The Committee will meet at 10.15 am in Committee Room 4.

1. **Work programme:** The Committee will continue its consideration of options for future inquiries and other procedural issues raised.

2. **Bills – timescales and Stages:** The Committee will consider a summary of evidence and decide its general approach to the issues raised in the inquiry.

3. **A new procedure for Members’ Bills (in private):** The Committee will consider a revised draft report and standing order changes.

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 (Note: re-circulated from previous meeting) PR/S2/04/11/1

Extracts from the *Edinburgh Evening News* and *Holyrood Magazine* on private Bills

Extract from the *Sunday Herald* on Sewel motions

### Agenda item 2
List of issues raised (note by the Clerk) PR/S2/04/11/17

Summary of evidence PR/S2/04/11/2

Note by the Clerk on Stage 1 calls for evidence PR/S2/04/11/3

Note by the Clerk on Stage 2 amendments and related issues PR/S2/04/11/4

Note by the Clerk on Stage 3 issues (1): timetabling issues PR/S2/04/11/5

Note by the Clerk on Stage 3 issues (2): motions to pass the Bill PR/S2/04/11/6

Correspondence with the Presiding Officer about Stage 3 timetabling PR/S2/04/11/7

Note by the Clerk on Stage 3: subordinate legislation PR/S2/04/11/8

Submission from the Convener of the Health Committee PR/S2/04/11/9

Letter (with table) from the Clerk to the Subordinate Legislation Committee (NB: copies handed round to members at last meeting) PR/S2/04/11/10

### Agenda item 3
Note by the Clerk on implementation of proposed Rule-changes (*private paper – members only*) PR/S2/04/11/11

Revised draft report (*private paper – members only*) PR/S2/04/11/12
Revised draft standing order changes (private paper – members only)  PR/S2/04/11/13

Note by the Clerk on proposal thresholds  PR/S2/04/11/14

The following papers are attached for information:

Oral questions review: questions lodged for Question Time (NB: slightly updated version of paper circulated as a late paper for previous meeting)  PR/S2/04/11/15

Oral questions review: attendance during Question Time (NB: updated version of paper circulated as a late paper for previous meeting)  PR/S2/04/11/16

Minutes of the last meeting  PR/S2/04/10/M
PROCEDURES COMMITTEE

Committee Forward Work Plan

Note by the Clerk

Purpose

1. This paper invites the Committee to consider its forward work plan for the remainder of the calendar year. In particular, members’ views are sought on what further inquiries the Committee should undertake this year. The paper also sets out suggested dates for committee meetings between September and December 2004.

Timing

2. Prior experience would suggest that the Committee is able to handle two major inquiries at any given time, perhaps with smaller scale inquiries or consideration of minor procedural issues fitted in.

3. The Committee is likely to conclude its inquiry on non-Executive bills by the summer recess. There should therefore be scope for the Committee to undertake a further major inquiry from September onwards. This new inquiry would run alongside the current inquiry on the timescales and stages of Bills, which is expected to be completed by the October recess.

4. On present plans, the Committee will wish to return to the review of FMQT and Question Time after the October recess. This work would then run alongside any new inquiry initiated in September, and should be concluded by the end of this calendar year.

Major Inquiries

5. There are three main candidates for the Committee’s next major inquiry, which the Committee could begin after the summer recess. Details of the possible scope and remit of each are set out below. Committee members are invited to indicate which of these inquiries they would wish to undertake first.

Option 1: Sewel Motions

6. The Committee last considered its forward work plan on 2 December 2003. At that meeting the Committee agreed that its next major inquiry after the inquiry on the timescales and stages of Bills would be an inquiry on Sewel motions. Since this decision has been public knowledge for some months, there is an expectation that the Committee will begin this inquiry before the end of this year.

7. There are two ways in which the Committee could approach an inquiry on Sewel motions. The Committee could choose to focus on the major
political issues surrounding Sewel motions. Under this option, the inquiry might consider the following issues:

- the general process by which it is decided that a particular devolved matter should be dealt with by Westminster legislation rather than by Scottish Parliament legislation, and why such decisions are made more frequently than was originally envisaged;

- whether general changes are needed to the mechanism used to seek the Parliament’s consent to Westminster legislating on a devolved matter (currently by the Executive lodging a motion, accompanied by a written memorandum, with the motion usually debated in the Chamber);

- whether adequate mechanisms are in place to ensure that Westminster stays within the bounds of any consent given and how, if an amendment is tabled or agreed to in Westminster that would take the legislation beyond the scope of that consent, the Parliament’s further consent should be sought.

8. Alternatively, the Committee could limit its inquiry to the internal procedural issues surrounding the Parliament’s handling of Sewel motions. Under this option, the terms of reference for the inquiry could be along the following lines:

- whether there should be a specific Rule governing the lodging and consideration of Sewel motions – in particular
  - should standing orders require the Executive to lodge a memorandum to accompany the motion for publication by the Parliament (and specify what the memorandum should cover);
  - should there be an agreed mechanism for the referral of Sewel motions to committees for consideration;
  - should there be a timeframe for committee consideration of Sewel motions; and
  - should standing orders specify what committees are expected do in consideration of a Sewel motion?

9. The previous Procedures Committee did undertake some work on this. It received evidence from the Executive and the Scotland Office, and recommended that the new Committee continue this work.

10. Partly in response, the Executive agreed towards the end of last session to make some changes to their procedures for handling Sewel motions. Sewel motions are now tabled after the Westminster Bill has been introduced but before the last amending Stage in the first House at Westminster (rather than between introduction and Second Reading). This new arrangement allows more time for the Parliament to consider the
Executive’s proposals for a Sewel motion. The Executive memorandum which accompanies the Sewel motion is also now published on the Executive website, to provide a more permanent record of the purpose and effect of a particular motion.

11. More recently we have been sent a copy of a dissertation on the Sewel procedure by a final-year politics student at Edinburgh University prepared during his placement at the Scottish Executive. The dissertation involves a detailed analysis of the process along with a number of recommendations for how the procedure might be improved. The author has indicated his willingness to give evidence to the Committee if invited to do so. This, together with the evidence taken by the previous Committee, would provide a good starting point for an inquiry on this topic.

12. The Convener of the Enterprise and Culture Committee recently suggested that the Procedures Committee consider aspects of the Sewel process – specifically a time-period for committee consideration and an “early warning” system for alerting committees to motions in good time. This letter was circulated to the Committee as PR/S2/04/7/10.

13. The Justice 1 Committee has also now invited the Committee to consider changes to the Sewel procedures – see separate paper PR/S2/04/10/10.

Option 2: Private Bill Procedures

14. The proposal to hold an inquiry on private bill procedures has featured as a possible option on the committee’s forward work plan for some time. However, the recent increase in the number of “works”-type private bills introduced, together with the fact that further such bills are expected later in the session, has raised the profile of this issue. In particular, concerns have been expressed about the amount of work placed on Members involved in private bill committees, particularly on “works” bills.

15. As with Sewel motions, there are two general approaches the Committee could take to such an inquiry. One option would be to focus on the major issue of what options there might be to remove some, or all, of the responsibility for “works” bills from the Parliament – including the possibility of some Scottish equivalent to the Transport and Works Act 1992 (which removed most of the work involved in such Bills from Westminster).

16. Alternatively, the Committee could focus on what scope there is to streamline the process set out in Chapter 9A. Such an inquiry might then cover the following areas:

- reviewing the Rules governing the “scope” of objections and the admissibility of amendments so as to deal more effectively with the possibility of a Private Bill being amended in ways that could adversely affect the interests of persons not given an opportunity to object at the time the Bill was introduced; and
• building more flexibility into Rules assigning specific roles to the Convener of the Private Bill Committee (e.g. in moving the motion to pass the Bill), to allow for circumstances where the relevant person has ceased to be an MSP.

Option 3: Review of the Parliamentary Week

17. Another option for a major inquiry would be a broad review of the Parliamentary week. The previous Procedures Committee looked at this issue and produced a “Time in the Chamber” legacy paper (circulated as PR/S2/03/1/5) which outlined the background to this suggested inquiry and set out possible options for an alternative model of the working week for consideration by the new Procedures Committee. Such an inquiry could look specifically at:

• the proportion of the normal sitting week allocated to Chamber business, and whether to relax the rule preventing committees and the Chamber meeting at the same time;

• how Chamber time is divided according to the various categories of business (motion-and-amendment debates, other debates, questions, etc.) and between categories of members (Executive time, opposition parties' time, backbenchers' time); and

• how the available speaking time is divided up within each debate or item.

18. It seems clear from the paper produced by the previous committee that there is an appetite among members for this issue to be looked at (82% of responses to the questionnaire issued in autumn 2002 agreed that it would be helpful for the Procedures Committee to investigate in detail whether the overall time allocated to chamber business was appropriate). During the debate on the previous Procedures Committee’s Founding Principles Report, a number of Members also raised concerns about issues such as the balance of time available for backbench speakers and the time limits on speeches.

19. The Committee’s current review of FMQT and Question Time will also have a bearing on this issue, so it may be sensible to await the outcome of that inquiry before re-opening the wider issue of time in the chamber. Given this, the committee might wish to defer an inquiry into time in the chamber until later in the Parliamentary session.

20. However it could also be argued that there is a less immediate need for procedural change in this area, compared to the other two options outlined above.

Small Scale Inquiries

21. There are a number of smaller scale inquiries which the Committee will be expected to undertake or has been asked to undertake. It may be possible
to deal with one or two of these alongside the larger inquiries. A list of these is set out in Annexe A. Committee members are asked to note the attached list and to give an indication of the priority attached to these.

22. It is also possible that further minor procedural issues (similar to current issues on the location of the Chamber and the Budget scrutiny process) may arise and will need to be considered by the Committee.

**Possible Awayday**

23. A further issue for the committee to consider is whether they wish to hold an awayday between now and the end of this year. The Committee last held an awayday on 25 August 2003. At that event the committee heard from Ken Macintosh MSP, the former Deputy Convener of the Procedures Committee, about the previous Committee’s CSG inquiry. Barry Winetrobe, Lecturer in Public Law, Glasgow University then gave an external perspective on the main findings of the CSG inquiry report and Ken Hughes, Head of the Chamber Office, spoke about the role of the Bureau, SPCB, Conveners’ Group and the Presiding Officer.

24. Given the additional work for staff involved with the pending move to Holyrood, it may be difficult to hold an awayday during the coming summer recess. It would however certainly be possible to organise such an event for the autumn or even towards the end of the calendar year. The nature of the event would, of course, also have a bearing on the timing. If the committee wished to use the awayday to discuss a forthcoming inquiry then it would probably have to be held relatively soon. However if the focus of the day was to look at the work plan for 2005 say then it would make more sense to hold off until later in the year.

25. It is also worth bearing in mind that a Committee awayday is, in many respects, similar to a private committee meeting, i.e. there is no Official Report of proceedings or a minute of the issues discussed and decisions taken. In choosing the topic or theme for such an awayday then, Committee members’ must consider what issues it is appropriate to discuss in such a forum.

26. Committee members’ views on the various issues raised above are invited.

**Date of Future Meetings**

27. Parliament will resume on Wednesday 8 September although it is unlikely that Committees will meet until the week commencing Monday 13 September. On the assumption that the Procedures Committee meets for the first time after recess on Tuesday 14 September then the pattern of meetings for the remainder of this year would be as follows:

   14 September
   28 September
   26 October
   9 November
Recommendation

28. Committee members are invited to:

(a) choose which of the major inquiries set out above they wish to undertake following the completion of the current inquiry on non-Executive bills;

(b) note the smaller scale inquiries set out in Annex A and give an indication of the priority attached to these;

(d) decide whether they wish to hold an awayday before the end of this year and, if so, when such an event might take place and what its focus might be.

Procedures Committee, June 2004
<table>
<thead>
<tr>
<th>Subject</th>
<th>Source</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner for Public Appointments (note – this piece of work will have to be undertaken as the Act places a requirement on the Parliament)</td>
<td>Public Appointments and Public Bodies (Scotland) Act 2003</td>
<td>Need for procedure to facilitate Parliamentary consideration of referrals by the Commissioner for Public Appointments under s.2(8) of Act (and for the CPA to consult the Parliament on a draft code under s.2(4)).</td>
</tr>
<tr>
<td>Petitions – whether there should be prohibitions on (a) their being lodged by MSPs; (b) petitions that have been closed being re-submitted within a year.</td>
<td>Convener of PPC</td>
<td>Letter inviting the Committee to consider these issues was sent to the Committee on 29 April (circulated as PR/S2/04/8/15)</td>
</tr>
<tr>
<td>Share of Member’s Business for independent MSPs</td>
<td>Dennis Canavan</td>
<td>Dennis Canavan (backed by Jean Turner and Margo Macdonald) has written to the Presiding Officer (copied to the Convener) questioning the Bureau’s role in selecting topics for Members’ Business and has suggested in particular that this should be done by a combination of selection by the Presiding Officer and by ballot.</td>
</tr>
<tr>
<td>Allocation of non-Executive Business in Chamber</td>
<td>Dennis Canavan 2/10/03</td>
<td>Question whether Rule 5.6.1(b) should be altered to give share of allocation of non-Executive time in the Chamber to the independent members.</td>
</tr>
<tr>
<td>Policy Memorandums</td>
<td>Murdo Fraser</td>
<td>Question whether the memorandums required for all Executive Bills should have to include an assessment of the Bill’s expected impact on economic growth.</td>
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PROCEDURES COMMITTEE

Timescales and Stages of Bills

Summary of Evidence

Pre-Legislative Stage

Should committees do more preparatory work at the pre-legislative stage to inform themselves about the factual background to a Bill, e.g. through briefings from officials?

Patricia Ferguson was supportive of the idea: “The relationship between the committees and the Executive is good, but it could be even more productive if early engagement took place”. The Executive was “happy to provide informal factual briefings for committee members” (cols 582-3). The Executive’s own consultations meant that “by the time that a bill gets to a committee, a lot of work has been done. It might be helpful for committees to draw on that to influence their work more than they sometimes do” (PF, col 429).

Alasdair Morrison also supported this suggestion: “Informal meetings between committees, civil servants and legal advisers are invaluable … The meetings do not paint the committee into a corner … [but] are a valuable part of any pre-legislative scrutiny process” (col 469).

Should Parliamentary committees undertake “pre-legislative scrutiny” (i.e. formal evidence-based scrutiny of legislative proposals) – either during general consultation or in relation to a draft Bill?

Prof. Alan Page was in favour: “The Parliament should not leave its engagement with bills and the legislative process until the point at which those bills are formally introduced. Subject committees should be putting a lot more effort into scrutinising the pre-parliamentary stages of the legislative process with a view to making the most effective use of the limited time available.” (col 412) “I believe that the Parliament has slipped rather mechanically into a legislative process in which committees do the stage 1 inquiry for a bill but close their minds to what has happened previously on it.” (col 416).

Ross Finnie also suggested that Parliamentary committees should have a greater involvement in the pre-legislative stage: “we would do well to consider whether there might be a better way of addressing our respective interests – without compromising them – than having a lead committee doing a full consultation after the Executive has already done one.” (RF, col 445). “There must be ways in which the Executive and the Parliament could share some of the evidence that is adduced during stage 1 scrutiny, to avoid repetition at a later stage” (RF, col 449).

SCVO “would welcome much more input from parliamentary committees at that (pre-legislative) stage”. Committees should “follow what has been going on in the Executive consultations to identify any gaps and to find out where other voices need
to be heard” (JF, col 560) – or even run a Parliamentary consultation in parallel with the Executive consultation (JF, col 565).

Scottish Churches Parliamentary Office (w) encouraged committees, where possible, “to expand the use of pre-legislative scrutiny as a preliminary way of raising awareness of concerns about proposed legislation”.

**Does this [pre-legislative scrutiny] compromise committees’ ability to undertake their scrutiny role at later Stages?**

Most witnesses did not see a major problem. Patricia Ferguson said, col 583, “Pre-legislative work is excellent; it does not compromise committees' independence in any way”. Ross Finnie: “I understand clearly the need for the committee to retain its integrity in respect of its ability to come to a different conclusion. Nevertheless, a large number of the bodies … into which we need desperately to inquire are the same as those to which you need to listen.” (RF, col 448)

SCVO did not think running such pre-legislative parliamentary consultation would compromise the committees’ ability to undertake their scrutiny role at later stages (JF col 568). Alan Page agreed: “a committee does not need to express a view in pre-legislative terms”, and “there is nothing to stop the committee expressing its views subject to what emerges subsequently” (col 422).

But Barnardos was less sure: “Committees have to maintain their scrutiny role. Executive consultation is for the Executive to deal with, and the scrutiny is quite separate … I would not be comfortable with a merging of the two processes” (col 557).

**Would committee involvement at pre-legislative stage reduce the time needed for Stage 1?**

Alan Page was clear that it would: “We are not talking about an absolute increase in work but about a redistribution, and the corollary is that stage 1 scrutiny should be lot lighter (col 421).

SCVO and the Policy Officer Network (SCVO) (w) agreed “Conducting pre-legislative scrutiny would allow a committee a little more time in the Stage 1 inquiry to cover issues that arose from the pre-legislative consultation … I imagine that Stage 1 would be shorter because of the amount of scrutiny that would go on in the pre-legislative consultation” (JF, col 566).

Pauline McNeil was less convinced, in relation to the Land Reform (Scotland) Bill – “There was a consultation that we were not involved in and the bill that emerged was substantially different from the draft. Even if we had been involved in the consultation, we would still have had to go through the same scrutiny. It is possible that pre-legislative scrutiny would help, but there would have to be a clear dividing line between the role of the committee in collating evidence and its work on pre-legislative scrutiny, in order to ensure that the committee did not ignore any changes to a Bill” (col 492).
Should the Executive be required to always produce a draft bill as part of the pre-legislative stage?

Ross Finnie was not in favour and suggested that the production of a draft Bill led people to believe that what they were seeing was the finished article. Any changes to the draft bill were then perceived as major policy changes.

Patricia Ferguson: “We try to publish a draft bill—and often do—whenever possible, but we would want to retain some flexibility on that to allow us to take account of differing circumstances.” (col 585)

Bob Christie (COSLA): “It would be hugely helpful if the Executive could find resources for the bill drafting teams and time to allow genuine pre-legislative scrutiny to take place, on the basis of a draft bill.” (col 571) But Cllr McChord recognised that “A draft bill is not always appropriate” (col 571).

Stage 1 committee inquiry

Should there be a minimum duration for Stage 1 – either in a Rule or in guidance? If so, what might that minimum be, and would it be different for different types/sizes of Bill?

Justice 2 Committee (w) – “Even a straightforward Bill requires a minimum time at Stage 1 of 6 to 8 weeks to allow evidence to be taken at 2 or 3 meetings and two drafts of a report to be looked at. If written evidence is also to be sought, this extends the time required. If this timescale is considered the basic requirement for proper scrutiny, it is obvious that rather longer is needed for a Bill with complex issues, many witnesses and secondary committee reports.”

Environment & Rural Development Committee (w) – “It should be borne in mind when timetabling Bills that committees are required to consider written evidence submitted by interested parties, as well as oral evidence given by witnesses. It is important that members have time to digest and consider this evidence.”

Justice 1 Committee (w): “Time should also be made available to scrutinise any proposed changes to the Bill announced by the Executive during Stage 1. Such announcements can sometimes be made late in the Stage 1 process, leaving Committees with little or no time to examine the proposals in detail.”

Pauline McNeill said that “there should be—there generally has been—some flexibility on the part of the Bureau in setting timescales for Bills. … Our experience is that the Bureau has been pretty flexible when we have asked for an extension and justified our case” (col 498). That had happened with the Land Reform (Scotland) Bill – “We asked the Bureau for an extra week and our request was granted … It is possible to get extra time without there being provision in standing orders” (col 492).
Do prospective witnesses have sufficient time to submit written evidence at Stage 1? Should there be a prescribed minimum consultation period at Stage 1? If so, what should it be?

SCVO wanted more time allowed for consultation in committee inquiries. “The smaller organisations in particular suffer from not having enough time to participate … a slot [should be] set aside at Stage 1 to allow organisations that have submitted written submissions to expand on them” (cols 560-1).

Pauline McNeil agreed: “There should be a minimum time for submission of written evidence. For Stage 1, the standard period is about eight weeks, or six weeks for a shorter bill, which is about right, but the period should never be shorter than that.” (col 498).

COSLA proposed a 12 week consultation period (excluding recesses, which mirror wider holiday periods) during Stage 1 as well as during the Executive’s earlier consultation (col 571). It sometimes had difficulties in preparing evidence within the timescales set for Stage 1 (w). Jennifer Turpie (Children in Scotland) and Douglas Hamilton (Barnardos) agreed that more time was required (cols 550 & 558).

But Patricia Ferguson suggested that, if there was greater committee involvement in pre-legislative scrutiny, prospective witnesses would already know about a Bill and the issues raised by it before Stage 1 began. As a result, a shorter period for evidence-gathering at Stage 1 would be sufficient (col 584).

Dave Morris (Ramblers Association) felt there was sufficient time in the case of the Land Reform (Scotland) Bill for external organisations to submit written evidence. (col 511). John Mackay (SNH) agreed saying that, “The organisations at the centre of the debate were well aware of the process and the timings, so they had no problem. However, organisations on the fringe may not quite have caught up on what was happening.” (col 511). Dr Hankey (SRPBA) also agreed but conceded that, had there not been the same level of pre-legislative scrutiny undertaken, then a longer period might have been needed at Stage 1 for submitting evidence (col 512).

Is there sufficient time for secondary committees to submit their reports to the lead committee and for the lead committee to consider them?

According to Stewart Stevenson “the lead committee gives little consideration to secondary committees’ input ... I was alert to the real potential …for secondary committees’ reports to be tacked on to the published stage 1 report without being given weighty consideration by the lead committee.” (SS, col 470)

Robert Brown MSP (w) – “There is an issue of the timetabling of the reports by secondary committees on Bills. Certainly my experience is that such reports arrive very late in the process and there might be some advantage in requiring a slightly earlier date for the report by secondary committees.”

Pauline McNeill acknowledged that more time could be sought from the Bureau and was usually granted: “The system is flexible, but there is a problem if other committees are feeding in and if there are other immovable deadlines” (col 492).
Subordinate Legislation Committee (w) – “From this Committee’s point of view, the timetabling of Bills at Stage 1 in itself provides relatively few difficulties… Occasionally, when a Bill is short but contains significant delegated powers provisions, the timetable may be a little tighter than this Committee might ideally wish but early communication between the clerks and Executive officials is usually enough to head off serious difficulties.”

The Finance Committee (w) “drafts and agrees its report and sends it to the relevant lead committee prior to that committee taking evidence from the relevant Minister or Member in charge. This means that the Finance Committee often has to work to tight deadlines and on occasion this has meant that the Committee has not been able to submit its report to the lead committee in time for its final evidence-taking session. The tight deadlines also mean that it can be difficult on occasion to give witnesses sufficient notice to prepare for a committee appearance… This situation is exacerbated when the Bureau sets a relatively tight timescale for the lead committee.”

Justice 2 Committee (w) – on Antisocial Behaviour Bill: “We also agreed that it was important that our report reached the lead committee before it began considering its own draft report … To achieve this we held 3 evidence sessions, including one all day session, in 3 weeks (excluding Christmas recess). We then completed our report in 3 weeks. This put pressure on both members and clerks. It also meant that we could not consider the written evidence to the lead committee which was due after we finished our report. Nor could we receive advance written evidence from witnesses in most cases.”

SCVO and COSLA both proposed that “organisations that work in the same area should be invited to give joint presentations” (JF, cols 561 & 562) and that committees that are working on the same bill could hold meet jointly to consider legislation. (CC & BC, col 571)

Stage 1 debate

Should there be a prescribed minimum period between the publication of the Stage 1 report and the Stage 1 debate? If so, what should that minimum period be?

The Executive acknowledged that a routine gap of around 1 week would be helpful on occasions (PF, col 584) but one of her officials (Michael Lugton) warned that the “loss of flexibility might … cause difficulty if there was general agreement that a Bill needed to be passed fairly quickly.” A minimum interval prescribed in standing orders might need to be suspended in particular circumstances (ML, col 584). Ross Finnie also did not think a mandatory minimum period between the publication and the debate should be set (col 452).

Stewart Stevenson felt that gap between the publication of the report and the Stage 1 debate should not be prescribed. Rather the gap should reflect the size and complexity of the Bill and the committee’s report. (col 471). SCVO agreed (JF, col 572).
Pauline McNeil said the 4-day interval in the case of Land Reform was probably enough for the committee members, but too short for other members wishing to participate in the debate (col 493). Alasdair Morrison was less sure: “The four-day gap was not very helpful for most members. Indeed, the Stage 1 report might as well have been written in the language of the Dead sea scrolls, given its inaccessibility ... members would have had to sit with the report for hour after hour over those four days in order to get up to speed” (cols 471-2).

Scottish Churches Parliamentary Office (w): “The gap between publication of a Stage 1 report and the debate in Parliament is frequently so short as to prevent those who feel their evidence has not been given due weight from making representations to MSPs prior to that debate.” Graeme Blount added: “To have a week to consider a Stage 1 report – even a report for a relatively straightforward Bill – would not place an undue burden on the process” (GB, col 572).

COSLA said “it would be preferable for any organisation to have enough time to consider a stage 1 report and ... to provide, if appropriate, a briefing on the report's implications for members’ consideration in the full debate in the Parliament” (BC, col 573).

Between Stage 1 and Stage 2

Should the minimum interval between Stage 1 and 2 – currently 7 sitting days – be extended? If so, what might it be extended to?

SCVO proposed that there should be a “break between each of the stages to allow for reflection on the progress of the legislation” (JF, col 561). COSLA agreed (col 562). The Scottish Churches Parliamentary Office (w) said the current gap of 7 sitting days was on the short side. Barnardos wanted more time between Stages 1 and 2 “to formulate the text of the amendments” (col 559).

Environment & Rural Development Committee (w): “In its Stage 1 report on the Nature Conservation Bill, the Committee requested that the Minister re-consider a number of issues, and inform it of his views prior to the commencement of Stage 2. In addition to addressing a number of issues in the Stage 1 debate, the Minister also provided the Committee with a detailed written response to its Stage 1 report.” This was “particularly useful” and was commended as “an example of best practice”.

The Executive (w) argued for no change to the current minimum period of 7 sitting days, on the grounds that the actual period allowed had usually been “considerably longer”. According to the Minister, “the flexibility already exists; we need to be aware of it and use it better” (cols 434-5).

Stage 2

Does the volume of amendments and overall pace of Stage 2 put unreasonable pressure on all those directly involved?

Patricia Ferguson said she would not call it “unreasonable pressure”, adding that “some members seem to thrive on the Stage 2 process and seem to find it a good
discipline to observe" (col 586). But few other witnesses agreed.

Ross Finnie said that “time is required to address all amendments properly. Some amendments may appear to be acceptable at first glance, but time must be taken to consider the full impact of each amendment. In some cases, that can require scrutiny of other legislation” (RF, col 447).

Barnardos said: “The system is stretched to breaking point at the moment (DM, col 515). Dr Hankey (SRPBA) agreed with this statement (col 515). According to the SCVO “there was a general response that the stages are too rushed and that the further down the stages we go, the faster things get and the harder it is for organisations outside to keep up ... and to engage in the process” (JF, col 561). COSLA said that “Stage 2 appears to us to be a rushed process” (BC, col 573). Children in Scotland’s experience was that there was “usually insufficient time to have a good discussion on all the amendments” (KT, col 554).

Alan Page (w): “My general impression is that overall the timetable for the consideration of Bills at Stages 1 and 2 is extremely tight, and that it puts considerable pressure on everyone involved in consideration of the Bill.” Jackie Baillie’s general experience was that “having more time at Stage 2—whether for the Executive ... or for MSPs and other organisations to have an influence—is critical. The timing is quite tight” (JB, col 545).

The Education Committee (w) suggested 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.” Stewart Stevenson MSP (w) said that “faced with the Bill, the Marshalled List and Groupings, members can struggle to do the necessary preparation in the limited time available.”

The Justice 1 Committee (w) – “There is a strong view among members of the Committee that more time should be built into the Stage 2 process.” The Convener (Pauline McNeill) added: “It is not uncommon for us to work well into the early hours of the morning to get our committee work done, but the system seems to be very onerous, in particular for the clerks” (cols 493-4). The Education and Justice 2 Committees (w) also commented on the late working by Parliamentary staff and by Executive staff which is required. Justice 2 did not consider this acceptable.

Education Committee (w): “The process could be more spread out so that fewer amendments are considered at each meeting. This would give interested parties and stakeholders more time to consider amendments and to interact with Committee members.”

**Is there merit in committees taking evidence (in appropriate circumstances) on amendments at Stage 2? Do they have time to do so?**

Douglas Hamilton (Barnardos): “I like the idea that more use of evidence could be made when considering particular amendments, especially when additions to the Bill are made by the executive at Stage 2” (col 559).
COSLA (w) “would also welcome opportunities for Committees to take evidence on proposed amendments before deciding on them.” Kay Tisdall (Children in Scotland): “we might make the radical suggestion to extend consideration of a bill by six months so that there is an opportunity to discuss amendments fully at Stage 2” (col 550).

Justice 1 Committee (w): “Where amendments which would substantially change the legislation or introduce new provisions are lodged by the Executive at Stage 2, the Committee should be given time to scrutinise the proposed changes and take further evidence if necessary.”

Ross Finnie was not convinced: “the process could become hugely complicated if a principle were established whereby a committee could at stage 2 seek to hold fire in order to take further evidence, unless a matter of extreme complexity was to come up, which might require separate legal guidance and so on” (col 454).

Should there be a presumption against committees meeting more than once per week to consider amendments at Stage 2? Where this does happen, would it help if these were counted as a single meeting with a single lodging deadline?

Ross Finnie supported this proposal: “If it is decided that the committee needs two consecutive stage 2 meetings, it would be helpful if they were regarded as one meeting with one deadline for the lodging of amendments” (col 458).

Stewart Stevenson, Alasdair Morrison and Pauline McNeill all agreed that where committees meet more than once per week to consider stage 2 amendments, this should be counted as a single meeting with a single lodging deadline. SCVO and COSLA agreed (col 575) – as did the Scottish Executive: “That would make sense. The process would be clear—people would understand when things are expected to happen and there would be no dubiety. Such an approach would be useful” (PF, col 588).

Should the Stage 2 committee have more control over the timescale for that Stage (rather than having to meet a deadline set by the Bureau)?

The Executive felt committees already had control: “If a committee convener feels that the timetable is too tight, it is open for him or her to go back to the Parliamentary Bureau to ask for an extension of time”. To her knowledge, such extensions had always been granted when requested.

But the Enterprise & Culture Committee (w) felt that the Bureau should give committees more flexibility to extend timetables depending on the number of amendments lodged.

Should the minimum notice period for Stage 2 amendments – currently 2 sitting days – be extended? If so, by how much?

The Executive’s view was that “it would be very helpful if the current deadline of two days was extended to three days.” (Andrew McNaughton, cols. 586-7). Patricia Ferguson suggested this might apply only to non-Executive amendments (col 434).
Ross Finnie and Alasdair Morrison supported the suggestion that the minimum notice period for amendments be extended from 2 to 3 sitting days. Stewart Stevenson and Pauline McNeill favoured some extension of the notice period (cols 474, 494) without recommending a particular amount. Pauline McNeill’s suggestion that, as a minimum, members should have two full days to consider amendments before a meeting (cols 495-6) would be equivalent to a 3-day notice period. This was supported by Dr Hankey (SRPBA) and John Mackay (SNH).

The Scottish Gamekeepers Association (w) complained that Stage 2 amendments were often lodged “at the last minute” leaving the Association “unable to make comment”. SNH (w) agreed: “the timing of amendment lodging and publication is too short to allow all parties to be able to assess the implications arising – another 1 or 2 days' space is desirable”. The Enterprise & Culture Committee (w) agreed.

The Communities Committee (w) said “a significantly longer time should be allowed” between the lodging deadline and the committee meetings. The Chartered Institute of Housing (Scotland) also argued for more time.

The Scottish Churches Parliamentary Office (w) said that 2 days' notice was “insufficient time to assess the impact of amendments and bring concerns to the attention of MSPs”. They wanted at least a full week’s notice.

The Ramblers Association (w) had found the Stage 2 process for Land Reform generally “satisfactory”, although it was “difficult to cope with the tight timetable between when amendments were lodged and when they were debated”.

**How useful is the Executive’s informal 5-day deadline? If the formal deadline was altered, would this also need to change?**

The Convener of the Environment & Rural Development Committee (w) emphasised the importance of Executive amendments being lodged early, “in order to allow members to consider the Executive position, and to lodge amendments of their own if they so desire”.

Pauline McNeill thought that “in general, the Executive sticks to its practice, so that other members can ascertain the Executive’s intentions and lodge their own amendments. That is a good thing” (col 494).

Dr Hankey (SRPBA) felt that it would be helpful for Executive amendments to be available 24-48 hours ahead of the final lodging deadline (Thursday afternoon) to give MSPs the opportunity to react to their amendments (col 514).

According to the Justice 2 Committee (w), “backbench members often wait to see how the Executive will respond to Stage 1 or Stage 2 commitments before deciding whether to lodge amendments themselves. The result is that, in most Bills, there are likely to be a substantial number of backbench amendments lodged in the last two days, putting pressure on members, clerks and Executive officials.”
Between Stage 2 and Stage 3

Should the minimum interval between Stages 2 and 3 – currently 9 sitting days if the Bill was amended at Stage 2 and 4 sitting days if not – be extended? If so, by how much?

The Executive (w) did not favour a change to the existing interval. Patricia Ferguson added that “flexibility is more important than a minimum period, which might make life more difficult for committees.” (col 438)

Both Dave Morris (Ramblers Association) and Dr Hankey (SRPBA) felt that the interval was sufficient in the case of the Land Reform (Scotland) Bill (col 516). Robert Brown MSP (w) felt the current interval was “tight but manageable”.

But COSLA (w) said this interval was “unlikely to allow full consideration of the amendments made to a complex Bill” and suggested a longer interval. The Communities Committee (w) also said that a longer period between Stage 2 and 3 “would be helpful”.

Should there be a formal requirement on, or at least an opportunity for, each relevant committee to review the Bill after Stage 2 to consider any new or amended provisions which might be of interest to that committee? In particular, should there be an opportunity for the Finance Committee to consider the financial implications of any new or amended provisions?

Scottish Churches Parliamentary Office (w): “When a Bill has completed Stage 2, the amended Bill should be passed to any Committees which passed comment at Stage 1, and they should report at Stage 3 on whether any concerns they raised at that stage have been addressed”. COSLA (w) agreed.

Pauline McNeill agreed this “would be useful […] and] would certainly assist in reflecting on the Bill.” (col 499)

While COSLA did not have a particular view on the interval between Stages 2 and 3, it wanted that period available for the lead committee and, if appropriate, other committees “to be able to consider what had happened before they went forward to the next stage”. (BC, col 576) Barnardo’s took a similar view: “There could also be more time after Stage 2 is completed so that members can decide whether they need to take further evidence or make further comment on the amended bill at that stage.” (DH, col 559)

The Environment & Rural Development Committee (w) had 2 months between Stages 2 and 3 of the Nature Conservation (Scotland) Bill. This had been “very useful in allowing members to consider the amendments debated at Stage 2 and to determine whether there are outstanding issues that they may wish to pursue.”

The Executive said that, as the minimum period between Stages 2 and 3 was normally exceeded, this was a good time in which committees could “re-assess a Bill and consider whether the overall shape of the Bill is what people thought it would be originally” (PF, col 437). The Minister was not convinced that the Finance Committee
needed any particular opportunity to reconsider Bills after Stage 2 (PF, col 589) – the Committee should “keep an eye on Bills that were going through” and pick up any financial implications of amendments in that way.

**Stage 3**

**Should the minimum notice period for Stage 3 amendments – currently 3 sitting days – be extended? If so, by how much?**

The Scottish Executive (w) was not in favour of such an extension. According to Ross Finnie, “no case has been made – and there is no evidence – that the three-day rule that applies at Stage 3 is inadequate.” (col 464). But Patricia Ferguson recognised that “earlier indication of the groupings would certainly be helpful” (col 593); she also said that because the Marshalled List was often produced very late in the evening, Executive officials had to work long hours “so that they can brief ministers and ensure that everything is prepared” (PF, col 438). An official with relevant experience (Lorna Clark) said that “an extra day would make a considerable difference” (col 439).

Pauline McNeill felt that “the same rules should apply at Stage 3 as apply at Stage 2, to give members a fair opportunity to see the Marshalled List and the groupings” (col 503).

Dave Morris (Ramblers Association) felt that the notice-period should be extended (col 516). The Enterprise & Culture Committee (w) agreed, as did the CIHS (w), which said that Stage 3 “causes particular problems for outside organisations” given the number of amendments debated.

**Does having Stage 3 over 2 days lead to any particular complications and/or benefits? Where a Stage 3 does take place over 2 days should there be a single lodging deadline (and a single Marshalled List and groupings)?**

Pauline McNeill did not think that there was any particular problem with Stage 3 of the Land Reform Bill taking place over two days (col 502). Having days in between days of the Stage was not detrimental.

**Is enough time overall allowed for the Stage 3 proceedings on amendments?**

Children in Scotland: “Frequently, there seem to be incredible time pressures so that, as the day’s consideration progresses, debates on amendments get shorter and shorter.” (KT, col 559)

The Conveners of the Enterprise & Culture and Communities Committees (w) felt that Stage 3 debates were too rushed, often not allowing members sufficient time in the debate, either to speak themselves or to hear the views of others. The Enterprise & Culture Committee (w) wanted more time for consideration of Stage 3 amendments, to enable greater scrutiny.
Record of Needs Alert (w) said that the time available at Stage 3 of the Additional Support for Learning (Scotland) Bill was inadequate, given the importance of that Bill for disadvantaged children.

The SRPBA (w) said that “with so many amendments being considered against a totally rigid time frame (seconds for some groups of amendments), Stage 3 was far from comforting”. It was doubtful whether MSPs at Stage 3 “really understood what they were being asked to vote through, other than to follow party lines”. “In the melee of amendment at Stage 3, it is difficult to imagine how the integrity of legislation is protected.”

John Mackay (SNH) pointed out that more time at Stage 3 “would also be helpful in later interpretation. At Stage 3 of the Land Reform (Scotland) Bill, the Executive lodged an amendment to widen access rights for educational purposes. The amendment made a major change and allowed the wording to become much more open, but it was not spoken to for even 90 seconds. We therefore have only the words that are in front of us. We do not have any clues in the Official Report to indicate why the amendment was lodged or the reason for the policy” (col 516).

The Ramblers Association (w) felt that there appeared to be “pressure from the Executive to get the Stage 3 process completed” and suggested that timetabling should be “more clearly in the hands of the Parliament or lead Committee”. Pauline McNeill was certain that, if she was offered some input on timetabling, she “could identify groupings in which there was likely to be greater interest” (col 504). The Minister, however, said that conveners already were consulted on timetable motions: “That is the approach that we take with every bill” (PF, col 592). She also said that “if we try to use a bit more discretion about speaking times we might find that we do not need to extend the overall length of debates” (PF, col 594).

**Would there be merit in changing the way in which Stage 3 amendment proceedings are timetabled to give the PO more flexibility to alter timings as the proceedings unfold?**

Pauline McNeill wanted more flexibility: “Members who did not have a chance to say anything until Stage 3 sometimes do not get to say even a few words. If the Presiding Officer had flexibility, he could incorporate such members in the usual way—members would express their interest in a section of the debate so that the Presiding Officer would have an understanding of the time that would be needed.” (col 502) She added that “perhaps members of the lead committee do not need to speak on every group of amendments, although it would be difficult to ask them not to speak” (col 503).

But the Minister suggested that the problem lay with the fact that the Presiding Officers “do not normally set a time limit for individual speeches during Stage 3, which is unique in our process. If they had that facility, a little more management by them would help the process significantly” (PF, col 439).
Should there be a gap between the consideration of Stage 3 amendments and the debate that the Bill be passed?

The Executive (w) was “not persuaded”, saying that such a gap “would in effect create a new Stage 4 which we consider to be unnecessary. There is already adequate provision for a Bill to be reconsidered should such a move be deemed necessary. Parliament should continue to confirm its view on the day concerned at Decision Time at 5 pm.”

Ross Finnie was also reluctant to have a prescribed period between the Stage 3 amendments and the debate to pass the Bill but recognised that “as a matter of courtesy to Parliament, even an hour or two to reflect on some amendments might be helpful” (col 462). He added: “We should not have a Stage 4—that would not help. Nonetheless, there is a case for allowing some time for Parliament to consider what has just taken place … in many circumstances, even an hour’s mature reflection would be adequate.” (cols 462-3).

Alasdair Morrison felt that “it would be a nonsense for us to defer the Stage 3 debate on a Bill, unless there were extraordinary circumstances that merited such a delay” (col 477). Pauline McNeill was doubtful whether a separation would have advantages: “If we discovered during the stage 3 debate that there was some terrible flaw in the bill, it would not necessarily be possible to put that right”. But if the two parts of Stage 3 were held on different days, it would not “make any difference to the dynamics of the debate” and would be preferable to extending the meeting regularly (col 505).

Stewart Stevenson saw benefit in having “breathing space to consider what has happened in the stage 3 amendment process.” He suggested “only that the debate on the bill be held the next day—the is no reason for having a large gap. I suspect that the Executive’s advisers would welcome the chance to go through and crosscheck the effects of all the various amendments that have been agreed to. Sometimes, if one is dealing with, say, 500 amendments, their interactions can turn out to be perverse” (cols 477-8).

Dr Hankey (SRPBA) argued that there should be a gap, perhaps of a few weeks between the amending stage and the debate that the bill be passed. During this gap he proposed that the bill should be given a “road test”, involving external experts as well as members. (cols 517 & 518). Dave Morris (Ramblers Association) had some sympathy with this suggestion (col 519), saying that “if there were a gap overnight, that would be really helpful because we could all sit back and understand where we had reached” (DM, col 523).

SCVO, similarly, called for “a safety-valve gap between debating amendments and voting on the amended Bill. For a small bill, half an hour or an hour or two might suffice. Often it would be good to have an overnight break” (JF, col 577). COSLA (w) wanted the lead Committee and other interested committees to “have an opportunity, within Stage 3, to consider the implications of any amendments made at Stage 3 before a motion is made to pass the Bill”.

Margo Macdonald thought that “standing orders should have the proviso that
business can be suspended for half an hour or three quarters of an hour – whatever it takes – for the Subordinate Legislation Committee to consider manuscript amendments quickly” during the Stage 3 proceedings (col 483). The current Committee advocated (w) a gap of around a week. The Minister didn’t think this was necessary, but would be prepared to consider it in more detail (PF, col 595).

Subordinate Legislation Committee

Should the Executive memorandum on delegated powers provided to the Subordinate Legislation Committee be one of the accompanying documents required on introduction? And should the Executive be required to provide a revised memorandum to the Subordinate Legislation Committee within a prescribed period after publication of the “As Amended” Bill?

According to the Subordinate Legislation Committee (w), there have been occasions when the Executive’s memorandum “has not arrived soon enough after introduction to allow the Committee to begin its consideration promptly”. The Committee thought that some time limit from the date of introduction “might be considered”. Margo Macdonald (the previous Convener) believed that “standing orders should incorporate a requirement for a memorandum from the Executive” (col 482).

But the Executive was not convinced. “It would be odd if the memorandum had to be lodged as an accompanying document on introduction before the Parliamentary Bureau had referred the bill to the Subordinate Legislation Committee.” This could also “prove to be burdensome”, and the memorandum would “take on a different significance” if it needed to be submitted as part of the pre-introductory process and then lodged formally on introduction. The Minister had “some concerns about the proposal” (PF, col 585).

Alasdair Rankin, clerk to the Committee, said that it was “more critical for the committee that the memorandum arrives promptly” after Stage 2 because there was usually much less time between Stages 2 and 3 for the committee to consider any subordinate legislation provisions in the Bill (col 484). He did not think a longer minimum interval between the two stages was necessary in cases where a Bill was referred back to the SLC under Rule 9.7.9 – the existing interval “should often prove sufficient” so long as “the Executive provides the memorandum in time” (col 487).

Margo Macdonald said that, as most of the relevant Stage 2 amendments come from the Executive, it should know what the policy intentions are, so “producing the memorandum timeously should not be a major piece of work” (col 486)

Other Issues

What further information could be made available to assist members preparing for amending stages?

Stewart Stevenson suggested that members who lodge amendments should be required to provide a policy statement with them. He felt this would cut down the amount of preparatory work members needed to do during the amending stages. (col 472). Pauline McNeill agreed: “It should be a matter of policy that anyone who
submits an amendment should say what the intention behind the amendment is, because that is not always obvious if the amendment is deleting or inserting something. I wonder whether it would be better practice for the requirement for a wee written note to apply to everyone, so that members would have to say what the effect of their amendments would be. That would be useful not so much for committee members, who are embroiled in the bill, but for other members who want to see what has happened and to lodge some amendments” (col 500).

SCVO and COSLA both supported the suggestion that amendments should be accompanied by a policy intention statement (col 574). Dr Hankey (SRPBA), John Mackay (SNH) and Dave Morris (Ramblers Association) also agreed. However, Dave Morris recognised the additional work this would involve for Executive officials in particular, who were under “extreme pressure” (col 515).

But the Minister said that “bringing together the rationale and all the arguments would be a fairly onerous job in itself, particularly if lodging deadlines were tightened up” … I would be concerned about making the proposal a formal part of the process” (PF, col 588). There would be more work involved in this than just re-presenting the “purpose and effect” notes already produced for Ministers (cols 588-9).

Pauline McNeill also suggested “a service that provides a list of all the amendments that have been lodged; members should not have to cut and paste from every issue of the Business Bulletin” (col 494). John Mackay (SNH) agreed that a running list of amendments should be available during each day of the amending stages (col 515).

Dave Morris (Ramblers Association) suggested that the groupings at Stage 3 should be made available to outside organisations and others in advance of the debate. As well as the actual groupings, this could include the relevant amendments below each group. John Mackay (SNH) and Dr Hankey (SRPBA) agreed (cols 516-7).

The Communities Committee (w) suggested “a review of the documentation produced as part of the legislation process, with a view to streamlining this material in some way. Members can find it very difficult to follow Stage 2 and Stage 3 proceedings working from 3 separate documents; i.e. a groupings list; a marshalled list; and a copy of the Bill.”

**Should it be a requirement to provide updated Explanatory Notes to accompany the Bill “As Amended at Stage 2” – or at least in advance of the Stage 3 debate?**

Pauline McNeill said “There are explanatory notes for bills as introduced at Stage 1, but the same notes appear once bills have been amended at Stage 2. That seems to me to be nonsensical because the notes then relate to a bill that has been changed” (col 489). She added that “if things were being done properly, a note would be prepared after Stage 2 to explain the effect of, for example, a new section.” (col 499).

The Minister was not keen for the explanatory notes to be updated, saying it would involve considerable additional work for officials and that members “must rely on Ministers for the provision of such information [during the Stage 2 and 3 proceedings]” (PF, col 590).
PROcedures Committee

Timescales and Stages of Bills

Calls for evidence at Stage 1: Note by the Clerk

There is presently no stipulation as to how long lead committees should allow prospective witnesses to submit written evidence during the Stage 1 inquiry process. The Guidance for the Operation of Committees merely states that “a reasonable timescale should be allowed for receiving responses”.

The Executive’s Good Practice Guidance on consultation sets a 12-week (i.e. 84 days) minimum period for responses to consultations.

The table includes all Public Bills on which Stage 1 inquiries have been begun so far this session – listed in order according to the time allowed, from (but not including) the date the call for evidence was issued to the deadline set in that call for evidence.

<table>
<thead>
<tr>
<th>Bill (M = Member’s Bill)</th>
<th>Lead committee</th>
<th>Call for evidence</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Issued</td>
</tr>
<tr>
<td>Education (Additional Support for Learning)</td>
<td>Education</td>
<td>29 Oct 03</td>
</tr>
<tr>
<td>Local Governance</td>
<td>Local Gov. &amp; Transport</td>
<td>24 Nov 03</td>
</tr>
<tr>
<td>Primary Medical Services</td>
<td>Health</td>
<td>10 Jul 03</td>
</tr>
<tr>
<td>National Health Service Reform</td>
<td>Health</td>
<td>12 Sep 03</td>
</tr>
<tr>
<td>Tenements*</td>
<td>Justice 2</td>
<td>3 Feb 04</td>
</tr>
<tr>
<td>Prostitution Tolerance Zones (M)</td>
<td>Local Gov. &amp; Transport</td>
<td>11 Nov 03</td>
</tr>
<tr>
<td>Emergency Workers</td>
<td>Justice 1</td>
<td>29 Mar 04</td>
</tr>
<tr>
<td>School Education (Ministerial Powers and Independent Schools)</td>
<td>Education</td>
<td>30 Mar 04</td>
</tr>
<tr>
<td>Nature Conservation</td>
<td>Environment &amp; Rural Dev.</td>
<td>9 Oct 03</td>
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<tr>
<td>Criminal Procedure (Amendment)</td>
<td>Justice 1</td>
<td>9 Oct 03</td>
</tr>
<tr>
<td>Vulnerable Witnesses*</td>
<td>Justice 2</td>
<td>1 Jul 03</td>
</tr>
<tr>
<td>Fire Sprinklers in Residential Premises (M)</td>
<td>Communities</td>
<td>5 Jan 03</td>
</tr>
<tr>
<td>Breastfeeding etc. (M)</td>
<td>Health</td>
<td>22 Jan 04</td>
</tr>
<tr>
<td>Prohibition of Smoking in Regulated Areas (M)</td>
<td>Health</td>
<td>12 Feb 04</td>
</tr>
<tr>
<td>Antisocial Behaviour</td>
<td>Communities</td>
<td>7 Nov 03</td>
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<tr>
<td>Average (Executive Bills)</td>
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<td>Average (Members’ Bills)</td>
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<tr>
<td>Average (All Bills)</td>
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</tbody>
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Note: An asterisk (*) means that written submissions were accepted after the deadline had been reached.
PROCEDURES COMMITTEE

Timescales and Stages of Bills – Stage 2 amendments and associated issues

Note by the Clerk

Introduction

1. A number of witnesses have suggested increasing the notice-period for Stage 2 amendments from 2 days to 3 days, in order to allow the Marshalled List and groupings to be made available further ahead of the Stage, and to allow members (and outside interests) more time to prepare.

2. The purpose of this note is to consider the procedural implications of such a change and suggest a number of options, including options for related changes at Stage 3.

Changes made by previous Committee

3. The original standing orders provided for a minimum period of notice for amendments of two sitting days before the Stage (or day of the Stage) both at Stage 2 and at Stage 3. The lodging-deadline on all days was originally set at 5.30 pm.

4. During the first year or so after the Parliament assumed legislative powers, it became clear that these procedures were causing practical difficulties for members and for clerks and Executive officials. In particular, it was common for Marshalled Lists not to be published and groupings not to be available until the morning of the day when the Stage 2 or Stage 3 meeting was taking place.

5. The Procedures Committee considered the issue and recommended:

   • increasing the notice-period for Stage 3 amendments from 2 days to 3;
   
   • bringing forward the time of the lodging-deadline from 5.30 pm to 4.30 pm on most days, and to 2 pm on the last lodging-day before Stage 2 (or a day of that Stage).

1 These changes were agreed to with effect from May 2001.

6. At the time, while the arguments in favour of an extra day’s notice at Stage 3 seemed fairly clear-cut, the issues at Stage 2 were more finely balanced. The option of increasing the notice-period to 3 days (as at Stage 3) was considered, but it was thought the more modest change agreed upon (i.e. moving the deadline back to 2 pm on the last lodging-day) might be sufficient. It should be noted, however, that the Committee saw itself as making only minimal practical improvements at that early stage – it was not engaged in a full-scale evidence-based inquiry on legislative procedures.

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1 1st Report, 2001. The other main change of relevance was to specify the minimum intervals between Stages 1 and 2 and between Stages 2 and 3 from “2 weeks” to specified numbers of sitting days.
Current Rules and practices

7. The relevant Rules remain today as they were altered in 2001. So, as noted above, the last lodging-day for amendments at Stage 2 (and Reconsideration Stage\(^2\)) is two sitting days beforehand, and the deadline is 4.30 pm – except on the last lodging-day before the Stage (or day of the Stage) when it is 2 pm (Rule 9.10.2).

8. The Executive has (from early in Session 1) aimed to adhere to an informal (i.e. non-binding) target for lodging its amendments (at all Stages) of 5 days before the Stage. While the large majority of its amendments meet this target, the Executive does not guarantee to meet it in every case.\(^3\) All members are encouraged to lodge amendments well ahead of the deadline, where possible.

9. Virtually all amendments are published in the Bulletin (Section G) the day after they are lodged, in what is known as a “daily list”. (Occasionally the clerks need to hold back amendments from next-day publication – for example to clarify with the member what is intended.) Members are always advised to check the Bulletin daily for new amendments lodged (and to check their own amendments as they appear in print).

10. The Marshalled List cannot be published until after the lodging deadline. It reprints all the amendments lodged up to that point, in the order in which they are to be moved and disposed of – but taking account of any corrections made, and any withdrawals or substitutions. Thus, while the daily lists give early notice of the amendments, it is difficult until the Marshalled List is available for members to see precisely what options are available to the Committee in considering whether to amend the Bill.

11. The groupings are prepared as soon as possible after the Marshalled List (in practice, the same sitting day the Marshalled List is published). Formal responsibility for the groupings rests with the Committee convener, but the draft is prepared by the clerks (who consult the Executive draftsmen in relation to an Executive Bill). Grouping amendments for a large Bill (particularly for the first day of Stage 2) is a complex and time-consuming exercise which may take most of the working day. Once agreed, the groupings are usually e-mailed to committee members and other relevant MSPs. So far the practice has not been to publish them either in hard copy or on the website.

12. The Marshalled List and groupings, together with the Bill itself, are the essential documents that members need in preparing for a Stage 2 meeting. Although members should be able to prepare some of their speaking notes on amendments in advance, it is not until the final groupings are available, showing the order in which amendments will be debated, that their preparations can be completed.

\(^2\) This is the Stage that may take place in the event that a Bill that has been passed is blocked from being sent for Royal Assent by a reference under section 33 of the Scotland Act. It enables any provision the legislative competence of which has been questioned in that reference to be amended. No Bill has so far been subject to a Reconsideration Stage.

\(^3\) Later lodging may sometimes be necessary where amendments require to be discussed in draft with backbench MSPs and external stakeholders, or where they are lodged in response to non-Executive amendments themselves lodged relatively late in the day.
13. The following diagram shows the normal timings in preparation for a Stage 2 meeting. It is assumed that “normal” here means a Stage 2 taken over a number of meetings, each separated by a week:

<table>
<thead>
<tr>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Weekend</th>
<th>Monday</th>
<th>Tuesday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous Stage 2 meeting</td>
<td>(Executive amendments published)</td>
<td></td>
<td>Formal lodging deadline (2 pm)</td>
<td></td>
<td>Final daily list and ML published (early); groupings available (later)</td>
<td>Stage 2 Meeting (morning or afternoon)</td>
</tr>
<tr>
<td>Informal deadline for Executive amendments</td>
<td></td>
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14. The key features of this situation are:

- Non-Executive members have 2½ sitting days between one Stage 2 meeting and the lodging-deadline for the next (though of course members have had since the end of Stage 1 to lodge amendments). This may be the only time they have to consider Executive amendments and respond to them (e.g. by lodging alternative amendments or amendments to the Executive amendments).

- By the time the final daily list – i.e. the amendments lodged on the final lodging-day (which may be a substantial proportion of the total) – is available, the Marshalled List has already been published. This gives members no opportunity to check and correct those final-day amendments.⁴

- Members may not get access to the groupings until late in the day before the Stage 2 meeting (which may begin in the morning). Executive officials get the final groupings at the same time and may be working late into the evening to prepare material for Ministers.

- To meet its informal deadline, the Executive must lodge its amendments for the later meeting by 4.30 pm on the day the previous Stage 2 meeting takes place.

- Because overall timescales are tight, the start-time of a Stage 2 meeting can become crucial with a larger, more complex Bill. A meeting on Tuesday afternoon allows members to do some of their preparation during office hours whereas with a morning meeting they may have to do it all the previous evening. If the first Stage 2 meeting on a big Bill is on a Wednesday, it is harder for the clerks to draft the groupings in good time, since they don’t have an intervening weekend available.

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⁴ The clerks make every reasonable effort to clarify any uncertainties about amendments with members on the day they are lodged, but this is not always possible, and clerks sometimes have to make assumptions about the member’s policy intentions in the course of tidying up the amendments for publication.
Consequences of an extra day’s notice at Stage 2

15. Changing the minimum notice-period for Stage 2 amendments from 2 days to 3, but leaving everything else unchanged, would have the following result:

<table>
<thead>
<tr>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Weekend</th>
<th>Monday</th>
<th>Tuesday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous Stage 2 meeting</td>
<td>(Executive amendments published)</td>
<td>Formal lodging deadline (2 pm)</td>
<td>Final daily list and ML published (early); groupings available (later)</td>
<td></td>
<td></td>
<td>Stage 2 Meeting (morning or afternoon)</td>
</tr>
<tr>
<td>Informal deadline for Executive amendments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

16. The big advantage of this for members (and the Executive) is the extra day it provides for preparation before a Stage 2 meeting.

17. There is one general drawback to any such increase – namely that an earlier lodging-deadline might increase the number of manuscript amendments lodged after that deadline. Since conveners have to give consent to any manuscript amendment being moved (Rule 9.10.6), it is not inevitable that this would lead to an increase in the number of manuscript amendments actually taken.\(^5\) But if it did, the benefit to members of getting earlier access to the Marshalled List and groupings would soon be undermined if manuscript amendments were regularly added in at short notice. On balance, however, this is a minor factor compared to the benefit of more time to prepare for the Stage 2 meeting.

18. However, there are two further factors that limit the advantage of simply adding a day to the notice-period (without making further changes elsewhere):

- Non-Executive members would have only 1½ (rather than 2½) sitting days between one Stage 2 meeting and the lodging-deadline for the next and hence less time to respond to Executive amendments – assuming the Executive retains its informal 5-day deadline (and the Executive may be reluctant to move this back a further day, i.e. to before the previous Stage 2 meeting had taken place).

- The clerks still have to finalise the Marshalled List for publication on the final lodging-day – meaning that members still have no opportunity to check and correct amendments lodged on the final day after they appear in print.

19. Perhaps a better way of utilising the extra day, therefore, would involve not publishing the Marshalled List immediately after the final lodging-day, thus providing members (and clerks) an opportunity to check the final day’s amendments in print and correct any errors. This would mean that the Marshalled List was still not published until 24 hours before the Stage 2 meeting (as at present) – but the disadvantage of this to members could be offset by

\(^5\) Conveners might be reluctant to refuse a larger proportion of such amendments lodged (particularly those lodged only shortly after the new, earlier deadline), since this might open them to criticism from the members concerned. Whether or not they are refused, manuscript amendments create extra work for clerks and conveners.
making it available by the end of the previous afternoon (i.e. the day after the lodging deadline). The groupings could also be made available to members at around the same time – and if both documents were then published the next morning, that would make give external stakeholders access to them a whole day before the meeting.

20. The result would be as follows:

<table>
<thead>
<tr>
<th>Previous Stage 2 meeting</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Weekend</th>
<th>Monday</th>
<th>Tuesday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Informal deadline for Executive amendments</td>
<td>(Executive amendments published)</td>
<td>Formal lodging deadline (2 pm)</td>
<td>Final daily list published (early); ML and groupings available (later)</td>
<td>ML (and groupings) published (early)</td>
<td>Stage 2 Meeting (morning or afternoon)</td>
<td></td>
</tr>
</tbody>
</table>

21. For a Stage 2 committee meeting weekly on Wednesdays rather than Tuesdays, the pattern would be as follows:

<table>
<thead>
<tr>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Weekend</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous Stage 2 meeting</td>
<td>(Executive amendments published)</td>
<td>Formal lodging deadline (2 pm)</td>
<td>Final daily list published (early); ML and groupings available (later)</td>
<td>ML (and groupings) published (early)</td>
<td>Stage 2 Meeting (morning)</td>
<td></td>
</tr>
<tr>
<td>Informal deadline for Executive amendments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

22. This is slightly less advantageous to members, who don’t have the Marshalled List and groupings before the weekend and so can’t make as much use of that time to prepare. But it provides additional comfort for the clerks who may occasionally use time at the weekend to begin preparing draft groupings (where particularly large numbers of amendments have been lodged).

23. Any revised Rules must, of course, work for Stage 2 meetings either on Tuesdays or Wednesdays. Even with the much-improved committee room facilities at Holyrood, there will continue to be committees dealing with Bills which meet on both days (and both on Tuesday mornings and afternoons).

**Notice-period for first day of Stage 2**

24. One point that emerges from the above is that the need for a longer notice-period for amendments is particularly great in advance of the first Stage 2 meeting. For one thing, it is during the run-up to this meeting that the biggest “peak” of amendments are lodged and when the groupings for the whole Stage take shape. As a result, this is usually when members and Executive officials have the most preparation to do and where they would most benefit from a little extra time in which to do it. For another thing, because there is no previous Stage 2 meeting a week earlier, there is less of a downside to moving back the lodging-deadline.
25. However, there is still a downside – namely, the impact on the minimum interval between Stages 1 and 2. That interval is set at 7 sitting days between the day of the Stage 1 debate and the first day of Stage 2 (Rule 9.5.3A) – which allows a Bill that clears Stage 1 on a Thursday to begin Stage 2 on the Tuesday of the next-following week (assuming no intervening public holidays etc.). Although the actual interval (which depends on Bureau timetabling and committee workloads) is often considerably longer than this, the Rule guarantees members a reasonable period to decide on the issues they wish to pursue at Stage 2, consult colleagues and stakeholders and then consult the clerks about the wording of their amendments. Each extra day added to the notice-period for amendments for the first day of Stage 2 is a day less for members to do this work.

26. If the notice-period for Stage 2 amendments was increased, particularly by more than a day, it might be felt necessary to increase the minimum interval between Stages 1 and 2 to compensate. Given the normal sitting-pattern of the Chamber and committees, once the minimum interval is increased beyond 8 sitting days, it might as well be increased to 12 sitting days (i.e. pushing back the first Stage 2 meeting by a week).6

27. Taking the above factors into account, one option would be to increase the normal notice-period for Stage 2 amendments from 2 days to 3, but increase it to 4 days in advance of the first (or only) Stage 2 meeting.

28. The implications of this option would be as follows (assuming a typical scenario with Stage 1 on a Wednesday and the first Stage 2 meeting on a Tuesday):

<table>
<thead>
<tr>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Weekend</th>
<th>Monday</th>
<th>Tuesday</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stage 1 debate</strong></td>
<td>(first opportunity to lodge amendments)</td>
<td></td>
<td></td>
<td>(Final Executive amendments lodged?)</td>
<td>(Final Executive amendments published?)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Weekend</th>
<th>Monday</th>
<th>Tuesday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal lodging deadline (2 pm)</td>
<td>Final daily list published (early); ML and groupings available (later)</td>
<td>ML (and groupings) published (early)</td>
<td></td>
<td></td>
<td><strong>1st Stage 2 Meeting (morning or afternoon)</strong></td>
</tr>
</tbody>
</table>

29. Points to note about the above:

- By extending the notice-period to 4 days, members would have 2 full days to prepare for the Stage 2 meeting (2½ if it took place on a Tuesday afternoon) with access to the published Marshalled List and groupings.

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6 Even an increase in the minimum interval to 8 days creates anomalies – it would allow Stage 2 to begin in the 2nd week after the Stage 1 debate only if either the Stage 1 debate or the first Stage 2 meeting is on a Wednesday. This is arbitrary in relation to those committees whose meeting slots are always on Tuesdays.
• In these circumstances, the Executive might move back its informal lodging deadline by a day so that members still have 1½ days to see all the Executive amendments in print before the formal deadline falls. (But this would be a matter for the Executive alone.)

• In the example given, members have only 4½ sitting days after the Stage 1 debate to prepare and lodge amendments; with a Thursday Stage 1 and a Tuesday committee meeting – i.e. the minimum interval under Rule 9.5.3A – this would be only 3½ sitting days (compared with a minimum of 5½ sitting days at present). As noted above, this might make it appropriate to increase the minimum interval to add an extra week between Stages 1 and 2.

30. A more cautious option would involve increasing the notice-period for Stage 2 amendments from 2 days to 3 only for the first Stage 2 meeting, leaving it unchanged for later meetings.

Committees meeting more or less frequently

31. In the relatively unusual cases where Stage 2 committees meet less than weekly, the pressures are eased, and any reasonable extension of the notice-period would work satisfactorily.

32. Increasing the notice-period for amendments would be unlikely to create extra difficulties in cases where committees have to meet more than once a week during Stage 2. Given that this normally involves a committee meeting both on Tuesday and Wednesday, the lodging-deadline for the Wednesday meeting already falls before the Tuesday meeting has taken place. Moving both of those lodging-deadlines back by a day would therefore make little difference. Even where this twice-weekly meeting pattern was repeated from week to week, a notice-period of 3 days would still provide a short interval between the end of one week’s Stage 2 meetings (i.e. Wednesday lunchtime) and the first lodging-deadline for the following week’s meetings (i.e. 2 pm on Thursday).

33. The issue here is not so much the length of the notice-period but the separate suggestion of enabling a committee to treat one Stage 2 meeting as a continuation of an earlier meeting the same week. This would mean there was only a single lodging-deadline for both days and a single Marshalled List and groupings. Rule-changes would be needed to make this possible.

Deadline on the final lodging-day

34. The current 2 pm deadline for the final lodging-day was designed to give the clerks more time to deal with the amendments lodged on that day (usually the busiest lodging day). This is not just in the interest of the clerks themselves; it also increases the chance that, if they need to discuss amendments with members, they can do so before members have left for the day. With big Bills, there is still a lot of pressure on clerks on that final day, and an earlier deadline of, say, 12 noon, would make the clerks’ job a bit easier without substantially reducing the time available to members to finalise their amendments.
Implications for Stage 3 amendments

35. All of the above relates to Stage 2. At Stage 3, the notice-period is already 3 sitting days and there may therefore be less of a case for further increasing it. The current Rules ensure that the Marshalled List and groupings are published at the beginning of the day before the Stage 3 debate – the question is whether this is sufficient to enable members to prepare.

36. It may be difficult to consider this question in isolation from the issue (considered in a separate note) of whether the Stage 3 amendments and the Stage 3 debate should continue normally to be taken on the same day. If that was changed – to create a final opportunity, after the Stage 3 amendments were disposed of, to check the Bill for minor inconsistencies or errors and correct them before it was passed – then it might be thought less important to increase the time available for preparation in advance of Stage 3.

37. The large majority of Stage 3s take place on a single day while the few exceptions have been taken on consecutive days in the same week. So the complications caused by trying fit an extra day's notice into a weekly sequence of meetings don't arise.

38. As with Stage 2, however, the advantages of having an earlier lodging-deadline – particularly if it is more than a day earlier – need to be balanced against the pressure that could be created to increase the minimum interval between Stages 2 and 3.7

39. That interval is currently 9 sitting days between the day of the final Stage 2 meeting and the (first) day of Stage 3 where the Bill was amended at Stage 2 and 4 sitting days between if the Bill was not so amended (Rule 9.5.3B). The effect of that Rule is to guarantee members a minimum of 7 sitting days (including the final lodging-day, when the deadline is 4.30 pm) to consider and lodge Stage 3 amendments (or 2 sitting days where the Bill was not amended at Stage 2).

40. Increasing the notice-period from 3 days to 4 would reduce that guaranteed period to 6 sitting days in the case of a Bill that was amended at Stage 2. That may be quite acceptable. But it would also result in members being guaranteed only 1 sitting day to lodge Stage 3 amendments to a Bill that had not been amended at Stage 2. That would probably not be acceptable, bearing in mind that Bills that emerge unamended from Stage 2 are not always uncontroversial. A Bill may emerge from Stage 2 unamended simply because the Executive persuaded the Stage 2 committee to vote against all the (opposition) amendments that were moved.

41. For this reason, an increase of even one day to the notice-period for Stage 3 amendments might need to be accompanied by a change to Rule 9.5.3B to apply the same minimum interval of 9 sitting days between in cases where a Bill was not amended at Stage 2 as already applies in cases where it was not amended at Stage 2.

7 There is also a risk, as at Stage 2, that a longer notice-period will lead to more manuscript amendments being lodged. But the Presiding Officer's discretion as to whether such amendments may be moved is probably a sufficient safeguard against any such trend.
amended. This would not affect the overall time-scale for the passage of the large majority of Bills, which are amended at Stage 2.

42. At Stage 3, there is currently no earlier deadline on the final lodging-day before the Stage. Where (as is quite common) a significant proportion of the Stage 3 amendments are lodged on that final day, this can lead to clerks working very late to prepare those amendments for publication. Moving to an earlier deadline of, say, 2 pm on that final lodging-day (as currently applies at Stage 2) would substantially ease that situation.

Summary of possible options

43. For Stage 2 amendments, the options are (beginning with the least change):

   **Option 1:** no change (i.e. a notice-period of 2 days).

   **Option 2:** Increase the notice-period for Stage 2 amendments from 2 days to 3 but only for the first day of Stage 2.

   **Option 3:** Increase the notice-period for Stage 2 amendments from 2 days to 3 for each day of the Stage.

   **Option 4:** Increase the notice-period for Stage 2 amendments from 2 days to 4 for the first day of Stage 2 and from 2 days to 3 for each subsequent day of the Stage and—

   **Option 4A:** increase the minimum Stage 1/Stage 2 interval from 7 sitting days to 8; or

   **Option 4B:** increase the minimum Stage 1/Stage 2 interval from 7 sitting days to 12.

44. Whichever of these options is chosen, either or both of the following further changes could be considered:

   **Option 5:** Move the lodging-deadline on the last day before the Stage (or day of the Stage) from 2 pm back to 12 noon.

   **Option 6:** Enable a second Stage 2 meeting in a particular week to be treated as a continuation of the first (i.e. with the same lodging deadline).

45. For Stage 3 amendments, the options are (beginning with the least change):

   **Option 7:** no change (i.e. a notice-period of 3 days).

   **Option 8:** Increase the notice-period for Stage 3 amendments from 3 days to 4 and make the minimum Stage 2-Stage 3 interval 9 sitting days regardless of whether the Bill was amended at Stage 2 (instead of 9 if it was amended and 4 if it was not).
46. Whichever of these options is chosen, either or both of the following further changes could be considered:

Option 9: Move the lodging-deadline on the last day before the Stage (or day of the Stage) from 4.30 pm back to 2 pm.

Option 10: Enable a second Stage 3 meeting in a particular week to be treated as a continuation of the first (i.e. with the same lodging deadline).
PROCEDURES COMMITTEE

Timescales and Stages of Bills – Stage 3 issues (1): timetabling motions

Note by the Clerk

Introduction

1. This note considers the use of timetabling motions to structure Stage 3 proceedings on amendments. It outlines the considerations for and against the current practice, and sets out various possible options for change.

Timetabling of Stage 3 amendment proceedings

2. In considering timetabling for Stage 3, the Bureau has to consider two interrelated issues:

- how much time is needed overall for Stage 3; and
- how that time should be distributed.

3. While both issues are relevant to the current inquiry, the focus of this note is on the latter. There have been occasions when the overall time available for Stage 3 has been insufficient – although there have been many more occasions when it has been adequate or even generous (including some occasions where the proceedings have finished well ahead of schedule). Where the overall amount of time is short, debates on amendments are likely to be constrained throughout the proceedings.

4. The particular issue considered here, however, is not a shortage of time overall but a timetabling motion that distributes the time available ineffectively, so that some groups are left with little or no time for debate even though surplus time is available elsewhere during the proceedings.

5. The conventions for calling speakers, and for speaking times, are different during Stage 3 proceedings (compared to other Chamber debates). Proceedings on amendments involve a sequence of separate short debates (one on each group) interspersed by formal proceedings (the moving and disposal of previously-debated amendments). The debates vary greatly in length and in the numbers of speakers wishing to speak; there is also no particular expectation of party-balance in the speakers called. The only speakers called automatically are the mover of the amendment (to open and wind up), the Minister (where different) and members with other amendments in the group; others are at the discretion of the Chair. In these circumstances, it is not practical for the Presiding Officer to have pre-determined speaking times for members – though the Chair retains of course the general right to control the length of members’ speeches.
Timetabling motions

6. The established practice (since early in Session 1) has been for a Bureau motion to be moved immediately prior to the Stage 3 proceedings setting out various deadlines to be observed during the proceedings. These motions have the following key features:

- each deadline (except the last) is expressed by reference to groups of amendments (with the last usually guaranteeing 30 minutes for the debate on the motion to pass the Bill);
- all deadlines are calculated from the beginning of Stage 3 proceedings, thus ensuring that the time available before the first deadline is not reduced by any over-run of the previous item of business (and allowance is also made for suspensions and consideration of other items mid-way through Stage 3);
- the deadlines are expressed inflexibly ("... debate on each part of the proceedings shall be brought to a conclusion ... no later than X") so that, once the motion has been agreed to, the deadlines are binding;
- the time-limits apply only to debate on amendments, not to the formalities of amendments being moved and disposed of (so that the expiry of a time-limit does not prevent amendments being formally moved and then disposed of).

7. Procedurally-speaking, these motions are just Bureau motions like any other. The features identified above are simply aspects of the way in which the motions have, as a matter of convention, been expressed. There is certainly nothing in the Rules to require timetabling to be done in this way (or, indeed, done at all).

8. The purpose of these timetabling motions is to structure the debate within the overall time available and hence to "protect" the most important amendments. Without any such timetabling motion, the risk is that debate on the early groups could over-run and that this would lead to later groups being increasingly squeezed for time. To achieve this, the deadlines are placed (so far as possible) immediately before the most important groups of amendments. Thus, if one deadline guarantees an hour to Groups 1 to 4 and the next guarantees 30 minutes to Groups 5 and 6, this gives the maximum protection to the debates on Groups 1 and 5, while leaving the debates on Groups 4 and 6 most vulnerable to running out of time.

9. Stage 3 timetabling motions are drafted by Executive officials (Minister for Parliamentary Business's office, in consultation with the relevant Department) – but they consult opposition parties (business managers) and the clerks (in the Legislation Team and the relevant subject committee). Since timetabling motions are drafted by reference to the groupings, they cannot be drafted or consulted upon until the groupings themselves have been agreed. Since the Presiding Officer does not group Stage 3 amendments until the penultimate day before the Stage (e.g. Tuesday for a Thursday Stage 3), that leaves only a day to finalise the timetabling motion for lodging the day before the Stage (e.g. on Wednesday).
The element of guesswork

10. The inherent difficulty in drafting a timetabling motion is in anticipating where time is going to be needed. Discussions among the parties should give an indication of the issues on which most members want to speak and where most of the concerns lie. Having more time between the groupings becoming available and the deadline for lodging the motion would probably help – it might, for example, allow business managers to consult their members (and committee conveners) more fully. Having a more generous overall allocation of time for Stage 3 would also – clearly – reduce the risk that, as a result of the timetabling motion, debate on any particular group will be unduly squeezed. But such changes cannot remove entirely the element of guesswork involved.

Inconsistency of deadlines and other time constraints

11. The net effect of the first two bullet-points in para 6 above is that the final deadline can end up being out-of-synch with another time constraint – either

- a start-time for the next item of business that is fixed by the agreed business programme (rather than being simply “followed by”) – e.g., for a Stage 3 on Thursday morning, FMQT at 12 noon; or

- the start-time for Decision Time (which, under Rule 11.2, is normally at 5 pm).

12. For example, if a Stage 3 is scheduled to start at 3 pm, the timetabling motion will provide for the debate on the Stage 3 motion to end no later than 2 hours after the Stage 3 proceedings begin. But this will not protect a full half-hour for that debate in a situation where Stage 3 has started late or is interrupted – since Decision Time is still required to take place at 5 pm. Arguably, therefore, there is no benefit in including this final deadline in the motion in any situation where Stage 3 is the last substantive item before Decision Time (or where the item that follows it has a fixed start-time in the business programme).

Time required for divisions etc.

13. As noted above, the deadlines only apply to “debates” on amendments and not also to the formal procedure involved in having them called in the order of the Marshalled List. This ensures that, even where there is a shortage of time, no amendment is prevented from being moved (formally, if need be) and a decision taken on it (by division, if need be).

14. But, even without debate, the moving and disposal of amendments takes a certain amount of time, particularly when there are divisions. The Presiding Officer's current convention is to allow 1 minute for the first division after any debate on a group, and only 30 seconds for each subsequent division (until the next debate). Consecutive previously-debated amendments are moved and (with the Chamber's consent) disposed of en bloc to save time. Even so, a long run of contested amendments can easily take 5 minutes or more – which is then time not available for debating groups of amendments that follow. This can have a knock-on effect, increasing the chances that later debates also run up
against their deadlines – particularly towards the end of the proceedings when there are usually more previously-debated amendments to be disposed of.

15. Members could help to ensure that maximum time is kept for debating subsequent groups by only pushing amendments to a division where there is a good reason to do so. In particular, where an early amendment has been disagreed to (or withdrawn), then there is no point in moving any later amendments that are consequential on it – since the later amendments would not achieve the intended result on their own even if agreed to. In principle, members should always be aware of these connections between their amendments, and should say “Not moved” when those later amendments are called. In practice, this sometimes happens, but by no means always.

The case for flexibility

16. If timetabling motions were drafted in “looser” terms, they could allow the Presiding Officer some flexibility in relation to the deadlines, according to how the debates progressed during the Stage 3 proceedings. For example, if an early debate was over-subscribed (i.e. with more members than expected wishing to speak), the Presiding Officer could allow that debate to run on slightly past an agreed deadline in the expectation of making up the time lost later in the proceedings. The judgement would be for the Presiding Officer to make, according to his sense of how much pressure there was on time overall. The timetabling motion would continue to provide a clear structure to the overall proceedings but would be advisory rather than binding on the Chair.

17. The disadvantage of giving such discretion to the Presiding Officer is that it would expose the Chair to criticism if the wrong judgement was made – either to allow a particular debate to over-run past a deadline, or not to do so. The Presiding Officer would not necessarily be in the best position (once the proceedings are under way) to judge the likelihood of time lost earlier being made up later on (or would need to seek the views of business managers, which can be awkward to do from the podium).

Motions without notice to extend deadlines

18. An alternative way of providing flexibility to adjust the timetable as the proceedings unfold would be to give any member – or perhaps just any Bureau member present – the right to propose (by motion without notice, at any point during the proceedings) an extension to the next deadline. To prevent this being over-used, there could be a maximum extension allowable by any such motion – say 10 minutes – and perhaps also a maximum number of such extensions – say 2 – that could be agreed to during any Stage 3. To avoid the benefit of extensions being lost, such motions would not be debatable.

19. This would transfer much of the responsibility away from the Presiding Officer, though the PO would still have to decide whether to allow the motion-without-notice to be moved – and, indeed, could invite someone to move such a motion where it was clear to him that time was likely to run out.

20. If the effect of such a motion was only to move the next deadline, that would (in many cases) simply transfer the problem onto the debates that followed that
deadline (perhaps leading to a further motion-without-notice). Therefore it would be better in principle if the effect of such a motion was to extend all subsequent deadlines by the specified amount. However, this in turn would cause problems where the Stage 3 proceedings were scheduled to run up to Decision Time (which is more-or-less fixed at 5 pm under Rule 11.2).

21. For this new facility to be effective, therefore, it would also be necessary to build appropriate flexibility into Rule 11.2 – to allow Decision Time to take place at any time up to (say) 5.20 pm in any situation where a Stage 3 was the final substantive item of business in a day. This would allow two full 10-minute extensions (by motion-without-notice) earlier in the proceedings without this automatically reducing the time available at the end. In situations where the time-constraint was a fixed start-time for the next item, the later resolution (i.e. the agreement to the motion-without-notice) would take precedence over the earlier resolution – and in any case, it would be for the Bureau to avoid scheduling a Stage 3 before such a fixed start-time in any situation where there was likely to be timetabling pressure.

Summary of possible options

22. The options appear to be (beginning with the least change):

**Option 1:** no change – continue with fixed timetables agreed in advance

**Option 2:** a change in the wording of timetabling amendments – so they allow a limited degree of flexibility to the Presiding Officer to depart from deadlines as proceedings unfold

**Option 3:** a new Rule to allow motions without notice to be moved during the proceedings to vary previously-agreed deadlines.
PROCEDURES COMMITTEE

Timescales and Stages of Bills – Stage 3 issues (2): motion to pass the Bill

Note by the Clerk

1. This note considers the current procedural mechanism that enables debate on the Stage 3 motion (i.e. the motion to pass the Bill) to be deferred to a later day. The pros and cons of this mechanism are considered, together with various options for change.

The current Rule, and how it works

2. Rule 9.8.5 states (in part) that:

“After any amendments have been disposed of, the Parliament shall debate the motion that the Bill be passed. The member in charge of the Bill may, immediately after the last amendment is disposed of, by motion without notice propose that the remaining proceedings at Stage 3 be adjourned to a later day. Such a motion may not be debated or amended. If the motion is agreed to, the member in charge of the Bill may give notice of amendments to the Bill to be moved at the adjourned proceedings. Such amendments are only admissible if, in addition to the criteria in Rule 9.10.5, they are for the purpose of clarifying uncertainties or giving effect to commitments given at the earlier proceedings at Stage 3. If the motion is not agreed to, the Parliament shall proceed immediately to debate the motion that the Bill be passed.”

3. The Guidance on Public Bills (2nd edition) gives the following explanation of what this procedure involves:

“Adjournment to a later day

2.47 The member in charge may move, immediately after the last amendment is disposed of, “That further Stage 3 consideration of the [short title] Bill be adjourned to [date]/a later day”. (The motion may, but need not, name a day.) This motion may be moved without notice and cannot be amended or debated – so the question is put on it straight away. If the motion is agreed to, no further proceedings take place on the Bill until the day named in the motion (or until the day subsequently appointed by the Bureau as the “later day”). In the interim, the member in charge may lodge further amendments, but only for the purpose of “clarifying uncertainties” or “giving effect to commitments given at the earlier proceedings at Stage 3” (Rule 9.8.5).

2.48 These two categories of permissible additional amendments correspond to the two possible reasons the member in charge may have for moving to adjourn to a later day. The first reason is to gain an opportunity to consider the implications of any unexpected or unwelcome decision to agree to Stage 3 amendments. In particular, any substantial
new material inserted into an Executive Bill by a non-Executive amendment may require some adjustment to its drafting, and further changes elsewhere in the Bill may also be necessary before the Bill is, once again, fit to be enacted. It is important to note that the Parliament’s agreement to a motion to adjourn Stage 3 would not permit the Executive to lodge amendments that would have the effect of reversing amendments to which the Parliament has agreed.

2.49 The second reason for moving to adjourn Stage 3 proceedings is where the Executive has promised, earlier in the Stage, to make some concession on a controversial issue, to meet concerns expressed by members in debate or in response to amendments already proposed. In such a case, the Parliament may feel able to support the Executive motion to adjourn Stage 3 proceedings, on the ground that this will allow time for a mutually satisfactory compromise to be reached and appropriate amendments to be lodged. These amendments can then be moved by the member in charge at the resumed Stage 3 proceedings.”

4. The following features of this procedure are worth noting:

- There is a strong presumption that the debate on the Stage 3 motion will be taken immediately after the Stage 3 amendments. That is the default position and a quite deliberate step is required to depart from it. The adjournment of the Stage 3 motion (i.e. the motion to pass the Bill) is therefore a procedural “back-stop”.

- The procedural back-stop is only available to the member-in-charge of the Bill – only that member can move the motion to defer the debate on the Stage 3 motion or lodge “tidying-up” amendments to the Bill (or amendments to “give effect to commitments”).

**Limits of the current procedure**

5. The current Rules clearly imply that the Stage 3 motion follows immediately after the last amendment has been disposed of. In practice, therefore, the only way to separate the two parts of Stage 3 under the current Rules is to invoke this procedural back-stop. Since this can only be done at the very last moment, in a situation where everyone present has been expecting the Bill to be passed that day, there may (not unreasonably) be a reluctance to use this procedural back-stop except in the most extreme cases. Using it could be seen as politically embarrassing – a last-minute hold-up in delivering a legislative outcome – and could also create practical difficulties (the need to re-arrange the business programme at short notice; possible delays in implementation of the legislation). In practice, perhaps for these reasons, the procedural “back-stop” has never been used.

6. The question that arises is whether this procedural “back-stop” should be made easier to use, or indeed whether the outcome it allows – i.e. a separation of the two parts of Stage 3, the proceedings on amendments and
the debate on the Stage 3 motion – should become the “norm” rather than the
exception.

7. There are various arguments in favour of leaving things as they are. As a
general rule, procedures should only be changed where a clear need has
been demonstrated and it is not obvious this applies here – in particular, it
could be that the procedural back-stop has never been used because it has
never been needed. There have not so far been clear cases of significant
errors found in Acts that originated from Stage 3 amendments and that could
have been corrected using the procedural back-stop if there had been more
time to use it. The current strong presumption in favour of completing Stage 3
in a single sitting keeps the overall timetabling of the Bill relatively simple.
Any significant departure from that would extend the overall length of time
Bills would need to complete their passage, possibly reducing timetabling
flexibility, particularly towards the end of a session.

8. On the other hand, there are various considerations why at least some
change may be considered desirable. These are considered below, together
with options for what the appropriate changes might be.

Confidence in passing a Bill

9. One feature of the current situation is that members in the Chamber have very
little time between participating in amending the Bill and being expected to
decide whether to pass it. They must make that decision, in other words,
without having any chance to see the Bill in its final form (which is available
only the following day with the publication of the “As Passed” version). Of
course, most members’ decision whether to support the passing of a Bill will
turn on the major issues of policy rather than on minor drafting issues, but it is
still important that members feel able to take that decision in the confidence
the loose ends have all been tied up and that the Bill is fit to be passed.

10. At present, even if members have been keeping careful track of the individual
amendments agreed to during the proceedings, they have no real opportunity
to consider the cumulative effect of those amendments – i.e. how they interact
with each other as well as how each one fits with the Bill. It is really only the
Executive that has the resources – in the shape of the Bill team solicitors and
draftsmen – to work out in advance all the possible implications of different
combinations of amendments being agreed to. As a result, there is an extent
to which other members must take their lead from – and place their trust in –
the Executive on the question of whether the Bill is technically fit to be
passed.

11. The minimum change needed to address this issue – if it is seen as a problem
– would involve taking the two parts of Stage 3 on separate days. That would
allow a revised Bill (“As Amended at Stage 3”) to be available on the morning
of the second day, giving members at least a few hours to check the Bill in its
amended form prior to deciding whether to pass it.
Preparation for the Stage 3 debate

12. Another factor is that members intending to speak in the debate on the Stage 3 motion have very little time to adjust what they plan to say in the light of the proceedings on amendments. By the time the debate begins, many of their general points are likely already to have been made in debates on amendments. As a result, these debates usually add little to the overall Stage 3 proceedings. Having them on a later day might enable them to become more worthwhile events in their own right, rather than merely a postscript to the amendment proceedings.

Lowering the threshold for technical amendments

13. The most likely reason for invoking the procedural back-stop would be to enable an error or inconsistency in a Bill to be corrected (using the limited power it affords to lodge technical or drafting amendments). But because of the political and practical disadvantages of using the procedure at all, it is only ever likely to be used where it is a fairly major error or inconsistency that is spotted (i.e. something that might frustrate an aspect of the Bill’s policy, or give rise to a legal challenge). If there were fewer disadvantages to using the procedure, it would become suitable also for addressing any more minor problems that might have been identified.

More flexibility in the Rule

14. A simple re-drafting of Rule 9.8.5 could create more flexibility, allowing the Bureau (in the business programme motion) to schedule the two parts of Stage 3 in a number of ways – either consecutively (as at present), or non-consecutively – with the debate on the motion separated from the amendment proceedings by a lunch adjournment (or another item) or following those proceedings on a later day or in a later week.

15. Such flexibility would allow the majority of Bills still to be scheduled as at present, but would make it easier to plan a different approach for a large and controversial Bill – for example, where there was a reasonable chance of a technically-imperfect amendment being agreed to. In each case, it would primarily be for the Bureau to decide, based on business managers’ understanding of how many politically controversial issues remained to be resolved, together with the Executive’s understanding of how vulnerable the implementation of the Bill might be to any minor technical defect.

16. Any such greater flexibility would be in addition to, not instead of, the existing procedural back-stop – which would still be available to deal with the unexpected problem.

Building a gap into Stage 3

17. A more radical option would be to turn the current presumption around, so that a distinct gap between the two parts of Stage 3 became the “default” position. For example, the Rule could state that the debate on the Stage 3
motion should “normally” take place on a later day (or even in a later week). The use of “normally” would still allow the whole of Stage 3 to be taken on one day only with unusually straightforward Bills.

18. If this was to give committees a meaningful final opportunity to consider Bills, the “normal” interval would have to be from one week to the next, giving committees a chance of meeting in the interim.

A special procedure for subordinate legislation

19. It could be argued that most committees don’t need such a further opportunity (particularly since there would be no scope for further amending the Bill in relation to policy at the resumed Stage 3 proceedings).1 However, the same is arguably not true of the Subordinate Legislation Committee (SLC). That committee (unlike any other) is already given a formal role in scrutinising Bills after Stage 2 where they have been amended in respect of their subordinate-legislation provisions (Rule 9.7.9). The SLC convener has now requested a week-long gap at Stage 3 to enable it to carry out a similar role in relation to Stage 3 amendments (see PR/S2/04/10/1). But the SLC only needs such a gap in situations where the Bill has been amended in relevant respects (not in every case).

20. So a more “targeted” way of meeting the SLC request would involve a new Rule requiring that, if the Bill has been amended at Stage 3 “so as to insert or substantially alter provisions conferring powers to make subordinate legislation”, then debate on the Stage 3 motion would be automatically deferred to at least the following week.

21. This would of course create the possibility of an unexpected alteration to the Bill’s overall timetable, on the day. However, in many cases, there would be a high degree of advance certainty – either because there were no amendments on the Marshalled List of the relevant sort (i.e. amendments that would, if agreed to, trigger this new Rule) or because there was an Executive (or Executive-supported) amendment of that sort which was almost certain to be agreed to. In other cases – where there were relevant amendments but it was uncertain whether they would be agreed to – it would at least be possible to work out in advance what decisions on amendments would trigger the new procedure. The disruption to proceedings would certainly be no greater than would be caused by the exercise of the existing procedure under Rule 9.8.5 (the procedural back-stop).

Extension to Ministers of right to move

22. There is, quite separately, a case for suggesting that Ministers should be able to exercise this procedural back-stop in the case of a Member’s or Committee Bill – i.e. in addition to the member (or convener) in charge of the Bill. This is on the grounds that the Executive, whatever their general policy position on any particular Bill, have a general responsibility to ensure that all the

1 The Rules already provide a separate mechanism for referring up to half a Bill, at Stage 3, back to a committee for further Stage 2 consideration (Rule 9.8.6).
legislation passed by the Parliament is workable and free of technical defects. The Executive also has the legal expertise needed to assess the implications of particular amendments that may be agreed to, and to draft any further, technical amendments needed to resolve any problem. Ministers may therefore be better placed than a non-Executive member-in-charge to take a dispassionate view of whether technical amendments are needed before a Bill is fit to be passed.

23. There should be no significant risk that giving this additional right to the Executive would be abused for political reasons, given the limits on the type of further amendments that may then be lodged.

Summary of possible options

24. The main options appear to be (beginning with the least change):

**Option 1:** no change – continue with presumption that the debate immediately follows the Stage 3 amendments

**Option 2:** alter the Rules to remove that presumption, thus allowing the Bureau flexibility (in proposing the business programme) whether to schedule the debate immediately after the amendments, or not, as it sees fit

**Option 3:** add a new Rule that would automatically defer the debate on the Stage 3 motion to the following week in the event of an amendment being made to insert or substantially alter a subordinate legislation provision

**Option 4:** alter the Rules to create a presumption that the two parts of Stage 3 would “normally” be taken on different days (or in different weeks) – i.e. leaving the Bureau some discretion

**Option 5:** alter the Rules to create a mandatory separation between the two parts of Stage 3 (the debate on the motion becoming “Stage 4”), with a minimum interval of (say) 3 sitting days between (e.g. amendments on Thursday, debate the following Wednesday) and a right to lodge technical/consequential amendments in the interim.

25. Whichever of these was chosen, there is also a choice between:

**Option 6:** no change, so that only the member-in-charge (whether or not a Minister) can move to defer the debate on the Stage 3 motion

**Option 7:** extend the right to move to defer the debate to any Minister (as well as the member-in-charge).

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2 For example, during Stage 3 of the Protection of Wild Mammals (Scotland) Bill, the Minister for Rural Development expressed the Executive’s position as follows: “We are seeking to move amendments where we believe genuinely that, if it is the will of Parliament to pass the bill, the context and content of the bill must be in a form that will eventually make it workable in both a practical and a legal sense—but primarily the latter. However, we have no position on the policy instrument. After all, the bill is a member’s bill.” (Official Report, 13 February 2002, col 6320).
LETTER FROM CONVENER TO PRESIDING OFFICER

I am writing to invite your views, and those of your deputies, on an issue that has arisen in the course of the above inquiry.

A number of witnesses have referred to the way in which the application of the time-limits imposed by Stage 3 timetabling motions can severely constrain or even prevent debate on certain groups of amendments, even where the overall amount of time allowed for Stage 3 is adequate.

One option the Committee may wish to consider is whether there would be merit in an alternative, less rigid, way of timetabling Stage 3 debates – for example by means of motions setting out time-limits that are advisory rather than binding, thus giving a degree of flexibility to the chair to re-distribute time as proceedings unfold. I should emphasise that the Committee has not yet taken any view on whether there is a problem here that requires a procedural solution and, if so, what sort of solution might be appropriate. All the same, the Committee would wish to know before considering any such option whether you and the DPOs would consider it to be appropriate and practicable.

In that connection, you may wish to consider the remarks made by the Minister for Parliamentary Business at yesterday’s Procedures Committee meeting. In particular, she said “We need to give the Presiding Officer more power over speaking times”, suggesting that if speeches on earlier groupings were kept tighter, there would be less likelihood of time running short later on, as deadlines approached. (I attach the relevant extract of the Official Report.)

It would be most helpful if any response you wished to make to this letter could reach me (via the Clerk to the Committee at the above address) by next Wednesday (16 June), so that I could circulate it to my Committee for its next meeting, when it will have an initial discussion of the main issues raised in the inquiry.

Iain Smith MSP
Convener
9 June 2004
Mark Ballard: One comment that was made to the committee was that speaking times are often curtailed, so if a member has only a minute to speak to an amendment it can be difficult for people to understand the amendment and its consequences. If more time was allowed for members to speak to their amendments, stage 3 would take longer but might be much more comprehensible to the outside world.

Patricia Ferguson: I agree about speaking times, but I disagree with your conclusion. We need to give the Presiding Officer more power over speaking times. There are no limits as such on speaking times in stage 3 debates and members sometimes speak for relatively long periods when it is not necessary. It might be more useful to allow the Presiding Officer to intervene on such occasions. We frequently find ourselves in a situation—or rather, we have done so occasionally; it does not happen frequently—in which an amendment cannot be spoken to. That concerns me and I do not like it to happen. However, I am conscious that earlier sections of a bill may have generated many speeches, which is reasonable. However, some of those speeches may have been relatively lengthy and the same ground may have been gone over more than once. The Presiding Officer could have a greater role in managing the time for a particular grouping, which would be helpful for everyone.

Mark Ballard: Should the Parliamentary Bureau be more flexible about scheduling longer periods for a stage 3 debate? That would make the Presiding Officers' job easier by giving them more time to juggle than they might have in a debate that lasted only one day.

Patricia Ferguson: We could try allowing the Presiding Officer to juggle within the context of a debate that lasted one day, or a debate that lasted just a few hours—as is sometimes the case, depending on the size and complexity of the bill. We must also juggle the requirements of members to be in other places for part of their parliamentary time. Passing legislation is Parliament's most important job, but we must take account of the fact that members have other ties and responsibilities. The Parliamentary Bureau has always striven to be clear that when it thinks that a debate will run on into a Thursday evening, for example, members are given as much notice as possible, so that they can deal with other responsibilities that they might have. If we try to use a bit more discretion about speaking times we might find that we do not need to extend the overall length of debates.

REPLY FROM PRESIDING OFFICER

Thank you for your letter of 9 June inviting the views of the Presiding Officers.

I should firstly note that the timetabling of Stage 3 debates can never be an exact science. Timetabling motions have improved over the years by taking into account the time taken for consideration of amendments at Stage 2, the demand for time expressed by party groups and erring on the side of caution when there is doubt about potential demand for time. That said, there is always room for improvement.

We agree there is merit in considering whether it is possible to gauge how a stage 3 debate is developing and to restructure time allocations accordingly. However, this may prove to be impractical. Currently, no notice is given by Members who want to debate amendments, nor would it appear possible to introduce such a practice. In the absence of this information it is difficult to see how the Presiding Officers could be in any better position during a debate to allow us to take decisions on restructuring groupings times significantly.

However, there may still be scope to apply less rigid deadlines to timetables. This could provide real benefits by providing an extra 5 minutes or so in extreme circumstances where there is no time left at all to debate an amendment. We
suggest that such a change could be made by revising the wording of timetabling motions without having to resort to rule changes.

As you will be aware, after amendments have been moved the Presiding Officers already have absolute discretion in calling speakers. We will reflect on whether it is possible to make better use of speaking time limits within groupings on the basis of what is before us on our request to speak screens.

George Reid
16 June 2004
PROCEDURES COMMITTEE
Inquiry on Timescales and Stages of Bills
Stage 3 Amendments: subordinate legislation

At the last meeting on 8 June, the Minister for Parliamentary Business was asked by the Convener about Stage 3 amendments affecting subordinate legislation provisions (col 595):

**The Convener:** Is the Executive aware of bills in which subordinate legislation provisions have been substantially or unexpectedly changed at stage 3, other than after its having being agreed with the lead committee or indicated in a supplementary memorandum that you produced? I am not sure whether that has happened.

**Patricia Ferguson:** I would not want to say that it has never happened, but I do not think that my officials or I can recall such an occasion off the tops of our heads. Again, if the committee wants to pursue the matter, I will be happy to discuss it further.

In this connection, members are reminded of the evidence given by the former Convener of the Subordinate Legislation Committee (Margo Macdonald) on 11 May in relation to the Land Reform (Scotland) Bill (cols 488-9):

**Margo MacDonald:** [...] We need a mechanism that allows us to scrutinise manuscript amendments at stage 3, which at the moment go through on the nod. I am speaking off the top of my head, but I think that during the passage of the Land Reform (Scotland) Bill, a couple of major amendments on access were lodged the night before the stage 3 consideration. Those amendments were central to the bill and should have been stringently examined by the Subordinate Legislation Committee. However, there was no opportunity for it to do a proper job. All I am saying is that there must be some mechanism to tighten up the potential loophole. Obviously, I am not referring to this warm, cuddly and wonderful Executive; however, at some point, we might get a nasty Executive that would seek to exploit that sort of loophole.

**The Convener:** Did that situation arise because amendments were lodged at the very last minute or because a manuscript amendment was lodged after the normal deadline?

**Margo MacDonald:** No, it was not a manuscript amendment. We got to know about these amendments the night before, or something.

**Alasdair Rankin:** At stage 2, a vote in the lead committee removed two of the bill’s major subordinate legislation-making powers. After that, when I was in touch with the Executive about a memorandum, its officials said that as they were not proposing to change the subordinate legislation provisions they would not produce a memorandum. Perhaps we should have been more diligent in scouring the Business Bulletins, but we found out quite late in the
day that the Executive had lodged stage 3 amendments that sought to reinsert
the two major provisions that had been deleted at stage 2. At stage 1, the
Subordinate Legislation Committee had expressed strong reservations about
the provisions in question and said that it wanted more opportunity to discuss
them.

**Margo MacDonald:** It was a "face of the bill" thing. Because the provisions in
question were so fundamental, we had to ask whether they should have been
dealt with in subordinate legislation.

The Land Reform amendments referred to in that evidence are as follows (both
lodged by Ross Finnie):

67 After section 3, insert—

<Modification of sections 2 and 3 and enactments referred to in them>

(1) Ministers may by order modify any of the provisions of sections 2 and 3 above
and, for the purposes of those sections, any of the provisions of sections 9, 14 and 22
below.

(2) They may do so generally (that is to say in terms similar to those in sections 2 and
3 above as enacted) or by making provision which relates to particular areas, locations
or classes of land or to particular access rights or particular activities which may take
place in the exercise of access rights or to particular ways of using, managing or
conducting the ownership of land or any combination of those.

(3) Before doing so, they shall consult such persons whom they consider to have a
particular interest in the effect of the proposed modification (or associations
representing such persons) and such other persons as they think fit.>

80 After section 7, insert—

<Adjustment of land excluded from access rights>

(1) Ministers may by order modify any of the provisions of section 6 and 7 above.

(2) They may do so generally (that is to say, in terms similar to those in sections 6 and
7 above as enacted) or by making provision which relates to particular areas, locations
or classes of land.

(3) Before doing so, they shall consult such persons whom they consider to have a
particular interest in the effect of the proposed modification (or associations
representing such persons) and such other persons as they think fit.>

These amendments both confer "Henry VIII" powers (i.e. that confer power by
subordinate legislation to modify primary legislation) and are thus the sort of
amendments the SLC would normally wish to scrutinise particularly closely.

Another example arose with the Mental Health (Care and Treatment) (Scotland) Bill,
where 33 Stage 3 amendments affecting subordinate-legislation provisions were sent
to the SLC on a Monday (the same day they were formally lodged. The Committee
had a meeting arranged for the following day (Tuesday), and Stage 3 itself then took
place over the Wednesday and Thursday.
SUBMISSION FROM CONVENER, HEALTH COMMITTEE

I am responding on behalf of the Health Committee to your invitation to contribute to the Procedures Committee’s inquiry on the timescales of the stages of legislation.

Since the beginning of this Session the Health Committee has completed scrutiny of the following Executive Bills —

- Primary Medical Services (Scotland) Bill
- National Health Service (Scotland) Bill

We are currently in the process of undertaking two members’ Bills which are at Stage 1 —

- Breastfeeding etc. (Scotland) Bill
- Prohibition of Smoking in Regulated Areas (Scotland) Bill

We have no experience this session of acting in the capacity of a secondary committee.

**Post introduction and pre Stage 1**

It has been the Health Committee’s practice to consider the proposed timetable and to take a decision as to whether or not the time allocated is reasonable, especially given other work commitments. To date the Bill timetables for this session have not given the Committee any undue concern.

In relation to the Bills we have considered we appear to have been allocated adequate time for Stage 1. The table below outlines the time allotted.

<table>
<thead>
<tr>
<th>Bill</th>
<th>Date of referral to Committee</th>
<th>No of weeks to complete Stage 1</th>
<th>No of weeks between Stage 1 debate and Stage 2 commencing</th>
<th>No of weeks between Stage 2 and Stage 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Medical Services</td>
<td>24 June 2003</td>
<td>20 (10 weeks of recess)</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>National Health Service</td>
<td>26 August 2003</td>
<td>25 (3 weeks of recess)</td>
<td>2</td>
<td>4 (1 week of recess)</td>
</tr>
<tr>
<td>Breastfeeding etc.</td>
<td>6 January 2004</td>
<td>31 (13 weeks of recess)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibition of Smoking in Regulated Areas</td>
<td>10 February 2004</td>
<td>36 (15 weeks of recess)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
We would expect that Stage 1 should allow for an adequate period of consultation prior to selecting witnesses for oral evidence sessions. We would expect there to be a minimum period of eight weeks in which to gather evidence prior to taking a decision as to oral witnesses.

We suggest that the following factors be taken into consideration when the timetable for Stage 1 is determined —

- The Bill’s length and the complexity of the issues;
- The number of different subject areas covered by a Bill;
- The number of other committees which may require to contribute to the process;
- Politically sensitivity; where Bills are contentious reports may take longer to draft, discuss and agree; and
- The workload of the lead and secondary committees – other referred work can include SSIs and petitions together with the Committee’s own inquiry work.

It is our view that these factors should be the subject of formal consultation between the Committee and the Business Bureau in advance of decisions on the timetable.

**Stage 2**

If the Parliament agrees the general principles of the Bill at Stage 1, the Bill proceeds to Stage 2. The Bureau again sets the timescale within which Stage 2 is to be completed.

At present amendments should be lodged no later than two sitting days before the day of the Stage takes place or begins – Standing Orders Rule 9.10.2. Where the Stage is being taken over more than one day, notice of amendments may be given by no later than 2 sitting days before each day of proceedings at that Stage. On these days the deadline for lodging is up to 4.30pm. As the Health Committee, meets on a Tuesday, the last day of lodging would be the previous Friday and on the final day on which notice of amendments may be given before Stage 2, the deadline becomes 2pm. In order to deal with amendments it is important that time is available for clerks and members to discuss amendments and adjust the amendments accordingly.

At present there is a voluntary commitment from the Executive that its amendments should be lodged no later than 5 sitting days before each day of the proceedings at that Stage. However, the formal deadline remains the same as for members under Standing Order Rule 9.10.2. To date the Executive has successfully made this target for the Bills we have considered.

On each day that amendments are lodged a daily list is produced which shows all the amendments lodged that day. The amendments appear in the Business Bulletin.
For a Stage 2 meeting on a Tuesday a Marshalled List is printed on the previous Friday. The groupings are then prepared by the clerk on the Monday and are usually emailed to members on the Monday evening.

**Stage 3**
At the conclusion of Stage 2 an ‘as amended’ print of the Bill is produced and members can again lodge amendments. However, unlike at Stage 2, amendments are selected by the Presiding Officer. Again there are daily deadlines and the final day for lodging is 3 days before the day on which the Stage 3 meeting is to commence.

The Health Committee is of the view that for both Stage 2 and Stage 3 –

- The timing of the daily deadline for lodging amendment should be the same time on every lodging day. The daily deadline should be 4.30pm (we recognise that this would require an amendment to Standing Orders);
- That the deadlines for lodging members’ amendments should be extended from the current 2 day period to one of 4 days before they are required to be considered by the Committee; and
- That the deadline for lodging Executive amendments should be formalised as 5 days.

**General comments**
We would also like to add some general comments on the experience of the Health and Community Care Committee in the previous session in relation to the passage of the Mental Health (Care and Treatment) (Scotland) Act 2003.

We appreciate that the above Bill was in no way typical of legislation considered by us or our predecessor committee. However, it did raise a number of general points worthy of consideration.

**Delay in introduction**
The Health and Community Care Committee at the time expressed concern at the lengthy delay in the introduction of the Executive’s mental health legislation.

That Committee’s initial understanding from the Executive was that the Bill would be introduced in February 2002. The date of introduction was pushed back on a number of occasions. The Bill was introduced on 16 September 2002, a delay of 7 months. The Justice and Local Government Committees were appointed secondary Committees on the Bill.

The late introduction of the Bill had a significant effect on the work of the Health and Community Care Committee. In order to organise its future work effectively, the Committee required a reasonable understanding of what its future legislative workload was likely to be. In the case of the Mental Health Bill the Committee’s understanding was that this was likely to be a particularly large and complex piece of legislation. Accordingly, that Committee made extensive changes to its forward work plan to accommodate the Bill, resulting
in a number of projects that the Committee might otherwise have proceeded with being postponed or not initiated.

The continuing delay in the introduction of the Mental Health Bill had two frustrating consequences. Firstly, the delay created a vacuum in the Committee’s work schedule. Secondly, it being difficult to organise replacement Committee business at extremely short notice a number of work plans had to be revised. In particular, the Committee had to reverse its earlier decision to carry out an inquiry into aspects of public health in Scotland because of the lengthy delay in the introduction of the Bill. There was not enough Committee time available before the Parliamentary election to carry out an in-depth and comprehensive inquiry into this important matter.

The Committee fully appreciated that the preparation of legislation is a complicated and highly-skilled business and that the introduction of ill-prepared legislation into Parliament should be avoided whenever possible.

It would have been helpful if, the Committee could have been informed, at the earliest possible opportunity, of any likelihood or possibility that there may be slippage in an Executive Bill. The advantage of being warned as far in advance would have meant that the Committee could make contingency plans for its future business.

On occasions, that approach could, of course, result in a Committee being forewarned of possible delays which do not in the end occur. However, that would be preferable to unanticipated delays in the legislative timetable leading to reduced work rate and serious disruption to the programme of future business.

Length of time available for consideration
Although a draft Bill had been put out for consultation during the summer of 2002 it bore little relation to the Bill as introduced, the Bill as introduced was 231 sections long.

The Bill was introduced on 16 September and the first evidence session took place on 25 September 2002. The Committee took evidence over a 5 week period from over 26 sets of witnesses. Committee members also visited three different types of mental health facilities. The time allowed for written submissions amounted to 4 weeks. The time allocated to interested parties to prepare oral evidence and to submit written comments was considered to be highly unsatisfactory by all parties to the process. From completion of the evidence to publication of the report there was only a 3 week period. The total time allocated to Stage 1 amounted to 11 weeks from introduction to debate.

This was felt by the Health and Community Care Committee and the secondary committees to be insufficient time for the proper scrutiny of such a large and complex piece of legislation which had significant ramifications for the lives of mental health patients.
Stage 2 and Stage 3
Stage 2 occurred over a 6 week period from 8 January to 18 February 2003 with the Health and Community Care Committee often meeting twice a week. 1350 amendments were considered over 9 Stage 2 meetings, the vast majority of the amendments were Executive amendments. The Executive failed to meet its 5 day deadlines and instead lodged in line with the deadlines set out in Standing Orders.

Stage 3 was held on 19 and 20 March 2003. 752 amendments were lodged in total, 480 of those amendments arrived on the final day. Again the vast majority were Executive amendments.

Conclusion
The late introduction of the Bill coupled with the number of amendments lodged placed an enormous burden on members, interested parties and parliament staff. The members of the Committee at that time felt that the passage of this Bill was unsatisfactory and the quality of scrutiny by Parliament may have been compromised.

We would hope that this situation will not happen again.

I hope you find these comments to be of assistance.

Christine Grahame MSP
Convener, Health Committee
17 June 2004
PROCEDURES COMMITTEE

Inquiry on Timescales and Stages of Bills

Letter from the Clerk to the Subordinate Legislation Committee

Inquiry on Timescales and Stages of Bills: Bills as amended at Stage 2

I am writing in response to Karen Gillon’s request, at the meeting of the Procedures Committee on 11 May, for examples of good and bad practice in relation to the provision of subordinate legislation memoranda to this Committee for Bills as amended at Stage 2.

Table 1 of the Annexe indicates that, towards the end of the first session the time between completion of Stage 2 of a Bill and arrival of the memorandum from the Executive averaged less than 4 weeks. Table 2 shows that, while the average is lower in the second session so far, the intervals vary more widely.

Although, as the tables also show, there is often an interval of 3-4 weeks between receipt of the memorandum and the Stage 3 debate, it needs to be borne in mind that the Committee considers the great majority of Executive, Members’ and Committee Bills at Stage 1 and considers most of them again after Stage 2 as well as considering and reporting on all statutory instruments coming before the Parliament. In these circumstances, therefore, having to wait for the arrival of memoranda imposes restrictions on the flexibility and orderly scheduling of the Committee’s business and on the time available to consider and report to the Parliament.

A consequence of the time constraints which arise can be seen in the closeness of the dates, shown in the tables, between publication of the Committee’s report and the Stage 3 debate. This can allow little or no time for Ministers and others to consider the Committee’s recommendations before the debate.

In the case of the last two Bills on Table 2, the Committee has decided that it is now practical to consider the Bill at one meeting only and with Executive witnesses present to respond to questions as there is too little time for written questions, a second consideration and production of the report before Stage 3. In each case, the table shows a substantial interval between completion of Stage 2 and receipt of the Executive’s memorandum.

I would be glad to respond to any questions arising.

Alasdair Rankin
Clerk to Committee
7 June 2004
Consideration of Bills as amended at Stage 2

Table 1 gives figures for the last seven Executive Bills considered by the Committee in Session 1. Table 2 shows equivalent figures for the first seven Executive Bills of Session 2.

Table 1

<table>
<thead>
<tr>
<th>Bill</th>
<th>Stage 2 Completion</th>
<th>SL Memo received</th>
<th>Publication of SLC Report</th>
<th>Stage 3 Debate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Justice</td>
<td>10 Dec</td>
<td>13 Jan</td>
<td>7 Feb</td>
<td>20 Feb</td>
</tr>
<tr>
<td>Water Environment</td>
<td>11 Dec</td>
<td>8 Jan</td>
<td>27 Jan</td>
<td>29 Jan</td>
</tr>
<tr>
<td>Public Appointments</td>
<td>18 Dec</td>
<td>14 Jan</td>
<td>28 Jan</td>
<td>5 Feb</td>
</tr>
<tr>
<td>Building</td>
<td>8 Jan</td>
<td>24 Jan</td>
<td>7 Feb</td>
<td>19 Feb</td>
</tr>
<tr>
<td>Title Conditions</td>
<td>14 Jan</td>
<td>27 Jan</td>
<td>18 Feb</td>
<td>26 Feb</td>
</tr>
<tr>
<td>Homelessness</td>
<td>15 Jan</td>
<td>6 Feb</td>
<td>3 Mar</td>
<td>5 Mar</td>
</tr>
<tr>
<td>Mental Health</td>
<td>19 Feb</td>
<td>27 Feb</td>
<td>19 Mar</td>
<td>19 &amp; 20 Mar</td>
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</table>

Table 2

<table>
<thead>
<tr>
<th>Bill</th>
<th>Stage 2 Completion</th>
<th>SL Memo received</th>
<th>Publication of SLC Report</th>
<th>Stage 3 Debate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Medical Services</td>
<td>02 Dec</td>
<td>03 Dec</td>
<td>12 Dec</td>
<td>18 Dec</td>
</tr>
<tr>
<td>Nature Conservation</td>
<td>03 Mar</td>
<td>23 Mar</td>
<td>22 Apr</td>
<td>5 May</td>
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<td>Education (ASL)</td>
<td>10 Mar</td>
<td>24 Mar</td>
<td>30 Mar</td>
<td>1 Apr</td>
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<tr>
<td>NHS Reform</td>
<td>23 Mar</td>
<td>20 Apr</td>
<td>6 May</td>
<td>6 May</td>
</tr>
<tr>
<td>Criminal Procedure</td>
<td>24 Mar</td>
<td>19 Apr</td>
<td>22 Apr</td>
<td>28 Apr</td>
</tr>
<tr>
<td>Antisocial Behaviour</td>
<td>26 Mar</td>
<td>2 Jun</td>
<td>15 Jun*</td>
<td>17 Jun</td>
</tr>
<tr>
<td>Local Governance</td>
<td>11 May</td>
<td>7 Jun</td>
<td>18 Jun*</td>
<td>23 Jun</td>
</tr>
</tbody>
</table>

Note by Clerk to Procedures Committee – when originally received, these dates were estimates and the 15 June date was estimated as 11 June.
PROCEDURES COMMITTEE

Non-Executive Bills

Proposal thresholds: note by the Clerk

The table below lists all proposals for Members’ Bills lodged so far this session, ranked according to the total number of supporters obtained. The right-hand column shows the extent of cross-party support.

Under the old threshold
Only a single proposal did not meet the requirements under the previous threshold (i.e. 11 supporters) – Reform of Council Tax and Business Rates Bill. This is also the only proposal so far this Session not to have obtained support from more than a single Party that is represented in the Bureau.

Under the new threshold
There are 16 proposals that would be deemed unsuccessful under the proposed new threshold arrangements (i.e. 18 supporters from half of the Parties represented in the Bureau). That is, 16 proposals did not obtain 18 supporters and 4 of those also did not secure support from 3 of the Bureau parties. These proposals are marked in bold. All proposals which obtained at least 18 supporters also gained support from Members of at least 3 parties.

It cannot, of course, be assumed that a proposal that did not obtain support from 18 Members or 3 Parties would not have done so had that been the threshold required at the time.

Members’ Bill (Session 2)

* These two proposals are still collecting signatures. Figures are correct as at Thursday 17 June.
PROCEDURES COMMITTEE

Review of FMQT and Question Time

Statistical data on questions lodged for answer at Question Time

Figures show the total number of questions lodged for each theme and for general questions, for each Question Time since the new format was introduced. Twelve questions are selected randomly for each departmental theme and 15 for the general section. (By comparison, the average number of questions lodged for each Question Time prior to the format changes, when each MSP could lodge only one question per week was 53 (during the period 8 January to 4 March 2004).)

<table>
<thead>
<tr>
<th>Date of QT</th>
<th>Subject (Theme 1 / Theme 2 / General)</th>
<th>Questions lodged</th>
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</thead>
<tbody>
<tr>
<td>11.03.04 Ent., Transport &amp; Lifelong Learning 50</td>
<td>Justice &amp; Law Officers 40</td>
<td>General 33 123</td>
</tr>
<tr>
<td>18.03.04 Educ., Culture, Tourism &amp; Sport 46</td>
<td>Finance &amp; Communities 31</td>
<td>General 39 116</td>
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<tr>
<td>25.03.04 Environ. &amp; Rural Development 38</td>
<td>Health &amp; Community Care 57</td>
<td>General 46 141</td>
</tr>
<tr>
<td>01.04.04 Ent., Transport &amp; Lifelong Learning 50</td>
<td>Justice &amp; Law Officers 42</td>
<td>General 48 140</td>
</tr>
<tr>
<td>22.04.04 Educ., Culture, Tourism &amp; Sport 41</td>
<td>Finance &amp; Communities 39</td>
<td>General 37 117</td>
</tr>
<tr>
<td>29.04.04 Environ. &amp; Rural Development 39</td>
<td>Health &amp; Community Care 58</td>
<td>General 53 150</td>
</tr>
<tr>
<td>06.05.04 Ent., Transport &amp; Lifelong Learning 50</td>
<td>Justice &amp; Law Officers 44</td>
<td>General 49 143</td>
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<tr>
<td>20.05.04 Educ., Culture, Tourism &amp; Sport 42</td>
<td>Finance &amp; Communities 37</td>
<td>General 48 127</td>
</tr>
<tr>
<td>03.06.04 Environ. &amp; Rural Development 39</td>
<td>Health &amp; Community Care 55</td>
<td>General 48 142</td>
</tr>
<tr>
<td>17.06.04 Ent., Transport &amp; Lifelong Learning 40</td>
<td>Justice &amp; Law Officers 42</td>
<td>General 40 122</td>
</tr>
<tr>
<td>Date</td>
<td>Theme/General</td>
<td>Questions Lodged</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>24.06.04</td>
<td>Educ., Culture, Tourism &amp; Sport</td>
<td>44</td>
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<td></td>
<td>Finance &amp; Communities</td>
<td>34</td>
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<td></td>
<td>General</td>
<td>45</td>
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<td></td>
<td></td>
<td>123</td>
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<tr>
<td></td>
<td>Average number of questions lodged per Question Time (overall)</td>
<td>131</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th><strong>Averages for each theme/general</strong></th>
<th></th>
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<tbody>
<tr>
<td>Ent., Transport &amp; Lifelong Learning</td>
<td>48</td>
<td>Environ. &amp; Rural Development</td>
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<tr>
<td>General</td>
<td>44</td>
<td>Finance &amp; Communities</td>
</tr>
<tr>
<td>Educ., Culture, Tourism &amp; Sport</td>
<td>43</td>
<td>Health &amp; Community Care</td>
</tr>
</tbody>
</table>
PROCEDURES COMMITTEE

Review of FMQT and Question Time

Statistical data on attendance during Question Time

This table shows the level of attendance by MSPs in the Chamber and by the public in the gallery during Question Time for a period before the new format was introduced, and for the first 8 weeks afterwards.

The data on MSP attendance was collected by clerks in the Chamber counting the numbers of members present approximately 5 minutes after the start of Question Time (or each part of it).

The data on public attendance was collected by security staff and show the number of people gaining access to the Chamber before and during Question Time (i.e. from 1.45 to 3 pm, or from 2 to 3 pm prior to the changes of format).

The main conclusion that may be drawn is that attendance by both MSPs and the public has risen since the new format was introduced (at least compared with attendance in the immediately preceding period). The limited amount of comparative data for members’ attendance makes this part of the conclusion less secure.

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
<th>MSP attendance</th>
<th>Public attendance</th>
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<tbody>
<tr>
<td>6 Nov</td>
<td>General</td>
<td>Data unavailable</td>
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<td>13 Nov</td>
<td>General</td>
<td>Data unavailable</td>
<td>234</td>
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<td>20 Nov</td>
<td>General</td>
<td>Data unavailable</td>
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</tr>
<tr>
<td>27 Nov</td>
<td>General</td>
<td>Data unavailable</td>
<td>156</td>
</tr>
<tr>
<td>4 Dec</td>
<td>General</td>
<td>Data unavailable</td>
<td>129</td>
</tr>
<tr>
<td>11 Dec</td>
<td>General</td>
<td>Data unavailable</td>
<td>129</td>
</tr>
<tr>
<td>18 Dec</td>
<td>General</td>
<td>Data unavailable</td>
<td>39</td>
</tr>
<tr>
<td>8 Jan</td>
<td>General</td>
<td>Data unavailable</td>
<td>66</td>
</tr>
<tr>
<td>15 Jan</td>
<td>General</td>
<td>Data unavailable</td>
<td>84</td>
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<td>22 Jan</td>
<td>General</td>
<td>Data unavailable</td>
<td>87</td>
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<td>29 Jan</td>
<td>General</td>
<td>Data unavailable</td>
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<tr>
<td>5 Feb</td>
<td>General</td>
<td>Data unavailable</td>
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<tr>
<td>12 Feb</td>
<td>General</td>
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<td>19 Feb</td>
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<tr>
<td>26 Feb</td>
<td>General</td>
<td>56</td>
<td>107</td>
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<tr>
<td>4 Mar</td>
<td>General</td>
<td>62</td>
<td>98</td>
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<tr>
<td><strong>AVERAGE (6 Nov’03 – 4 Mar’04)</strong></td>
<td><strong>59</strong></td>
<td><strong>122</strong></td>
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<tr>
<td>Date</td>
<td>Subject</td>
<td>MSP attendance</td>
<td>Public attendance</td>
</tr>
<tr>
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<td>------------------------------------------</td>
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<td>-------------------</td>
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<tr>
<td>11 Mar</td>
<td>Enterprise, Transport &amp; LL Justice &amp; Law Officers General</td>
<td>71 83 77</td>
<td>146</td>
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<tr>
<td>18 Mar</td>
<td>Education, Tourism, C&amp;S Finance &amp; Communities General</td>
<td>60 72 62</td>
<td>147</td>
</tr>
<tr>
<td>25 Mar</td>
<td>Env &amp; Rural Dev Health &amp; Community Care General</td>
<td>57 74 77</td>
<td>243</td>
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<tr>
<td>1 Apr</td>
<td>Enterprise, Transport &amp; LL Justice &amp; Law Officers General</td>
<td>40 73 79</td>
<td>145</td>
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<tr>
<td>22 Apr</td>
<td>Education, Tourism, C&amp;S Finance &amp; Communities General</td>
<td>57 65 64</td>
<td>162</td>
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<tr>
<td>29 Apr</td>
<td>Env &amp; Rural Dev Health &amp; Community Care General</td>
<td>59 75 77</td>
<td>124</td>
</tr>
<tr>
<td>6 May</td>
<td>Enterprise, Transport &amp; LL Justice &amp; Law Officers General</td>
<td>47 59 70</td>
<td>75</td>
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<tr>
<td>20 May</td>
<td>Education, Tourism, C&amp;S Finance &amp; Communities General</td>
<td>46 67 67</td>
<td>Data unavailable</td>
</tr>
<tr>
<td>3 June</td>
<td>Env &amp; Rural Dev Health &amp; Community Care General</td>
<td>35 53 57</td>
<td>Data unavailable</td>
</tr>
<tr>
<td><strong>AVERAGE (11 Mar – 3 Jun)</strong></td>
<td><strong>2.05 pm = 52 2.25 pm = 69 2.45 pm = 70</strong></td>
<td><strong>Overall avg. = 64</strong></td>
<td>149</td>
</tr>
</tbody>
</table>
PROCEDURES COMMITTEE

Timescales and Stages of Bills: list of issues raised

Note by the Clerk

Questions marked in bold are considered in more detail in separate papers.

Pre-Legislative Stage

- Should committees do more preparatory work at the pre-legislative stage to inform themselves about the factual background to a Bill, e.g. through briefings from officials?

- Should Parliamentary committees undertake “pre-legislative scrutiny” (i.e. formal evidence-based scrutiny of legislative proposals) – either during general consultation or in relation to a draft Bill? Does this compromise committees’ ability to undertake their scrutiny role at later Stages?

- Would committee involvement at the pre-legislative stage reduce the time needed for the Stage 1 inquiry?

- How helpful is it for the Executive to publish a draft bill at the pre-legislative stage?

Stage 1

- Should there be a mandatory or advisory minimum duration for Stage 1 – either in a Rule or in guidance? If so, what might that minimum be, and should it be different for different types/sizes of Bill?

- Do prospective witnesses have sufficient time to submit written evidence at Stage 1? Should there be a prescribed minimum consultation period at Stage 1? If so, what should it be?

- Is there sufficient time for secondary committees to submit their reports to the lead committee and for the lead committee to consider them?

- Should there be a prescribed minimum period between the publication of the Stage 1 report and the Stage 1 debate? If so, what should that minimum period be?

- Should the minimum interval between Stage 1 and 2 – currently 7 sitting days – be extended? If so, what might it be extended to?
Stage 2

- Does the overall pace of Stage 2 put unreasonable pressure on some or all of those directly involved (members and officials)?

- How important is it for committees to have enough time at Stage 2 to take evidence (in appropriate circumstances) on amendments?

- Should there be a presumption against committees meeting more than once per week to consider amendments at Stage 2? Where this does happen, would it help if there was only a single lodging deadline (and a single Marshalled List and groupings)?

- Should the Stage 2 committee have more control over the timescale for that Stage (rather than having to meet a deadline set by the Bureau)?

- Should the minimum notice period for Stage 2 amendments – currently 2 sitting days – be extended? If so, by how much?

- How useful is the Executive’s informal 5-day deadline for lodging its amendments? If the formal deadline was altered, would this also need to change?

- Should the minimum interval between Stages 2 and 3 – currently 9 sitting days if the Bill was amended at Stage 2 and 4 sitting days if not – be extended? If so, by how much?

- Should there be a formal requirement on, or at least an opportunity for, each relevant committee to review the Bill after Stage 2 to consider any new or amended provisions which might be of interest to that committee? In particular, should there be an opportunity for the Finance Committee to consider the financial implications of any new or amended provisions?

Stage 3

- Should the minimum notice period for Stage 3 amendments – currently 3 sitting days – be extended? If so, by how much?

- Does having Stage 3 over 2 days lead to any particular complications and/or benefits? Where a Stage 3 does take place over 2 days should there be a single lodging deadline (and a single Marshalled List and groupings)?

- Is enough time overall allowed for the Stage 3 proceedings on amendments?
• Would there be merit in changing the way in which Stage 3 amendment proceedings are timetabled – for example, to give the PO some flexibility to depart from the agreed deadlines for debating specific groups of amendments?

• Should there be a gap, at least in some circumstances, between the consideration of Stage 3 amendments and the debate that the Bill be passed (with an opportunity for minor or technical amendments to be lodged in the interim)? If so, how long a gap would be needed?

Miscellaneous issues

• Should the Executive memorandum on delegated powers provided to the Subordinate Legislation Committee be one of the accompanying documents required on introduction? And should the Executive be required to provide a revised memorandum within a prescribed period after publication of the “As Amended” Bill?

• What further information could be made available to assist members preparing for amending stages?

• Should it be a requirement to provide updated Explanatory Notes that correspond to the Bill “As Amended at Stage 2”? If so, should there be a minimum period in advance of the Stage 3 debate when these should be made available?
PROCEDURES COMMITTEE

MINUTES

10th Meeting, 2004 (Session 2)

Tuesday 8 June 2004

Present:

Mr Richard Baker  
Mark Ballard

Cathie Craigie  
Karen Gillon (Deputy Convener)

Jamie McGrigor  
Iain Smith (Convener)

Apologies were received from Bruce Crawford.

The meeting opened at 9.33 am.

1. **Timescales and Stages of Bills**: The Committee took evidence from—

   Patricia Ferguson, Minister for Parliamentary Business, Michael Lugton, Head of Constitution and Parliamentary Secretariat, and Andrew McNaughton, Head of Parliamentary Liaison Unit, Scottish Executive.

2. **Oral Questions Review**: The Committee considered the provisional decision made at its last meeting that the trial period be extended until the summer recess; that the Parliamentary Bureau be invited to propose moving Question Time to Wednesday afternoon from the start of September until the October recess; and that the Committee should complete its review and report to the Parliament by the end of December 2004. In the light of the reply from the Parliamentary Bureau, the Committee agreed to endorse this timetable, but not to pursue the suggestion that Question Time should be temporarily re-scheduled to Wednesday.

3. **Work Programme**: The Committee agreed that consideration of its future work programme would be continued to the next meeting.
4. **Two Minor Changes to Standing Orders (in private):** The Committee considered and agreed a draft report and draft standing order changes.

5. **A New Procedure for Members’ Bills (in private):** The Committee considered a draft report and draft standing order changes, and agreed a number of changes. The Committee agreed to consider a revised draft report and standing order changes in private at its next meeting.

The meeting closed at 12.04 pm.

Andrew Mylne  
Clerk to the Committee