a convener.

10. These provisions do not confer on deputy conveners any other rights in relation to the discharge of committee business. For example, there is no requirement for the convener to involve the deputy convener in discussions with clerks or in the process of setting agendas. However, there are a number of examples of situations where conveners have, as a matter of practice, involved the deputy convener in these matters and where this has occurred it has generally been regarded as effective. In particular, it allows the deputy convener to be fully prepared in the event of having to take the chair at short notice or to deal with committee business, in the absence of a convener, between meetings.

Temporary Conveners

11. A temporary convener can be appointed where a committee does not have deputy convener or the deputy convener is unable to act in that capacity either during or between meetings. This allows a meeting to proceed even where the convener and deputy convener cannot attend. In that situation, the oldest member takes the chair to allow the committee to choose a temporary convener, who when chosen has all the functions of a deputy convener and can chair a meeting in the absence of the convener. The clerks will advise members on the procedures to be followed should it be necessary to appoint a temporary convener.

Duration of an appointment

12. In terms of Rule 12.1.8 appointment as a convener is for the duration of the committee unless the convener:

- resigns by intimating his or her resignation to the Clerk.
- is removed by a decision taken by an absolute majority of the committee on a motion lodged under Rule 12.1.8A;
- ceases to be a member of the Parliament or the committee.

In practice, if a convener does intend to resign, he or she should tell the clerk to the committee and follow this up with a letter as soon as possible. The clerk will then deal with the relaying of messages and the copying of letters as required.

The Committee Clerk

13. The first source of advice on all matters of Committee procedures and practice is the clerks. Clerks serve all members and give impartial advice. However, inevitably, there will be a close working relationship between the convener and the clerk. In order to discuss draft agendas, papers, reports and the convener’s brief it is important for regular meetings to be scheduled between the committee convener and the clerk.

14. During committee meetings, clerks will advise on procedure, and if asked to do so will give advice “on the record”. However, a convener may still ask a clerk privately for advice on any point of concern. In meetings, a clerk may from time to
time draw procedural matters to the convener’s attention, but it is for the convener to
decide what action to take and whether to call the meeting to order. Clerks do not
generally give advice on matters of policy (other than when advising the Procedures
and Standards Committees in the discharge of their functions).

Correspondence

15. Conveners will often receive a substantial volume of correspondence in
connection with their role and the work of the committee.

16. This can include matters such as invitations to attend conferences, letters from
individuals concerning the remit of the committee or in relation to particular inquiries
or Bills under consideration. All correspondence of this kind should be passed to the
clerks who will draft responses for clearance by the convener. Not only does this
practice help relieve the burden on conveners and their staff, it helps keep the
clerking team fully informed of current issues and ensures a consistent approach to
content of replies. If unsure as to whether a letter should be passed to the clerks, the
best advice is to pass it on to the clerking team. If it is not appropriate for the clerks
to frame the draft, it will be returned promptly, with an explanation of why they cannot
deal with it.

17. It is a matter for the discretion of the convener whether to circulate
correspondence to members of the committee. It is, however, good practice to
circulate correspondence where a committee has agreed that the convener should
write on behalf of the committee.

Committee work programmes/agendas

18. Rule 12.3.1 of Standing Orders deals with the choice of business for the
committees and the setting of agendas.

19. The application of the rule means that the committee work programme,
including the topics for inquiry, requires to be approved by the committee. It is,
however, the convener who is responsible for the week to week agenda. The
Standing Order requires the convener to “notify the Clerk” and for the Clerk to notify

20. In practice, the committee clerk will prepare a draft agenda for approval by the
convener which will take account of any timetables which have been agreed with the
Bureau in relation to Bills, constraints imposed by Standing Orders, for example, in
relation to the consideration of subordinate legislation and the committee’s agreed
work programme.

21. For the smooth running of the committee, it is essential that conveners have
the opportunity to discuss draft agendas and the handling of meetings with the clerks
and, therefore, it is strongly recommended that conveners should schedule regular
meetings with the clerking team. As mentioned above, some conveners find it helpful
to involve the deputy conveners in this process, although this is not a requirement of
Standing Orders.
22. In setting the agenda, it is a matter for the discretion of the convener whether to include an item that an individual committee member has asked to be included on an agenda. It is the committee which is responsible for determining the business to be considered, in the wider sense. However, a convener may not wish to be seen as disregarding the views or concerns of individual members. If the convener is inclined to accede to a request, it may be useful to discuss the matter with the committee clerk before agreeing to add the matter to an agenda so that any preparatory work can be done and a paper commissioned.

23. One option is to ensure that the committee reviews its work programme at appropriate points during the year to allow priorities to be readjusted. The frequency with which committees review their work programmes varies. Conveners may find it prudent soon after the establishment of a committee to agree a practice for reviewing the work programme and dealing with requests by members to add items. This will help conveners manage members’ expectations in relation to having items included in agendas.

24. When setting agendas, conveners can allocate timings to each item of business or schedule items to commence not before a particular time. This is not however normal practice and can bring problems in that the timings require to be adhered to, which can add to the difficulties of chairing a meeting. If the agenda states that an item will not start before a particular time and the business earlier on the agenda is concluded quickly, the meeting has to be suspended until the allotted time is reached.

25. Even where formal timings are not set, the length of the agenda and the time available must be considered. When scheduling evidence sessions, an assessment must be made of how many witnesses the committee can reasonably question in one session. This will vary according to circumstances. If a committee meeting requires to be closed before all witnesses have been heard, this can cause adverse publicity for the committee and can affect relationships with stakeholder groups. (see also paras 48-49 below)

26. There are no provisions in Standing Orders for “emergency business” in committees. The agenda which is published in the daily business list must contain notice of all the business that a committee will consider.

27. Items can only be added to an agenda if there is still time to publish an amended daily business list. In the most exceptional cases, this can be done on the day of the meeting. Clerks will make the necessary arrangements. The decision on whether to add an item to an agenda is one for the convener. Particularly if this done at short notice, a convener needs to balance the importance of having an early discussion in the committee with considerations of accessibility (interested parties may not be able to attend or even be aware of the discussion) and the ability of members and witnesses to prepare for questioning.

28. The Standing Orders do not allow the introduction of “ad hoc business” into committee meetings nor do they allow the inclusion of non-specific items such as “any other business” or “matters arising” on committee agendas.
Timetables for the consideration of Bills

29. An important consideration when planning committee work programmes and setting agendas for meetings is the overall timetable for the consideration of the stages of Bills.

30. The Bureau will normally agree a timetable for completion of the Stages of a Bill taking into account the views of the conveners of the relevant committees. It is also possible, by Bureau motion, for the Parliament to agree the timetable for completion of the Stages of a Bill.

31. This can be particularly important at Stage 1 for conveners of secondary committees and the Subordinate Legislation and Finance Committees which report to the lead committee. Conveners will wish to ensure that sufficient time is available for other committees to be thorough in their consideration at Stage 1 and to report to the lead committee in time for their views to be of value in informing the lead committee’s report to the Parliament.

32. Conveners may wish to make written representations to the Bureau. If necessary, arrangements can be made for the conveners to attend a Bureau meeting. This can be arranged by the committee clerks.

33. It is for conveners to decide whether they wish to discuss timetabling issues with their members before making their views known to the Bureau. However, if there has been no discussion, a convener should make it clear that the views expressed are his or her own and not those of the committee.

34. Where a timescale is agreed for completion of either Stage 1 or Stage 2, it is, of course, possible to go back to the Bureau to seek additional time should that prove necessary. This is particularly important at Stage 2 when the length of time required may depend on the number of amendments lodged.

35. There is a presumption that a committee will complete its consideration of a Bill within the timetable, even if that means scheduling additional meetings. Standing orders make it clear that the Stage 1 debate cannot take place until the lead committee has reported. Similarly, a Bill cannot proceed to Stage 3 unless all amendments at Stage 2 have been dealt with. If a committee failed to meet the timetable, it would, at best, have breached an agreement with Bureau and, at worst, have breached a resolution of the Parliament. Standing Orders prescribe no specific sanction but the future timetabling of the Bill and any other issues arising would be matters for the Business Managers and the Bureau.

Conduct of committee meetings

36. The convener is responsible for keeping order in a committee meeting and calling speakers. The committee clerk will prepare a “Convener’s Brief” to assist in managing the meeting.

37. Any MSP can attend a committee meeting but may only participate if invited to do so by the convener. Members can only speak when called by the convener. In calling speakers, the convener is required to have regard to the business under
consideration. There is no provision which specifically requires the convener to reflect the balance between the parties in calling speakers. However, it is normal practice, in the interests of promoting consensus, for conveners to do so.

38. The convener is not required to be impartial and is entitled to participate in the work of the committee and express his or her views on the topic under consideration. However, in practice, there may be difficulties in a convener participating fully whilst exercising his or her role in keeping order and calling speakers. This can cause particular problems where a convener is the sole representative of this or her party on a committee. Handing the chair over to the Deputy Convener for part of the meeting can help in this situation. (see also paras 79-82 below).

39. Members are required to conduct themselves in a courteous, respectful and orderly manner and to respect the authority of the chair.

40. Conveners are entitled to allocate speaking times. In practice, this does not normally occur in committee meetings which are generally less formal in their nature than proceedings in the Chamber. However, conveners may find this a useful tool when managing Stage 2 of a Bill to ensure that the timetable for completion is met. Even where speaking times have not been allocated, the convener is entitled to order a member to stop speaking if the member departs from the subject or repeats himself or herself.

41. The convener may order a member who breaches any of these rules of conduct to leave the meeting, although this would be a rare event and one only to be taken as a last resort.

42. Members of the public also require to adhere to a Code of Behaviour and must not disrupt proceedings in any way.

43. If a convener is of the opinion that a member of the public is disrupting proceedings, he or she can order that person to be excluded from the proceedings.

44. There are no specific provisions in Standing Orders or in the Code of Behaviour for members of the public which cover communications between committee members (or anyone else sitting at the committee table) and the public gallery whether by passing notes or otherwise. It is entirely a matter for the convener to determine whether any behaviour constitutes a breach of the provisions dealing with the keeping of order whether by members or members of the public and to deal with it accordingly. Most conveners have taken the view that this practice is disruptive and do not allow notes to be passed to members from the public gallery during meetings.

45. If a disturbance interferes with the conduct of business, a convener can suspend the meeting, although this is a rare occurrence.

46. In such a situation, the convener must order the person creating the disturbance to stop. The convener must clearly state that he or she is suspending the meeting and must leave the chair.
47. The committee meeting may be re-convened later in the day. If the meeting is not re-convened later in the day, it is deemed to have been closed when suspended.

**Managing Witnesses**

48. There are varying practices between committees on the approach taken to questioning witnesses. Some committees adopt a practice of inviting witnesses to open with a statement to the committee. This can have advantages in that it sets witnesses at their ease, particularly those who are not familiar with the process. However, this practice has to be carefully managed by the convener and a balance has to be struck between putting witnesses at ease and the needs of the committee. Time does not always permit opening statements and, even when it does, members seldom find it helpful for witnesses simply to read their written evidence. Where an opening statement is to be made, it is good practice to get the clerks to advise the witness of the time allowed and to ask them to focus on one or 2 key points rather than rehearsing their written submission. It is for the convener then to manage the witness and, if appropriate, keep him or her to the agreed time. Convener may have to take a strong line with witnesses, including Ministers and Executive Officials, to prevent a committee overrunning.

49. Whether to allow opening statements may be a matter which a committee could agree if considering its Working Practices. (see paragraphs 83-85 below).

**Forms of address**

50. Proceedings in committees tend to be relatively informal and members often use first names when referring to each other.

51. This practice can, however, cause some confusion for the visually impaired or for those listening to radio broadcasts of meetings, particularly if two members have the same forename.

52. It is therefore good practice for convener to call speakers (at least on their first contribution to the meeting) by their full name.

53. It is normal for the convener to be addressed as “convener”, although Standing Orders would allow the convener to be addressed by name.

**Meetings/items in private**

54. Standing Orders provide that committee proceedings shall be held in public except when a committee decides otherwise. There are certain types of business which must be taken in public and committee clerks will advise on this.

55. Standing Orders allow only committee members to be in attendance at private meetings. The convener must ask any MSPs who are not committee members to leave before the private meeting or private part of the meeting starts.

56. The decision on whether to meet in private is one which must be taken by a committee and not by the convener. The decision must be taken on the merits of each individual piece of business. A committee could not, for example, agree a
practice of taking a particular type of business in private. (For further information on meetings in public and in private see "Guidance on Operation of Committees" paragraph 7.7 to 7.19). The Conveners’ Group has recognised the benefits that can be derived from taking draft reports in private which include an enhanced likelihood of achieving consensus and compromise. Consideration in private also ensures that media attention is not focussed on preliminary views which may not feature in the final report.

57. It is important for the convener to make it clear when a committee is moving into private session. It is the convener’s statement that the meeting is moving into private session that acts as the trigger for broadcasting to close the microphones and stop recording for the purposes of the Official Report. It also is the trigger for the security staff to clear the public gallery.

58. If it is not clear that the committee is moving into private session, the meeting will continue to be broadcast and officially reported, which can cause embarrassment to members.

**Decision taking and voting**

59. In practice, committees take many decisions by consensus and votes are relatively unusual except at Stage 2 of a Bill.

60. It is, however, for the convener to decide the time at which members should take a decision on any item of business and to decide whether to proceed to a division.

61. If there is a division, members vote by a show of hands unless a member has asked for a roll-call vote and the convener agrees to that request. Requests for roll-call votes are unusual and the vast majority of divisions are by show of hands. Conveners should encourage members to be clear in the way that they are voting and to keep their hands raised until the clerk has had the opportunity of counting and recording the vote.

62. The convener has a personal vote as a committee member and also a casting vote in the event of a tie. It is entirely a matter for the discretion of the convener how to use the casting vote. There are no agreed conventions on this point. It is however recognised as good practice for a convener to explain the basis on which he or she was using the casting vote immediately before doing so.

**Conveners leaving the chair**

63. A convener can hand the chair over to a deputy (or temporary) convener during a meeting and either leave the room for part of the meeting or still remain at the table and participate in the meeting as an ordinary member. The deputy, while in the chair, exercises all the functions of the convener including use of the casting vote.

64. Where a convener knows in advance that he or she wishes to hand over the chair for part of the meeting, this should be discussed with the clerks and deputy convener prior to the meeting so that, if necessary, the deputy can be clear about the
arrangements for the convener leaving and resuming the chair. Ideally, if the convener wishes to leave or resume the chair this should be done between agenda items. If this cannot be pre arranged, the convener should advise the clerk when he or she wishes to leave or resume the chair. This will allow the clerk to alert the deputy and a smooth transfer can be arranged. In the unlikely event of a deputy refusing to give up the chair, the clerk will arrange for the convener’s microphone to be switched on so that the convener can resume the role of chair. It is not necessary for the convener to occupy any particular seat at the table.

Suspension and closure of meetings

65. In paragraph 45 above, reference is made to the power of the convener to suspend a meeting if a disturbance interferes with the conduct of business.

66. Conveners may also suspend meetings:

- in the event of an emergency
- where electronic equipment in the committee room breaks down (in the committee context this refers to the broadcasting/recording system)
- for a meal or other break
- if the agenda contains timings, where an item concludes before the time set for the start of the next item.

67. Conveners can find it useful to suspend meetings for short periods as witnesses or groups of witnesses leave and join the committee table. If there is going to be any significant break, suspension ensures that the microphones are not left open during this period. If the meeting is not suspended, the microphones are left open and comments and observations made by members will be broadcast. This includes comments made by conveners.

68. It is also for the convener to close the meeting. This will normally occur when the business specified on the agenda is concluded, but the convener has the power to close the meeting when he or she considers it appropriate. Committees will, however, normally try to conclude all the business specified on the agenda, particularly when this involves hearing witnesses who may have travelled some distance to attend the committee meetings. It is also important to bear in mind that members of the public gallery may have attended the meeting specifically to hear one item of business.

69. When suspending/closing/reconvening a meeting the convener must state this clearly. It is the statement by the convener that the meeting is being suspended/closing/restarting which will alert broadcasting staff to switch the system on or off for the purposes of the microphones and the Official Report. If it is not clear then there is a danger that the microphones will be left open and broadcasting will continue. Alternatively, if it is not clear that a meeting has recommenced, there will be difficulties in producing an Official Report of that section of the meeting.

Informal information gathering

70. Information gathering is important to the overall scrutiny function of committees. Much information is gathered by taking evidence from witnesses in the formal setting of committee meetings. These meetings form part of the proceedings
of the Parliament and are regulated by Standing Orders. This is not, however, the only method available to gather information and may not be appropriate in all situations, particularly where committees wish to engage in more participative sessions with contributors. Additional options available to committees include fact finding trips and informal briefing sessions. Some committees have found it useful to have informal briefing sessions which can involve ministers, Executive officials and representatives from stakeholder groups. These sessions can perform a useful role in allowing members to increase their background knowledge of a subject preparatory to commencing an inquiry or scrutiny of a Bill. Briefings may also be provided for members by parliamentary officials. Although briefing sessions enable members to obtain background information and clarification of factual points in an informal setting which allows a more participative discussion, such sessions should not be used as a substitute for formal evidence taking. They are not part of the proceedings of the Parliament and are not Officially Reported. It is for a committee to agree whether it is appropriate to organise a briefing session or to invite witnesses to give evidence.

Conveners and the media

71. Advice on all aspects of media relations and the work of the Committees can be obtained from the Media Relations Office (MRO) and the clerks. Conveners may find it helpful to discuss media related issues with the MRO staff and clerks before reaching a decision on the appropriate action to be taken.

72. Conveners will inevitably be asked to express views in the media relevant to the committee’s remit.

73. If expressing a view, it is important for a convener to distinguish clearly between a view given in a personal capacity and one given on behalf of the committee. If speaking on behalf of the committee, the view must reflect matters which have been agreed in the committee.

74. However, this can be a difficult area. Conveners may find it helpful to secure the agreement of their committee as to how media relations should be handled and the extent to which the convener has authority to speak on behalf of the committee.

75. There can be grey areas and some committees have found it helpful to agree at an early stage after their establishment certain working practices covering the committee’s relationship with the media.

76. For example, some committees have agreed guidelines on matters such as when press releases should be issued and by whom they should be cleared; who should clear any newspaper articles written about the work of the committees and in whose name these should be released and who has responsibility for determining when a press conference would be appropriate and how the committee should be represented at such press conferences.

77. Agreeing working practices in this way provides some measure of security for conveners in their handling of the media when asked to comment about committee business.
Legislation

78. The Guidance on Public Bills provides detailed information about the procedures and processes of handling legislation in committees. The clerks will advise on the detail of the procedures and provide detailed briefing for conveners particularly in relation to Stage 2 of a Public Bill.

Amendments in name of convener

79. At Stage 2 of a Bill, any MSP may lodge amendments which will be debated subject to satisfying the criteria of admissibility. These provisions therefore allow a convener of a committee which is considering the Bill at Stage 2 to lodge amendments in his or her own name.

80. However, there can be certain practical difficulties for a convener who wishes to lodge amendments:

- conveners are responsible, in terms of Rule 9.10.4 for “determining any dispute” in relation to the admissibility of an amendment. In most cases this issue will not arise, as it is the clerk who is responsible, in the first instance, for ruling on admissibility. If that decision is accepted then a convener faces no conflict. However, a convener who does not accept the clerk’s ruling on admissibility of his or her amendment, is then required to “determine” the matter. There is nothing in Standing Orders which would prevent a convener determining a dispute in relation to his or own amendment. However, to do so could leave a convener open to a suggestion that he or she has breached Section 2.8 of the Code of Conduct, which requires a member to resolve any conflict of interest in a way which protects the public interest. Accordingly, in such a situation, it is recommended that a convener should consider him or herself “unable” to act and ask the deputy convener to determine the dispute.
- conveners may find it difficult to both chair meetings and participate fully in a debate on his or her amendment.
- conveners are required to use a casting vote in the event of a tied vote. Standing Orders are silent on how the casting vote should be used and there is no recognised convention or practice (for example that the casting vote would always be used to vote against an amendment).

81. Conveners could consider asking another member to lodge amendments for them, but this may not be an attractive option either in practical or political terms.

82. So far as debating the amendments are concerned, where a committee has a deputy convener, the Standing Orders do allow the convener to leave the chair and hand over to the deputy for part of the meeting. This would resolve the issues of participating fully in the debate; however, the option may not always be attractive. The deputy convener may also be in the position of having lodged amendments or may wish to participate fully in the debate on the conveners amendment. The deputy convener, when in the chair, would also be in the position of using the casting vote in the event of a tie.
Agreeing working practices

83. Some committees have found it useful to agree working practices. This helps clarify the expectation of members in relation to how items of business will be handled.

84. This has proved to be a useful exercise in relation to a number of aspects of committee business where Standing Orders leave committees with freedom to develop their own practices. For example, some committees have agreed working practices in relation to:

- agreeing and reviewing work programmes
- media relations
- the selection and questioning of witnesses
- the administrative arrangements for considering petitions referred by the Public Petitions Committee
- the administrative arrangements for handling SSIs.

85. If a committee can agree working practices, then conveners are less exposed to criticism in relation to the discharge of their functions.

Speaking in debates in the Chamber

86. In a debate in committee time in the Chamber, the Convener will normally open for the committee and the deputy convener will usually close the debate. Speaking times will vary depending on the length of the debate.

87. In other debates, if a convener wishes to speak on behalf of the committee, he or she should put his or her name on the speaking lists in the usual way. The Committee Clerks will alert the Chamber Clerks that the contribution is to be on behalf of the committee and not the convener as an individual. As with dealing with the media, it will sometimes be necessary for a convener to make clear to the Parliament the capacity in which he or she is speaking. If speaking on behalf of the committee, conveners must take care to ensure that the committee has agreed the views put forward in its name.

Committee Office
December 2003
Is prioritisation needed at all?

According to David Cullum, NEBU was currently not as busy as in the final year of last session, when it handled six or seven bills simultaneously. Most of the work so far this session had involved discussing legislative ideas at an early stage – “If a significant proportion of those ideas are translated into bills, we will be in trouble. However, the experience from the first session suggests that many ideas do not lead to the drafting and introduction of a bill.” (col 157) He was hopeful that there would be fewer new ideas over the next year compared with the early months of the session (col 159).

NEBU's capacity, with existing resources, was roughly “four bills running and four bills in preparation”. But a lot depended on the size, scale and scope of the Bills. (col 158). The most resource-intensive part of the process was the post-consultation period when NEBU was involved in “the serious work of preparing instructions for a draftsman … to convert the idea and the results of consultation into a bill that is fit for purpose” (col 158).

Paul Grice said there was “no crisis in resources” at NEBU at present, but “looking ahead, if all 20 [current] proposals came to fruition, it is clear that we could not sustain the level of service demanded, given the unit's capacity”. For the SPCB there was “a significant issue to be addressed as to which bills should get support, what type of support they should get and at what stage in the process they should get it” (PG, col 193). To speak of the system breaking down “would be to overstate the matter”, but “there is demand in the pipeline that cannot be met within existing resources; it is likely that we have not yet seen the end of that demand” (col 201). Towards the end of last session “demand outstripped supply” and some members “were disgruntled and felt that they were not getting as much support as they wished”. NEBU staff had been “under enormous pressure” (col 200); staff should not be “put in the position of having to take political decisions” (col 201).

Paul Grice believed that “if a decision were made to make do with the current machinery … that could be made to work” – but there was an opportunity “to consider whether a better system could be put in place” (col 202). Although extra resources could be provided in some cases, there were “quite tight constraints” (PG, col 199). But he recognised that “any decision that prevented a member from introducing a member's bill would be a difficult one to take in the kind of Parliament that we have” (col 204).

The SPCB had always been a bit uncomfortable with a first-come-first-served approach which meant it was not able “to look ahead at all”. There was a risk that “all the resources would be tied up in supporting two or three bills and that a more worthy bill … would come a month or two later. That was the problem with the
Children’s Commissioner Bill, which arrived quite late in the session: “we were not able to plan for it as well as we could have done” (PG, cols 193-4).

Mike Watson believed that, given the rush of proposals since the beginning of Session 2, “the whole question of prioritisation has become important” (col 251).

The Greens felt that “there will be situations in which prioritisation is needed and we need to have transparent systems in place to deal with those situations – in relation both to committee time and to NEBU time” (MB, col 279). According to Robin Harper, NEBU already had to prioritise – for example, it had to “occasionally negotiate quietly about whether there would be time for a Bill to progress. That should not be NEBU’s job … [but] because of the flexibility that was afforded to NEBU, the system worked, although it was not entirely transparent” (col 267).

The SSP argued that the current Members’ Bills process was the “jewel in the crown” which “must be defended” (TS, cols 263-4). There was a “real risk of undermining the Parliament’s founding democratic principles and the public’s ability to influence what goes through the Parliament, which is essential to the Parliament’s aspiration to be much more open and democratic than Westminster” (CL, cols 265-6). Business managers were initially told there was a problem with resourcing of NEBU, but it then became clear that there was only the potential for a problem and “a possibility that the process could be managed” (CL, col 264). There was a lack of clear evidence about the extent of the problem (CL, col 278) and any change “should be proportionate to the scale of the problem, in so far as there is one” (CL, col 264). Prioritisation should “kick in only when there was a proven problem, rather than in the way the Executive proposes” (CL, col 278).

Tommy Sheridan would much prefer the current system, where any member who secures 11 supporters for the proposal, consults on it and introduces a Bill can get it considered, even if its passage is likely to be slow, rather than a system where only some of the proposals are allowed to become Bills in the first place (col 272). He could “not see how a system for prioritisation would be anything other than political. The existing mechanism … is largely depoliticised, because NEBU carries out the process on the basis of resources; it does not prioritise Bills on the basis of what party they have come from” (TS, col 272). NEBU should be given the resources to support members who don’t have external support – but he had no evidence as to what additional resources this might require.

Alasdair Morgan thought it was “clear that prioritisation will be required at some stage because resources will always be limited” – but he had no evidence that resources were a problem (col 282).

Joyce McMillan doubted whether there was really a problem or whether the Bureau and the Executive were “simply anticipating or perhaps slightly over-anticipating a problem”. The Committee should “set out clearly what the problem is and the reasons why it needs to be tackled.” (JM, col 347) Barry Winetrobe also felt that there was “a potential rather than an actual problem” (BW, col 335). For him, the danger of prioritisation was that it could easily be “represented as a crude sifting process … as the Executive or the Parliament cracking down on individual members or Opposition parties” (col 338).
Patricia Ferguson stressed that it was “the parliamentary authorities” rather than the politicians who had suggested there was a need for prioritisation, and this was a conclusion that business managers “regretted” (cols 299 & 307). The Conservative Party Group agreed that some prioritisation process was needed.

**What should be prioritised – NEBU resources or also Parliamentary time?**

According to Paul Grice, the SPCB had been concerned that it had “never taken a Parliament-wide view on the matching of the other key element of resources – parliamentary time – to demand. Its view was that “whatever solution the Committee comes up with, recognition be given to the constraints on parliamentary time as well as on those of the corporate body’s people and money resources.” (PG, col 194).

This was confirmed by the Minister, who said that the Bureau “was not asked to look at NEBU’s resources alone” but to come up with a mechanism that would also taken into account parliamentary and committee time (PF, col 299). She was clear that committee bills and bills not drafted by NEBU would have to be covered by the process as they put a burden on parliamentary committees (col 307). She accepted however that the whole area needed further discussion across the parties and around the Parliament (col 307).

According to the SSP, it was “crucial to make a distinction between a decision to allocate NEBU resources to a Bill and a decision to allocate parliamentary time to a Bill.” (CL, col 269). The previous Parliamentary Bureau’s proposals “use a sledgehammer to crack a nut and mix issues that are entirely separate” (CL, col 278).

Joyce McMillan recognised the need “to develop a system that makes the best possible use of parliamentary time, drafting capacity and other limited resources in the Non-Executive Bills Unit”. (col 346)

According to Paul Grice, members going outside NEBU for support had “a significant potential to relieve the burden on staff resources”, although it did not remove the burden on the member, nor did it address the issue of parliamentary time. Much depended on the quality of the outside support: “if the support is not particularly well developed technically, many benefits can be quickly eroded, as the bill would have to be redrafted” (PG, col 198).

**Pressure on Parliamentary and committee time**

The SSP argued that Chamber time was often given to relatively unimportant debates and could instead be used to consider Members’ Bills (CL, col 265).

Mike Watson recognised that Members’ Bills took time in committees that competed with their other priorities, but suggested that committees could meet on Friday mornings, if need be, to consider them (col 259).

Mike Russell argued that the two principal blockages were committee time and drafting resources. In relation to committee time, he suggested the possibility of special committees’ being established – as such those that exist for private bills. He also argued that resources should be increased. (col 206)
Mike Russell suggested the Parliament could meet for longer, perhaps on Friday mornings, specifically to consider Committee or Members’ Bills, if it valued them (cols 206-208).

**Should prioritisation be decided by the Bureau …?**

Patricia Ferguson argued that the Bureau was better placed than the SPCB to decide prioritisation as it had the advantage of overseeing committee and parliamentary time (col 294). She did not accept that business managers would attempt to decide according to their perception of the “worth” of proposals. The Conservative Group agreed that the initial sift of proposals should be carried out by the Bureau although the final decision should be for the Parliament as a whole to take.

Mike Watson wanted prioritisation decisions made “not by parliamentary staff but by elected members” (col 251). It should not be done by the Bureau – to preserve the distinction between the Executive and the individual member. “We should remember that, for reasons we all understand, the Bureau has a political weighting. As the committees of the Parliament do not have that same weighting, individual members could consider proposals for Members’ Bills on their merits rather than from any political viewpoint” (col 252). The decision should be made by the Procedures Committee, a committee established for the purpose or the Conveners’ Group (cols 251-2).

The Greens did not think the Bureau was a suitable forum for “attempting to reach a consensus on a matter through discussion and taking evidence from witnesses” (MB, col 262). Mike Russell felt that involving the Bureau in prioritisation “would be a very divisive step”, and that having the Parliament as a whole voting on prioritisation “would be viewed as political” (col 210).

The SSP argued that giving the Bureau the lead role would make it a political choice among proposals. “That would not allow civic Scotland, the trade unions and the wider community the opportunity to influence the process and … to achieve legislative change through the Parliament” (CL, col 265). There was a danger the Executive “would dominate decisions on what business would be taken … decisions would be put to the Parliament in a business motion and the vote on it would be whipped in favour of the Executive. That would strangle ideas at birth and would not be … in keeping with the Parliament’s founding principles” (col 280). It would “undermine severely the rights of back benchers to introduce legislation” (CL, col 264).

Having the Bureau make the prioritisation decisions was “certainly not [the SNP’s] favourite method of proceeding” (col 282) as there would at least be a perception that the Executive were controlling which Bills were introduced. “There will always be some Bills that Government ministers might prefer not to see.” The same could be true of other parties, where a Business Manager might use his or her weighted votes in the Bureau to stop a proposal from a backbencher of his or her own party (col 286).

Joyce McMillan agreed with Barry Winetrobe that the previous Bureau and SPCB proposals “smack too strongly of a standard-issue attempt to increase slightly Executive control” (col 347). Barry Winetrobe recognised that the SPCB, “rightly,
does not feel comfortable about taking what are essentially political decisions about
the prioritisation of non-Executive bills”. A disadvantage of either it or the Bureau
taking such decisions was that, as both bodies met in private, there was “no scope
for public involvement” (cols 344-5). He was also “not happy with the idea of an
annual round … [which] does not allow for members to bring forward proposals
during the year, as matters arise” (BW, col 345).

... or a committee?

The SPCB favoured a mechanism “by which a new or existing committee or the
whole Parliament – or, indeed, both – would make a decision on some kind of
forward programme of bills”. This was “a better way of meeting the Parliament’s
aspirations and ensuring that the use of resources was planned and exercised more
sensibly” (PG, cols 194-5). This would give everyone concerned “a degree of
comfort about the likely outcome of bills” (col 196). If the Parliament was to decide
between competing proposals, there was a “fundamental” question about the level of
information required: “For example, would it be adequate just to have a proposal?
Should there be more information than that? Should we go all the way to the extreme
of requiring a draft bill? … Should we have a system through which some committee
aims to present a report to Parliament to provide members with the information and
to give an idea of the likely availability of time?” (PG, col 196).

According to Mike Watson “the record of committees has shown that it is less likely
that what one might call an Executive vote would emerge from a committee than from
the full Parliament” (MW, col 253).

Alasdair Morgan agreed that a small committee was better suited to consider in detail
competing proposals than a meeting of the Parliament – “when we get down to the
consideration of detail, a committee of 129 just does not work” (col 287).

The Greens favoured a back-bench committee which “could be transparent and
ultimately accountable in a way in which the corporate body and NEBU are not” (MB,
col 279). It should “not become a Stage 1 committee” (MB, cols 262-3) – its job
“would be not to decide which proposals will progress and which will not, but simply
to do the same thing that NEBU has had to do: prioritising the proposals that are
placed in front of it and hearing from committee conveners on their committees’ work
programmes and the from the members who lodged the proposals. The process
would have to be thorough and might be complicated, but the committee would meet
no more than twice a year, if that.” (RH, col 267).

The SSP was sceptical: “It should be the right of the Parliament, not a back-bench
committee or any other committee, to decide what priority to give Bills” (col 264).
Any prioritisation by a committee would “run the risk of being labelled as being political” (TS, col 263) – so the standing orders would need to include “an obligation
on that committee not to strangle a Bill at birth”. Committee should consist of
representatives of the political parties and independents, “but not on a party-
proportional basis” (CL, col 270). Robin Harper agreed that the normal party-
weighting was inappropriate, citing the example of the House of Commons Public
Accounts Committee, which was prevented from having a Government majority.
The SNP advocated a committee whose sole function would be “the prioritisation of Bills to which it is intended that drafting resources be given” and which should be composed of backbenchers from each party (col 282). It was important to secure consensus on how the committee members would be selected: the process should not be controlled by business managers. An election by single transferable vote was one option for Alasdair Morgan (col 283).

Joyce McMillan felt that the Procedures Committee was probably the most suitable committee available “as it understands better than anyone the procedures and how much time proposals are likely to take”. But she did not think that such a system would “contribute anything to the process” (col 355).

Patricia Ferguson was not keen on the suggestion that a new committee be set up to undertake the role of prioritising bills. She felt any such committee would be required to “achieve a high level of expertise very quickly” (col 306). She also argued that it might be difficult to find sufficient members to take part in the committee, particularly at the same time as private bill committees were running (col 306).

**Prioritisation criteria**

According to Paul Grice, the SPCB criteria had been developed to give NEBU “some political management to ensure the appropriate use of resources” (col 192). These criteria had “proved useful and quite durable, but it would be worth while examining them … There will need to be a political judgement as to which proposed bills meet whatever criteria are set out” (col 202). Generally speaking, successful Bills had been those that “have had a measure of cross-party support, have not been too ambitious politically—by taking on too many big political issues—and ... have afforded the member sufficient time to work through the Bill, so that the i’s are dotted and the t’s are crossed” (col 199).

Keith Harding felt that the existing criteria were “sound” and acknowledged that they were needed to “weed out some of the weaker bills” (col 209).

Mike Russell felt that the existing criteria were either self-evident (the need to remain within legislative competence) or vague (no likelihood of legislative action in the Scottish Parliament or at Westminster in “the reasonable future”). He would be worried about other criteria being imposed if they seemed political (col 210).

The SSP objected to having as a criterion whether the Executive or the UK Government are planning legislation in the same area. Carolyn Leckie would “strongly object to the frustration of any Member’s Bill” on the basis that a Minister had said they “might be considering legislating in that area some way down the line”. There was “potentially a big difference between what a member might propose and how Westminster or the Executive might legislate on a particular matter” (cols 278-9).

Joyce McMillan wanted Committee Bills to take “some kind of priority” in any prioritisation process (col 347). She also proposed a role in the process for “imaginative public consultation … a responsibly organised, deliberative process … on an annual or, at the very most, twice-yearly basis” (col 351). This would be an instance of genuine power sharing between the Parliament and the people, “while respecting the final say of the Parliament over the order and priority of its business”
Her idea was for a citizen’s jury with a membership that would change every year – “a different group of representative citizens should be involved every year, so that people could not be lobbied” (col 354). Members would have the chance to make a case for their proposal to the jury. These proceedings would be filmed so that the public could see, after the event, how the decisions had been arrived at (col 348). Some initial filtering would be needed. Proposals that would take little time to draft and were uncontroversial would not need to be submitted to the citizen’s jury in the first place; there would also be a need to ensure that proposals put to the jury were within the competence of the Parliament and had been assessed according to the resources needed to draft them (col 351).

Barry Winetrobe agreed that, in order to satisfy the Parliament's founding principles, there needed to be “scope for some measure of open parliamentary scrutiny … and, perhaps more important, an opportunity for meaningful public involvement before a final decision is taken about the fate of a non-Executive legislative proposal (col 345).

Patricia Ferguson believed that the availability of committee and parliamentary time should be elements of the prioritisation criteria. The SPCB should provide information about the staffing resources available following discussion with NEBU (col 294). There should also be consultation with the conveners and clerks of committees to ensure that any work suggested fitted into the committees' work programmes. This would flag up to committees much earlier in the parliamentary year what pressures would be placed on them (col 298). She also thought that consideration should be given to whether other similar legislation was “in the pipeline, from the Executive or elsewhere … there might be Westminster legislation that would have to be taken into consideration” (col 296). The size and complexity of the proposed Bills would also have to be taken into account (col 303). There was a need for consultation on proposals at an early stage “so that the case could be made that legislation was needed” and to test whether existing legislation could address the problem (col 296).

**Ballot system**

Mike Watson was “reluctant to have a ballot system, not because it is not fair, but because it does not mean that the Bills with the most to offer are introduced.” There was a particular risk that, if the ballot was just of members’ names, the Executive would then “hand out” to those highly placed in the ballot minor Executive Bills that there was insufficient Executive time for, as happens in Westminster (col 252). That would be “a corruption of the Members' Bills process” (col 254).

A ballot was also not the SNP’s preferred method, but was “a possibility” (col 283).

Mike Russell believed that a ballot, although not ideal, was “probably the fairest way” to prioritise NEBU resources. “A ballot would be drawn for the allocation of NEBU's resources, and the first three or four bills drawn would get those resources. That would not prevent members from seeking help from outwith the Parliament, but it would mean that members knew whether they would get support from the Parliament or whether they would have to either give up the idea of their bill or go elsewhere. … All other ways of making the decision, even if they are not political, might look political, which would be even worse” (cols 209-211).
According to Paul Grice, the SPCB recognised the merits of a ballot but felt that “we should set our sights a little higher and try to find a system that was a little bit more sophisticated … and which attempts to produce an outcome that better meets the Parliament's needs and aspirations” (PG, col 194).

Consultation

Mark Richards (NEBU legal adviser) emphasised the importance of consultation in informing policy development, and hence the drafting instructions: “The consultation has to have been completed before we get to that stage, otherwise the member might find that a lot of changes are required to their proposals” (cols 163-4). David Cullum added that the consultation results were also made available to the lead committee at Stage 1. This could save that committee some work and helped to narrow the focus of its inquiry (col 162). NEBU would always offer members help with consultation, though some members were reluctant to engage in it. Conducting a consultation exercise was “quite a time-consuming task and many proposals stop at that point.” This avoided NEBU resources being wasted (cols 161-2).

According to Mark Ballard, “consultation is a key hurdle; it is about ensuring that the Parliament is doing things that relate to what people outside the Parliament want done and that match the reality outside the Parliament … [it] is not something that any member would undertake lightly or would be able to do more than once in a parliamentary session” (cols 267-8).

Alasdair Morgan thought “help with consultation should almost always be given because it is part of the Parliament’s wider duties to consult the public on important issues” (col 282).

Mike Russell felt that the process itself was too lengthy. The need to consult on the proposals where, in some cases, a significant amount of consultation had already taken place and the need to invite evidence and consult further during Stage 1 seemed unnecessarily lengthy. He also suggested that the time taken to draft bills could be shortened by providing more resources and perhaps establishing a separate team to deal with Committee Bills (col 207). He went on to describe the “paralysis of consultation” which seemed to exist in Scotland and to suggest that it would be better to have “detailed Stage 1 consideration of a proposal that is well developed” (col 212).

Keith Harding endorsed Mike Russell’s view that far too much consultation was going on and felt there was a “duplication of consultation” when his members’ bill was being considered. (col 212)

The Conservative Party Group felt it was essential that members submitting bills undertook responsibility for the consultation process, although they recognised that members would sometimes require assistance from the parliamentary authorities in carrying out this task.

The Executive believed that responsibility should rest with members to ensure that proper consultation had been carried out, and Parliamentary resources should be made available to them to assist with the consultation process, including summarising responses.
**Initial threshold**

According to Tommy Sheridan, the need to find 11 additional members to support a proposal was “an important threshold for every member, particularly members of small parties” (col 264).

The SNP thought the threshold could be raised to “20 or thereabouts” – certainly not so high that a majority of MSPs would be needed at that early stage, before members had seen the detail of a Bill.

Mike Watson thought that “any Bill will be helped by having broad support, but there could be reasons why some Bills that do not have broad support should still be able to be introduced” (col 256). Mike Russell agreed some important measures might not attract a wide level of support, and suggested that widespread support for a bill across political parties or by a significant number of backbenchers might provide a better indication of Parliament’s intention to take a bill forward (col 211).

For Joyce McMillan, simply raising the threshold of supporters would “look as though the big parties were trying to gain more control over the process” (col 348). She was attracted by the proposal … to create a “matrix of support” involving the volume of support, the extent to which that support is cross-party and, indeed, the extent of support in the wider Scottish community“(col 348).

According to the Minister, the previous Bureau “recognised that the securing of colleagues’ signatures on a bill proposal did not present much of a hurdle at all”. Although business managers did not suggest the threshold should be lowered or done away with, they “were not convinced that raising the number of required signatures to 30 – or to any other arbitrary number – would make a difference” (col 293).

The SPCB did not think much could be achieved by limits in standing orders on the number of Bills that a member can introduce or the number of supporters required. It recognised that no two bills were the same and that political judgments were needed – “a purely mechanistic solution was never likely to produce sensible outcomes” (col 194).

**Right to introduce 2 Bills per session**

Alasdair Morgan supported a reduction of the right from 2 Bills per session to one, even suggesting this might be reduced to one proposal per member – this would “focus minds on whether a proposal was reasonable” and prevent proposals becoming “substitute motions” (col 283). It might also “make members think before they jump during the first year of a parliamentary session” (col 284). Robin Harper would not be against such a reduction; it would be “sensible” (col 276). Mike Russell took a similar view (col 209).

Tommy Sheridan was not convinced this would help. He argued that the theoretical possibility of there being around 200 backbench Bills per session was not relevant. “Every member has the right to oppose every business motion … and every member
has the right to force a vote on every motion … but that does not happen” (TS, col 268).

Mike Watson felt that MSPs “should have a pretty well unfettered right to introduce Bills”. The system ‘should be about members’ independence to promote Bills for which have identified a need and have garnered sufficient support inside and outside the Parliament” (col 252).

Joyce McMillan also questioned a reduction from 2 Bills per session to one. “If during their period as an MSP a member came across an issue that was much more significant than they had anticipated and was affecting the lives of their constituents in a way that was quite beyond their previous knowledge, it would be a great pity if they could not have a second pop at introducing a member’s bill during the session to deal with that issue.” She felt two bills per session was a reasonable number and that reducing it to one, while it might limit the number of Bills overall would “probably be an unwise move” (cols 349-50)

Patricia Ferguson also did not think that limiting MSPs to one Member’s Bill per session would prevent bottlenecks occurring. If every MSP (bar Ministers) introduced a Bill, that would still be enough to overburden the system, and could also lead to the situation where a member with 2 proposals simply passed one to a colleague (col, 305).

**Cut-off for introducing Bills at end of session**

The Executive suggested that the cut-off date for the lodging of bill proposals should be around September in the year prior to dissolution. The Minister was not concerned whether the cut-off date was for the introduction of Bills or the lodging of proposals, so long as members understood that their proposals stood no chance of progressing through to enactment before dissolution (col 303).

The Conservative Group agreed, suggesting a cut-off date for the introduction of Bills around August in the last year of the session. The SNP also supported the Minister’s suggestion (col 283).

Keith Harding recognised that, towards the end of a session, Executive and Committee Bills would take precedence and that there would be less time available for Members’ Bills (col 205). He therefore suggested that Members’ Bills should not be accepted after the first two years of the session since they would have little realistic prospect of getting through and NEBU would be “tied down with unproductive and unnecessary work” (col 208).

But Mike Russell argued that the right of members to introduce legislation should be “jealously protected and any changes to the present situation should ensure that that right is protected” (col 205). He did not want to see limits to when the right to introduce legislation was exercisable (col 208).

**Other suggestions**

Barry Winetrobe suggested that existing mechanisms might be used – either the system where members could submit a proposal to the Bureau which would then
refer it to a committee for initial scrutiny; or members “lodging some sort of legislative petition, which would follow the usual petitions process or something similar” (col 339). Although either system would involve extra work for committees at an early stage, but this might be recouped at Stage 1, when a smaller-scale inquiry would be needed (BW, col 339).

He also suggested creating a separate mechanism for non-Executive party Bills, which could be considered during those parties’ allocated half-days (col 342). Alternatively, Rule 5.7 could be altered to create a new category of non-Executive time allocated to consideration of non-Executive Bills (col 335). Finding a way of removing or reducing the need to consider Private Bills would free up more time for non-Executive Public Bills.
PROCEDURES COMMITTEE

Non-Executive Bills: prioritisation

Options paper: note by the Clerk

1. At the Committee’s 3rd Meeting, 2004 (10 February), it considered a paper (PR/S2/04/3/3) which set out (in paragraph 5) a list of principal issues to be decided in the inquiry. A number of subsidiary issues were then raised (paragraph 6).

2. These issues are considered in the remainder of this paper. Various considerations bearing on each issue are described. These have been informed by the evidence received, but this paper is intended to be read alongside the separate summary of that evidence – it is not a substitute for that summary. At the end, a range of general options is set out. These options are not intended to be exhaustive – there may be others, or different combinations. The Committee is invited to consider the questions in turn and then to make decisions, at least in general terms, about the option or options it prefers.

3. It is suggested that the Committee might then consult the SPCB, the political parties and members generally on an outline of its preferred option (or options). At the same time, this could be put to public consultation to enable views by organisations such as the SCVO and others (see their letter to the Convener, circulated separately) to be submitted. This could be done over the Easter recess.

4. Given the range of views already expressed, it is unlikely that any single option recommended by the Committee will secure universal support – but at least such a consultation process will enable specific doubts or concerns to be expressed in time for the Committee to accommodate them as far as possible when it finalises its recommendations in a draft report to the Parliament – which could be done at the first meeting after Easter (27 April).

Question 1: is prioritisation needed?

Is there sufficient evidence of a problem with the current system for introducing Members’ Bills that requires a procedural solution – i.e. a new mechanism for prioritising Member’s Bill proposals? Or would it be better to leave the current procedures largely unchanged?

If a new mechanism is needed, should it permanently replace the existing mechanism for introducing Members’ Bills, or should it be a “reserve mechanism” that can be employed only when it is clear that there is a specific problem of excess demand?

During Session 1, NEBU coped with the demands made of it, supporting all the proposals and Bills that met its criteria and that members wished to pursue. It needed to take on extra resources only once, to deal with the exceptionally large demands of the Children’s Commissioner Bill. A substantial number of proposals
were lodged at the beginning of this Session, many of which are currently under consultation. Although some will drop away in any case for various reasons, it seems likely there will be a larger “peak” of demand during the next 6 months than has arisen so far. A similar peak may be expected in each new Session.

NEBU officials cannot themselves be expected to prioritise (or choose between) proposals, all of which satisfy the existing SPCB criteria, in a situation where demand exceeds resources. NEBU can refer particular proposals to the SPCB only where there is doubt about whether the criteria are satisfied; beyond that, the SPCB is also not well equipped to make (political) choices between competing proposals.

For these reasons, a case can be made that the current system is under strain or soon will be and that there is therefore a need to put in place some better system of managing the use of NEBU resources – and to do so before the current system breaks down. It can further be argued that NEBU resources are only part of the wider picture – and that it would make more sense to have a prioritisation system that also aims to manage the demands made by non-Executive Bills on Parliamentary and, in particular, committee time. Such a system would enable committees, in particular, to plan ahead more effectively with better knowledge of what Bills were coming their way and when.

Against this, it can be argued that current backbench right to introduce Bills – which reflects the CSG principle of “sharing the power” and is a major strength of the Parliament compared with the House of Commons in particular – should not be compromised until compelling evidence exists that it is not working. Where occasional peaks in demand arise, additional resources can be given to NEBU. The Bureau already has adequate powers to manage pressures on committee and Chamber time; and more committee time could also be made available (for example, Friday morning meetings) if need be.

Some of the benefits of advance planning might also be achieved in other ways. Members proposing to introduce Bills (whether or not with NEBU support) could be encouraged or required to keep the Bureau and/or the relevant committee informed of progress towards introduction; and committees themselves could be given more power (or better use their existing power) to adapt their Stage 1 scrutiny of Members’ Bills to their existing work programmes, rather than vice versa – subject to any timetabling requirements imposed by the Bureau.

The question whether a prioritisation system is needed cannot easily be decided in advance of deciding what that system might involve (whether it would just govern access to NEBU resources, who would make the decisions, etc.).

**Question 2: should prioritisation govern only NEBU resources?**

Is the purpose of a prioritisation mechanism only to ration access to NEBU support/drafting resources, or is it also directly to govern access to committee and Parliamentary time?

The original proposal for a prioritisation system arose from anticipated pressure on NEBU’s resources. But there have also been concerns about the impact Stage 1 inquiries on Members’ Bills can have on Committee time. (There is less of a problem with Chamber time for Stage 1 and Stage 3 debates.)
The Bureau already has responsibility for recommending how Chamber time is allocated (e.g. choosing topics for debate when there are always many more motions lodged than there is time to debate). It also routinely sets timescales for the Stages of Bills, taking account of the views of committees as to their available capacity. These decisions are taken in a flexible manner as and when the need arises and are open to review if circumstances change.

The concept of “prioritisation” suggests either (or both) (a) ranking competing proposals in descending order of priority, or (b) dividing them into two categories, the prioritised group that can go forwards (at least on that occasion) and the non-prioritised group that cannot. Each approach will result in some rigidity if prioritisation involved a fixed decision taken on an infrequent (e.g. annual) basis.

The advantage of the first type of prioritisation (and disadvantage of the second) is flexibility in the overall number of proposals that can be developed into Bills during the year. NEBU cannot know in advance how much work each proposal will involve; with a ranked list it would simply move on to the next proposal as soon as it had spare capacity available, with the aim of completing work on as many as it could by the end of the year. But the disadvantage of the first (and advantage of the second) is that the way in which NEBU works does not fit easily with a linear order of priority. NEBU will always have a number of Bills under development at any one time, and some will progress more rapidly while others may suffer delays (e.g. while the member considers policy options, legal complications are resolved, or negotiations conducted with the Executive or others).

The inflexibility of either approach becomes more acute if the purpose of prioritisation is not just to allocate NEBU resources, but also to manage the demands on committee time. While NEBU resources can be assessed in advance, there is no realistic way of measuring, at the time prioritisation decisions need to be made, how much capacity the relevant subject committees will have to scrutinise the resulting Bills at Stage 1. Committees will have little idea that far ahead what their workload will be and a committee that is overloaded at the time a prioritisation decision is made may turn out to have spare capacity by the time the resulting Bill is introduced (or vice versa). What prioritisation could achieve is to ensure a reasonable spread of subject-matter among the proposals prioritised, so that no one committee receives a disproportionate share of the resulting Bills. Knowing in advance what relevant Bills are under development would then assist committees in planning their future work.

| Question 3: should all non-Executive Bills be prioritised? |
| Should members whose proposals have not been prioritised retain a right to find external (i.e. non-NEBU) support and then introduce their Bills? If so, on what basis would they compete with prioritised Bills for committee and Parliamentary time? |
| Is it only Members’ Bills that need to be governed by such a system, or does it also need to encompass Committee Bills (which also require NEBU resources)? |

The original purpose of NEBU was to provide a service within the Parliament for members unable to secure development/drafting assistance from outside; it was never intended to prevent members from seeking such outside assistance.
One advantage of allowing members to continue to seek outside support for their proposals is that this reduces the demands on NEBU, enabling it to concentrate on those proposals for which no outside support is available. The way in which NEBU operates is aimed at delivering a well-researched, legally robust and high quality product, but this is time-consuming, expensive and demanding on the member concerned. This approach may not suit some members who wish to introduce a Bill quickly or who wish to keep a particular external body closely involved in the process – or who have simply adapted a Bill that has already been drafted (e.g. a Scottish Law Commission draft or a Westminster Bill). The NEBU process also involves a considerable investment of (public) money, and it is not clear why the Parliament should require members to follow this route if they prefer to find outside support that costs the Parliament (and the public) nothing. While outside drafting support is of variable quality, the Legislation Team (which is quite separate from NEBU) can help members by tidying up the drafting to an adequate standard for introduction – the main criterion being ensuring the legal effects of the Bill are sufficiently clear to enable the Legal Office to advise the Presiding Officer as to whether it is within legislative competence.

Clearly, if there remains a separate route of entry for non-NEBU drafted Bills, then prioritisation will be less effective as a means of controlling the overall volume of legislation competing for committee and Parliamentary time. But even if prioritisation covered all Members’ Bills, it would still leave them competing with a variable input of Executive Bills, Private Bills and other items of business. Securing adequate external support is not an easy option (if it was, NEBU would never have been needed). The NEBU route is always going to be preferred by many members, given the quality of the product it delivers and the support provided throughout the 3-stage process. It also minimises the risk that a Bill will be rejected on the grounds that the policy is not sufficiently developed, consultation has been inadequate, or the drafting is poor. It is therefore not clear that leaving open the right of members to use whatever external support for their Bill proposals they can find would substantially undermine the benefits of prioritising access to NEBU resources.

Committee Bills would have to be factored into any prioritisation decision, since they compete directly with Members’ Bills for NEBU’s limited resources. However, it is not clear that Committee Bill proposals need themselves be included among the proposals competing in a prioritisation process. They already have (limited) priority in the existing SPCB criteria and are always likely to be relatively few in number. It should therefore be possible to guarantee that any Committee Bill meeting the criteria will get NEBU support, and that the role of a prioritisation system is to decide which Member’s Bill proposals take precedence in securing a share of whatever proportion of NEBU’s available resources are left over.

**Question 4: what are the criteria for prioritisation?**

Should proposals be prioritised, as far as possible, according to their merits in order to prevent party-political considerations determining the result? If so, to what extent could the existing SPCB criteria for NEBU-supported proposals be used for this purpose?

Or would a random ballot be a better way of ensuring fairness?
The purpose of prioritisation is to determine which proposals get first call on the resources available to develop them into Bills for the Parliament to scrutinise; it is not therefore a substitute for the decisions that are made after that scrutiny has been undertaken. At the time of prioritisation, all that is available is a rough sketch of what a fully-developed Bill might involve and (even allowing for a consultation exercise on the proposal) limited evidence about its merits. There is an inevitable tension between the need to enable prioritisation decisions to be adequately well informed and the need to concentrate the limited available resources only on the proposals that emerge from prioritisation.

More generally, there is always a balance to be struck between encouraging consideration of Bills on their merits, informed by evidence about the extent of problems and the workability of solutions, and a recognition that elected members will always bring political considerations to bear in any such process. So although prioritisation should be more about the merits of competing proposals and should not be used to anticipate the Stage 1 decision before any evidence has been taken, it is probably impossible to keep politics out of the process altogether. This also depends on the nature of the proposals themselves. The backbench member whose proposal is for a modest and non-partisan reform of the law has more right to expect it to be considered on its merits than an opposition party spokesperson whose proposal is to give effect to a policy that other parties are known to oppose. The latter can less easily complain if those opposing its prioritisation do so partly on political grounds.

Perhaps the most realistic way of securing an appropriate balance would be to give the decision to a representative group of MSPs but give them a clear remit as to the criteria that are to be employed. Those criteria (which could be set out in a Rule, or in guidance) could make clear that merit is the principal consideration – but there will need to be a range of other factors and room left for judgement in how they are weighed against each other. Relevant factors may include the extent of support already given to the proposal by MSPs and the cross-party basis of that support; the level of support shown in consultation on the proposal; the anticipated resource-implications of developing the proposal into a Bill; whether there are any difficulties in relation to legislative competence; and whether the Executive (or the UK Government) are already planning similar legislation within a reasonable timescale.

These are similar to the existing SPCB informal prioritisation criteria, which could therefore be given a more formal status as a way of guiding whoever is responsible for prioritisation decisions.

Probably the only way of avoiding even a perception of political bias in how prioritisation is done would be to use a random process (a ballot). But it is difficult to see how a “pure” random system would be workable. It would be hard to avoid some initial filtering of the proposals entered into the random draw, if only to ensure that they were broadly within legislative competence. A ballot would also offer no control over whether those selected were complex and resource-intensive or simple and straightforward, so it would probably be necessary to limit random prioritisation to sorting the various proposals into order rather than prioritising a fixed number.

Some of these problems could perhaps be avoided by adopting the House of Commons system, where it is members’ names rather than proposals that are entered into the ballot. But that would be a further departure from the principle that the Member’s Bill procedure is there to enable any MSP with a worthwhile idea for
legislative change to pursue it. If members don’t need to have chosen (or researched) a proposal before entering the ballot, they may be more likely to enter (perhaps just to avoid missing out), thus reducing the chances of the member genuinely committed to a particular idea. This could also lead to exploitation of the process by interest-groups or by the Executive, lobbying members who have come out high in the ballot with offers of “hand-out” Bills.

The main disadvantage of any random process is that it is arbitrary and hence the opposite of any prioritisation on merit – although it may still be considered fairer than a first-come-first-served system. A random process also cannot guarantee a reasonable distribution of prioritised proposals across the relevant committees.

Question 5: who decides?

Who should make prioritisation decisions – the Bureau, the Parliament as a whole or a committee? If it is to be a committee, should this be an existing committee (e.g. Procedures); a new committee of 5-15 members appointed on the normal proportional basis; or a “committee of backbenchers” appointed on some alternative basis?

The Bureau already has responsibility for decisions about timetabling and if prioritisation is primarily aimed at managing the overall volume of legislative business considered by the Parliament, it seems an obvious choice. But there would at least be the perception of a conflict between the inherently party-political composition of the Bureau and the principle that the Member’s Bill mechanism is designed for members acting as backbenchers (i.e. not primarily in a party-political capacity). The Bureau does not represent the smaller parties or independent MSPs (unless 5 or more of them group together to secure a Bureau representative), and even some backbenchers of the larger parties may feel that their business manager is not best placed to assess their proposals dispassionately. Any perception of political bias in the assessment of competing proposals (whether or not justified) would be heightened by the fact that the Bureau meets in private.

No-one has suggested that the final decision would be made by the Bureau – only that the Bureau would recommend a prioritised list for endorsement (after debate) by the Parliament. But the Bureau system (which includes weighted voting among Bureau members) tends to work on the presumption that its recommendations are normally endorsed by the Parliament more-or-less as a formality and that when they are opposed this is usually more about putting an objection on record rather than having a realistic chance of overturning the Bureau view. It is difficult to see how the Parliament as a whole would be capable of making the decision “from scratch” – i.e. other than by debating a recommendation of a smaller body (the Bureau or a committee) which had already considered in detail, and perhaps taken evidence on, the various proposals.

If prioritisation decisions (or recommendations for endorsement by the Chamber) are to be made by a committee, the choice is between an existing committee or a new one established for the purpose. Central to deciding between these options is the issue of whether the committee needs a different composition and/or method of appointment.
So far as composition is concerned, the Scotland Act requires the standing orders to ensure that, “in appointing members to committees … regard is had to the balance of political parties in the Parliament” (Sch 3, para 6(3), Rule 6.3.4). This has so far been achieved by a d’Hondt system for convenerships and broadly-proportional committee memberships. It is not clear how far the Rules could depart from such an approach in relation to any particular committee while remaining consistent with the Act, nor is it clear what rationale there would be for any particular alternative composition. For example, if there was one member from each party, would that include the SSCUP and would there be a seat for an independent?

An alternative is to choose a different method of appointment, designed to minimise the direct influence of the parties. For example, rather than appointing members on a Bureau motion, it could be left to any backbench MSP (i.e. non-Minister) to stand for one of the seats allocated to his or her party, with the decision between rival candidates (e.g. if 5 Labour members stood for 3 Labour seats) taken by election in the Parliament (perhaps with voting restricted to members of the relevant party). In practice, however, it could still be that parties would seek to avoid rival candidates standing or otherwise make the outcome a formality. Even if that did not happen, it is not clear whether the procedural complexity and high profile of such a method of appointment would be justified by the nature of the job those members are being asked to do. The risk might be that, by recommending direct election of members as necessary to enable prioritisation decisions to be seen as fair, this will be seen as casting doubt on the ability of any other committee to conduct its business fairly.

Committees have already shown themselves capable of setting aside party allegiance in many of the decisions they make – for example, there have been many more defeats for the Executive in committees than in the Chamber, and committees have quite often agreed (without division) on report recommendations even on contentious subjects. The underlying principle is that in a unicameral parliament, cross-party committees are the best available mechanism for keeping scrutiny at arms-length from Executive or party control.

Another factor that may be just as important as composition and method of appointment is whether there would need to be a formal prohibition on members of the committee that decides on prioritisation lodging (or supporting) proposals themselves. If the main concern is to ensure that prioritisation decisions are seen to be as fair as possible, such a prohibition may be justified, to prevent any member being “judge in his/her own cause”. But it could significantly restrict the pool of available backbenchers eligible for membership of the committee (particularly if the prohibition extended to supporting proposals). To prevent such a prohibition presenting too much of an obstacle to membership, committee membership might only last for a year (or members might simply resign in order to lodge a proposal of their own).

The above factor may be important in the choice between giving an existing committee (or the Bureau) the extra function of prioritising proposals or establishing an extra committee just for this purpose. Procedures is probably the best placed existing committee, both in relation to remit (although that would require amendment) and workload – but a number of its current members have proposals in progress. It might be possible to avoid conflicts of interest by requiring substitutes to step in whenever a committee member’s proposal was under consideration (although this would be difficult if there were other items on the Agenda that the regular members of
the committee wished to participate in). But probably the only satisfactory way of avoiding such conflicts of interest altogether would be to establish a new committee of members despite the additional practical implications (in terms of identifying available members, finding suitable meeting slots, finding clerking capacity etc.).

In either case, of course, there are particular problems about trying to impose a new system mid-way through a session. It would be easier in a new session to establish a committee (whether Procedures or an ad hoc committee) knowing that its remit would cover prioritisation and that MSPs with ambitions to introduce Members’ Bills would not be eligible for membership.

A final point to consider is whether any committee would take the final decision or be required to report to the Parliament (which would then have the final say). The general presumption is that committees only recommend while the Parliament itself decides (although there are exceptions – notably Stage 2 of Bills); and it may be reasonable to assume that the Parliament would generally follow any committee recommendation. But letting the committee decide would keep the system more flexible and responsive; if the purpose of using a committee is to encourage a non-party-political approach and to minimise conflicts of interests, this could be undermined if there was then a possibility of the committee’s view being overturned by a plenary decision (which could easily be whipped and would directly involve those whose proposals were at issue). The answer might depend on whether prioritisation is only to govern access to NEBU resources or also to determine which members will have the right to introduce Bills.

**Question 6: should the initial threshold be raised?**

Should there be any alteration to the initial threshold that proposals must cross in order to be eligible for introduction (under the current mechanism) or for prioritisation (under any new mechanism) – for example, an increase in the number of supporters needed and/or a formal requirement to have conducted a consultation exercise?

As already suggested in paper PR/S2/03/7/7, it is not obvious that simply increasing the minimum number of supporters would be appropriate. A small increase would make little practical difference (most successful proposals secure well over the minimum of 11 supporters already), whereas a larger increase (to 20 or more) would have a disproportionate effect on members of the smaller parties (and independents).

What might be more meaningful would be to introduce an explicit requirement for cross-party support. It would not be realistic to require support from more than three parties in total, given that an Executive majority is unlikely ever to involve more than three parties. To avoid giving very small parties a disproportionate influence in determining which proposals succeeded, the requirement might refer only to parties represented by at least 5 MSPs (i.e. those parties entitled to a seat on the Bureau), plus any groups of smaller-party MSPs and independents formed under Rule 5.2.2 (and also entitled to a seat on the Bureau).

The fairest threshold might set various levels of support according to how cross-party the support was. For example – and recognising that any numbers are to some extent arbitrary – the minimum threshold could be:
• 11 supporters if they include members of 3 or more of the political parties or groups represented in the Bureau;

• 18 supporters if they include members of only 2 such parties or groups; or

• 25 supporters if they include members of only one of the main political parties.

A further refinement would be to count the support of a particular party only if there are at least 2 supporters from that party (rather than just 1 from each, as implied above).

**Question 7: Should members retain the right to introduce 2 Bills per session?**

Should the current right of each member (other than Ministers) to introduce two Members’ Bills per session and to lodge an unlimited number of proposals be reduced to one Bill or even one proposal?

The current limit creates the theoretical possibility of over 200 Bills per session. However, this is not a realistic prospect for various reasons. Introducing even one Bill is a major commitment, and few members are ever likely to wish to do this twice in a single session (and many will not wish to do so at all). There is also a limit to the overall number of Members’ Bills the Parliamentary system as a whole could deal with during 4 years – beyond which it would become increasingly pointless for any member to introduce another one. That capacity threshold is likely to be well below the number (100+) that could theoretically still be introduced even with a 1-Bill-per-member limit. Indeed, it is doubtful whether that lower limit would reduce the total number of Members’ Bills introduced, given that the occasional member wishing to pursue a second legislative idea would probably be able to persuade a colleague who had not already introduced a Bill of his/her own to take it on.

With a system of prioritisation, it would certainly be possible to limit each member to getting NEBU support to draft a Bill only once per session – though again this might have little overall impact on demand.

The other approach would be to limit the number of proposals each member may lodge during a session. A limit of 2 per session (assuming the 2-Bills-per-member limit remained unchanged) would almost certainly reduce the tendency for an initial rush of proposals at the beginning of the session, and also discourage the use of proposals as alternative motions – i.e. by members who wish to draw attention to an issue but have no serious wish to legislate. A more radical 1-proposal-per-member limit (combined with a 1-Bill-per-member limit) would have a bigger effect in reducing the pressure on NEBU at the beginning of the session, but only at the expense of substantially curtailing the ability of members to respond to important concerns during the course of the session.

A further option that might be considered – either instead of or in addition to raising the 11-supporter threshold – would be to limit the number of times each MSP can support another MSP’s proposal. A limit of, say, 10 indications of support per member per session would create a theoretical sessional maximum of around 1,000 indications of support (assuming Ministers were excluded or did not use their quota, as at present). That would be enough in theory to see about 90 Bills over an 11-supporter threshold – though in practice it would be considerably fewer, since many
members would probably choose not to use all 10 opportunities. This might be a more effective way of capping the total number of Bills likely to be introduced than a direct limit on the number introduced per member. By making the right to support proposals a finite (and hence valuable) resource, this would also make clearing the relevant threshold a more meaningful achievement.

**Question 8: is an end-of-session cut-off needed?**

Should there be a formal cut-off point towards the end of a session after which members will no longer be entitled to introduce Bills (or after which Bills will lose the right to be allocated time)? If so, when should this be?

There will come a point towards the end of a session when it is too late to lodge a proposal, and a later point when it is too late to introduce a Bill, with any realistic prospect of getting the Bill passed prior to dissolution (when all outstanding Bills fall). A case can therefore be made that members should not be entitled to introduce a Bill, or lodge a proposal, after the relevant point to avoid any wasted expenditure of NEBU or other staff resources and Parliamentary time.

One difficulty would be in deciding when the cut-off point should be. For most substantial Bills a point 6 months before the end of the session is likely to be about right – but some very short or straightforward Bills would still have a realistic prospect of being passed if introduced later than that, given a political will to get them through. There may be concerns about further differentiating in the Rules between categories of members – assuming any such end-of-session cut-off applied only to non-Executive Bills. (And the Executive is certainly unlikely to accept any such constraint on its own ability to introduce Bills at any time during the session, even if Bills it intended to invite the Parliament to treat as Emergency Bills were excluded.)

Another consideration is that not all Members’ Bills are introduced simply in order to make a change to the law; some are introduced primarily to air an issue and initiate a debate (perhaps as a means of encouraging the Executive to address the issue in its own legislation or in other ways). Assuming this is recognised as a legitimate (and sometimes effective) use of the Member’s Bill mechanism, it is not clear why members should be precluded from exercising it during the final months of a session. Even members who are more focused on changing the law may establish benefits from introducing a Bill late in the session, as the debate engendered (and evidence received) could be usefully employed to refine the Bill for re-introduction in the new session. Those who do not anticipate those benefits would presumably refrain from introducing their Bills late in the session in any case.

It is not clear that committees need to be protected from having Members’ Bills referred to them during the closing months of a session. They may be content to undertake some scrutiny on a late-introduced Bill if they feel it raises issues of importance (and recognising that if a similar Bill was introduced in the new session, the work done on the earlier Bill could largely be re-used). On the other hand, they could decide not to devote time to it if they did not wish to, just on the grounds that it wasn’t going to make further progress. Under the existing Rules, the Bureau already has the ability simply not to set a date for the completion of Stage 1 of any late-introduced Bill, effectively leaving it up to the committee whether to conduct a Stage 1 inquiry or not.
Nor is it clear that such a cut-off is necessary to protect NEBU from being expected to devote resources to drafting Bills that will never be passed. Again, seeing legislation onto the statute book is not the only “measure of success” for NEBU; it has never aimed to assist members only with proposals that have the maximum chance of enactment. Being able to work on new Bills right up to the end of the session may be a better use of NEBU time overall, if that reduces the competition for its resources at the beginning of the new session (when they are most in demand). Perhaps more effective would be make clear that proximity to the end of the session is one of the factors that would be taken into account in deciding whether a proposal qualifies for NEBU resources.

If the previous Bureau’s system of prioritisation was favoured, it is not clear what would be added by a prohibition on late-introduction. That system involved annual prioritisation and presumably the last such exercise would be conducted far enough ahead of the end of the session to allow all the prioritised proposals to be developed in time for introduction at least 6 months before the end of the session.

**Options**

Taking account of all the above considerations, the main options that the Committee might recommend would appear to be as follows.

<table>
<thead>
<tr>
<th>Option A: No prioritisation as such</th>
</tr>
</thead>
</table>
| **This option would leave the main elements of the existing system intact – in particular, that the only procedural threshold for a backbencher seeking to introduce a Bill would be achieving a minimum level of support to a proposal.** The recommendation would be that specific problems encountered by NEBU (proposals that don’t appear to meet the existing criteria, or too many proposals that do meet those criteria demanding support at the same time) would be resolved on an ad hoc basis – by applying to the SPCB for additional resources if need be. This option could include taking steps to adjust the current system by other means than prioritisation – for example by (some or all of):

- raising the 11-supporter threshold (or limiting the number of proposals each member can support)
- giving formal endorsement (in the Rules, or in a resolution of the Parliament) to the SPCB criteria, to give NEBU more authority to apply them
- encouraging or empowering (by changes to the Rules) the Bureau to be more flexible in the expectations put on committees to deal with Members’ Bills – at Stage 1 in particular. |

<table>
<thead>
<tr>
<th>B: Ad hoc prioritisation by an existing committee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>This option would involve transferring responsibility for taking decisions in relation to prioritisation from the SPCB to an existing committee (possibly Procedures). NEBU would continue to apply the existing criteria in relation to the proposals it supports, and to assist all members with consultation exercises, but would be able to refer to the committee decisions about whether the criteria are satisfied in a particular case, or which of a number of competing proposals that satisfy the criteria should take priority for resources. The committee would in turn be able to refer matters to the</strong></td>
</tr>
</tbody>
</table>

11
SPCB in certain circumstances – for example if a short-term increase in NEBU resources was recommended.

On this option, prioritisation would only be called for as and when it was seen to be necessary and would only govern access to NEBU resources. The Bureau would continue to have responsibility for timetabling of all Bills after introduction. Members would continue to have the right to seek outside drafting support as an alternative to NEBU.

This option could also be combined with some of the alternative steps outlined in Option A.

C: Prioritisation by a new committee

This option would be similar to B except that a new committee would be established solely in order to carry out prioritisation of proposals that met the existing criteria and had been consulted on. The committee would differ from other committees in relation to:

- its composition (perhaps one member from each party, plus an independent member);
- the method of appointment of its members (perhaps direct elections); and/or
- a prohibition on members of the committee lodging or supporting proposals.

The committee might meet on a more regular basis than would be the case under Option B (e.g. quarterly) to make prioritisation decisions as required and to review NEBU’s progress with developing proposals previously prioritised.

D: The previous Bureau’s preferred option

This option would involve an annual assessment by the Bureau of all Member’s Bill proposals that had passed the procedural threshold (11 supporters) and completed a consultation exercise. The Bureau would take into account a range of factors, including the anticipated capacity of the relevant committees, and then recommend (in a motion) a certain number of proposals to the Chamber. The motion would be debated and could be amended. Only those proposals included in the resulting resolution would have a right to NEBU support or have the right to be introduced as Bills. Members would continue to have a right to take a prioritised proposal to an outside drafting source but there would not be an alternative route for introducing non-prioritised Bills.
PROCEDURES COMMITTEE

Consultation Methods - Citizens' Juries and Citizens’ Panels

Note by the Assistant Clerk

Background

1. In her evidence at the Committee meeting on 2 March, Joyce McMillan suggested that the Committee might consider using a citizens’ jury or a citizens’ panel to help with the prioritisation of Members’ Bills. In response to this suggestion, the Committee requested that the clerks gather information on the costs associated with these proposals together with information on how these mechanisms might be set up. This information is set out below.

2. A summary of Joyce McMillan’s evidence on the citizens’ jury is included in paper PR/S2/04/5/2, which has been issued separately for this meeting.

Citizens’ juries

3. Citizens’ juries and citizens’ panels are two quite different mechanisms. The main features of a citizens’ jury are as follows:

- Very small sample of people (around 15 – 20)
- Discussion events held over several days
- Experienced facilitator is employed to assist discussions
- Extensive briefing material is provided to the jurors
- End result is set of recommendations contained in a report

4. As the sample is very small, the membership is not usually representative of the whole population.

5. Although the Parliament has never employed this method of consultation, the Parliament’s Participation Services predicts that such an undertaking could cost in the region of £10k – £30k (on the basis that a single day conference event for 100 people costs around £25k).

Citizens’ panels

6. In contrast, a citizens’ panel is normally constructed along the following lines.

- Representative sample of 500 – 1000 (or more) members of the public
- Sample is surveyed on a range of issues, from technically complex single issues to broad satisfaction with overall services
- Used by the UK Government and local authorities

7. Generally speaking, citizens’ panels are time-intensive and very expensive to set up. There is a high drop-off of members and the panel tends to be most effective where it is surveyed three or four times annually. Usage of anything less than this
often results in the panel being re-established from scratch, due to an increased drop-off rate.

8. Again, the Parliament has not utilised this consultation method. However, George Street Research\(^1\) has recently completed such a task for a Scottish local authority. The panel comprised 800 people with an annual drop-off rate of 30%, and cost £42k to recruit the panel and £31k to maintain for the first year. The first year’s cost of £73k included three separate surveys.

Committee events budget

9. To put these figures in perspective, it is worth noting that the current annual budget for all committees to run events (i.e. a range of informal mechanisms aimed at public participation in the work of committees) is around £40k. All bids for a share of this budget need to be made to the Conveners' Group, with a justification for the method chosen and the likely cost.

Other options

9. There are other options for the Committee to consider such as employing focus groups for workshop events, as the Committee has already experimented with during its inquiry into oral questions.

10. Focus group events tend to be less costly than citizens' juries and panels. However, as the groups are often community based, their outcomes cannot necessarily be considered as representative of the whole population.

11. The Parliament’s Participation Services would be able to organise any of these types of event.

---

\(^1\) An Edinburgh based research company that provided this Committee with assistance on the public gallery questionnaire for FMQT and QT.
The Scottish Council for Voluntary Organisations has been following the official reports of recent meetings of the Procedures Committee with concern, in particular concerning the issue of whether, and if so how and by whom, non-Executive bills should be prioritised.

There has been little time for us to consult, but we have opened up discussion on the matter with the Third Sector Policy Officer Network, from which there has been a strong and unanimous response. This network of voluntary sector staff working closely with the Scottish Parliament facilitates information exchange and peer support in involvement with the parliament, and also plays a role in monitoring the parliament to ensure the access agenda is being followed according to the CSG principles. This issue is of particular concern to us for two primary reasons - the CSG Principles and voluntary sector engagement:

**CSG Principles:** The principles of openness, accessibility and participation; power-sharing; accountability, and equal opportunities were warmly welcomed by Scotland’s voluntary sector and they are strongly supported by the SCVO Policy Committee. SCVO and the Policy Officer Network are keen to see the principles upheld and developed.

- **Accessibility and Participation:** The members’ bill process is a prime example of a procedure that makes possible a participative approach to the development of policy and legislation. Any significant changes to the process would also impact on opportunities for participation.
- **Openness and Accountability:** If recommendations to prioritise members’ bills were to be decided in private meetings of the Parliamentary Bureau, the principles of openness and accountability would be compromised. Publishing summary minutes of Bureau meetings is not enough to ensure openness.
- **Power-sharing:** It is important to voters that their elected representatives have an opportunity to introduce legislation, whether or not they are in the governing parties, and that this process retains its separateness and distinction from the Executive bill process.
- **Equal Opportunities:** the facility of members’ bills has allowed more radical and progressive thinking and debate concerning legislation for a more equal society – for example on free school meals, breastfeeding, civil partnership registration, prostitution tolerance zones, warm homes, and planning rights of appeal.

**Voluntary Sector engagement:** Voluntary organisations have been vigorously involved with members’ bills that have become legislation, such as the Abolition of Poindings and Warrants Act and the Protection of Wild Mammals Act, and have been active behind many other proposals. For example, we believe that the Breastfeeding etc. (Scotland) Bill; Prohibition of Smoking in Regulated Areas (Scotland) Bill, Prohibition of GM Crop Planting (Scotland) Bill; Warm Homes (Scotland) Bill; Civil Registered Partnerships (Scotland) Bill; Free School Meals (Scotland) Bill; Free
Nursery and Primary School Milk (Scotland) Bill; Third Party Planning Rights of Appeal (Scotland) Bill; Abolition of NHS Prescription Charges Bill; Environmental Levy Bill; Transportation and Sale of Puppies (Scotland) Bill; Community Based Drug Facilities (Scotland) Bill; Single Vaccinations for MMR (Scotland) Bill; Green Transport (Scotland) Bill; School Meals and Snacks (Scotland) Bill have had considerable voluntary sector involvement. Committee bills are also likely to benefit from a high degree of voluntary sector involvement, given the close interaction between voluntary organisations and Scottish Parliament committees.

Responses from the Policy Officer Network have all recognised that this is an important issue for the sector; that the CSG Principles need to be applied; and that before any changes to the non-Executive bills process are decided upon, there should be an open inquiry into the issue with broad consultation. All were equally clear that they would not like to see decisions about prioritisation of the bills go to the Parliamentary Bureau, for reasons of accountability, and because the smallest parties and independents would be excluded from the decisions. There was concern that Members of the Policy Officer Network had been unaware of the discussions taking place until SCVO brought them to their attention.

Voluntary organisations appreciate that involvement with members' bills may result in the introduction of that legislation, help deliver improved and more inclusive Executive legislation, or promote a policy argument in a way that would benefit their communities. They would view the initial prioritising of these bills in a private meeting of the Bureau with the same level of concern with which the public in Scotland would view the prioritising of public petitions by such a method.

Various possible options to address a bottleneck situation, were suggested by network members (eg increased staff and resources for the NEBU; the creation of more parliamentary time for members' Bills; a ballot; the citizens’ panel suggested in Joyce Macmillan’s submission; and an ad-hoc committee of back-benchers). The variety of suggestions highlights the need for consultation.

In conclusion, SCVO recommends that the committee bears in mind that non-Executive bills and in particular the members' bills process, are seen by voluntary organisations as a key method of engagement, and therefore the need to make any significant changes to the process should be investigated fully, and in the spirit of the CSG Principles, any proposals for change should go out to public consultation. Also that Policy Officer Network members have stressed that as the Parliamentary Bureau is not subject to the same standards of transparency as other parliamentary committees, a decision for the Bureau to take a lead in decisions concerning backbench proposals for legislation would not promote the objectives of the CSG Principles.

We would welcome time to consider these important and complex issues in detail, and so we believe that a full inquiry into non-Executive bills should be carried out by the Procedures Committee, either as part of their inquiry into legislative procedure, or if this is to focus on Executive bills, as a separate inquiry, and we would be pleased to be involved in promoting such a consultation.

Jill Flye, SCVO
4 March 2004
In responding to the Parliamentary Bureau/SPCB proposals for the prioritisation of Non-Executive Bills, I have taken into consideration three factors.

1) The need to develop a system which respects the basic principles on which the Parliament is founded – in particular, in this instance, the principle of power-sharing.

2) The need for the Parliament to play to its strengths, and to build on its image as an open and innovative parliament for the 21st century, in order to promote the long-term deepening and strengthening of the relationship between parliament and people.

3) The need for a system which works effectively in providing substantial scope for the introduction of Non-Executive Bills, while making the most effective use of limited parliamentary time and resources.

I would further observe that given the current public antipathy to “control-freakery” and excessive Executive power in political processes, the openness of any Parliament to the introduction of Non-Executive Bills is likely to be one of its most popular and widely-discussed features. The introduction of Committee Bills is a genuinely innovative feature of Scottish Parliament procedure, which has contributed to the generally positive image of the Parliament’s Committees as powerful, effective and open to argument.

It is also worth noting that the annual ballot for Private Members’ Bills at Westminster, while it has a slightly jokey, raffle-like feel to it, is well understood by many members of the public as a rare “open” moment at which backbench MPs may win a chance to make their mark. The handling of this issue is therefore both important in itself, and highly significant in the signals it sends about the Parliament’s attitude to democratic openness and power-sharing, and the seriousness with which it takes these issues.

Taking account of the CSG principles, and various reviews of the working of the Scottish Parliament to date (including the Scottish Civic Forum’s 2003 Audit of Democratic Participation), I would therefore make the following proposals:

1) That Committee Bills should generally take priority over Members’ Bills, since they represent a significant and popular innovation which helps to strengthen the role of Committees in the parliamentary process.

2) That the PB/SPCB proposals for Members’ Bills should not be accepted as they stand, since they smack too much of Executive control over the prioritisation of Members’ Bills through the exercise of the parliamentary majority.
3) That a simple raising of the threshold for the introduction of Members’ Bills would also send a negative signal, since it would appear to militate against the interests of the smaller parties in the Parliament.

4) That the Procedures Committee should, however, give serious consideration to the proposals outlined in paper PR.S2.03.7.7 for taking breadth of cross-party support, as well as overall numbers, into consideration when prioritising Members’ Bills.

5) That while accepting that the Parliament must make the final decisions on its own order of business, the Committee should also give careful consideration to the potential for some particularly imaginative public participation in the prioritisation of Members’ Bills – e.g. a serious deliberative consultation process, carried out on an annual basis, in which an advisory proposal for the prioritisation of Members’ Bills would be drawn up by a statistically representative citizens’ jury, after hearing arguments from the MSPs involved. This would improve on the Westminster ballot procedure in terms of democratic credentials and creative innovation, might attract substantial positive media interest both in Scotland and beyond, and could get the whole nation talking creatively and responsibly about its legislative priorities. Which, in the end, is what we all want.

Joyce McMillan
1 March 2004
E-MAIL TO THE CONVENER

I wish to thank you and the Committee for allowing me to participate in your inquiry into non-Executive legislation. Following the interesting session this morning, I attach a short note seeking to clarify or amplify a few points, for the assistance of the Committee. If your Committee’s working procedures allow you to accept this note as a formal submission (as a ‘Supplementary Note by the Witness’, or the like), I am happy to submit it on that basis.

In advance of the OR of this morning’s meeting being published, can I take this opportunity to clarify one point of apparent confusion? If I recall correctly, during my questioning, there appeared to be a brief exchange between us about whether the CSG Report recommended a limit of 2 bills being introduced per session by an MSP, or 2 proposals for Bills. You appeared to suggest, if I did not misunderstand, that it was the latter, and that I had wrongly suggested it was the former. This seemed to have been cleared up during Joyce McMillan’s evidence when you said that the proposal from CSG related to introduced Bills, rather than proposals. The relevant section of the CSG Report (which, incidentally, also shows that the 11-supporters threshold was not its specific suggestion, but 'perhaps 10% of all MSPs', or alternatively, in its following flowchart for Option 2, '10-20 Members'):

“Private Members’ Bills
21. Individual Members should be entitled to submit written proposals for legislation to the Presiding Officer. Such proposals should be brought before the Plenary if either they could secure the support of a minimum number of MSPs (perhaps 10% of the total), or by submitting them to the relevant subject Committee which should then have a discretionary competence to initiate an inquiry on the need for such legislation and to report to the Scottish Parliament. We also recommend that individual members should be able to introduce no more than 2 Bills in any Parliamentary session.” (CSG Report para 3.5.21)

Barry K Winetrobe
Lecturer in Public Law
University of Glasgow
SUPPLEMENTARY NOTE

1. Any scheme of prioritisation, especially one with a specific public deliberative process, as suggested by Joyce McMillan, must consider the purposes of the parliamentary legislative function and of its processes and procedures, relating to all legislation, not just that from an executive.

2. The principle of power-sharing means that legislative initiative is shared between an executive and others, not that initiative by those others is additional or extra to that of the executive, to be fitted in where convenient.

3. The Parliamentary legislative process is designed to allow, in particular, every appropriate opportunity for those with power of legislative initiative to introduce and put to parliamentary and public scrutiny their legislative proposals; to enable these proposals to be decided upon by the Parliament, and to ensure that any legislation which is enacted is “fit for purpose”, necessary and reasonable, legally valid and effective, and so on. It does not provide arbitrary hurdles for some or all proposals to overcome, but mechanisms to ensure that proposals are properly “tested”. For example,

- “Why legislate” not “why not legislate?”, should be the key question – the legislative process should protect against “knee-jerk” reactive legislating (e.g. “Sarah’s Law”, dangerous dogs), and to provide scope for a parliament (especially a unicameral one) and people to think again where appropriate.¹

- Prioritisation criteria should not be based on likelihood of success (i.e. enactment) – requirements for “cross-party support” and the like may deter or prevent apparently unpopular, minority or “off-the-wall” proposals, which in a later time may become acceptable or even “self-evident truths”.²

- Classifications of legislation as “small”, “technical”, “uncontroversial” and so on can backfire – apparently innocuous or worthy measures can suddenly become high-profile or controversial,³ or be under-regarded in a consultation process.⁴

¹ An extreme example is the strict rules for constitutional amendment in the USA, and even there, there are unhappy examples, such as Prohibition in the early 20th Century, or, currently, the proposed banning of “gay marriage”.

² The standard examples here are abolition of slavery and votes for women. Experience of the Cross-Party Group system shows the problems of defining and applying such criteria.

³ This was the case with family law proposals at Westminster in the early 1990s, which emanated from Law Commission, began expedited process, but ran into trouble when media criticisms suddenly arose claiming them to be “anti-family” or “anti-marriage”.

⁴ As in the Convener’s own St Andrew’s University example today.
Consultation/scrutiny processes carry risks which could distort the core purposes of the legislative process – this may be especially so if involving deliberative processes along the lines suggested by Joyce McMillan. There is the risk of “capture” by distinct lobbies; domination by “the usual suspects”, and potential improper pressure on Members to “do something” about particular issues. Meaningful public engagement in the legislative process – essential to this Parliament and its ethos – should be clearly integrated into parliamentary processes, and not perceived as quasi-autonomous adjuncts to it.

Any scheme should be seen to be robust and effective, in the face of any potential criticism that it is dominated by the Executive, special interests or otherwise.⁵

ANNEX: SNP PRESS RELEASE:

White hits out at Executive’s handling of Members’ Bills

SNP MSP for Glasgow Ms Sandra White has today (Friday 27 February 2004) attacked the Scottish Executive over their treatment of Members’ Bills put forward by MSPs from opposition parties.

Ms White’s Bill* on Third Party Right of Appeal (TPRA) in planning has recently become a victim of this after the Executive announced their intention to hold a consultation on the issue, which means that assistance from the Non Executive Bills unit was not available.

Commenting Ms White said:

“It seems that all the Executive have to do to scupper a Member’s Bill is to announce that they will be having their own consultation.

“However, there has been no sign of an Executive consultation into Third party Right of Appeal, despite the fact that they announced their intention to conduct one over two weeks ago.

“It appears this situation is being abused by the Executive as a means to kick legislation into the long grass and when they finally enter the consultation process they will still be months behind the position I was at.

“This is not the first time that we have seen this happen in the Parliament with another recent example being that of Tricia Marwick’s Proportional Representation (Local Government Elections) (Scotland) Bill.

“The only thing this move from the Executive does is delay the implementation of any legislation and denies individual MSPs the chance to initiate it.

“This is against the spirit of democracy; it is abuse of the current system and is something which must be looked at closely in the near future.”

[* Note by the Clerk: there is only a proposal for a Bill at present, not a Bill.]
PROCEDURES COMMITTEE

Timescales and stages of Bills: witnesses and meetings

Note by the Clerk

Agreed categories of witness

At the 3rd Meeting (10 February), the Committee agreed the following list as a basis for the oral evidence it would invite:

- the Executive – the Minister for Parliamentary Business, and perhaps also (separately or accompanying the Minister) officials with experience of working on Bill teams
- members (other than Ministers) who have been members-in-charge of Bills
- opposition party spokespersons and backbench MSPs who have been involved in the amendment process, whether from within or outwith the Stage 2 Committee
- committee conveners – and perhaps also committee clerks with experience of dealing with Bills and amendments
- outside individuals and organisations with experience of engaging with the Bills process – either as witnesses at Stage 1 or as proposers of ideas for amendments at later Stages
- legal practitioners or other “end users” with experience of working with the primary legislation that the Parliament has produced
- the Legislation Team (the clerks with overall responsibility for managing the administrative aspects of the process).

The idea behind this list is to ensure that, so far as possible, direct views are heard from all the main “players” affected by the timescales that operate at different points in the legislative process. The pressures will be different for each player – for example, for an MSP seeking to lodge an amendment and the external body he or she is discussing it with, the pressure will be in meeting the deadline for lodging the amendment; but for the Executive officials who need to prepare advice for the Minister about how to respond to the amendment, the pressure will be in completing that advice in the period between the amendment being published and it being moved.

Case studies

In order to impose focus on the taking of evidence, it is suggested that the Committee identifies Bills to use as “case studies”. This would enable relevant members, Executive officials, clerks and others to give their different perspectives on the same events and circumstances – rather than having a range of evidence that
would be difficult to compare (since it would not be clear whether differences of view were attributable to different perspectives or just to different circumstances).

The aim would be to choose Executive Bills (since those are the ones usually subject to timetabling pressure) that are broadly representative (i.e. avoiding both the best and the worst examples) and reasonably recent without being current. Since no single Bill will embody the full range of timescale issues covered in the inquiry, it is proposed that two are chosen, one smaller and one larger. Given the limited choice of Bills that have so far completed their passage this Session, it is suggested that one of the Bills chosen should be from Session 1 – but as recent as possible so that witnesses will still be able to recall the detail of what happened.

In selecting suitable Bills, we have aimed to cover the following aspects:

- the involvement of committees other than the lead committee at Stage 1;
- a Stage 2 lasting more than one meeting;
- consideration by the Subordinate Legislation Committee between Stage 2 and Stage 3;
- reasonable numbers of amendments at both Stages, including substantive (i.e. more than technical or tidying-up) amendments, manuscript amendments etc.

It is therefore recommended that the Committee chooses one of the following Session 1 Bills and one of the Session 2 Bills as case studies. Some of the key players in each case who might then be invited to give evidence are listed in bold.

**The Agricultural Holdings (Scotland) Bill – SP Bill 62 (Session 1)**

- Medium/large Bill (80 sections, 1 schedule)
- Introduced September 2002; passed March 2003. Ministers: (Ross Finnie), Allan Wilson
- Stage 1 lead committee: Rural Development (Convener: Alex Fergusson) – held 4 meetings to take oral evidence; 2 meetings to consider a draft report
- Additional report at Stage 1 from Subordinate Legislation Committee (no oral evidence)
- 4 days at Stage 2 – 188 amendments
- 1 day at Stage 3 – 139 amendments
- This was a politically contentious Bill. The Conservatives opposed it at Stage 1. The SNP argued (unsuccessfully) that the pre-emptive right-to-buy conferred by the Bill should be converted into an absolute right-to-buy – a fairly fundamental change to the Bill. This led to a number of divisions on the draft Stage 1 Report, was prominent in the Stage 1 debate and prompted many of the amendments at Stage 2.
- There was criticism of the Executive during Stage 2 for the lodging of amendments on the final lodging-day (i.e. without adhering to the informal deadline of 5 days before the Stage) and the lack of notice this gave to members
and others. There were a number of manuscript amendments at Stage 2 and at Stage 3.

- Other relevant MSPs: Fergus Ewing

- Relevant outside bodies: National Farmers’ Union of Scotland; Scottish Landowners’ Federation; and Scottish Tenant Farmers’ Action Group

The Homelessness (Scotland) Bill – SP Bill 62 (Session 1)

- Small Bill (13 sections, 1 schedule)

- Introduced September 2002; passed March 2003. Ministers: Margaret Curran, Hugh Henry and Des McNulty

- Stage 1 lead committee: Social Justice (Convener: Johann Lamont) – held 5 meetings to take oral evidence; 2 meetings to consider a draft report

- Additional reports at Stage 1 from Finance (1 meeting of oral evidence) and Subordinate Legislation Committees (no oral evidence)

- 1 day at Stage 2 – 35 amendments

- 1 day at Stage 3 – 17 amendments

- Subordinate Legislation Committee report on the Bill as amended at Stage 2 (no oral evidence)

- This was not a particularly controversial Bill. At Stage 2, 8 amendments were dealt with by division; at Stage 3, 10.

- Other relevant MSPs: Jackie Baillie

- Relevant outside bodies: Shelter Scotland, Scottish Council for Single Homeless, Scottish Federation of Housing Associations and CoSLA

The Vulnerable Witnesses (Scotland) Bill – SP Bill 5 (Session 2)

- Small/medium Bill (20 sections, no schedules)

- Introduced June 2003; passed March 2004. Ministers: (Cathy Jamieson), Hugh Henry

- Stage 1 lead committee: Justice 2 (Convener: Annabel Goldie) – held 4 meetings to take oral evidence; 2 meetings to consider a draft report

- Additional reports at Stage 1 from Finance (2 meetings taking oral evidence) and Subordinate Legislation Committees (no oral evidence)

- 1 day at Stage 2 – 94 amendments
• 1 day at Stage 3 – 68 amendments

• This was a relatively uncontroversial Bill. The Stage 1 report was agreed to unanimously; there was no division at Stage 1 or Stage 3; and there were divisions on only 6 of the Stage 2 amendments and 3 of the Stage 3 amendments.

• Some of the Executive amendments Stage 2 amendments were lodged on the final lodging-day (i.e. without adhering to the informal deadline of 5 days before the Stage). There were no manuscript amendments.

• Other relevant MSPs: Patrick Harvie (outside committee), Jackie Baillie, Maureen Macmillan, Mike Pringle and Nicola Sturgeon

• Relevant outside bodies: Justice for Children, Scottish Child Law Centre, Scottish Human Rights Centre and Law Society of Scotland

Primary Medical Services (Scotland) Bill – SP Bill (Session 2)

• Small Bill (9 sections, 1 schedule)

• Introduced June 2003; passed December 2003. Ministers: (Malcolm Chisholm), Tom McCabe

• Stage 1 lead committee: Health (Convener: Christine Grahame) – held 1 meeting to take oral evidence; 2 meetings to consider a draft report.

• Additional reports at Stage 1 from Finance (1 meeting taking oral evidence) and Subordinate Legislation Committees (1 meeting taking oral evidence)

• The Subordinate Legislation Committee also published a report on the Bill as amended at Stage 2

• 2 days at Stage 2 – 50 amendments

• 1 day at Stage 3 – 18 amendments

• This was a very uncontroversial Bill (except for an issue about the non-availability of draft regulations at Stage 1). There were no real timetabling problems.

• Other relevant MSPs: David Davidson, Shona Robison

• Relevant outside bodies: British Medical Association
LETTER TO THE CONVENER FROM ROBERT BROWN, CONVENER OF THE EDUCATION COMMITTEE

The Education Committee, at its last meeting on 3 March 2004, noted with interest the Procedures Committee’s inquiry into Legislative Process. The Education Committee is currently considering the Education (Additional Support for Learning) (Scotland) Bill at Stage 2 and has asked me to write to you.

The Education Committee feels that more time between the publication of the grouping of amendments to a Bill and the date of the Committee meeting which is to consider them, would make for better debates. The Committee is conscious of the late working both by Parliamentary staff and by Executive staff which is required to make groupings available and to brief Ministers.

The Committee is also of the view that it would be beneficial if subject Committees and Executive Ministers had more time to consider amendments and would welcome appropriate procedural changes to give this effect.

Robert Brown
Convener, Education Committee
9 March 2004
PROCEDURES COMMITTEE

Meeting with Irish Parliamentary Delegation, Friday 5 March 2004

Note by the Senior Assistant Clerk

Present:  Dr Rory O’Hanlon, Ceann Comhairle (Speaker of the Dail)
Noel Davern, TD (Fianna Fail)
G.V. Wright TD (Fianna Fail)
Fergus O’Dowd TD (Fine Gael)
Paudge Connally TD (Independent)
Senator Eddie Bohan (Fianna Fail)
Cait Hayes, Interparliamentary Unit, Houses of the Oireachtas

Iain Smith MSP (Convener)
Mark Ballard MSP
Jamie McGrigor MSP
Andrew Mylne, Clerk to the Committee
Jane McEwan, Senior Assistant Clerk
Alison Dickie, External Liaison Unit

Introduction

1. Following the formal introductions, the Convener outlined the remit of the Procedures Committee and gave a brief summary of the work the Committee had undertaken so far this session. He said that the Committee was just beginning a major inquiry into the timescales and stages of legislation.

2. The discussion which then took place focused on the topics set out below. The main points noted during the discussion were as follows.

Oral Questions

3. The Taoiseach (Prime Minister) faces 45 minutes of questions twice per week (Tuesdays and Wednesdays). In addition to this he handles 3 questions from opposition leaders (Leaders’ Questions) every morning he is in the Dail. These questions are asked without notice and are subject to time limits of 7 minutes overall – 2 minutes for the question, 3 minutes for the reply, plus 1 minute for a supplementary and 1 minute for the reply. There was a feeling that this procedure was an effective mechanism for raising topical issues. By comparison, the visitors felt that oral questions in the Scottish Parliament were a little less lively.

4. Questions to Ministers works on a rota basis with 3 slots each week – 1 hour on Tuesday and 1 hour 15 minutes on Wednesday and Thursday. Each Minister (there are currently 14, other than the Taoiseach) faces questions every 5 weeks, based on a rota decided on a resolution of the Dail. A total of 6 minutes is allocated for each question: the initial question is called without being read out, 2 minutes is allowed for the Minister’s initial reply, 1 minute for a supplementary by the member and 1 minute for the subsequent reply. Any remaining time may be
used for a further supplementary and reply. This 6-minute time limit is strictly adhered to – something the Ceann Comhairle admitted was rather inflexible. The whole of the Minister’s initial answer is reproduced in the Official Report, even if there is not time for all of it to be read out. The 6-minute rule has now been in force for around 8-9 years and was introduced to increase the number of questions taken. All TDs can submit 2 questions each day for Question Time and the questions to be taken are chosen by lottery.

5. The first 5 questions (for up to 30 minutes) are designated as “priority questions” (and require only 3 days’ notice rather than the 4 days’ notice otherwise required). These are allocated on a proportional basis to opposition parties that have 7 or more TDs – Fine Gael and Labour, together with a “Technical Group” consisting of Sinn Fein (5 TDs), the Greens (6 TDs) and the independents (11) which qualifies for a share of priority questions. These questions are allocated to party spokespersons (which, in relation to the technical group, involves rotating spokespersons), who then pass some of them on to other TDs in their party/group. Only the questioner can ask supplementary questions. The main drawback of the priority question system is that it reduces the time available for backbench TDs to question Ministers.

6. Ministers’ ability to perform well during extended questioning involved, without direct support from civil servants, was seen as a key test of their credibility and of the extent to which they were on top of their briefs.

7. Like the Scottish Parliament, all parliamentary proceedings are televised internally. Leaders’ Questions and Questions to Ministers are televised via the main national TV stations. The Ceann Comhairle did not think it would be appropriate for the timing of oral questions to be adjusted to suit the media; it was for the media to follow what the Dail did, reflecting its status as a parliament.

Adjournment Debates

8. An Adjournment Debate lasting 40 minutes is held at the end of each day’s business in the Dail (typically 9 or 10 pm). Four questions in total are taken during the debate and both questioners and the Minister responding are allocated 5 minutes each. The Ceann Comhairle is responsible for selecting the questions taken. This provides an additional opportunity for TDs to raise topical issues with Ministers. The Dail is currently considering revising this procedure and moving instead to a Commencement Debate as the current practice is that junior Ministers rather than the senior Minister to attend the Adjournment Debate given that they tend to take place very late in the day.

Non-Executive Bills

9. Any Member may seek leave from the Ceann Comhairle to introduce a Private Member’s Bill (PMB). The bill is then introduced and put to the House. Although bills can, in principle, be voted down at this First Stage, in practice most proceed to Second Stage, a debate on the general principle of the bill.

10. Second Stage of a PMB is held in opposition party time. In principle, up to 6 hours is allocated, requiring two of the 3-hour slots allocated to that party, though
in practice it is often agreed to use only one such slot. The need to secure opposition party time for these debates means that the only PMBs likely to make progress are those actively supported by a major opposition party.

11. At the end of Second Stage, a PMB the bill is likely to be voted down if the Government don’t support it. Generally, Bills that progress to Committee Stage for detailed consideration and amendment are taken over by the Government and proceed as Government Bills.

**Timescales and Stages of Legislation**

12. After Second Stage, a bill (regardless of whether it is a Government or Private Member’s Bill) is referred to a committee (usually a select committee shadowing a Department). The interval before Committee Stage is usually around 2 weeks, but this is not a rule, and sometimes it is only a day or two. There is generally 1-2 weeks between the Committee stage (Third Stage) and Report Stage (Fourth Stage). There have been occasional complaints that the time between these stages is too short. However, time pressures in the Dail are offset by the fact that Bills must also be considered by the second chamber (the Seanad, or Senate) whose role is to refine the legislation.

13. The Dail’s standing orders do not specify specific timescales for the progress of bills. This is left to the parties to determine although it is for the committee to decide when to take a particular bill for committee stage.

14. Four days’ notice of amendments is required although there is still a feeling that this may not be sufficient. The Bills Office clerks sometimes work beyond midnight processing amendments, and there is concern about the pressure this puts on them. Amendments are submitted at Committee and Report Stages although no entirely new amendments may be introduced at Report Stage (Committee Stage amendments may be re-tabled, and consequential amendments dealing with issues raised at Committee Stage may also be tabled). In addition, the opposition parties cannot introduce amendments which would place a charge on the exchequer.

15. Lobby groups and the public liaise with Ministers and opposition spokespersons in advance about amendments they would like to see made, but have little direct engagement in the amending process itself.

**General Points**

16. There are 166 seats in the public gallery and the public can only gain access to the gallery by invitation of a TD.

17. A total of 3 hours of plenary time each week is allocated to the opposition parties: 7.00 - 8.30 pm on Tuesdays and Wednesdays. This is usually used for debates on motions (to which there are invariably Government amendments). The opposition party has 40 minutes to open the debate, the Government has 30 minutes to reply and other parties then get around 20 minutes each. At the end, the Government gets a further 5 minutes and the proposer 15 minutes to wind up.
18. The visitors had been impressed by the extent of public participation in the Scottish Parliament. They felt that TDs kept closely in touch with public opinion more through the extent of their constituent activities, where most were highly visible and attended many local events. The accessibility of TDs to the public was partly attributable to the electoral system.

19. Although the Dail had a committee on procedure and privilege, there was also a separate committee considering Dail Reform consisting of business managers and the clerk which was reviews procedures. However, it had been operating for a number of years and had made little progress. This was attributed to the fact that changes that parties wished to see when in opposition they then opposed when in government.
Present:

Mr Richard Baker
Mark Ballard
Bruce Crawford
Karen Gillon (Deputy Convener)
Iain Smith (Convener)

Apologies were received from Jamie McGrigor.

The meeting opened at 10.18 am.

1. **Non-Executive Bills**: The Committee took evidence from—

   Barry Winetrobe, Lecturer in Public Law, Glasgow University; and

   Joyce McMillan, Convener of the Scottish Civic Forum and former member of the Consultative Steering Group,

   and agreed to consider a paper at its next meeting examining the extent to which a change in procedure was necessary, summarising the evidence received and setting out options for discussion. Information about the the likely cost of a “Citizens’ Jury” along the lines proposed by Joyce McMillan, and how it might work, would also be provided.

2. **Timescales and Stages of Bills – witness expenses**: The Committee delegated responsibility to the Convener for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry.

3. **Review of FMQT and Question Time**: The Committee considered what further information it required in order to complete the review. In addition to the information outlined in the note by the clerk (PR/S2/04/4/3), the Committee agreed to seek information on the frequency and duration of direct FMQT coverage in lunchtime and evening news bulletins on
Grampian and Borders Television, together with average viewing figures for these bulletins; equivalent information in relation to direct radio coverage of FMQT; data on the number of hits on the Parliament’s live webcast during FMQT and Question Time; and information from the Broadcasters’ Audience Research Board on viewing figures and audience reach in relation to FMQT and Question Time.

The meeting closed at 11.42 pm.

Andrew Mylne
Clerk to the Committee