The Committee will meet at 10.15 am in Committee Room 6.

1. **Declaration of interests**: Bruce McFee will be invited to declare any relevant interests.

2. **Private Bills – witness expenses**: The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry.

3. **Committee Awayday**: The Committee will review what it learned at its recent awayday in Stirling.

4. **Private Bills**: The Committee will consider a possible structure and timescale for the inquiry and identify prospective witnesses.

5. **Timescales and Stages of Bills**: The Committee will consider a number of outstanding issues raised in the inquiry.

6. **Timescales and Stages of Bills (in private)**: The Committee will consider a draft report and draft standing order changes.

Andrew Mylne  
Clerk to the Committee  
Room TG.01  
Ext 85175  
andrew.mylne@scottish.parliament.uk
The following papers are attached for this meeting:

Agenda item 3
Note of the Committee Away Day

Agenda item 4
Note by the Senior Assistant Clerk on the remit and handling of the inquiry
Written evidence received to date

Agenda item 5
Note by the Clerk on outstanding issues
Statistics on Stage 1 calls for evidence
Note by the Clerk on intervals between Stages
Submission by the Executive on substantive amendments at Stage 2 (NB: copies handed round at last meeting.)
Note by the Clerk on Stage 3 timetabling
Note by the Clerk on Stage 3 timetabling data
Letter from the Executive on Explanatory Notes etc.
Letter from the Convener of the Local Government and Transport Committee
Letter from COSLA on a reporting stage at Stage 3

Agenda item 6
Draft report (private paper – members only: NB copies already circulated to most members)
Draft standing order changes (private paper – members only)

The following papers are attached for information:

Note on TYCO system for Members
Letter from the Presiding Officer on random selection of questions for Question Time  PR/S2/04/12/15

Letter from the Presiding Officer on the Commissioner for Public Appointments  PR/S2/04/12/16

Note by the Senior Assistant Clerk on visit of delegation from the Croatian Parliament  PR/S2/04/12/17

Note by the Assistant Clerk on visit by Quebecois parliamentarians  PR/S2/04/12/18

Additional Submissions  PR/S2/04/12/20

Minutes of the last meeting  PR/S2/04/11/M
PROCEDURES COMMITTEE

Committee Awayday, Monday 13 September, Stirling Management Centre

Note of discussions

**Members present:** Richard Baker, Mark Ballard, Cathie Craigie (morning only), Bruce Crawford, Karen Gillon, Iain Smith

**Apologies:** Jamie McGrigor

**Committee clerking team:** Andrew Mylne, Jane McEwan (afternoon only), Lewis McNaughton, Kathleen Wallace

**Other attendees:** Frank Cranmer (Clerk of Bills, Public and Private Bill Office, House of Commons), Sîan Jones (Clerk, Public and Private Bill Office, House of Commons), Callum Thomson (Head of Private Bills Unit, Scottish Parliament), Greg Thomson (Directorate of Legal Services, Scottish Parliament)

**Private Bills at Westminster**

1. Frank Cranmer and Sîan Jones gave a presentation on Private Bill procedure in Westminster. A copy of the slides issued during the presentation is attached as Annex A. The presentation covered the following areas:

   - the underlying principles of private legislation – primarily, that it involves a person or body seeking a departure from the general law, and that (where other private individuals object) a quasi-judicial process is needed to weigh up the arguments in a disinterested way;

   - the reasons behind, and a summary of, the Transport and Works Act 1992, as well as its effect on the number of Private Bills introduced;

   - other alternatives to proceeding by Private Bill, including “special procedure orders”; and Scottish Provisional Orders; and

   - the procedures governing the passage of a (non-works) Private Bill at Westminster, including the role of the Examiners, the distinction between Opposed and Unopposed Bill Committees, the ability of MPs to object and force a debate at various stages, and the role of the second House.

2. The following main points were noted during the discussion of the Westminster procedures:

   - The main differences of context between Westminster and the Scottish Parliament arise from Westminster being a bicameral legislature whose legislation cannot be overturned by the courts and whose decisions are not subject to judicial review.
There was a limited “roll” of approved Parliamentary agents, who draft Private Bills and represent promoters. These agents are accredited by the Speaker (in practice, by the Chairman of Ways and Means, and the Examiners).

The local MPs (although barred from membership of the committee on the Bill) tend to take an interest in Private Bills and can force debates at various points in the process on behalf of their constituents.

Members who vote in the 2nd Reading debate are not thereby barred from membership of the Committee on the Bill, but those who speak usually are.

Opposed Bill Committees usually hold only 1 or 2 meetings to hear evidence. An Unopposed Bill Committee will usually need only a single meeting. Committees may occasionally reject a Bill (even if it is unopposed) if the promoter does not make a good enough case for having the law changed. Where the Bill is unopposed, the Chairman of Ways and Means has a role in ensuring the promoter makes that case.

The Transport and Works Act 1992 was developed following a Joint Committee inquiry, prompted by concerns about the pressure that Private Bills were putting on Parliamentary time. The result is that most “works” proposals are now dealt with as applications to the Secretary of State for an order which – if objections are made – becomes the subject of a public hearing or local inquiry. Parliament only becomes involved if the scheme is judged (by the Secretary of State) to be of national significance, in which case the order (laid as a statutory instrument) must be approved by resolution of both Houses. The Act has greatly reduced the number of Private Bills dealt with by Westminster, with only around 5 Private Bills now passed each year, most of them uncontentious.

In a different way, the Private Legislation (Procedure) (Scotland) Act 1936 removed most of the work associated with Scottish Private Bills from Westminster. The process required the promoter to seek a “provisional order” from the Secretary of State who could set up an inquiry (involving 3 or 4 Commissioners, two of whom would normally be MPs or peers) held locally, in Scotland. An “order confirmation Bill” was then needed to convert the order into a Private Act, though these Bills were subject to accelerated procedures through both Houses.

Special procedure orders – orders under the Statutory Orders (Special Procedure) Acts 1945 and 1965 – are now uncommon, used where compulsory purchase is sought for certain protected categories of land. Individuals adversely affected have 21 days to petition with objections, and this can (at the discretion of the Chairmen in the two Houses) lead to referral to a joint committee for a decision on whether the order should be modified.
• The Scotland Act in some ways represented a step back from the trend towards extra-Parliamentary consideration of private legislation. It amended the 1936 Act so that a promoter seeking powers wholly within the Parliament’s legislative competence can no longer use the provisional Order route provided by that Act, and must instead introduce a Private Bill into the Parliament.

Private Bills in the Scottish Parliament

3. Callum Thomson then gave a presentation on Private Bills in the Scottish Parliament. Greg Thomson assisted with the legal aspects of the process. A copy of the slides issued during the presentation is attached as Annex B. Callum’s presentation covered the following areas:

• an overview of Private Bills, including those which are classed as “works” Bills;

• the number of Private Bills already passed, currently in progress and expected; and

• a summary of the procedure – charting the progression of a Bill from introduction and the objection period, through the Preliminary, Consideration and Final Stages.

4. Discussion centred on the main problem areas with the current Private Bills process and the following points were noted:

Objection period

• The current fee of £20 per objection was unpopular, particularly by comparison with the public inquiry process. An issue was whether it should be abolished or at least refunded in cases where the objection was deemed admissible.

• The process is different from the planning inquiry system, with which people are relatively familiar.

• Some objectors find confusing the two-step process by which objections are first assessed by the Clerks on admissibility grounds and then assessed by the Committee at Preliminary Stage according to whether the objection shows that the objector’s interests have clearly been adversely affected. In particular, some objectors have not understood how the Committee can reject an objection at Preliminary Stage if it has already been deemed admissible.

• There can be problems dealing with objections to the whole Bill (i.e. where the objection is to the general principles of the Bill). They need to be considered at Preliminary Stage (before the Parliament decides whether to approve the general principles) but The Rules are based on the presumption that all objections are considered in substance only once
the Bill is at Consideration Stage (i.e. after the Parliament has agreed to the general principles), which has made it necessary in practice to deal with these objections in substance at Preliminary Stage. More generally, it can be difficult to convince some objectors that their objections (including those on points of detail) will be given a fair hearing – the concern may be that since objections are only considered in substance after the Parliament has approved the Bill in principle, the committee will be reluctant to view any number of objections as together providing a reason to reject the Bill.

- Some objectors also dislike the procedure whereby similar objections are grouped for the purposes of taking evidence, since this means that only one of their number is able to speak.

- Promoters are invariably legally represented (often by a QC), whereas objectors tend to represent themselves (partly because they do not qualify for legal aid). Although Committee members try to compensate for this asymmetry of expertise, some objectors find the cross-examination process intimidating.

- Although Private Bill Committees consist of only 5 Members, the strict membership criteria (which exclude Members with registrable interests relating to the topic of the Bill, or who live in or represent the area covered by the Bill) can result in there being a relatively small pool of Members available for some Bill committees. The pressure on those members is exacerbated by the Rules allowing Members to be absent from committee meetings only in exceptional circumstances.

- Specialist consideration is required to be given to often very technical issues. As politicians, Members may not be best placed to play this role. Expensive specialist advisers have sometimes proved necessary to assist with the technical, location-specific evidence.

- There have been difficulties scheduling meetings of Bill committees, given the prohibition on committees meeting at the same time as the Chamber. This has led to Private Bill committees meeting on Mondays or Fridays (or Thursday lunchtimes).

- There is no formal requirement for the promoter to consult bodies that are statutory consultees in comparable contexts (e.g. SNH, SEPA).

- A business/financial case is not required as an accompanying document, although arguably just as important as those documents in many cases.

- The current charging regime (whereby the promoter pays an initial fee of £5,000 and accepts liability for certain other identified costs) is unlikely to cover all of the actual costs incurred by the Parliament in dealing with a Private Bill.
• Any amendments that might alter the route of a railway (or the area of any other works) can bring in as prospective objectors people who were not notified at the outset. To ensure they are not disadvantaged, this can require the Bill to be delayed while there is a further, lengthy objection period.

General Discussion on Private Bills Inquiry

5. The Committee went on to have a more general discussion on the issues surrounding Private Bills. During that discussion the following points were noted:

• One option is to split Private Bills into two categories – those relating to infrastructure projects (i.e. works bills) and others – with different procedures applying to each. If that option was pursued, the Transport and Works Act 1992 (TWA) could serve as a model for how works Bills were dealt with in future. The question would then be who would prepare the Bill for such an Act, and how long it might take to bring it into force.

• Possible models (other than the TWA model) included a system based on the Private Legislation Procedure (Scotland) Act 1936 or a system where promoters would still introduce a Private Bill in the Parliament, but where the Parliament would delegate the detailed scrutiny to external reporters (with powers comparable to planning inquiry reporters).

• A secondary question would then be identifying where the existing procedures in Chapter 9A of the Standing Orders could improve the Parliament’s scrutiny of works Bills during the period before any new system was introduced, and of non-works Bills both then and in the longer term.

• Further works Bills dealing with the Edinburgh and Glasgow Airport links and the Airdrie-Bathgate railway were expected to be introduced in the spring of 2005. It would therefore be helpful if any improvements to Chapter 9A could be brought into force in that timescale.

• Case-studies of how the TWA system and the provisional Order system operate in practice might assist the Committee in assessing their relative merits. Information on how other major infrastructure projects were taken forward – for example, the building of a new road or the construction of a dam or of a line of pylons – via a local inquiry would also provide a useful comparison.

• An initial discussion on the witnesses to be called during the inquiry would be held at the meeting on 28 September. The possibility of appointing a Committee Adviser and of undertaking one or more fact-finding visits would also need to be discussed.

• As little written evidence had so far received, the Clerks would issue a reminder of the deadline set out in the call for evidence.
Discussion on Committee work programme

6. Committee members considered a paper produced by the Clerks which outlined the Committee’s existing work commitments together with those additional areas of work which the Committee would be expected to undertake between now and Christmas. Options for possible future inquiries into 2005 were also highlighted. During the discussion on this paper the following points were noted:

- Members asked for the draft report on Timescales and Stages of Bills to be circulated further in advance than normal to allow ample time for consideration of the text.

- Members requested a further issues paper on Oral Questions for discussion at the Committee meeting on 9 November. Again members asked that this paper be circulated well in advance of the meeting to allow time for consideration and discussion with colleagues. It was agreed that this would be circulated as a private paper.

- Given existing work commitments, it was unlikely that the Committee would begin to consider the procedures for Consolidation Bills until next year, particularly as no further Consolidation Bills were currently planned.

Procedures Committee
September 2004
Procedures Committee Awayday

13 September 2004

A Westminster perspective...
Procedure and Practices of the Private Bill Office in the House of Commons
Introduction

• Private legislation is legislation which confers particular powers or benefits on any person or body of persons in excess of or in conflict with the general law.

• The difference in procedure between a public bill and a private bill:
  – a public bill is either presented direct to one or other House or introduced on motion by a Member of the appropriate House,
  – a private bill is sought by the parties who are interested in promoting it and is founded upon a petition which must be duly deposited in accordance with standing orders. Furthermore, the payment of fees by the promoters is an indispensable condition of its progress.
History

• The range of activities requiring private bills narrowed during the course of the last century as an increasing number of functions came to be governed by public general acts.

• The 1980s saw a resurgence of private legislation to authorize railway, underground and tramway schemes, as well as harbour installations and barrages.

• There was concern about the increasing number of complex and lengthy private bills for major infrastructure projects.
Joint Committee on Private Bill Procedure

• In 1986 the Chairman of Ways and Means suggested to the House that a review of Private Bill procedure might be necessary. There was widespread support for this on both sides.

• The Chairman of Ways and Means was concerned about the increasing number of complex and lengthy private bills for major infrastructure projects, which attracted huge numbers of petitioners and took up considerable time in committee, and the reluctance of Members to serve on opposed bill committees.

• The Joint Committee’s key recommendation was that “in principle, in cases where planning considerations are dominant, all works proposals for which private bill approval is presently required should instead be authorised through non-parliamentary procedures involving the holding, where necessary, of a public local inquiry into objections”.

Transport & Works Act 1992

- The Act allows the Secretary of State to make Orders relating to the construction and operation of railways, tramways, other guided transport systems, inland waterways, and in relation to any works which might interfere with navigation.

- Applications for an Order under either section 1 or section 3 of the Transport and Works Act 1992 may be made by companies or individuals to the Secretary of State.

- Those who object to the application for an Order may submit their objection to the Secretary of State in writing, not later than 42 days after the date of the application for an Order.
The Secretary of State may decide that a scheme is of national significance. In this case he or she can only make a Transport and Works Act Order if both Houses of Parliament pass resolutions approving them.

The Secretary of State may cause a public local inquiry to be held, or may appoint a person to consider the project and any objections to it.

Once the preceding stages have been gone through, the Secretary of State may make an Order which puts into effect the proposals of the application; or make an Order which puts into effect those proposals with modifications decided upon by him or her; or may decide not to make an Order at all.
## Statistics

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Alternatives to proceeding by private bill

- Special procedure orders
- Scottish provisional orders
- Private Legislation affecting Scotland & elsewhere

Public legislation has also removed the need for private bills in some areas.
Scrutiny of Private Bills

- Public general bills: Parliament acts strictly in its legislative capacity. Outside individuals have no immediate influence upon the decision of Parliament.

- Private bills: Parliament still exercises its legislative functions, but its proceedings are also of a judicial character. Those parties who may be affected by its provisions have the opportunity to support or oppose it.

- The Chairman of Committees in the House of Lords and the Chairman of Ways and Means in the House of Commons are entrusted with the general supervision of private business.

- Government departments are also required to scrutinise all private bills.
Journey of a Private Bill

1. Petition for a Bill
2. The Examiners
3. Petitions against a Bill
4. Presentation and First Reading
Petition for a Bill

• The promoters of a private bill are required to deposit a petition signed by them, requesting the bill, on or before 27 November in any year, with a printed copy of the bill attached.

• A printed copy of the bill must also be deposited with the Vote Office and in the House of Lords Private Bill Office on or before the same day.
The Examiners

- On 18 December, the Examiners of Petitions for Private Bills meet to consider whether or not the promoters of each private bill have complied with Standing Orders 4 to 59 (so far as they are applicable to each case).

- The promoters’ agents confirm that the Standing Order requirements have been met by either producing affidavits or affirming it themselves.
Presentation & First Reading

• Bills starting in the House of Commons must be presented to the House on 21 January.

• First reading of a private bill is also automatic on the first sitting day after Presentation. The bill is then ordered to be read a second time.

• Bills brought from the Lords are deemed, under SO 166(2), to have been read the first time on the day on which they are received.
Petitions against the Bill

• Any individual, group of individuals or organisation ‘directly and specially affected’ by the provisions of a private bill may petition against that bill.

• A petition is a request to the House for the petitioner to be allowed to argue his or her case, in due course, before the committee on the bill.

• The petition must be deposited by a date defined by Standing Order, which, for a bill starting in the Commons, is 30 January, or, for a bill sent from the Lords, is within ten days of the bill’s first reading.
Journey of a Private Bill

Second Reading

Objections By MPs

Committal

Opposed Bill Committee or Unopposed Bill Committee
Second Reading

- A bill starting in the Commons is read the second time not before the fifth day after its first reading, and not later than eight days after first reading. At least three clear days’ notice of second reading must be given.
- A bill which has been brought from the Lords undergoes the same procedure except that there is no limit to the period between first and second reading.
Objections by MPs

• Private business is taken in the Chamber at the time for unopposed business.

• An MP may block further proceedings on a bill, whether at second reading, consideration, third reading or consideration of Lords Amendments, simply by shouting ‘object’.

• If a bill is objected to, it is tabled for further discussion at a time named by the Chairman of Ways and Means.
Opposed Bill Committee

- 4 Members (2 Government, 2 Official Opposition) are nominated by the Committee of Selection to form the Committee.

- The Bill’s promoters must make the case for the bill. They are represented by legal counsel and can call witnesses.

- Petitioners have the right to appear before the Committee and may make statements and call witnesses.

- Government departments can submit reports supporting or disagreeing with part or all of the bill.

- The Committee must decide what happens to the Bill.
Unopposed Bills Committee

• If there are no petitions outstanding against a bill on committal, it is referred by the Committee of Selection to the Committee on Unopposed Bills.

• The Committee has Seven Members, four of whom are chosen from a panel nominated by the Committee of Selection at the beginning of each Session, as well as the Chairman of Ways and Means, and his two deputies.

• A Committee on Unopposed Bills is capable of amending any bill referred to it, and often does, particularly in terms of drafting changes proposed by the promoters of the bill.
Journey of a Private Bill cont..

Consideration

Objections By MPs

Third Reading

Objections By MPs

Lords

Royal Assent

23/09/2004
Consideration

• If a bill has been amended in committee, it goes to consideration stage.

• Consideration stage is taken at the time of unopposed business.

• Members may table further amendments to the bill on consideration. The promoters of the bill may ask the Chairman of Ways & Means to put down further drafting changes at this stage.

• If a Member other than the Chairman of Ways and Means puts down amendments on consideration, he will be called to move them at the appropriate time.
Third Reading

- Third reading, like the other stages of a private bill, is taken at the time for unopposed business.

- It is possible for amendments to be proposed on third reading of a private bill, but they must be verbal only. In other words, they should be minor rather than substantive.

- Such amendments usually come up as a result of representations made by the promoters to the Chairman of Ways and Means.
House of Lords

- Each private bill is scrutinised in both Houses of Parliament.
- This enables petitioners to object to the bill in both Houses.
- Promoters of the bill have to justify their need for it to both the Lords and the Commons.
- This also give the House an opportunity to correct any errors missed in the first House.
Lords Amendments

• Bills which started their progress in the House of Commons return, if they are amended during their progress in the Lords, to the Commons for consideration of Lords amendments.

• The promoters may propose amendments to the Lords amendments.
Carry-over

- Private bills can be suspended at the end of a session which allows the bill automatically to continue during the next session from the beginning of the stage it had reached at the end of the old session.

- Carry-over requires the concurrence of the other House.
Conclusion

• Private Bills are scrutinised more effectively when MPs or members of the public object to them.

• Two Houses = two opportunities to examine the bill.

• Transport & Work Act 1992 dramatically reduced the office’s workload.
Questions?
Procedures Committee Awayday: Private Bills in the Scottish Parliament

Callum Thomson
Head, Private Bills Unit
Structure of presentation

• Overview of private bills
• Overview of parliamentary process
• Highlight problem areas
• Highlight areas that your inquiry may wish to explore
What is a private bill?

• A Bill introduced by an individual or other body (the promoter)
• To seek power or benefits in excess of (or in conflict to) the general law
• Individuals or other bodies may lodge an objection to a private bill which would adversely affect their interests (objectors)
• Two types of private bills: works bills and non-works bills
What is a works-type private bill?

• Bills that seek to authorise the construction or alteration of certain types of works (e.g. tramway, railway)

• Effectively this is the equivalent of planning permission

• Gives powers to promoters (typically local authorities) that they do not otherwise enjoy under general law – e.g.
  – Provisions giving authority to construct listed works
  – Provisions giving compulsory purchase rights
  – Provisions to authorise compensation

• Works bills must be accompanied by a number of additional accompanying documents, most notably an Environmental Statement.
Private legislation so far

Acts
• National Galleries for Scotland (non-works Act, session 1)
• Robin Rigg Windfarm (non-works Act, session 1)
• Stirling-Alloa-Kincardine Railway and Linked Improvements Act (works Act, session 2)

Bills in progress (all works bills)
• Waverley Railway (Edinburgh - Borders)
• Edinburgh Tram Line 1 (loop, connecting city centre with Leith and Granton)
• Edinburgh Tram Line 2 (city centre to airport)

Expected Works Bills to come
• Edinburgh Airport Train Link
• Glasgow Airport Train Link
• Airdrie-Bathgate Railway
• Edinburgh Tram Line 3 (city centre to new Royal Infirmary)
• Others, at lesser stage of development
Private Bill Procedure

• Objection period

• Preliminary Stage

• Consideration Stage (split into two phases)

• Final Stage
Objection Period

• 60 days from day after date of introduction

• People who consider their interests are adversely affected can object
Objection Criteria

• be signed by or on behalf of an objector;
• be in English:
• be printed, typed or clearly hand-written;
• set out clearly the name, address and (where relevant) other contact details of the objector (telephone, email and fax);
• set out clearly the nature of the objection i.e. why, in general the objector opposes the Bill
• explain whether the objection is against the whole Bill or only certain identified provisions;
• specify how the objector’s interests would be adversely affected by the Bill, for example, because of anticipated loss of earnings or reduction in property values, adverse impact on employment or business, loss of amenity etc;
• be accompanied by the lodging fee (currently £20).
Membership of Private Bill Committees

- Up to five members
- Members must not live in or represent the area affected by the Bill
- Bureau should have regard to registered interests
Preliminary Stage

• Three functions for the Committee:

I. Preliminary Consideration of Objections (this determines whether evidence-taking on general principles is inquisitorial or adversarial)

II. Consider general principles (and objections to the whole of the bill)

III. Whether Bill should proceed as a Private Bill, ie
   – Is a private bill needed to achieve promoter’s objectives?
   – Are the accompanying documents adequate to allow proper scrutiny of the Bill?

• Committee reports to the Parliament...Decision by the Parliament on general principles of Bill and whether Bill should proceed as a Private Bill
Consideration Stage – Phase 1

- Consider evidence on the detail of the bill
- Grouping objections which are the same or similar
- Adversarial evidence-taking
- Grouped objectors get the chance to put forward amendments to the Bill (for example that a part of a transport system takes an alternative route to that proposed in the Bill)
- Committee reports on whether to uphold or dismiss arguments of grouped objectors
- Committee report indicates where, if it all, it expects the Bill to be amended
Consideration Stage – Phase 2

- Line by line consideration of the Bill and amendments in Committee
- Largely the same as Stage 2 of a public bill except:
  - Amendments only from members of the Committee
  - Amendments can be made on behalf of the promoter
  - In private bills so far, this stage has been concluded in one meeting (and is largely rubberstamping what has been decided by the Committee in its Consideration Stage phase 1 report)
Final Stage

- Consideration of amendments from any member

- Debate on whether the Bill be passed

- Royal Assent, assuming there is no reference back to the Parliament
PROCEDURES COMMITTEE

Remit and Handling of Private Bills inquiry

Note by the Senior Assistant Clerk

Purpose

1. This paper invites the Committee to consider a range of issues in relation to the remit and handling of its inquiry on Private Bills.

Background

2. At its last meeting on 22 June, the Committee agreed that its next major inquiry would focus on the Parliament's procedure for Private Bills as set out in Chapter 9A of the Standing Orders. The committee further agreed that they wished to undertake a wide ranging inquiry which covered not only what improvements could be made to the procedures specified in Chapter 9A but which also considered whether Private Bills were the correct vehicle for taking forward public works.

3. A news release was issued on Monday 5 July launching the inquiry and inviting written evidence by Monday 27 September. A copy of the news release can be found on the Committee's website page.

Oral Evidence Session - Witnesses

4. A list of potential witnesses is set out below and Committee members’ views on the range of witnesses, and on when they wish to call witnesses, are invited.

5. It is suggested the Committee begin taking oral evidence at its next meeting on 26 October. Given that there is likely to be a number of other items on the agenda for that meeting it is suggested that only one witnesses, or one panel of witnesses, be taken at that meeting. Further, lengthier, oral evidence sessions could then be held at the Committee meetings on 9 and 23 November.

6. For example, the Committee could take evidence from a Scottish Executive Minister on 26 October and hear from Private Bill Committee Conveners and statutory bodies (i.e. statutory consultees in relation to certain planning applications) on 9 November. This could be followed by a further evidence session on 23 November, with witnesses chosen from those who submit written evidence – but including promoters and objectors, plus Parliamentary agents.

Scottish Executive
Patricia Ferguson, Minister for Parliamentary Business
Nicol Stephen, Minister for Transport
7. The Committee is also invited to consider whether it wishes to appoint an adviser to assist with the certain aspects of the inquiry. For example, if the Committee wished to pursue in detail options for taking “works” Bills outside the Parliament – including considering the relative merits of different models for how such an alternative system might work – it could be useful to have an adviser with experience of working with such a process (e.g. through local planning inquiries). On the other hand, such expertise could also be brought in through witnesses and/or fact-finding visits (see below). And if the Committee prefers to keep its inquiry at a more general level – i.e. leaving it to others to choose what model for a new system would be most appropriate – then such an adviser is unlikely to be necessary at all.

8. Members are reminded that quite a long lead-time is required for the appointment of an adviser. Committees are required to seek approval from the Conveners’ Group for authority to pay an adviser’s fees and expenses, and then to follow a procurement process – which includes the Committee choosing a suitable candidate (in private) at a meeting. There is therefore only any point in pursuing this if the adviser will not be needed in the early stages of the inquiry.

Fact-finding visit

9. Railways and tramlines have recently been given approval in a number of areas throughout the United Kingdom and also in Ireland. For example, new tram lines in Sheffield and Nottingham are being constructed, as is a series of new tram lines in Dublin. These works projects have been approved via different means. The local councils in Sheffield and Nottingham were granted the necessary powers via Transport and Works Act Orders (TWAOs). The councils then held public inquiries on the proposed routes.

10. In Ireland major public works were, until recently, given approval by the passage of primary legislation in the Oireachtais in much the same way that Private Bills currently pass through the Scottish Parliament. However in 2001, the Irish Parliament passed the Transport (Railway Infrastructure) Act which enabled the Minister for Public Enterprise to authorise, by order,
the construction, operation and maintenance of railways and to provide for
the on-street regulation of light railways. A visit to Dublin could be
combined with a visit to the Dail to learn about their procedures for dealing
with Private Bills (and about the issues raised during the passage of the
Bill for the 2001 Act).

11. The Committee is invited to consider whether it wishes to visit one or more
of these areas to learn about the process followed in each case and to
speak to the various groups involved. If the committee does wish to
pursue this option, then it is suggested that Dublin might be the preferred
location since it would be possible to learn about their relatively-recent
experience of working under the two different systems. Committee
members' views are invited.

12. Members are reminded that any fact-finding visit would need quite a long
lead-time to plan and arrange. Approval for the expenditure would need to
be sought through the Conveners’ Group (from a limited budget available
to all committees). For a visit to Dublin (because it is outside the UK),
approval from the Bureau would also be required (under Rule 12.10).

September 2004
LETTER FROM NATIONAL GALLERIES OF SCOTLAND

Thank you for your letter of 6 July regarding our experience of working with the Non-Executive Bills Unit. I apologise for not replying sooner, but you will appreciate that the few weeks before opening the new complex have necessarily been somewhat hectic.

You also wrote to Mr. Michael Clarke, the Project Director and, as he is about to have a sabbatical for the next couple of months, I am responding on his behalf as well.

Most of the work with the unit was carried out by myself and Mr Durkin at Rees and Freres and I feel that, over the two years of the process, we have become well acquainted with it. My main observation would relate to the length of time taken in the process before we could ever have any contact with the Bill committee themselves and the protracted nature of this element for what was a two line Bill and one which was not politically contentious. We felt that earlier contact with the MSPs involved would have expedited this process. Secondly, whilst we appreciate that the introduction of new and untested procedures was challenging for officials, there was a feeling of being guinea pigs and that the “learning process” would take as long as required but this did not take account of the real financial and time constraints under which we (and other promoters) were working. This point is reinforced by the numbers of staff involved. At almost every meeting, the NGS were only represented by Mr Durkin and myself, but usually faced with several officials. Hopefully this will have reduced with experience.

Further, whilst we can see that rigorous legal scrutiny may well be needed with some commercial works bills, as an NDPB developing in support of aims directed and funded by Scottish Ministers, the time and costs incurred seemed somewhat excessive and it may be that some abbreviated procedure may become possible for organisations such as the NGS in future.

Lastly, at the early hearing stages, we were disappointed to find that the Clerks were effectively soliciting objections to a non-contentious proposal. While this may have been to “test” the new procedures or simply to make the process more interesting for the media, it was galling to find this having spent a considerable time over the preceding years in working with these heritage and amenity groups to ensure the acceptability of our proposals.

Should you wish to discuss these matters further, or have any additional questions, I would be happy to assist.

Scott A Robertson
Project Advisor NGS
26 August 2004
LETTER FROM KINCARDINE RAILWAY CONCERN GROUP

I refer to your letter of 5 July and reply as follows.

The following comments are my own and, if required, you may publish the contents of this letter.

My involvement in the process of the private bill was to consolidate the argument, for the residents of Ochilview, against the Bill, which, if passed, would allow a number of large freight trains to run along the extended railway line from Stirling to Longannet Power Station, and possibly beyond.

Whilst I found the process to be interesting, it did involve a great deal of time in putting together written evidence which was required to be produced to the Committee. We had put forward our objections initially in written form and the written evidence was a repeat of what had already been submitted; I could only elaborate on the same points.

It was fortunate that I had recently retired and could spend a fair bit of time at the exercise. Other members of the Group have full-time positions and could not possibly have attended the public meetings without taking time off work and losing either holiday entitlement or time off without reimbursement.

Whilst we felt that the Committee were doing their best to hear all the complex legislative details of the Bill, the ordinary layman, I am sure, felt very much out of his/her depth. The whole experience of having to put forward a sensible articulate argument to the Committee was very daunting.

The overall feeling of the process is that a great of deal of time and money was utilised in bringing about decisions that gave no consolation to any of the objectors along the whole route from Stirling to Kincardine. If even one objection had been upheld maybe the whole procedure would have felt to have been worthwhile.

Meanwhile, we have to live with the impending consequences.

Isabel Marshall
Kincardine Railway Concern Group
8 September 2004

LETTER FROM ALISON J BOURNE

I understand that the Scottish Parliament’s Procedures Committee has called for interested persons to submit written evidence in relation to Private Bills procedures. As a person who is currently involved in such procedures, being an objector to the Edinburgh Tram Line 1 Private Bill, I would like to take this opportunity to comment.
To date, my experience of the Private Bills procedures has tended to be one of frustration and anxiety. From the start, trying to lodge an objection proved difficult, especially when seeking to object to the Whole Bill. There is a requirement that an objector to the Whole Bill must demonstrate how that they are personally adversely affected. It is not acceptable to state that one is simply against the principle of a Private Bill, even though this is a reasonable stance to take. Surely it is reasonable to have a view that trams are wrong for Edinburgh or are a gross waste of public funds? For example, objecting to the principle of the Waverley Railway Line, wind farm projects or smoking in public spaces is surely a valid stance to take, if that is one’s view.

The current Private Bills procedures do not allow an objector to simply state this as a reason for objecting to the Whole Bill and require that one demonstrate how one is personally adversely affected. However, it would be acceptable for a Public Inquiry. This is a major failing of the current Private Bills procedures.

For the Edinburgh Tram Line 1 Private Bill, the Private Bills Unit (PBU) eventually accepted my objection to the Whole Bill after I stated that I considered the expenditure of public funds, to which I contributed as an Income Tax payer, was unacceptable. In addition, I objected on the basis that the scheme is likely to require additional funds, most likely to come from Council Tax, of which I am also a payer. However, what if a person is not an Income Tax payer and is exempt from Council Tax? Why should they not be permitted to object to the Whole Bill, if they are against the principle of a proposal?

The process of lodging an objection can take some time, as the PBU will advise if an objection is not acceptable but is unable to advise on what reasons it would be valid. As there is little guidance available, it can be daunting and frustrating to potential objectors and some are likely to give up. The requirement to have to specify particular aspects of the Bill is difficult and can lead to an objection being dismissed on a simple technicality. In addition, if people are not fully aware of the need to demonstrate personal impact, they can submit an objection, towards the end of the objection period, only to have it ruled inadmissible with no time to amend it.

The current Private Bills procedures are more likely to restrict the number of objections to the Whole Bill. In addition, the PBU vet the objections first and decide if they are to be allowed or not. This is unfair and undemocratic – all objections should be accepted and then heard by the Committee.

Objections to the Detail of a Bill are mostly from those persons who are directly affected by part of the proposals, such as frontagers. The majority of these objectors are automatically labelled as “NIMBY” by the Promoter, which is unfair.

There is then the situation that a Private Bill will tend to have a few objections to the Whole Bill and significantly more objections to the Details of the Bill. This automatically gives the impression that the principle of the proposal is generally acceptable, as there are fewer objections, and it is simply a case of resolving some detailed aspects of the proposal. However, this can be a serious distortion of the facts. It is possible that there are many objectors who are opposed to the principle of the proposal but their objections to the Whole Bill have not been allowed because
they failed to demonstrate how they were personally affected. It is also likely that there are objections that were rejected by the PBU, which are not being considered.

In addition, as the majority of objections to the Details of the Bill will be labelled as “NIMBY”, there will be the suspicion that they will not be given the full consideration that they should. This will give the impression that the Private Bills procedures are weighted in favour of the Promoter.

The requirement to have to provide a £20 fee for lodging an objection is unacceptable. This requirement severely penalises those persons on low incomes, who may wish to object and have valid reason to do but simply cannot afford the fee. The proposed alignment of Tram Line 1 runs through the North Edinburgh SIP area, which covers some of the City’s most deprived housing estates. With high unemployment levels and low incomes, many residents in this area cannot afford to pay £20 as part of an objection and there is the danger, therefore, that the Parliamentary procedures are actually social exclusive and are denying some citizens of their democratic right to object. There is no such requirement for the Public Inquiry process.

I understand that once the process has commenced, even though the PBU may have vetted the objections, the Parliamentary Committee will subsequently assess the objections in detail and rule whether or not they are valid. This means that objectors have no guarantee that their concerns will be heard. This conflicts with the Public Inquiry process, where unresolved objections are automatically heard.

In addition, I understand that the Parliamentary Committee can call whomsoever it wishes and that it is not automatic that an objector will have the opportunity to be heard. This questions the democratic right of an individual to be able to put forward their concerns and also question the Promoter’s evidence. Again, this conflicts with the Public Inquiry process, where an objector has the right to be heard, if they wish.

I understand that the Committee can group objections and invite a representative to present them. This seems to be simple a timesaving procedure. Whilst there is logic if lots of similar objections are grouped, having one representative presenting them does take away from the impact that a number of objectors would make. The process gives the impression that all similar objections are not being treated fairly. There is also an issue with regard to the selected representative. This person may not fully address all the concerns of some of the other objectors but simply give their own viewpoint. There may be some aspects with which other objectors disagree. Timesaving should not be a legitimate reason for preventing each individual from being permitted to state their case, even if there are similarities with others. Again, this conflicts with the Public Inquiry process, where an objector has the right to be heard, if they wish.

I understand that it is up to the Committee to decide if it should invite objectors to be able to question the Promoter in person. This raises serious concern if an objector is not invited and is denied the opportunity to cross-examine the Promoter’s supporting evidence. This is of particular concern to me. I am of the opinion that some of the statements made by the Promoter, in respect of the Edinburgh Tram Line 1 Private Bill, are misleading and I wish to have the opportunity to question this evidence. I am concerned that the Private Bills procedures favour the Promoter as there is no
guarantee that (all) objectors will be afforded this opportunity. Again, this conflicts
with the Public Inquiry process, where an objector has the right to be able to
question the Promoter, if they wish.

I am of the view that the Private Bills procedures automatically assume that the
Promoter “is right”, i.e. that the proposal is a sound one and that the Promoter has
behaved with integrity and has followed properly all procedures in order to present
the Bill in a balanced and thoroughly investigated manner. It may be a cynical
viewpoint, but I strongly believe, in this day and age, it is highly unrealistic to
automatically make this assumption. The public has recently seen, during the
Holyrood Inquiry, what highly dishonourable behaviour can take place amongst
officials and the extent of financial damage, which can be caused by officials
providing misleading information regarding costs. In light of this, it seems only
prudent that, from here on, all major proposals be investigated by Parliament in a
thorough and comprehensive way in order to ensure a sensible conclusion and this
means ensuring that all objectors are given the opportunity to be heard.

I appreciate that the Private Bills procedures are based on old legislation, which
requires to be modernised. Whilst there is an issue with the time it takes to process
Private Bills, these should not be fast-tracked at the expensive of the individual to be
allowed to speak. Procedures should be updated so that all citizens can voice their
concerns, whatever they may be, without having to comply with strict adherence
tests and without having to pay a fee. It seems that something similar to Public
Hearing procedures would be more democratic.

I trust the above is acceptable and would respectively request that the points raised
be taken into account.

Alison J Bourne
15 September 2004

LETTER FROM TOM ADAM

Stirling-Alloa-Kincardine Railway Private Bill

I presented a case for re-routing a heavy freight line to bypass Clackmannan Town.

These views on the procedures adopted by the Private Bills Unit are of necessity my
own.

The reason for this is that although 235 Clackmannan residents submitted objections
to the proposed route of the proposed freight line, because of the grouping
procedure coupled with the requirement for a £20 fee from every objector, meant
that all these objections were lumped together and considered to be a single
objection. It follows therefore that nearly all of these objectors were effectively
disenfranchised.
Although I can appreciate the need to filter out the frivolous, it appears to be totally undemocratic to have to pay a substantial sum of money for the privilege of lodging an objection to a project that will affect your quality of life.

Unless objectors paid the fee they were denied any notification of meetings or correspondence relating to the project.

Some method of refunding their £20 to genuine objectors should be found in order to encourage maximum participation in the procedure.

The procedure for giving oral evidence and cross-examination of the promoters’ witnesses was very good and the Private Bills Committee were very fair and even handed in their approach to hearing the evidence.

The fact that the PBC heard evidence locally was much appreciated, although the security arrangements were daunting. Individuals having to book seats through Edinburgh, was both unnecessary and off-putting for many, and certainly reduced the level of local participation.

The requirement for all evidence to be submitted in writing, even down to what the witnesses might want to say in oral examination, with the caveat that repetition of evidence would not be tolerated, greatly limited spontaneity from witnesses at the hearing especially when questioning had to be based on the written submissions.

The time scale for written submissions were sometimes unrealistic for lay representatives and witnesses who are in employment and who’s free time is limited, also the lines of communication to and from the PB office were on occasion very poor.

I felt it was ludicrous to allow the transport minister to give evidence to the committee. He is effectively their boss and was saying that this project was the best thing since “sliced bread” and that he would brook no delays in its completion. His evidence must have had an unfair influence on the committee’s final decision.

This culture of “we know best” among politicians does not comfortably lend itself to this procedure.

Not only that, the Minister had four bites at the cherry,

1. He spoke on behalf of the promoter at the preliminary stage hearing
2. He addressed Parliament at the passing of the preliminary stage
3. He appeared as a witness for the promoter at the consideration stage hearing
4. He addressed the Parliament prior to the final vote being taken on the proposal.

A fundamental flaw of the procedure is that the committee themselves had a vested interest in the outcome of the enquiry, which in my opinion manifested itself in the committee rejecting every objection to the proposal, with the result that the original proposal remained as it was prior to the enquiry taking place.
This of course led to dissatisfaction on the part of the objectors who felt that the whole procedure had been a farce, and that the outcome had been predetermined by the policy of the executive.

I hold the view that all the evidence both written and verbal should be considered by an independent body/person who should then report back to the executive before a final decision is taken.

This would support the transparency and democratic principle embodied in the procedure.

In my opinion the process is very good on paper and should be retained, but some restraint must be placed on the politicians if the credibility of the procedure is to be preserved.

The Clackmannan objectors perception, rightly or wrongly, of the SAK bill as far as I can ascertain, is that the whole object of the exercise was a pointless waste of time and money, because the Private Bills Committee listened but did not hear, the concerns of the people they were elected to represent.

Tom Adam
Chairman, Clackmannan Railway Concern Group
17 September 2004

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Thank you for your letter of 13 July 2004 offering Scottish Natural Heritage (SNH) the opportunity to offer views on the Scottish Parliament's Private Bills' Procedures.

SNH's detailed comments are contained in Appendix I to this letter. The essence of what we are looking for can, however, be summarised as follows:

- the Private Bills' Procedures should take fully into account the interests of Scotland's natural heritage;
- the Private Bills' Procedures should take fully into account national and European legislation aimed at protecting Scotland's natural heritage, and other aspects of the environment; and,
- where the Private Bills' Procedures do provide means by which the natural heritage of Scotland can be taken into account, along with the legislation aimed at protecting this heritage, these means should be the most efficient and effective means possible.

As we explain, the present Private Bills' Procedures fail to measure up to these requirements in a number of important respects. They are, moreover, very complex.

In order to avoid confusion, SNH's comments address only those aspects of the Procedures which touch on the protection and enhancement of the natural heritage
and of which SNH has gained some experience through our involvement in the Private Bills for tramways proposed for Edinburgh and the re-opening of the railway lines between Stirling and Alloa and Edinburgh and Galashiels. SNH's comments, therefore, relate to Private Works Bills to enable large-scale infrastructure or large-scale development that otherwise would be subject to the requirement for planning permission as well as other permissions and consents before development could begin, not to other possible categories of Private Bill.

John Thomson
Director Strategy & Operations (West), SNH
22 September 2004

Evidence by Scottish Natural Heritage (SNH) on Private Bill Procedures

1. Introduction

1.1 The function of SNH as Scotland’s statutory adviser on the natural heritage was established by the Natural Heritage (Scotland) Act 1991 which set forth the general aims and purposes of SNH as:

“(a) to secure the conservation and enhancement of: and
(b) to foster understanding and facilitate the enjoyment of,

the natural heritage of Scotland; and SNH shall have regard to the desirability of securing that anything done, whether by SNH or any other person, in relation to the natural heritage of Scotland is undertaken in a manner which is sustainable” (Section 1.(1))

The natural heritage is stated in the Act to include:

“the flora and fauna of Scotland, its geological and physiographical features, its natural beauty and amenity” (Section 1(3)).

1.2 In order that SNH fulfils these purposes and accordingly to take into account the natural heritage in decision making processes which could affect it (whether positively and negatively), SNH has been given a statutory role in responding to national planning policy consultations, to emerging development plans, to planning applications and, in general, to development control. The principal pieces of legislation, primary and secondary, that create and regulate the duty to consult SNH are found in:

- The Town and Country Planning (Scotland) Act 1997; (“the Planning Act”)
- The General Development (Procedure) (Scotland) Order 1992 (“the GDPO”);
- The General Permitted Development (Scotland) Order 1992 (“the GPDO”)
- The Environmental Impact Assessment (Scotland) Regulations 1999; (“the EIA Regulations”)
• The Conservation (Natural Habitats, Etc) Regulations 1994 (“the Habitats Regulations”)

In broad outline, the purpose of this legislation is to ensure that, prior to any decision being taken to enable development to proceed, all potential impacts on the natural heritage are identified and assessed and that the advice of SNH is available to the decision maker. This procedure would allow modifications to the proposals which might avoid, reduce or mitigate against adverse impacts and in certain cases compensate for them. In certain instances there are further requirements of the decision maker should the intended decision be contrary to the advice of SNH.

1.3 The Private Bills Procedure is very different from that of a planning application (or similar proposal such as under the Electricity Act 1989). It is highly complex, it is a process that is still developing and SNH is unaware of any guidance beyond that of the Scottish Parliament’s Guidance on Private Bills updated in March 2004 (“the Guidance”). The concerns of SNH as expressed in this submission are based on certain assumptions and understandings of the complex legalities involved and SNH does not exclude the possibility that some concerns might be allayed by a more complete understanding on its part of this emerging procedure.

2. The Private Bills Procedure

2.1 A Private Bill is introduced for the purpose of obtaining for the promoter, powers or benefits in excess of or in conflict with the general law. It appears that the procedure is currently being used primarily, if not exclusively, for major transport projects. The procedures are considered appropriate, not because of the absence of statutory remedies by other means, but because of the variety and complexity of the required permissions. In the absence of the Private Bills Procedure, such permissions would include compulsory purchase of substantial areas of land, planning permissions (possibly from more than one planning authority), variations and terminations of a variety of land interests, including rights of way, avoidance of legal nuisances and so forth. It is in the context of such large scale Private Works that this submission is made. By their very nature, these complex works have the potential for natural heritage consequences of greater significance than many planning applications.

2.2 In the absence of the Private Bills procedure, the principal consent required with implications for the natural heritage is that of planning permission. As prefaced in paragraph 1.2 that procedure secures the involvement of SNH (and other statutory consultees) in terms of such as:

• Article 15 of the GDPO;
• Regulation 14 of the EIA Regulations;
• The provisions of Part IV of the Habitats Regulations.

This would ensure that environmental impacts were addressed from project inception to final design prior to any consent being granted, and if consent was granted, to the monitoring of residual impacts and ensuring that
conditions imposed on the grant of consent and / or legal agreements were appropriately framed. In particular, where a European Site is involved, the Habitats Regulations (Regs 48-53) impose strict controls with helpful explanatory guidance including flowcharts contained in Circular 6 / 1995 (Revised 2000). The Private Bills Procedure however is, so it seems to SNH, substantively different.

2.3 The concern of SNH is that the procedures may not allow for the timely identification of potential harm to the natural heritage and opportunity for modifications to avoid harm before the Bill is enacted. It is recognised that the role of the Parliament is that of legislating, but Private Bills are advanced in the private interests of the promoter, thereby calling for procedures that are both Parliamentary and quasi judicial in character. The elements of the procedure which are parallel to the regime briefly described in paragraph 2.2 in a planning application appear to SNH to be these:

2.3.1 Works authorised by an Act of the Scottish Parliament ("ASP") are permitted development (Article 3 and Class 29 of Part 11 of Schedule 1 to the GDPO). Development authorised by an ASP is not permitted if (broadly) it relates to a building operation unless the prior approval of the planning authority in respect of the detailed plans and specifications is first obtained.

2.3.2 Regulation 47 of the EIA Regulations inserts into Article 3 of the GDPO provisions which would appear to apply certain requirements of environmental impact assessment, failing which any development is not permitted. However, development authorised in terms of Class 29 (1)(a) and (b) of Part 11 (and that includes an ASP) is excluded by Article 1.5 of the EIA directive which disapplies it to projects, the details of which are adopted by a specific act of national legislation. Accordingly, in general, the GDPO is amended to ensure that EIA takes place in the unlikely event that any development, otherwise permitted, falls within Schedule 1 or Schedule 2 to the EIA Regulations but the type of permitted development authorised by an ASP would appear to be outwith the EIA procedure. A Bill for Private Works of the nature with which SNH is concerned is to be accompanied by an environmental statement (an "ES") containing all of the information set out in Schedule 4 to the EIA Regulations (Annex N of the Guidance).

2.3.3 A grant of permitted development rights in terms of Article 3 of the GDPO is subject to Regulations 60-63 of the Habitats Regulations. These are relevant to development that is permitted as opposed to the subject of a planning application. The procedure is that a party intending to rely on such permitted development rights may ask SNH for its opinion on whether the development is likely to have a significant effect on a European site not directly linked to its conservation management. The "local planning authority" is entitled, having obtained the opinion of SNH, to approve the development only after having ascertained that it will not affect the integrity of the site.

3. Issues
3.1 Absence of Formal Consultation

As identified in paragraph 2.2, SNH is entitled in the case of a planning application to be statutorily consulted in appropriate cases under the GDPO, the EIA Regulations and the Habitats Regulations. In sharp contrast, although the Private Bills procedure requires public advertisement (Annex H to the Guidance) and notification for those with an interest in heritable property (Annex G of the Guidance) there is no requirement upon the promoter of the Bill or the Scottish Parliament as the decision maker to consult SNH (or the other statutory consultees for environmental matters). Accordingly, SNH will become aware of a Private Bill only if a member of staff notes a press advertisement or visits the website of the Scottish Parliament. This is a procedure highly susceptible to administrative oversight which could result in an inadequate timescale for SNH to provide its opinion or worse, to a proposal being wholly overlooked. Accordingly, this procedure could prevent the proper identification and assessment of the impacts upon the natural heritage with consequences for its protection and the quality of the wider environment. It may also have consequences for development of the project through delays or unforeseen costs. Further, it should be noted that, strictly, the only method by which SNH could draw to the attention of the Private Bill Committee the natural heritage interest of a site is by “registering an objection”, even although the position of SNH may be that of support for the principle of the proposal.

3.2 “Prior Approval”

Reference is made in paragraph 2.3.1 to the necessity for prior approval of the planning authority to ensure that the works qualify as permitted development. However, this appears to provide to the authority a limited control usually restricted to discussions about minor elements of design. Further, we are uncertain about the form of application for such approval, let alone the procedure adopted (including any consideration of environmental issues) by the planning authority. We are unaware of any guidance on this subject. SNH is concerned that with large scale projects potential impacts may also be large scale and the requirement for prior approval is insufficient to identify and remedy these. To remedy impacts may necessitate substantial alterations to the design of the project, for example the partial re-routing of a railway line or significant changes to working methods. This is linked to the questions of the absence of statutory consultation and the quality of the environmental information (see paragraphs 3.1 and 3.3). It should also be recorded that this is one of the areas in which the identity of the project promoter and the planning / local authority may be identical.

3.3 EIA and Related Issues

In paragraph 2.3.2 we referred to the disapplication by the EIA directive of the EIA Regulations for an ASP and given the terms of Paragraph 160 of Circular 15/1999, in the comments that follow SNH has made the assumption that the Private Bills procedure is not subject to environmental impact assessment but is limited to the production of an ES. We consider elsewhere the form of
assessment that may be required by the Habitats Regulations. Thus, the matters that concern SNH in connection with EIA are relevant here, even if no European site is involved.

3.3.1 The absence of the EIA procedure means that there are no consultative procedures drawn from Regulation 14 of the EIA Regulations, increasing the risk of administrative oversight.

3.3.2 An ES in isolation is very different from the process of environmental impact assessment. The latter is the whole process of collecting and analysing environmental information, including the advice and recommendations of statutory consultees such as SNH regarding modifications necessary to protect the environment. The EIA process and the development of the proposals are intended to be linked and iterative. If the EIA identifies an aspect of the project that is harmful, it can be abandoned, changed or modified. By contrast, the ES is a written report on the state of the environment at its production date and how this may be affected by the development, what impact may arise, how significant it is and how it will be avoided, reduced or mitigated.

3.3.3 The absence of a formal statutory EIA process bears upon concerns about the quality and quantity of information within the environmental statement. The experience of SNH to date would suggest that the level of information accompanying a Private Bill is insufficient to assess properly the range and level of potential impacts on the environment. For example, from the information provided with a Bill to open a railway line, it may be possible to deduce that all trees on the line of the railway will be removed. Without information on the working area for machinery used to re-profile embankments, it is not possible to calculate the extent of the area on one or both sides of the line where trees need removed or will be irreparably damaged; nor is it possible to identify the whereabouts and significance of damage to groundwater systems. SNH recognises that providing detailed information on a project comes at considerable cost to the promoter, but such information nevertheless is necessary to assess properly the environmental impact. The challenge to promoters and statutory agencies alike is to agree the level of information in each case. The procedures developed for taking forward proposed projects through the planning system allow for this to happen.

In June 2002, the Scottish Executive Development Department issued to all Heads of Planning guidance on the EIA directive, the minimum requirements of the EIA Regulations and outline planning applications. This guidance stressed the necessity of planning authorities obtaining sufficient information on outline applications in order to screen them properly and evaluate impacts to the environment. The guidance note referred to certain relevant Court cases including *R.v Rochdale MBC ex parte Milne (2000)*. With reference to that case the guidance states:

> “the Judge emphasised that the directive and regulations required the permission to be granted in the full knowledge of the likely significant
effects on the environment. This did not mean that developers would have no flexibility in developing a scheme. Such flexibility would have to be properly assessed and taken into account prior to granting outline planning permission. He also commented that the EIS need not contain information about every single environmental effect. The directive refers only to those that are likely and significant. To ensure it complied with the directive, the authority would have to ensure that these were assessed before it could grant planning permission”.

Although Private Bills appear to be exempt from the EIA directive, the view of SNH is that this judgement can be taken as a measure of the importance of ensuring the impacts of the development are fully understood prior to a decision. To understand the likely and significant impacts, it is necessary to have appropriate detail on the proposed development relative to its construction, operations and (possibly) maintenance. A statutory process for consultation, involving screening and scoping, with SNH (and no doubt SEPA, HS and other agencies) would assist the promoter of a Private Bill to identify those aspects of the development that need to be presented in detail as well as the likely significant impacts that require investigation.

3.4 Guidance

As already mentioned (para 1.3), the current procedure is complicated and in certain respects it is possible that SNH may be misunderstanding it. It is likely that other parties, and possibly even promoters, experience difficulty. SNH believes that the procedure for Private Bills would benefit from simplification, especially when they are inextricably linked to other complex procedures such as the GPDO, the EIA Regulations and the Habitats Regulations. An example was experienced by SNH in regard to a Private Bill for a railway line where footnote 10 of the promoter’s Supplementary Memorandum states:

“The responsibility arises by virtue of Article 3 of the Council Directive 92/43.EEC (“Habitats Directive”). This is directly applicable to the Scottish Parliament. The Conservation (Natural Habitats Etc) Regulations 1994 (“Habitats Regulations”) do not apply to the private bill process but for convenience the terminology of the Habitats Regulations has been adopted and it has been assumed that the basis of assessment will be in accordance with the Habitats Regulations”.

The interpretation of SNH is that the relevant “Article 3” is Article 3 of the GPDO (see para 2.3.1) and thereby grants permitted development rights for development authorised by an ASP. However, Article 3 states that such permitted development rights are “subject to Regulations 60-63 of the Habitats Regulations”, an interpretation which the parliamentary agents for the promoter do not appear to share despite the terms of Paragraphs 47-49 of Circular 6/1995 (Revised 2000).

3.5 The Habitats Regulations

In paragraph 2.3.3, we referred to the grant of permitted development rights subject to Regulations 60-63 of the Habitats Regulations. If, despite
confusion (see Para 3.4) SNH is correct in its interpretation, consideration is required to the operation of the Habitats Regulations in the Private Bills procedure, particularly in matters of timing. The purpose of Regulations 60-63 is that of ensuring that any permission granted by the GPDO does not breach the Habitats Directive, whether for site-based measures or for species protection. Guidance highlights the need for compliance with the aims of the directive prior to any decision being made (see e.g. “European Protected Species, Development Sites and the Planning System: Interim Guidance for Local Authorities and Licence Arrangements”). The Circular already mentioned contains at Appendix C of Annex E a flowchart of the process that developers should follow in respect of Regulations 60-63. In essence, a proposal likely to have a significant effect on a European site will, at either the request of the developer or the local planning authority, depending upon circumstances, be submitted to SNH for its opinion. If SNH concludes that the proposal is likely to have such an effect, the planning authority must carry out an appropriate assessment of the implications for the development in view of the conservation objectives of the site. If the conclusion of that assessment is in the negative, no planning application is required presuming the proposal meets all permitted development criteria. If the reverse applies, the planning authority cannot approve the development which is therefore not permitted as required by the GPDO. With that brief background, we turn now to certain specific matters:

3.5.1 Regulation 60 has the effect of imposing on the permission for the proposal conferred by the GPDO a condition preventing development being started prior to the written approval of the planning authority. The promoter of the Bill has no statutory obligation to take any action which would lead (in relevant cases) to an appropriate assessment for the purposes of the Habitats Regulations. The promoter provides only an ES (legally separate from an appropriate assessment and in respect of which our comments appear in Paragraph 3.3), obtains the Royal Assent to the Bill and thereby inter alia obtains permitted development rights subject to the Habitats Regulations. At a later stage when convenient, the developer with all the authority conferred by the ASP, can then turn his mind to obtaining the approval under Regulation 60. In that respect, the ASP may have provided that, for the purposes of the Habitats Regulations, the competent authority is the Scottish Parliament. This may eliminate any further involvement of the local planning authority although SNH does note that, in contrast to Regulations 48-53, all references in Regulations 60-63 are to the “local planning authority” as opposed to the competent authority.

3.5.2 If the procedure allows the promoter to defer action under the Habitats Regulations until after the Bill becomes an ASP, SNH could find itself advising Scottish Ministers that no written approval of the local planning authority (or Scottish Ministers) should be given for a project where an ASP provides all other necessary consents after substantial expense, public involvement and publicity. This would be highly unfortunate. Even if the advice of SNH fell short of outright objection and was to the effect that modifications to the proposal might enable it to comply with the Habitats Regulations, such modifications might be
beyond the ambit of the ASP; in that event, further legislation might be required with the attendant costs, including those caused by delay.

3.5.3 It may be said that it is open to the promoters to invoke the procedures of Regulations 60-63 prior to the Bill being enacted and that the production of an ES will provide the appropriate level of detail, initially for SNH to offer its opinion and subsequently for the decision maker to make the appropriate assessment and reach a conclusion. However, the decision maker prior to enactment is the local planning authority and SNH has no experience yet of being asked for its opinion either by the developer under Regulation 61(2) or by the local planning authority under Regulation 62(4). This is linked also to previous points (para 3.3.3) regarding the quality and quantity of the information in the ES, a matter mentioned also in paragraph 3.6.

3.6 Conditions Etc

3.6.1 The ASP may identify (but only in general terms) conditions that need to be fulfilled by the developer when the details of the project are worked up, when contracts are in place and so forth. This raises two issues, namely:

(i) whether prior to enactment the Bill provides enough information to identify all relevant conditions; and

(ii) the method of enforcement and the identity of the enforcer.

A means used to date has been a legal agreement among the promoter, SNH and SEPA requiring them to work together to identify possible significant impacts as the detailed design of the project progresses and to identify and implement proposals to avoid or mitigate such impacts, including by modification of the proposal. This begs the question again about the adequacy of the information prior to enactment as such modifications may be outwith the scope of the ASP and, in any event, agreement among these parties could not be guaranteed as new information was gathered.

3.6.2 There are also certain difficulties with agreements under Section 75 of the Planning Act. Such agreements require to be between a planning authority and a person with an interest sufficient to bind the land. SNH is neither. Until the promoter acquires following the ASP, the promoter may not own the land either. SNH is primarily an advisory agency and must be cautious about adopting a regulatory role. Further, the identification and assessment of impacts to the natural heritage after a decision is made and the agreement regarding measures by which such impact could be avoided or mitigated will be much more time consuming and expensive than conducting such an exercise (as is normal under the planning regime) as an integral part of the decision making process; it must be asked whether this is an appropriate way for the resources of a publicly funded agency like SNH to be used.
Summary of SNH’s Concerns

SNH is concerned at:

1. The absence of guidance on the complex procedures for processing a Private Bill, including the relationship between the Private Bill procedure, planning law and the Habitats Regulations. An explanatory memorandum produced by the promoter, no matter how well intentioned, does not fulfil that role.

2. The absence of a formal statutory consultation of SNH, SEPA and Historic Scotland.

3. The substitution of an ES for an EIA process leading to enhanced risks of inadequate information / consultation.

4. The compounding of the risks at 3 where the Habitats Regulations are involved.

5. The prospect of the Habitats Regulations being applied after enactment.

6. Enforcement difficulties caused by the concerns expressed at 3, 4 and 5, the more likely if the ASP does not deal in sufficient detail with conditions.

7. The potential for legal challenges in circumstances where the local authority could also be any one or more of the following, namely: the promoter, the local planning authority, the competent authority, a party owning some of the land, the ultimate developer.
PROCEDURES COMMITTEE

Inquiry on Timescales and Stages of Bills

Note by the Clerk

1. The Committee made a series of decisions in principle in relation to the above inquiry (at the 11th Meeting on 22 June). Since then, clerks and lawyers have been considering how these decisions can best be translated into Rule-changes.

2. The purpose of this note is to invite the Committee to consider further a few of the decisions made in June and to decide in more detail how it wishes the decision implemented. In some cases, all that is necessary is to note a brief explanation of how the decision has been implemented and why. In one instance, the Committee is invited to re-consider to some extent the earlier decision where it does not appear practical to implement the decision as it stands.

3. Those decisions not mentioned in this note can be assumed to be unproblematic, and they are reflected without further comment in the draft Report and draft Rule-changes.

Publication of committee reports

4. The Committee decided there should be a Rule requiring 5 sitting days (i.e. a week) between publication of a Stage 1 Report and the Stage 1 debate.

5. Committee reports are (almost invariably) published first thing in the morning (though they may occasionally be embargoed to a later time, e.g. to coincide with a press conference). For the purposes of the Rule-change, it has been assumed that the day of publication counts as one of the days that members have to read the report. The suggested Rule-change therefore allows a report to be published (first thing) on a Thursday, with the Stage 1 debate taking place the following Thursday (either morning or afternoon).

6. The drafting is also intended to reflect the practical reality – namely that the date of the Stage 1 debate is likely to be established some time before the publication date of the Report is known. The debate date will be formally fixed at least a fortnight in advance (in a business programme) in most cases – but in reality it is likely to be provisionally decided earlier still, as part of the Executive’s forward planning of legislation. As a result, the effect of this new minimum interval is to require lead committees to count back from the debate-date to establish the last day it can publish its Report.

7. The drafting also aims to avoid any failure by the committee (or the clerks) to hit the publication-deadline – which could be because of factors outside their control – leading to a requirement on the Parliament to re-arrange the business programme (by Bureau motion) at short notice (or suspend a Rule to avoid having to do so). The new Rule therefore allows the Stage 1 debate to
go ahead on the planned day even if the Report has not been published a week ahead – but only if the Parliament makes a specific decision to do so.

8. If the Committee is generally content with this approach, it should choose whether that motion (to allow the debate to go ahead as planned) should be capable of being moved:

- only by the member in charge of the Bill;
- also by any Bureau member; or
- by any MSP.

**Minimum interval between Stages 1 and 2**

9. The Committee agreed in June that this interval should be increased from 7 days to 8.

10. The existing Rule is drafted so that the minimum interval requires 7 sitting days to elapse between the day on which Stage 1 ends and the day on which Stage 2 begins. The current interval was intended to reflect the normal sitting pattern of the Parliament – i.e. committee meetings on Tuesdays and Wednesdays, Chamber meetings on Wednesdays and Thursdays. It allows Stage 2 to begin on either the Tuesday or Wednesday of the next-following week after the Stage 1 debate, regardless of whether that debate was on a Wednesday or Thursday – always assuming that all intervening weekdays are sitting days (i.e. don’t include public holidays etc. when the office of the Clerk is closed).

11. Increasing this interval by only 1 day to 8 sitting days between creates anomalies. If Stage 1 is on Wednesday, the Rule-change is unlikely to make any practical difference – in normal circumstances, the Stage 2 committee would still be able to hold its first Stage 2 meeting on either Tuesday or Wednesday of the next-following week. But if Stage 1 is on the Thursday, it allows a first Stage 2 meeting only on the Wednesday of the next-following week and not on the Tuesday. For a Stage 2 committee that always meets on a Tuesday, this is likely to mean a whole extra week’s interval before Stage 2 can begin.

12. The likely upshot is that, with any Bill the Bureau was keen to see make rapid progress, the Stage 1 debate would be scheduled for a Wednesday wherever possible, to allow Stage 2 to begin (as at present) during the next-following week. Where that was not possible, there might be pressure to refer the Bill to a committee that meets on a Wednesday rather than one that meets on a Tuesday – even if the Tuesday committee was otherwise better-placed to deal with the Bill. Alternatively, there could be pressure on a committee to re-arrange a meeting from a Tuesday to a Wednesday (although this is unlikely to be practicable at short notice, given that members are likely to have conflicting commitments on that day) – or to suspend the new Rule.
13. If the Committee’s intention is to increase the minimum interval consistently across Bills and committees, it may wish to re-consider its earlier decisions. Options are:

- to increase the interval from 7 to 12 sitting days. This would add in a whole additional week (i.e. 5 sitting days) between Stages 1 and 2;

- to increase the interval from 7 to 11 sitting days. As above, but with some useful extra flexibility - for example, whether the Stage 1 debate was on Wednesday or Thursday, this would enable the first Stage 2 meeting to be held on the Monday of the 3rd week afterwards, or would allow it to be held on the Tuesday of that week even where one of the intervening weekdays had been a non-sitting day;

- to leave the minimum interval unchanged at 7 sitting days.

14. The Committee is invited to choose between the above options.

**Single lodging-deadline etc. for Stage 2 meetings in same week**

15. The Committee agreed that there should be a single lodging-deadline, single Marshalled List and single groupings for all committee meetings in the one week which include Stage 2 proceedings.

16. The Committee should note that the relevant Rule-changes have not been drafted so that two (or more) meetings of a committee are counted as a single committee meeting. This is to preserve the existing, very useful convention that committee meetings on different days are numbered and recorded separately in the Minutes and the Official Report. Instead, the Rule-changes allow a committee that is holding two meetings in one week (e.g. Tuesday and Wednesday) to use the same Marshalled List and groupings on both days, with the relevant item on the Wednesday agenda recorded as a continuation of the item from the Tuesday agenda.

17. Two options are set out in the draft Rule-changes. The first (Option A) delivers exactly the policy agreed by the Committee in June. In this option, it is assumed that weeks mean calendar weeks – Monday to Friday. This option certainly covers the most likely situation – a committee meeting both on the Tuesday and Wednesday of the same week – and has the benefit of simplicity. However, it would also allow Stage 2 consideration begun on a Monday to be continued on the Friday of the same week with the same Marshalled List and groupings – even though Stage 2 consideration begun on a Friday could not be so continued the following Monday.

18. Although this scenario is presumably unlikely, it is arguably not a situation in which it would be appropriate to continue Stage 2 without a new lodging-deadline. The purpose of the Rule-change was to deal with situations where Stage 2 meetings are so close together that the lodging-deadline for a later meeting has expired before an earlier meeting has taken place. But this would not be true in a Monday-Friday situation, where (with the new 3-day
notice-period agreed by the Committee) the lodging-deadline for the Friday would fall at 2 pm on Tuesday.

19. To take account of this factor, the Committee may prefer **Option B**, which restricts the ability of committees to continue Stage 2 items from one day to another only in circumstances where both (or all) the days in question are no more than 2 days apart. This option would allow a Stage 2 committee to deal with amendments from the same Marshalled List and groupings on Monday and then Wednesday, or Wednesday and then Friday – or even on Monday, Wednesday and Friday – but not on Tuesday and then Friday, for example. A further decision would then have to be made whether the continuation would also have to be within the same week – i.e. to allow Wed-Fri but not Fri-Tues – simply as a way of putting an upper limit on the number of committee meetings that could be held close together without there being a fresh opportunity to lodge amendments between meetings.

20. The Committee is invited to choose between these two Options.

**Lodging deadline on normal lodging-days**

21. The Committee agreed to change the deadline on the final lodging-day (at Stage 2) from 2 pm to 12 noon – which has been reflected in the draft Rule-changes. However, that leaves the deadline on other days (at all Stages) unspecified in the Rules. This normal deadline has been fixed administratively, by the clerks, at 4.30 pm since 2001. There is no intention to change this – and indeed, it is now felt that it would be better if this deadline were specified in the Rules, both as an aid to transparency and to give this deadline the same formal status as the earlier final-day deadline.

22. The Committee is invited to endorse this suggestion.

**Motions without notice to alter Stage 3 timetabling motions**

23. The Committee agreed to allow timetabling motions to be varied by means of a motion without notice (for short, MWN). However, some of the details of this still require to be decided.

24. First, who should have the power to move such a motion? The paper previously considered (PR/S2/04/11/5) suggested this could either be any member, or just members of the Parliamentary Bureau. The argument for the former is that any member may have an amendment that is due to be called just before a deadline expires, and he or she should therefore have the ability to move for an extension of time to enable his or her amendment to be debated. The argument for the latter is that the original timetabling motion will have been proposed by the Bureau (which has special responsibility for timetabling matters) and therefore only a member of the Bureau should be entitled to propose a variation to it. This might also reduce the chances of over-frequent use of the new facility.

25. The second question is whether there should be a limit either to the amount of the extension that may be made by a single MWN or on the total extension
that may be made by MWNs during any Stage 3 – either by limiting the number of MWNs that may be moved, or by fixing a maximum period of extension. (Paper PR/S2/04/11/5 suggested a 10-minute limit per MWN and a maximum of 2 MWNs per Stage 3.)

26. In considering this, the Committee will wish to keep in mind:

- that this new flexibility is not intended to be a substitute for the general need to ensure (when the original timetabling motion is proposed and agreed) that sufficient overall time is allowed for the Stage 3;

- that it is separately to recommend that the timetabling motions should be drafted more loosely to allow the Chair to allow some minor departures from deadlines without the need for any MWN;

- that substantial departure from the overall timetable will have a knock-on effect on subsequent business – possibly causing disruption and inconvenience (e.g. to MSPs with travel or other commitments immediately after the meeting of the Parliament has finished, or to members of the public who have travelled to see a later item, e.g. a Members’ Business debate);

- that the PO has to agree to any extension being moved – so it might be sufficient to rely on the chair not to allow over-use of the MWN procedure on any particular day (i.e. without a fixed upper-limit in the Rules).

27. Options include:

- a limit per MWN of 10, 15 or 20 minutes;

- an overall limit of 20, 30 or 40 minutes – i.e. 2 or 3 times the limit per MWN.

28. The Committee should also note that (as suggested in paper PR/S2/04/11/5) the draft Rule-changes provide:

- that it is for the PO to decide whether a MWN is taken;

- that a MWN cannot be debated or amended (or – if the Committee chooses – only at the PO’s discretion);

- that a MWN has the effect (if agreed to) of moving back all remaining time-limits (not just the one about to expire) by the amount of time mentioned in the motion;

- that the PO will then be able to decide whether knock-on changes to later times in the daily business list are required – e.g. whether any over-run in a Stage 3 should take time out of the next item or whether that item should also end later by the same amount;
• that the new facility to extend a Stage 3 debate by means of a MWN is instead of (rather than in addition to) the existing general facility to extend (by motion without notice) any debate under Rule 8.14.

29. The draft Rule-changes also include a new Rule providing a foundation for timetabling motions. The reasons for this are explained in a separate paper.

**Delegated Powers Memorandum**

30. The Committee agreed that the memo currently provided by the Executive directly to the Subordinate Legislation Committee – which can be referred to as the “Delegated Powers Memorandum” (for short, DPM) – should become a mandatory “accompanying document”, required on introduction.

31. However, the draft Rule-changes suggest that the DPM should not be an accompanying document as such (i.e. added to the list in Rule 9.3). The main reason for this is that accompanying documents are required “on introduction” – and any failure to provide it on time means that introduction cannot go ahead. This seems inappropriate in relation to the DPM (which is unlikely to be of interest to committees other than the SLC) – so instead it is proposed there should be a separate Rule requiring the DPM to be lodged “immediately after” introduction. This should still meet the SLC concern to get it promptly, without any risk of delay in introduction.

32. It is suggested that the DPM should be mandatory only in the case of Executive Bills. It is only Executive Bills that are likely to contain many relevant provisions and to be subject to relatively tight timescales at Stage 1; there are also doubts as to whether some members (i.e. some of those not supported by NEBU) would be in a position to provide the relevant information. However, the new Rule would in no way prevent a DPM being provided for any non-Executive Bill.

33. The Committee should also note that the new Rule requires the DPM to include the same categories of information currently provided in the non-mandatory memos – that is (for each relevant provision in the Bill):

• on whom the power is conferred and the form in which it is exercisable (i.e. usually as a statutory instrument);

• the type of Parliamentary procedure (if any) to which it is subject; and

• why the Executive considers it appropriate to delegate the power and to make it subject to the type of procedure (if any) chosen.

34. The Committee should also note that the new Rule does not require the DPM to be printed in hard copy. In practice, it is expected that the DPM will be published – but only on the website – as a sensible balance between providing public access to the document without adding to printing costs.
Revised/supplementary DPM

35. The Committee agreed with the SLC that the Executive should also be required to provide a revised DPM after Stage 2 where the relevant provisions had been amended. Here the aim is to give the SLC a chance to consider the new/amended SL provisions and report on them ahead of the Stage 3 debate.

36. The suggested Rule gives the Executive the choice of lodging either a revised or a supplementary memo – depending on how much of the original memo has been superseded by the amendments made. In either case it is to be lodged by the end of the 2nd week before the Stage 3 debate – i.e. by the Friday of Week 1 if Stage 3 is to be held during Week 3. That allows the memo to be circulated to SLC members in advance of the SLC meeting in Week 2 (usually a Tuesday), thus giving the SLC clerks a day or two after that meeting to finalise a short report for publication by the end of Week 2. This should give MSPs time to read the report before Stage 3 begins.

Explanatory Notes

37. The Committee has not yet decided whether to require revised (or supplementary) Explanatory Notes to be provided after Stage 2. The Executive is not keen on such a change for the reasons set out in the Minister’s letter.

38. The draft Rule-changes include a new Rule that would fulfil the policy if that is the policy the Committee adopts.

39. Separate draft Rule-changes make the provision of Explanatory Notes mandatory for Members’ Bills as well as for Executive Bills (as the Committee has already decided).

Suspension of committee meetings

40. The Committee noted at the meeting on 22 June a concern about the Rule that prevents committees meeting at the same time as the Chamber. The current drafting of the Rule prevents a committee meeting being suspended while a Chamber meeting takes place. This required the Communities Committee to have two meetings on one day – on the day the Parliament was convened at short notice for a statement on the Stockline Plastics factory explosion.

41. The list of draft Rule-changes includes drafting changes to avoid this happening again.

Additional Rule-changes

42. In the course of preparing the above Rule-changes, a couple of minor but unrelated anomalies in Chapter 9 have been spotted. Draft Rule-changes that would address these are set out at the end of the list – together with brief explanation of why they are thought desirable.
Private Bills

43. On previous occasions when changes have been recommended to Rules in Chapter 9, similar changes have also been recommended to the equivalent Rules in Chapter 9A. This has been to ensure that the practices governing the two types of Bills are kept in conformity in relevant respects (especially in relation to how amendments are dealt with).

44. However, no Chapter 9A Rule-changes have so far been prepared, even where the issues (e.g. notice required for amendments, intervals between Stages) arise in relation to both Chapters. That is for the following reasons:

- the Committee has taken no evidence during this inquiry on timescale issues affecting Private Bills;
- the Committee has already begun a separate inquiry on Private Bills, which provides an opportunity to address any timescale problems within a few months; and
- the context is different in relevant respects – for example, there tend to many fewer amendments to a Private Bill and the overall time-pressures are different in nature.

45. The Committee is invited to endorse this approach. If it does, it may also wish to remove some of the references to Private Bills in the current draft Report.
PROCEDURES COMMITTEE

Timescales and Stages of Bills

Calls for evidence by committees at Stage 1, Sessions 1 & 2

The table below shows the time allowed by lead committees for the submission of written evidence at Stage 1 – from the issue of a call for evidence to the deadline set. Some (better-resourced) organisations may in practice have a few days longer if they are aware of the publication of the Bill as soon as it happens. This in turn depends on how promptly committees issue calls for evidence, which is sometimes only a day or two after introduction but sometimes weeks later.

The table includes all Session 2 Executive Bills that have completed Stage 1 inquiries so far, plus those Session 1 Executive Bills for which data is available – i.e. excluding those where the relevant call for evidence has not been retained or could not be easily retrieved (though the Bills included can reasonably be assumed to be a representative sample). The Bills are listed in ascending order according to time allowed, for each Session. The indication is that the majority of Stage 1 inquiries by committees have fallen short, and a few significantly, of the minimum. The Session 2 data was included in an earlier version of this note circulated for the Committee meeting on 22 June (paper PR/S2/04/11/3), but the Session 1 data has been added for purposes of comparison.

There is presently no stipulation as to how long should be allowed by committees to receive written evidence as part of their 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 (84 days) minimum period for responses to consultations.

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# Agenda item 5: Call for Evidence

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**Session 2**

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**Average (Executive Bills, Session 1)** 34 days

**Average (Executive Bills, Session 2)** 41 days

**Notes**

Duration excludes the day on which the call for evidence was issued, but includes the closing date for submissions and all days in between.

* Written submissions were accepted after the deadline had been reached.
PROCEDURES COMMITTEE

Timescales and Stages of Bills

Intervals between Stages of Bills

Stage 1 to Stage 2

Rule 9.5.3A of the Standing Orders states that “the minimum period that must elapse between the day on which Stage 1 is completed and the day on which Stage 2 starts is 7 sitting days.”

The table below lists all Bills in order according to the actual interval allowed. Grey-shading indicates Bills where the minimum interval was not complied with.

Only those Bills that have completed their progress through Parliament and have been passed are included.

NB: (M) indicates Members’ Bill; (Cttee) indicates Committee Bill.

<table>
<thead>
<tr>
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<tr>
<td>Bail, Judicial Appointments etc. (Scotland)</td>
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**AVERAGE FOR SESSION 1 (ALL BILLS)**

|                           | - | 15.4 | -  |

**AVERAGE FOR SESSION 1 (EXECUTIVE BILLS ONLY)**

<p>|                           | - | 13.3 | -  |</p>
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</table>
Stage 2 to Stage 3

Rule 9.5.3B of the Standing Orders states that “the minimum period that must elapse between the day on which Stage 2 is completed and the day on which Stage 3 starts is (a) 9 sitting days if the Bill is amended at Stage 2; (b) 4 sitting days if the Bill is not amended at Stage 2.”

The table below lists all Bills in order according to the actual interval allowed. Grey-shading indicates Bills where the minimum interval was not complied with. Bills marked (CWP) were considered at Stage 2 by a Committee of the Whole Parliament (on the same day as they were considered at Stage 3).

Only those Bills that have completed their progress through Parliament and have been passed are included.

NB: (M) indicates Members’ Bill; (Cttee) indicates Committee Bill.

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<td>Protection from Abuse (Scotland) (Cttee)</td>
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<td>Interval S2/S3 (sitting days)</td>
<td>Stage 3 debate</td>
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</table>

**AVERAGE FOR SESSION 2**

- - 23.1 -
Publication of the Lead committee Stage 1 report to Stage 1 debate

Only those Bills that have completed their progress through Parliament and have been passed are included.

The Interval is defined by the number of sitting days from (and including) the date of publication of the Stage 1 Report to (but excluding) the date of the Stage 1 debate.

NB: as Committee Bills are not referred to a lead committee at Stage 1 there is no Stage 1 report and hence Committee Bills are not included in this table. An “**” indicates Bills where lead committee reports at Stage 1 were published during a recess period. (M) indicates Members’ Bill.

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<thead>
<tr>
<th>Bill (Session 1)</th>
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When Ross Finnie gave oral evidence to the Committee on 27 April, in relation to the Land Reform (Scotland) Bill, he commented on a paper circulated to the Committee showing when the various Stage 2 amendments to the Bill had been lodged (PR/S2/04/7/3). In particular, he said:

“Looking at the tables that contain the evidence of the number of Executive amendments that were lodged can, at first glance, give a false impression. Some amendments were policy related, but the majority were technical, to ensure consistency, or consequential—for example, to address matters that were introduced elsewhere, such as sustainable development and charitable status issues in parts 2 and 3.” (OR, cols 446-7)

Later, Jamie McGrigor asked:

“Of the 203 amendments that were lodged for the first day of Stage 2 of the Land Reform (Scotland) Bill, only 10 were lodged in the first eight weeks between Stage 1 and Stage 2; the rest were lodged five days in advance of the meeting at which they were being considered. That gave people very little time to understand and deal with those amendments. Would it be possible for amendments to be lodged earlier than that, rather than all in a lump at the end?” (col 455)

Mr Finnie replied:

“We would be happy to consider that suggestion if required. We discussed the matter the other day. Members have in front of them tables with details of Executive and non-Executive amendments, so it might be helpful for your deliberations if we could arrive at a view about our amendments, noting those that are of a purely technical nature, those that relate to policy and those that respond to specific requests by a committee.

“Somebody could take a bundle of amendments and say, "Gosh—this is pretty difficult stuff." We could discuss with your clerks some additions to the tables—that might be helpful, because in considering Jamie McGrigor's question, we also need to consider the nature of amendments. We discussed that point the other day and we thought that that information would be a constructive addition to the tables.” (cols 455-6)

Executive officials have now provided a breakdown of the Stage 2 Land Reform amendments as follows:
Part 1 (Access Rights)

Stage 2
33 substantive; 0 technical; 10 consequential.

Stage 3
70 substantive of which 4 were lodged in response to non-Executive amendments; 3 technical; 32 consequential.

Part 2 (Community right to buy)

Stage 2
48 substantive of which 2 were lodged in response to non-Executive amendments; 14 technical; 3 consequential.

Stage 3
9 substantive of which 3 were lodged in response to non-Executive amendments; 14 technical; 1 consequential.

Part 3 (Crofting community right to buy)

Stage 2
46 substantive of which 5 were lodged in response to non-Executive amendments/queries; 12 technical; 5 consequential.

Stage 3
5 substantive; 4 technical; 0 consequential.

Total
211 substantive of which 14 were lodged in response to non-Executive amendments; 47 technical; 51 consequential.

Executive officials have explained that “it is always a matter of judgement into which category each amendment falls but we believe we have been consistent throughout” – and provided the following definitions and examples:

Substantive: policy related, for example changing or developing the policy;

Technical: to ensure consistency with the policy or other minor factual change; and

Consequential: for example, to address matters introduced elsewhere, such as sustainable development and charitable status.

Executive amendment 104 was a substantive amendment in that it inserted a new provision in the Bill. It amended the Bill at Stage 2 by inserting a new section after section 18. It requires local authorities to review the core path plan adopted by them under section 18, at such times as they consider appropriate and on Ministers requiring them to do so. Where a core path is closed or diverted then they are required to make appropriate
amendments to the plan. In doing so, however, they must have regard to the extent to which it appears to them that persons would, but for the amendment, be likely to exercise access rights using the core path and the effect which the amendment of the Plan would have as respects land served by the core path. Where a core path is stopped up/diverted, by order under section 208 of the Town and Country Planning (Scotland) Act 1997 then they must amend their plan accordingly. Where the local authority propose to add a new path to the Plan then they must have regard to the provisions detailed in section 17(3) and (4) of the Bill and carry out the consultation procedures set out in section 18 in respect of the amended Plan.

**Executive amendment 101** is consequential on Executive amendment 104 in that it removed the existing provision relating to review of the core paths plan that was in section 18 of the Bill when it was introduced as it was no longer needed in light of amendment 104.

**Executive amendment 120** tabled at Stage 3 was a technical amendment. It confirmed that when calculating the 40 days for the purposes of section 24(a) (i.e. the laying of ministerial guidance before Parliament) no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 5 days.

**Conclusion**

The Executive’s conclusions are as follows:

“What the data shows is that out of a total of 171 Executive amendments at Stage 2, 127 were substantive amendments and at Stage 3 out of a total of 138, 84 were substantive amendments that might have required detailed consideration by the Committee and others. The vast majority of Executive amendments were lodged at least 5 days in advance of the Committee meetings although most of these were lodged at the one time on the 5-day deadline appropriate to the relevant meeting. We recognise that lodging a large number of amendments at one time can present difficulties although the 5-days advance notice (rather than 2 days) will be helpful to Members.”
Introduction

1. The Committee has already considered in general terms – and on the basis of evidence received – whether, and if so how, to introduce more flexibility into the timetabling of Stage 3 amendment proceedings. That discussion started from the assumption that the reasons for change were political rather than procedural – in other words, that while it might be desirable for various reasons to have more flexibility, the status quo was a procedurally legitimate option. However, in the course of reviewing the relevant Rules, some doubts have arisen as to whether this is the case – and hence whether some changes in practice may be necessary (separately from whether changes are desirable).

Current practice

2. The current practice involves the Parliament agreeing to a timetable motion that includes deadlines for the completion of debates on specified groups of amendments. The effect of the resulting resolution has been taken to be that, where a deadline is reached before one of the specified groups has been debated, no debate on the amendments in that group may take place. In such cases, the Presiding Officer has allowed the member who lodged the lead amendment in the group only to say “Moved” or “Not moved” before immediately putting the question on that amendment. The view has been that the PO is bound by the timetable and hence not entitled to allow that member to make any substantive remarks, or to allow any other member to speak – including the Minister (or member-in-charge) and members with other amendments in the group.

Rule 9.10.13 – right to speak on amendments

3. One question that has arisen in the course of reviewing how this practice fits with the existing Rules concerns Rule 9.10.13, which states:

“The member moving an amendment may speak in support of it. The member in charge of the Bill and any member of the Scottish Executive or junior Scottish Minister present at the proceedings may also speak on the amendment. Other members may speak on an amendment at the discretion of the convener or, as the case may be, the Presiding Officer."

4. The purpose of this Rule is clearly to guarantee a basic minimum right to speak in any debate on an amendment on the “key players”. Looked at
the other way round, the purpose is to ensure that there is a basic minimum amount of debate on every amendment. The PO’s discretion is thereby limited to which other speakers to call (i.e. over and above the key players).

5. The rights conferred by this Rule appear to be unqualified (i.e. this Rule does not appear to be over-ridden or substantially qualified by any other Rule). There also appears to be no secure basis on which these rights can be over-ridden or cancelled by a timetabling decision of the Parliament taken by resolution. This is because the Rules (so long as not suspended) take precedence over decisions made by resolution – for the general reason that otherwise the Rules would offer little protection against ad hoc changes of process.

6. This is not to say that Rule 9.10.13 has been breached by the way things have been done so far. The Rule confers a right on certain Members to speak, but in no way requires them to do so. So long as those Members are content not to exercise their right under the Rule in any situation where an agreed timetabling deadline has expired – in effect, voluntarily deferring to the expressed will of the majority – there is no procedural problem. However, if those Members were to insist on exercising that right in those circumstances, the Presiding Officer would not appear to have any authority to prevent them doing so. (This is in clear contrast to all other MSPs – who are given by Rule 9.10.13 only a qualified right to speak, at the PO’s discretion.)

7. It is true that “no member … may speak unless called upon to do so by the Presiding Officer” (Rule 7.2.1), and the PO may also impose limits on how long members may speak (Rule 7.2.2), but it would not be a reasonable interpretation of the latter Rule to say that it allows the PO to deny altogether a member who has a right to speak to do so. (The better interpretation of these Rules together is that the PO must be prepared to call those members who are given a right to speak under Rule 9.10.13, though he may allocate them only a limited time to speak if they wish to exercise that right.)

Rule 9.10.12 – members with non-lead amendments

8. A related question concerns the rights of members with later amendments in the group. At first glance, they do not appear to be given a right to speak under Rule 9.10.13 since such a member is not “the member moving an amendment” but rather a member wishing to speak to an amendment that has not yet been moved.

9. However, Rule 9.10.13 must be read in conjunction with Rule 9.10.12, which entitles the PO to group amendments “for the purposes of debate”. The process of grouping necessarily separates the debate on some amendments from the process of formally moving them – but it is often largely arbitrary which of the various amendments in a group is the “lead” amendment (i.e. the one that is moved at the time the group is debated). Since the underlying purpose of Rule 9.10.13 is clearly to protect the
right to speak of the “key players” in any debate, that must include all the members who have amendments in the group, not just the one whose amendment happens to come first in the Marshalled List. (In this context it should be borne in mind that the lead amendment may sometimes be a relatively minor or “paving” amendment for later ones, or merely one of a number of equally important alternative amendments lodged by different MSPs.)

10. It therefore follows that the list of members who are given a right to speak in a debate under Rule 9.10.13 includes all the members who have lodged amendments in the group.

Practical implications

11. If every member who has a right to speak under Rule 9.10.13 insisted on exercising it in every case, this could mean that – in any situation where a timetabling deadline was passed with one or more groups still to be debated – it would be necessary to allow short debates on those groups after the deadline.

12. The PO would presumably wish to keep speeches in any such debate extremely tight (1 or 2 minutes at most) and would call only the key players. In some groups, there might be only one such key player (the Minister, in a group of Executive amendments to an Executive Bill); in some there could be two (e.g. an opposition amendment to an Executive Bill, in a group of its own); in others there could be three, four or more.

13. The extra time taken for these “stripped down” debates would come out of the remainder of the time-allocation, and so would have some knock-on effect on the timetable. However, it is likely that in practice all the time-allocation deadlines would have been set a few minutes earlier than they otherwise, to compensate for this eventuality. The overall effect, therefore, would simply be to re-distribute the available time slightly more evenly – no group would go entirely un-debated, but the average time available for each group would be slightly reduced.

14. Of course, even this slight reduction in the average debating-time per group could be avoided by an equivalent increase in the overall time-allocation for the Stage 3 proceedings. Where that overall time-allocation is reasonably generous from the outset, it is possible for all the proceedings to run ahead of the timetable – in which case no-one needs to rely on their rights to speak under Rule 9.10.13 in the first place.
The following table shows, for each Bill so far considered at Stage 3 this session:

- the time allocated (in a timetabling motion) for the amendment proceedings, and for the debate on the motion to pass the Bill;
- the actual time used for the amendment proceedings and for the debate on the motion (and the proportion of the time allocated this represented);
- the number of amendments considered;
- (from these last two figures) the average amount of time spent in debating each amendment;
- the number of divisions on amendments
- a rough estimate of the amount (and proportion) of time spent on procedure rather than debate (i.e. time spent on disposing of amendments, by division or otherwise)

In addition, the various Stage 3s are roughly classified as follows:

- those where the overall time allocation was adequate (i.e. those where the time allocated exceeded the actual time used) – no shading
- those where there was (or may have been) some time-pressure but where there was some debate on every group – pale shading
- those where there was clear evidence of significant time-pressure (i.e. where there was at least one group which could not be debated at all) – dark shading

Below the table is set out some of the evidence on which this classification was based, consisting of points noted from the Official Report, particularly where the PO refers to a lack of time to call speakers, or imposes tight time-limits because of impending deadlines. This selection of comments can only give an approximate indication of the extent of time-pressures – for example, the Presiding Officers do not always refer on the record to members who requested to speak but could not be called.
## Agenda item 5

<table>
<thead>
<tr>
<th>Bill</th>
<th>Time allocated</th>
<th>Time taken</th>
<th>Amendments</th>
<th>Procedural Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Medical Services</td>
<td>2:30 0:50 3:20</td>
<td>1:13 0:58 2:11</td>
<td>18 15 (83%) 3</td>
<td>4:04 00:06:45 9%</td>
</tr>
<tr>
<td>Vulnerable Witnesses</td>
<td>2:30 0:50 3:20</td>
<td>1:51 0:59 2:50</td>
<td>49 25 (51%) 3</td>
<td>2:16 00:14:30 13%</td>
</tr>
<tr>
<td>Education (ASL)</td>
<td>3:30 0:30 4:00</td>
<td>3:36 0:32 4:08</td>
<td>98 45 (46%) 34</td>
<td>2:12 00:50:00 23%</td>
</tr>
<tr>
<td>Criminal Procedure</td>
<td>1:55 0:30 2:25</td>
<td>1:58 0:26 2:24</td>
<td>123 68 (55%) 16</td>
<td>0:58 00:42:45 36%</td>
</tr>
<tr>
<td>Nature Conservation</td>
<td>1:55 0:30 2:25</td>
<td>2:02 0:23 2:25</td>
<td>55 42 (76%) 9</td>
<td>2:13 00:20:30 17%</td>
</tr>
<tr>
<td>NHS Reform</td>
<td>1:50 0:40 2:30</td>
<td>1:49 0:42 3:31</td>
<td>20 5 (25%) 5</td>
<td>5:27 00:08:45 8%</td>
</tr>
<tr>
<td>Antisocial Behaviour</td>
<td>5:15 0:15 5:30</td>
<td>5:36 0:46 6:22</td>
<td>145 89 (61%) 34</td>
<td>2:19 01:01:45 18%</td>
</tr>
<tr>
<td>Local Governance</td>
<td>1:55 0:30 2:25</td>
<td>1:56 0:27 2:23</td>
<td>28 9 (32%) 14</td>
<td>4:08 00:17:30 15%</td>
</tr>
<tr>
<td>Tenements</td>
<td>1:30 0:30 2:00</td>
<td>1:12 0:33 1:45</td>
<td>82 79 (96%) 3</td>
<td>0:53 00:22:45 31%</td>
</tr>
</tbody>
</table>

**Notes:**

- Time allocated (cols 1-3) – taken from the timetabling motion agreed to at the beginning of the proceedings
- Time taken (cols 4-6) – calculated from the clock-times included in the Official Report
- No. of amdts (col 7) – from the Marshalled List (i.e. all selected amendments, including those not moved on the day)
- No. of divisions (col 8) – from the Official Report
- Average time/amdt (col 10) – calculated as the time taken on amendments (col 4) divided by the no. of amendments (col 7)
- Procedural time (col 11) – calculated on the following basis: (no. of divisions x 1 minute) + ((no. of amdts – no. of divisions) x 15 seconds. This assumes that the average division takes a minute – although in most cases, only 30 seconds voting-time is allowed, this includes the time taken by the PO to call the amendment, put the question and to announce the result at the end. It also assumes that the rate at which amendments can be formally moved and disposed of is about 4 per minute. This is probably an underestimate, except where a lot of amendments are moved and disposed of en bloc.
- The figures in column 12 show how much of the allocated time (to the nearest percentage point) has not in fact been available for debating amendments.
The main lessons that can be drawn from this data are as follows:

- Shortage of time for amendments has been a problem with the majority of Bills so far this session; in only a third of cases (3 out of 9) has enough time been available.
- The worst problems arise with the Bills that have attracted the most amendments, particularly where this involves a higher proportion of non-Executive amendments – which are more likely to be debated at length and divided on.
- This may suggest that not enough account is being taken, in calculating how much time is needed, of the time required just to deal with the necessary procedure involved in moving and disposing of amendments – which can be around a third of the total time spent on the amendment proceedings.
- These figures are only a rough guide – there was no evidence of a lack of time for the Tenements Bill even though the average time per amendment was the lowest for any Bill so far this session (perhaps because the time spent was concentrated on a relatively small number of debates, with a large number of uncontroversial Executive amendments then being agreed to en bloc).
- There were time-pressures in the debate on the motion to pass the Bill in around half the Stage 3s so far this session.

**Evidence from the Official Report**

Note: Points shown in italics are from the proceedings on the motion to pass the Bill (others being from the proceedings on amendments).

**Primary Medical Services**

- Mike Rumbles complaint that the business managers had allowed so long for a debate on SSP amendments (col.4387)
- Decision Time brought forward to 3.50 (col.4470)

**Vulnerable Witnesses**

- Stewart Stevenson: “we are making more rapid progress than the timetabling motion suggested” (col.6322)

**Education (Additional Support for Learning)**

- DPO – “very little time” for Minister to wind up on amdt (col.7345)
- DPO gives 3 of the 4 speakers in a debate on a group 1 minute each to speak to their amendments; others wishing to speak not called and Minister given no time to respond (cols.7347-8)
- Fiona Hyslop: “in the interest of time, I will not wind up” (col.7465)
- DPO asks member moving lead amendment to be brief (col.7341)
- Motion moved without notice to put Decision Time back to 5.33 pm to allow 30 minutes for debate on motion to pass Bill (col.7479)
- DPO unable to call members who had requested to speak, and speeches limited to 3 minutes (col.7486)

**Criminal Procedure (Scotland) Bill – 28 April 2004**

- DPO (at beginning of Group 7): “We are almost out of time … there is time only to move the amendments and have the divisions” (col.7817)
- Group 8 likewise – Minister moves amdt formally (col.7819)
• **DPO warns members that he will be enforcing time limits in debate on motion to pass Bill “quite severely”** (col.7835)
• **DPO says there is “only a short time for open debate” – calls 3 members, the 3rd for only 1 minute, and apologises to 2 other members not called** (cols.7841-7844)

**Nature Conservation (Scotland) Bill – 5 May 2004**

- PO: "we have 13 minutes left for the first two groups", speeches should be "kept tight" (col.8035)
- PO: 6 minutes to deal with one group (col.8039)
- One MSP not called due to lack of time (col 8047)
- DPO: “Eight members wish to speak, so I appeal for brevity” (col.8060)
- DPO calls for members to be brief as there were a “significant” number of people wishing to contribute (col.8073)
- DPO: “There is no time for the Minister to speak. Are you for or against amendments 51?” (The Minister: “Against”) (col.8079)
- **Penultimate speaker in debate given only 2½ minutes** (col.8093)

**National Health Service Reform (Scotland) Bill – 6 May 2004**

- PO – “we have only nine minutes in which to get through both this group of amendments and the next group” (col.8134)
- DPO: “we have very little time”, apologises to 2 members not called (cols.8139-40)

**Antisocial Behaviour etc. (Scotland) Bill –**

- PO: “I ask members to keep their speeches tight” (col.9173)
- DPO reminds members to “keep it tight” (col.9187)
- DPO: A “considerable” number of members wish to speak – members should “speak briefly and to the point” (col.9211)
- Two members given 2 minutes each; DPO apologises to other members not called (cols.9218-20)
- DPO: “We have a considerable number fo groups of amendments to get through, so I would be grateful if members could try to be brief” (col.9286)
- DPO asks members to remain in chamber for votes as there “might be no time for debate” (col.9305)
- DPO tells Minister to be “very quick indeed” – when Minister suggests she could just reply to points raised in debate, DPO says “there will be no debate to reply to” (col.9307)
- Stewart Stevenson moves motion without notice to extend business for that group by 15 mins (col.9307)
- DPO asks members to be brief (col.9311)
- DPO asks Minister to “speak very briefly indeed” (col.9316)
- DPO: “We are almost out of time, so I must ask the Minister simply to move amendment 147” (col.9320)
- Patricia Ferguson asked to move motion to extend business by 15 minutes (col.9324)
- Two members given only a minute “for bullet points”; one of them withdraws (col.9332)
- DPO asks for “brief contributions” (col.9333)
- DPO asks for “brief contributions” (col.9353)
• Motion to move Decision Time back to 6.15 (col.9367)
• PO: “Time is now extremely tight”, next two speakers limited to 2 minutes (col.9372)

Local Governance
• DPO: “I ask for brief speeches as we are running short of time” (col.9417)
• DPO – “the clock defeats us” – member who had been told he would be final speaker not called (col.9422)
• Member not allowed to make winding-up speech on lead amendment at end of debate (col.9423)
• Only 10 minutes available for group (col.9424)
• DPO says he will be unable to call all members wishing to speak in debate on group (col.9447)
• In final group, only mover of amendment (Minister) called (col.9452)
• DPO unable to call all members wishing to speak in debate on motion (col.9459)

Tenements
• No comments recorded.
PROCEDURES COMMITTEE
Timescales and Stages of Bills

Letter from the Convener of the Local Government and Transport Committee

STAGE 3 DEBATE ON THE LOCAL GOVERNANCE (SCOTLAND) BILL

I writing to you in your role as chair of the Parliamentary Bureau, following a meeting of the Local Government and Transport Committee on 29 June 2004 at which members expressed concern at the timetabling arrangements for Stage 3 proceedings on the Local Governance (Scotland) Bill.

At the Committee meeting, members expressed the view that insufficient time was available for the debate on the motion that the Local Governance (Scotland) Bill be passed. The Committee agreed that I should write to the Parliamentary Bureau to express these concerns, given that the Bureau proposes the business motion for the timetabling of Stage 3 proceedings.

As you will be aware, the Local Governance (Scotland) Bill was a significant piece of legislation which attracted widespread interest and debate both within and outwith the Parliament. At Stage 1, the Local Government and Transport Committee devoted six meetings to scrutiny of the general principles of the Bill and published a substantial report on the Bill. During the Stage 1 debate on the general principles of the Bill, 21 speakers participated during a two and a half hour debate. In my view, this level of scrutiny of the Bill was appropriate to the significance of the issues under discussion.

However, in contrast, just half an hour was available at Stage 3 for members to debate the motion that the Local Governance (Scotland) Bill be passed. The Minister for Finance and Public Services opened the debate, and there followed speeches by spokespersons for the SNP, Conservative and Liberal Democrat parties. However, there was only time for three speeches to be made by ‘backbench’ members, and these contributions were curtailed to two minutes, due to a lack of time. During the debate, the Deputy Presiding Officer noted that a considerable number of members had expressed a wish to participate in the debate but could not be called to speak due to time constraints.

In the view of the Committee, the time allocated to the debate at Stage 3 of the Local Governance (Scotland) Bill was not sufficient to allow a full debate to take place on an important piece of legislation. The Committee considers, in particular, that it was regrettable that a number of members were either unable to contribute to the debate at Stage 3, or had their speeches curtailed, due to a lack of time. The Committee’s Stage 1 report on the Bill, and the debate in the Parliament at Stage 1, indicated that the Bill was of widespread interest and importance, but this did not appear to be reflected in the allocation of time for the debate at Stage 3.
I am therefore writing on behalf of the Local Government and Transport Committee to raise these concerns with members of the Parliamentary Bureau, and to seek their views on the future arrangements for the timetabling of debates on Bills at Stage 3.

I understand that the Procedures Committee is currently undertaking an inquiry into the procedures and practices that determine the speed at which Bills progress through Parliament, and so I am also copying this letter to the Convener of that Committee in order that it can inform the Committee’s work.

Bristow Muldoon  
Convener - Local Government and Transport Committee  
1 July 2004

**Note by the Clerk:** This letter was considered by the Bureau at its meeting on 6 September 2004. The extract from the relevant minutes reads:

*Stage 3 debates* - Following consideration of a paper advising that the Local Government and Transport Committee had raised concerns with the Presiding Officer and the Procedures Committee about the time allowed for the debate on Stage 3 of the Local Governance (Scotland) Bill, it was agreed that consideration of the matter be continued pending the outcome of the Procedures Committee’s views on a draft report on issues relating to the legislative process.
PROCEDURES COMMITTEE

COMMITTEE AUDIO SYSTEM – GUIDANCE FOR MEMBERS

Committees will be using the new TYCO audio and voting system at Holyrood. This system requires members to slot their security card into the console in front of them in order to speak at committee meetings.

Members should note the following points in relation to this new system:

- If for any reason members change seats during the course of the meeting they must also move their card to their new console.
- Unlike the Chamber, members will not be using electronic voting or request to speak buttons at committee meetings. Voting will continue to be by show of hands, and the sound operator will activate microphones remotely.
- The clerks have a spare card for each member should anyone misplace their own card; members are asked to return their duplicate card to the clerks at the end of the meeting.
- Members on more than one committee have a duplicate card for each committee – so there is no need to take a duplicate card from one committee meeting to use at another.
- But if members intend to attend a committee of which they are not a member, they should inform the clerks to that other committee in advance, so a duplicate card can be available at the meeting.
- If members use a duplicate card at a committee of which they are a member, and are going straight on to another meeting of a committee of which they are not a member, they should take their duplicate card with them (and hand it back to a clerk at the end of the meeting).
- Members should never take their duplicate card to use in the debating chamber as their committee duplicate card will not be recognised by the Chamber voting system and therefore cannot be used to vote in the Chamber. Clerks in the Chamber will provide a suitable duplicate card to members on request.
- Committee conveners will use a specific convener card instead of their own security card. This will be entered into their console before each meeting by the clerks.

Please note that separate instructions will be issued on the operation of the audio and voting system in the debating chamber.
PROCEDURES COMMITTEE

Review of Oral Questions

Problem with random selection mechanism for Question Time

A point of order was raised immediately after Question Time on 1 July. A question by John Home Robertson had been selected as Q1 in each of the week’s two themes and also in General Questions. Included below the extract from the Official Report are the Presiding Officer’s letter of explanation to the Convener, plus a short note on probability.

EXTRACT FROM OFFICIAL REPORT, 1 JULY 2004 (COL 9803)

Mr John Home Robertson (East Lothian) (Lab): On a point of order, Presiding Officer. It seems the appropriate moment at which to raise the matter of the procedure for selecting questions for oral answer. Members may have noticed that the electronic random selection system drew my name first three times today. Dennis Canavan, who I think used to teach maths, tells me that the odds against that happening are about 1 million to one, so I just wish that I had bought a lottery ticket last week.

When some members receive several questions under the system, other members do not have the chance to question ministers at all. Like most members, I have been on the wrong side of that equation for months. It is rather like waiting for buses that arrive in convoys. I suggest that the selection procedure is one factor that is spoiling question sessions and I submit that it should be reviewed urgently now that I have had my treble chance.

The Presiding Officer (Mr George Reid): The member is right—it was his lucky day. The situation seems a trifle unusual. I have already asked staff to look into it and they will report back. All that I can say to members is that I have examined the figures, which show that each party’s share of questions to date matches closely its share of questions that have been lodged.

LETTER TO CONVENER FROM PRESIDING OFFICER

Random Selection of Questions for Question Time

During the Procedures Committee’s debate on 24 June 2004 John Home Robertson raised the fact that he had been selected first in each of the three sections of Question Time for 1 July 2004.
This outcome has now been investigated and I can advise you that as a result a flaw has been identified in the system for the computerised random selection of questions for Question Time. This flaw only arose when the new arrangements for Question Time were introduced and has not been identified before now because it only manifests itself in rare circumstances.

As explained in the Chamber Desk’s note to the Procedures Committee on 7 October 2003, under the previous Question Time arrangements the system for the computerised random selection of questions (which as you know is a “pseudo-random” system) contained a feature whereby, if the selection was repeated on the same day, it would produce the same outcome. This was to provide a safeguard against the selection being repeated to produce different results. When the new arrangements for Question Time were introduced, which require three random selections to be made the same day, this feature was unchanged. The template for the random selection of questions sorts the list of questions into alpha-numeric order of question number and then assigns them a pseudo-random number, which is not known to the Chamber Desk. The template then re-sorts the list into the order of each question’s pseudo-random number. This mechanism (that still ensures that a selection on the same day will produce the same result) is applied to all three question themes. The consequence of this, is that if two, or three, questions are in the same position in each alpha-numeric list, for example if three questions from the same member are all seventeenth on the three alpha-numeric lists, they will all, if selected, be selected at the same point in each list of selected questions. This is what happened with John Home Robertson’s questions. I am sure that you appreciate that the chances of a member’s three questions appearing at the same point in each alpha-numeric list are remote.

Having identified the problem I can assure you that the feature from the previous system that led to this flaw has now been removed. Each alpha-numeric list now gets assigned a different random number sequence, although for each list of questions, repeating the random selection on the same day, will generate the same outcome. These outcomes for each list are now totally independent. I can also confirm that, with often over 50 members lodging over 140 questions between three themes, instances of the type highlighted by Mr Home Robertson are very rare and that the overall distribution of questions selected matches very closely the share lodged by each party.

George Reid
26 July 2004

**Note by the Clerk:** With any random (or computerised pseudo-random) process for selecting questions into order, the probability of a particular question being selected as Q1 is 1/X, where X is the number of questions actually lodged. Where a separate random selection is carried out for each of the three parts of Question Time (as was assumed to be the case on 1 July and will be the case in future, now the software has been corrected), the
chances of a particular member’s question being drawn first for all three parts of Question Time is $1/X \times 1/Y \times 1/Z = 1/(X \times Y \times Z)$. That would have yielded Dennis Canavan’s estimated probability of $1/1,000,000$ only if each of Mr Home Robertson’s questions had been one of 100 questions lodged for the relevant part of Question Time. In fact, however, the numbers of questions lodged for 1 July were much smaller – 30, 43 and 44 – so the probability of John Home Robertson’s three questions being randomly selected as Q1 in all three lists would have been $1/56,760$.

Since the same probability would have applied to any other member who lodged three questions, the overall chances of some member having the first question in all three parts would have been $N/56,760$, where $N = \text{the number of members who lodged three questions}$. In this instance, $N$ could have been as high as 30, so the probability of some member being selected to ask Q1 in all three lists could have been as high as $1/1,892$.

In the event, of course, the probability was made very much higher than that by the flaw in the mechanism described in the Presiding Officer’s letter. Indeed, the result of that flaw was that, if each member who lodged questions for Question Time had lodged a question for each of the three parts and if the clerks had entered those questions into the original (alpha-numerically numbered) lists in the order of lodging, it would have been certain (i.e. probability of $1/1$) that the same member’s questions would appear as Q1 on all three lists. The fact that the occurrence of the same member at the top of all three lists had not arisen earlier is therefore a product of the fact that some members lodge only 1 or 2 questions and that questions are not always entered into lists exactly in the order of lodging.
LETTER TO CONVENER FROM PRESIDING OFFICER

PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC (SCOTLAND) ACT 2003

The Public Appointments and Public Bodies etc (Scotland) Act 2003 requires the new Commissioner for Public Appointments in Scotland to among other things, to prepare and publish a Code of Practice in respect of the making of appointments or recommendations for appointments by the Scottish Ministers to public bodies listed in schedule 2 of the Act. In preparing or revising the Code, the Commission is required to consult both the Scottish Ministers and the Parliament, and to invite others to make representations.

The Commissioner must also report to the Parliament any case where the Code of Practice has not been, or appears likely not to be, complied with and where Scottish Ministers have failed or are likely to fail to act on this non-compliance. In such circumstances, the Commissioner may direct Scottish Ministers to delay making the appointment/recommendation until the Parliament has considered the case.

The Commissioner is also required, under the Act, to prepare and publish a strategy for ensuring that appointments are made in a manner which encourages equal opportunities. In preparing this strategy, the Commissioner must consult both Scottish Ministers and the Parliament.

As you may know, there is currently no specific procedure for Parliamentary consideration of consultations or reports under the 2003 Act. It might be possible to use existing general procedures to facilitate such consideration as an interim measure, but this would not be satisfactory in the longer term.

It would be helpful therefore if your committee would consider developing a specific procedure for dealing with matters arising from the 2003 Act, and to any other statutory consultations and reports that require some response from the Parliament. This could, perhaps, include giving the Bureau a power of referral to an appropriate committee.

I should also like to take this opportunity to provide you with advance notification that I may also have to refer an issue to do with the possible re-appointment of Commissioners and Ombudsmen to your committee to consider a change to Standing Orders and I shall write to you further on this issue when I have more information.

A copy of the letter has also been sent to the committee clerk.

George Reid
24 June 2004
PROCEDURES COMMITTEE

Visit by the President and delegation from the Croatian Parliament, Wednesday 23 June 2004

Note by the Senior Assistant Clerk

Present:  Dr Vladimir Seks, President of the Croatian Parliament
            Mr Neven Jurica, President of the Foreign Affairs Committee
            Mrs Ingrid Anticevic-Marinovic, Vice President of the Committee
            for the Constitution and Political System
            Mr Josip Sesar, Secretary of the Croatian Parliament
            Mr Boris Abramovic, Chief of Staff of the President’s Office
            Mrs Marina Plochinjic, Adviser/Interpreter
            Mark Ballard MSP, Member, Procedures Committee
            Jamie McGrigor MSP, Member, Procedures Committee
            Andrew Mylne, Clerk to the Procedures Committee
            Jane McEwan, Senior Assistant Clerk, Procedures Committee
            Graeme Wear, External Liaison Unit.

Introduction

1. Following the formal introductions, Mark Ballard outlined the remit of the Procedures Committee and gave a brief summary of the work the Committee had undertaken to date. He also indicated that the Committee was about to embark on a major inquiry into the Parliament’s private bills procedures.

Oral Questions

2. The discussion then turned to oral questions. Dr Seks said that oral questions in the Croatian Parliament had been extended and a total of 41 questions were now asked during question time. 50% of these questions were allocated to government parties with the other 50% allocated to the opposition parties. Dr Seks’ party held 66 seats in the Parliament and, as a consequence, they were allocated 15 questions for each oral question session. Each member is allowed to submit 2 questions but only the first 41 drawn are taken. Those questions to be taken are drawn randomly from a box. The questions drawn are then published 24 hours before the oral question session.

3. Dr Seks went on to explain that, historically, the right to ask supplementary questions had been abused with some members asking supplementary questions which were totally unrelated to the main question. Now all questions must be kept short and if the questioner is unhappy with the response they can request further written information.
4. Delegates confirmed that oral questions were televised.

Parliamentary Committees

5. Dr Seks indicated that the composition of Croatian Parliamentary committees reflected that of the Parliament as a whole. Therefore, as in the Scottish Parliament, the ruling parties had an in-built majority. The allocation of committee chairs also reflected the make-up of the Parliament. The role of the Committee for the Constitution and Political System in the Croatian Parliament appeared to mirror that of the Procedures Committee. As in the Scottish Parliament, changes to Standing Orders had to be agreed by the whole Parliament in plenary session before they could be implemented.

6. In the main, Committee meetings took place in public, although the Committee for National Security sometimes needed to meet in private session.

Elections

7. Dr Seks said Croatia had had a 65% turnout at the last general election. As in Scotland, the majority of members of Parliament are elected from party lists. However the majority of those with constituencies tend to live within the constituency and hold regular surgeries.

Procedures Committee
September 2004
Mark Ballard, together with the Clerk and the Assistant Clerk, attended a meeting with a Québec delegation led by the President (Speaker) to discuss Parliamentary procedure in the Scottish Parliament.

Specific areas of discussion included the management of oral questions, consensual decision-making in committees, voting in the Chamber and issues of party balance.

The National Assembly is currently considering a programme of parliamentary reform and wishes to take some ideas from how things are managed here in Scotland. This reflects the view that the Scottish Parliament is regarded by other legislatures across the world as an innovative and modern institution.

There follows some interesting facts relating to the National Assembly, which may be useful to the Committee in future comparative work.

The makeup of the National Assembly and plenary sittings

- As at 31 March 2004, the Assembly was composed of 38 women (30.6%) and of 86 men (69.4%).

- The Standing Orders of the National Assembly establish a work calendar that is divided into two periods: from the second Tuesday in March until 23 June at the latest, and from the third Tuesday in October until 21 December at the latest.

- The National Assembly normally sits on Tuesdays, Wednesdays and Thursdays from 10.00 am – 12.00 pm and then from 2.00 pm – 6.00 pm. The Standing Orders also allow for special ‘intensive periods’, under which the weekly sittings are extended to include Fridays and the daily duration is extended to 10.00 am – 1.00 pm, 3.00 pm – 6.00 pm and 8.00 pm – 12.00 am.

- In the course of the 2003/4 year, the National Assembly met 56 times and for a total of 325 hours and 58 minutes.

Oral questions

- The item of business during which oral questions are answered is the most familiar to the public. Oral questions are asked during a 45-minute period as part of Routine Business, which occurs on each day that the National Assembly meets. In the course of the 2003/4 year, the National Assembly spent 41 hours and 15 minutes on oral questions, during which time 513 questions and 700 supplementaries were asked.
Bills

- Only a Minister may introduce a Bill that has a financial impact. Otherwise, any Member may introduce a Bill at the National Assembly, the drafting of which is carried out by the legal and legislative services of the Assembly.

- In the year 2003/4, the National Assembly passed 38 Bills. 30 were introduced by Ministers, 15 of which were adopted unanimously; 2 were introduced by Members and were both adopted unanimously; and 6 were private Bills, 5 of which were adopted unanimously. On average, 47 days elapsed from the day on which the Bill was introduced to the day on which it was passed.

Standing Committees

- It is mainly through the Standing Committees that Members exercise their duties as legislators and controllers of the Government’s actions and the public administration. A Standing Committee is composed of a limited number of Members who are responsible for the examination of any matter within its competence.

- In the course of 2003/4 the committees met 348 times and for a total of 1,157 hours and 40 minutes.

- Committees may meet on any day from Monday to Friday and simultaneously with a plenary meeting. (Mondays between 2.00 – 6.00 pm; Tuesdays to Thursdays between 9.30 am – 12.30 pm and 2.00 pm – 6.00 pm; and on Fridays between 9.30 am – 12.30 pm.) As with plenary meetings, there is scope to extend these sitting times during ‘intensive periods’.

- There are 11 parliamentary committees, 9 of which are sector-based. 6 of the sector-based committees are chaired by Members from the group forming the Government and 3 by Members of the Official Opposition. The chairmanship of the Committee on Public Administration is set aside for a Member of the Official Opposition, and the President of the National Assembly chairs the Committee on the National Assembly, which, in addition to other things, establishes the membership of each of the Standing Committees. The Standing Committees that existed during the 2003/4 year are as follows:

  Committee on the National Assembly
  Committee on Public Administration
  Committee on Institutions
  Committee on Public Finance
  Committee on Social Affairs
  Committee on Labour and the Economy
  Committee on Agriculture, Fisheries and Food
  Committee on Planning and the Public Domain
  Committee on Education
  Committee on Culture
  Committee on Transportation and the Environment
Andrew Mylne  
Clerk to the Procedures Committee  
The Scottish Parliament  
Queensberry House  
Edinburgh  

23 September 2004  

Dear Andrew,

INQUIRY ON THE TIMESCALES AND STAGES OF LEGISLATION

I am writing on behalf of Councillor McChord in response to the invitation to set out our views on adding a reporting stage to Stage 3 of the Bill process. We are conscious that, since we provided our evidence, the Committee has decided upon a number of points arising from its inquiry.

COSLA has submitted evidence that both individual Members and Committees should have more time for the consideration of amendments to Bills both at and after Stage 2 and Stage 3. We believe that this is necessary so that the cumulative effects of amendments can be assessed. We are therefore pleased to note that the Committee has decided to extend the notice periods for amendments. We are particularly pleased that the Committee has agreed to indicate that Committees have the opportunity to review a Bill as amended after Stage 2.

However, it seems that the Committee does not recommend any substantive change to Stage 3 of the process. COSLA continues to believe that the lead Committee should 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. We see this as an opportunity, not a requirement, to be taken only when substantial numbers of amendments have been made to large and complex Bills. Then, if the lead Committee undertook a quick review, which revealed significant inconsistencies within the amended Bill, or significant difficulties in its implementation, further corrective amendments could be put to the Parliament before the motion is made to pass the Bill.

We appreciate that this addition of a reporting stage at Stage 3, with consideration by the lead Committee, would require at least a week’s gap between decisions on amendments and the decision on the Bill. We note that this is perceived as a disruption of Members’ consideration of the Bill and of the business programme. But we would argue that such a gap provides a valuable opportunity for reflection and would strengthen Members’ confidence in the legislation which they are passing. We would humbly suggest that it would also serve to strengthen the confidence of other stakeholders in the rigour and quality of the legislative process.

We hope that the Committee will wish to reflect further on this point.

Yours sincerely,

Bob Christie  
Corporate Adviser

Bob Christie
PROCEDURES COMMITTEE

Inquiry on Private Bill procedures

Further written evidence

SUBMISSION BY THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

Introduction

1. The Scottish Environment Protection Agency (SEPA) was constituted by the Environment Act 1995. It is a Non-Departmental Public Body with powers and duties which include the control of pollution, assessment of flood risk, and the giving of advice to Scottish Ministers and others. The Act (section 28) empowers SEPA to oppose “any private legislation in Parliament” but it is not clear whether that provision should have been amended or clarified after devolution.

2. The evidence which follows is based largely on SEPA’s experience of the promotion of the recent Stirling-Alloa-Kincardine Linked Improvements Bill.

Pre-Parliamentary stage, issues of concern to SEPA

3. The present government "Guidance on Private Bills 2004" indicates that prospective promoters are "invited" to make early contact with the Private Bills Unit when, among other things, advice can be taken on notification, advertising and accompanying documents (paras 2.3).

4. The draft Bill must be lodged along with certain accompanying documents including an Environmental Statement. Also, in the accompanying Promoter's Memorandum there should be some detail on what consultation (if any) was undertaken on the proposals, and the Promoter's Statement details arrangements for, among other things, further discussion or consultation (paras 2.15 and 2.16).

5. In the case of Public Bills, consultation papers are normally issued by the Scottish Executive to provide an opportunity for individuals and organisations to comment on draft legislation prior to its introduction to the Scottish Parliament, and where that proposed legislation has implication for functions of SEPA the Scottish Executive will normally consult SEPA at an early stage. In the case of Private Bills any early consultation by the promoter seems to be entirely voluntary, and subsequently there may be no opportunity for SEPA to give early guidance to the Private Bills Unit nor to gear itself up for the time-consuming investigation and consideration that might be required among various SEPA staff and departments.
6. SEPA would therefore welcome an element of compulsion, probably by amending the "accompanying documents" rules to ensure that SEPA is engaged at the earliest possible opportunity and in particular is closely involved in scoping the environmental statement and commenting on the statement itself. In other words it would be useful if SEPA were put in the same position as a "statutory consultee", similar to Town & Country Planning (TCP) and associated Environmental Impact Assessments (EIAs), with an appropriate rule defining the type of development/works or area of interest on which SEPA should be consulted (avoiding, for example, consultation on socio-economic issues on which others are better placed to comment). The TCP General Development Procedures Order lists development types that require SEPA consultation, and a similar criteria-based approach could be used here. It is likely that other environmental organisations such as Scottish Natural Heritage would also wish to be involved at an early stage. Indeed it is to be hoped that project managers, in the case of "works" bills, would welcome assistance from such organisations at the “pre-parliamentary” stage, since they need to be fully aware of all potential impacts of the works for good business reasons.

7. SEPA has experienced what it regarded as unreasonable timescales within the Private Bills procedures, and since the standard period for consultation on EIAs in other procedures is 28 days, this should be built in to the Private Bills procedure for environmental statements.

8. Apart from such an approach smoothing the way for the later consultation and consideration phases, it would be in line with the spirit of the Aarhus Convention, so far as relating to full participation by the public who are among SEPA's customers, including setting of reasonable time frames and promoting effective participation "at an early stage" (Convention wording) of any environmental decision-making.

Parliamentary stages, availability of advice from SEPA

9. The opportunity to provide advice on Private Bills prior to their formal introduction to the Scottish Parliament, suggested above should reduce the need to provide advice during subsequent Parliamentary stages, but it will not negate the need altogether (especially where the advice is contentious). The procedures for Private Bills do not however make it clear how such advice should be provided.

10. A Private Bill is introduced by the Promoter lodging it with the clerks at the Parliament. A copy of the Bill and all the accompanying documents is made available for inspection in each of the Parliament’s partner libraries in the area affected by the proposed Bill and, if possible, on the Parliament’s website. The Promoter must individually notify anyone considered to be directly affected by the Bill. They must also place a notice in two newspapers which circulate in the area affected by the Bill. Objections to the Bill must be lodged within 60 sitting days of
introduction. Any individual person, company or group of people, who consider that the Bill would adversely affect them, may lodge an objection. After the 60-day period, Preliminary Stage consideration of the Bill begins.

11. For the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, SEPA was served with 48 notices regarding its interests in March 2003. These took the form of, in the parlance of TCP, ‘neighbour notifications’, with SEPA being consulted on individual land allocations where it had an interest, for example a nearby hydrology gauging station.

12. Whilst these notices enabled SEPA to raise objections with regard to its property interests, the form of notice did not seek (nor alert SEPA to the need for) advice on the general principles of the proposed Bill or the accompanying Environmental Statement. If the latter is intended, then the form of notice should be changed to make this clear (or another mechanism altogether as noted at 6 above).

13. The Bill was subsequently introduced by Clackmannanshire Council on 15 May 2003. SEPA raised no objections with respect to its property interests. The objection period ended on 7 July 2003.

14. According to Parliamentary guidance, at the Preliminary Stage, the Committee has three functions:
   
   • To consider and report on the general principles of the Bill;
   
   • To consider and report on whether the Bill should proceed as a Private Bill; and
   
   • To give preliminary consideration to the objections and reject any objection where the objector’s interests are, in the opinion of the Committee, not clearly adversely affected by the Private Bill.

15. As SEPA had no objections with regard to its own interests and did not wish to comment on the general principles, it chose not to submit any objections or evidence at this stage. SEPA was asked by letter from the Committee for evidence on the effect of the Bill in respect of water resources and with reference to explicit parts of the ES. It would however be helpful to have more clarity as to when precisely, if at all, detailed suggestions for amendment of the Bill should normally be made by SEPA, as opposed to “objections” or comment on the principle of the Bill. For example the initial call for evidence might extend to such detailed suggestions.

16. It is not therefore clear how and when advice from organisations such as SEPA should be provided, especially where it does not amount to an objection. Although, in this case, the Bill Committee subsequently wrote to SEPA to request certain evidence, it would be helpful to clarify when such evidence will be sought. It may, for example, be
appropriate to make a call for evidence at the outset (not just objections with respect to interests) both on the general principles and on detailed amendments for the Consideration Stage.

SEPA
23 September 2004

SUBMISSION BY HISTORIC SCOTLAND

Purpose

1. This submission is in response to the Procedures Committee Clerk’s letter to Historic Scotland of 13 July 2004, which invites our views on the Private Bill procedures from our perspective as a consultee on previous Private Bills. We note that the Committee is considering the scope to streamline the current Private Bills process, particularly in relation to “works” Private Bills, and that comments are sought on options for change or improvement to current procedures, particularly those which might reduce the Parliament’s responsibility for such Bills. One specific option mentioned is the possibility of some Scottish equivalent to the Transport and Works Act 1992.

2. Historic Scotland welcomes this opportunity to provide evidence on those issues insofar as they relate to our remit for the protection of the Scotland’s historic environment.

Background

3. Historic Scotland (HS) is an Executive Agency of the Scottish Executive and part of the Scottish Executive Education Department (SEED). Its mission is to safeguard Scotland’s built heritage and promote its understanding and enjoyment.

4. Within this broad remit, HS exercises Scottish Ministers’ statutory powers in relation to the scheduling and protection of monuments of national importance under the Ancient Monuments and Archaeological Areas Act 1979 and the listing and protection of buildings of special architectural or historic interest under the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. We share responsibility with Scottish Natural Heritage for the identification and protection of historic gardens and designed landscapes included in An Inventory of Gardens and Designed Landscapes of Scotland, 1988, and its subsequent supplementary volumes which extend its original coverage. We are also responsible for ensuring compliance with UNESCO’s World Heritage Convention in respect of cultural World Heritage Sites in Scotland.

5. Scottish Executive planning policy also confirms that the maintenance and enhancement of the natural and built environment (which includes its historic elements) is one of the three primary objectives of the town and country
planning system. Consequently HS is widely consulted on both strategic planning documents and specific applications for planning permission. In the latter case the Town and Country Planning (General development Procedure) (Scotland) Order 1992 (as amended in 1994) specifically requires planning authorities to consult Scottish Ministers (through HS) in cases where planning applications may affect nationally important heritage assets. These include the site and setting of scheduled monuments and category A listed buildings, and the site of designed landscapes in the published Inventory.

6. HS is also a statutory consultee, again through Scottish Ministers, under the Environmental Impact Assessment (Scotland) Regulations 1999 which implement EC Directive No 85/337/EEC, as amended by Council Directive No 97/11/EC, on the assessment of the effects of certain public and private projects of the environment (the EIA Directive) Our role in this process is essentially to ensure that impacts on the historic environment are accurately identified and described, and that mitigation measures proposed to avoid, reduce or offset adverse impacts are appropriate and likely to be effective. Such consultations do not illicit a view on the development proposal per se.


8. This provides the general background to our interest and potential remit within the Private Bills procedures. Our direct experience to date is solely with “works” Private Bills for the Stirling/Alloa/Kincardine Railway, the Waverley Line Bill and the two Edinburgh Tram Lines. In each case we have provided comments on the environmental statement at the Preliminary Stage in response to requests from the respective Private Bill Committees. We have also given oral evidence at the Preliminary Stage of the Stirling/Alloa/Kincardine Railway Bill on the environmental statement. To date we have had no direct experience of the Bill procedures beyond that stage, though as an objector to both of the two Edinburgh Tram Bills we expect wider future engagement in the process.

9. We also have some limited past experience (and recollection) of the passage of Scottish “works” Private Bills through the Westminster Parliament prior to devolution and the procedures which applied in those cases, particularly in relation to the application of the Environmental Impact Assessment (EIA) Regulations. The application of EIA in the current Scottish Parliament Private Bills procedures is of particular concern to us.
Comments on current Procedures

10. As the Committee’s call for evidence stresses, many Private Bills relate to major building works which could have considerable effect on the lives of many Scots. From our experience of the 4 “works” Private Bills mentioned in para 8 above, those considerable effects include very significant potential impacts on the environment, including on national assets which other legislation and Government policy seek to protect. *A Partnership for a Better Scotland* places the environment at the heart of Scottish Executive policy making and seeks to secure environmental justice for all Scotland’s communities. Against this background we would expect the Private Bills procedures to contain clear and robust mechanisms to ensure that adequate weight attaches to the identification and mitigation of significant environmental impacts within the Bill documentation; that those issues are subject to appropriate consultation and scrutiny; and that there are sufficient checks and balances to secure environmental mitigation commitments and guarantee their implementation after Royal Assent has been gained. However our experience is that the current Private Bill procedures perform poorly in these areas in comparison to our experience of other consent mechanisms for major projects where similar issues arise. We would highlight the following specific areas of concern.

Consultation on the Bill

11. HS is widely consulted on many hundreds of development proposals which affect the historic environment. As noted in para 6 above, we are a statutory consultee (through Ministers) where planning applications may affect certain national heritage assets and are automatically notified of, and consulted on all such applications. We are also routinely notified of other types of major development requiring consent outwith the planning system, for example trunk road schemes or major utility infrastructure projects. To the best of our knowledge the Private Bill procedures are the only consent mechanism which places the onus on us to identify from press and/or web sites developments proposals where national heritage interests may be affected. Paras 2.16 – 2.25 of the Guidance on Private Bills indicate that only those persons identified in Standing Orders Rule 9A.2.3(d)(i)-(iii) must be notified: in effect those with an affected heritable property interest, or members of bodies corporate in certain circumstances. This excludes from formal notification all other potential “stakeholders”, including national agencies with statutory environmental duties. We accept that this could be seen as an administrative failing on our part, but HS does not routinely rely on public notices to detect development proposals which might adversely affect national heritage interests, nor do we have any internal mechanisms in place to do so. This is potentially an enormous task at a national scale. From our perspective as a Scottish Executive Agency with a duty to advise Ministers on the protection of Scotland’s historic environment we do not find the current limited consultation requirements in the Bill procedures to be helpful, particularly given the nature of the projects involved and their likely level and range of environmental impacts. The lack of formal consultation with key environmental bodies places important parts of Scotland’s heritage and
environment at considerable and unnecessary risk through simple and inadvertent oversight.

12. All 4 Bills cited in para 9 do raise significant issues for the historic environment, but in all cases we only became aware of this when approached by the relevant Bill Committee Clerks for comments on the environmental statement at the Preliminary Stage. In each case that approach came well after the 60 day objection period had expired. In the case of the 2 railway Bills we are able to rely on Ministers powers under the Ancient Monuments and Archaeological Areas Act 1979 to seek resolution of major adverse impacts since those powers are not affected by those Bills. However in the case of the Edinburgh Tram Bills we have, regretfully, had to lodge a late objection in order to reserve our position.

The Status of the “Environmental Statement”

13. As noted in para 6, HS is also a statutory consultee, through Ministers, under the Environmental Impact Assessment (Scotland) Regulations 1999 (the 1999 Regulations). These require that certain projects defined in its schedules are subject to the process of Environmental Impact Assessment (EIA). By their nature the type of project promoted by “works” Private Bills is likely to raise significant environmental issues and would almost certainly require EIA if they were subject to other consent mechanisms.

14. The production of an environmental statement is simply one part of the wider process of EIA under the 1999 Regulations. EIA is an open and transparent process requiring consultation with statutory bodies at various stages, and with the public. The elimination of adverse environmental impacts or their reduction to an acceptable level is at the heart of the process. The decision maker is required to take account of the “environmental information” in the decision making process, and that is defined in the Regulations as including both the contents of the environmental statement and any further information and any representations made by statutory consultees and the public. The decision maker must also state in the decision that he has done so and include a description of the main measures to avoid reduce and, if possible, offset the major adverse effects of the development. From this HS would argue that an “environmental statement” in itself has no real meaning or purpose if it is divorced from the whole process and purpose of EIA as set out in the 1999 Regulations.

15. Yet Private Bill Standing Order Rule 9A.2.3(c) simply requires that a Private Bill should be accompanied by an “environmental statement”, defined as containing all the information set out in Schedule 4 to the 1999 Regulations. No further guidance is given, nor any further reference made to any other part of the 1999 Regulations. Consequently it is unclear whether this “environmental statement” must be compiled in compliance with all other parts of the Regulations, including their publicity and consultation requirements, and what its status is in the decision making process.
16. Whilst we accept that Article 1.5 of the EU Directive excludes projects which are adopted by a specific act of national legislation from the need for EIA, we question whether in fact that is the intention in the UK. As is apparent in the way Scotland is currently implementing The Environmental Assessment of Plans and Programmes (Scotland Regulations 2004 (the SEA Regulations), member states are not prevented from going beyond the requirements set by European Directive. Indeed prior to devolution Scottish Office Development Department circular 26/1991 Environmental Assessment and Private Legislation Procedures specifically addresses this issue in the context of the Private Legislation (Scotland) Act 1936. Paragraph 3 confirms the exclusion of projects adopted by national legislation from the provisions of the Directive, but goes on to say that the purpose of the Directive is to ensure that all projects which are likely to have significant environmental effects are subject to an assessment of those effects before consent is granted. Thus the intention behind the adoption of a General Order to the 1936 Act at that time “is to ensure that projects which would have been subject to environmental assessment, but for the fact that they were approved through Parliamentary Private Legislation procedures would in fact be subject to environmental assessment”. It goes on to give detailed guidance on how the Regulations are to apply, including guidance on consultation and the consideration of environmental information in the decision making process.

17. Circular 26/1991 was amended by Scottish Executive Development Department circular 15/1999 The Environmental Impact Assessment (Scotland) Regulations 1999. Paragraph 168 states “the appendices to circular 26/1991 are amended, and this Circular remains relevant for projects which are the subject of private legislation through the UK Parliament. Further guidance on procedures at the Scottish Parliament in this regard will be issued in due course”. With the exception of the very brief reference to the need for an environmental statement in the Guidance on Private Bills discussed in para 15 above, no further guidance has been issued. The ambiguity of the current situation has already been stressed. We also find it hard to believe that Scotland intends that EIA should apply to a lesser degree than it applies under other UK provisions, particularly when Scotland is at the forefront in implementing the principles of SEA. We consider that this ambiguity over whether or not the EIA Regulations apply in their entirety to projects promoted by Private Bill in Scotland must be rectified as a matter of urgency.

**Consultation on the “environmental statement”**

18. One consequence of this ambiguity is that the current Private Bill procedures do not explicitly require any consultation at the various key stages with the environmental bodies identified in the 1999 Regulations, including at the point when the environmental statement has been produced and lodged with the “application” – in this case the Bill. This compounds the problems identified in para 11 above. It is true that our comments on the contents of the submitted environmental statements have been routinely sought by the respective Bill Committee Clerks at a later date, in preparation for the Preliminary Stage of the Bill. However that is outwith the formal objection
period, and the only way we are able to reserve our position where we are concerned about certain aspects of a Bill is through objection.

19. From our experience of the Bill procedures to date it is also unclear what purpose our comments at this stage serve, if there is no clear legal requirement within the Bill procedures for the Committee to take account of the “environmental information” in their decisions on the Bill.

Adequacy of information provided in Private Bill environmental statements

20. In general we do not consider that the Private Bill environmental statements we have seen to date contain sufficient details to fulfil the purpose of EIA. Under Rule 9A.2.3(c) the environmental statement must include all the information contained in Schedule 4 to the 1999 Regulations. Our experience is that whilst most correctly describe the aspects if the historic environment likely to be affected, the actual effects are in many cases either uncertain or unknown because the project details are not sufficiently developed.

21. We appreciate that most Private Bills seek to establish the principle of development and that there is a reluctance to undertake much costly work until that principle is established. In that respect the situation is broadly similar to that of outline planning applications. Here Government guidance makes clear that the requirements of the Regulations must be fully met at this stage. “The limited information generally provided in an outline application is unlikely to be sufficient to form the basis of an environmental statement, or for the planning authority, the public and the statutory consultees to make an informed response. There may be uncertainties for example over the way the project will be constructed and operated, including its design and development footprint, making it difficult to accurately determine the environmental effects on the basis of the documentation submitted.” (Planning Advice Note 58, Environmental Impact Assessment). In the light of a growing number of successful legal challenges in the English courts, the Scottish Executive issued further guidance to all planning authorities in June 2002 on the minimum requirements of the Regulations and on outline planning applications. We believe that the same issues also arise in the case of projects promoted under the Private Bill procedures. Whilst there is currently a total lack of guidance on this issue specific to Private Bills, we recommend that full use is made of existing guidance to improve the current standard of environmental statements.

Status of the environmental statement in the decision making process

22. In line with comments in paragraphs 14 and 16 above, the Private Bill procedures need to make explicit the status of the environmental statement in the decision making process. It is otherwise without obvious effective purpose.
Securing mitigation measures

23. Although HS has not yet had any direct experience of the Private Bill procedures beyond the Preliminary Stage, our objection in the case of the Edinburgh Tram Bills has given us cause to consider, in practical terms, how environmental mitigation commitments can be made legally binding in the case of development promoted by Private Bill. Scottish Executive circular 15/1999 Environmental Impact Assessment (Scotland) Regulations 1999 stresses that mitigation measures proposed in an ES are designed to limit the environmental effects of the development and that careful consideration needs to be given to securing such measures, particularly where they have been important in the decision making process and are cited in the report on the decision. In the case of planning proposals we would expect such matters to be secured either by appropriate planning condition or by legal agreement under section 75 of The Town and Country Planning (Scotland) Act 1997. In the case of Private Bills it is not clear to us what, if any, parallel mechanisms exist to achieve this end. There is no guidance on this matter in the published Guidance on Private Bills.

Transport and Works Act 1992

24. We note that the Committee’s call for evidence raises the possibility of the adoption of a Scottish equivalent to the Transport and Works Act 1992, as an alternative to the current “works” Private Bill procedures. Although we have no direct knowledge or experience of its application, we have had a brief look at some of the statutory instruments related to this Act to see whether they hold any answers to the environmental problems highlighted in this paper. In addition to the Act itself we have have a brief look at:

- The Transport and Works (Assessment of Environmental Effects) Regulations 2000 (SI 2000 No 3199)

25. At this admittedly very superficial level of scrutiny, it would appear that this Act and its other accompanying statutory instruments may offer a positive way forward. It fully transposes the requirements for EIA into its application and would meet our concerns about those aspects of the current Private Bill procedures. In addition The Transport and Works (Applications and Objections) Procedure (England and Wales) Rules 2000 (SI 2000 No 2190) also requires that a specified list of interested parties set out in its Schedules are both notified of an intended application, and are served a copy of the application and its documents, including the environmental statement. Those parties include HS equivalent bodies in England and Wales for a number of statutory historic environment matters. This seem to broadly parallel the effect of the planning consultations received by HS under the General
Development Procedure Order which are discussed in paras 11 and 12 above.

26. In conclusion we consider that for our environmental concerns, the adoption of a Scottish equivalent of this Act may indeed be a positive way forward, and certainly one which deserves more detailed consideration.

Historic Scotland
24 September 2004

SUBMISSION BY GRAHAM BISSET

I refer to the invitation of the Procedures Committee for interested parties to comment on the Scottish Parliament’s Private Bill’s process. As an objector, to the Stirling-Alloa-Kincardine railway and linked improvements bill (“SAK”), I have had first-hand experience of the process, and the views offered in this submission reflect my experience and that of my entire Group.

I consider that there are a number of weaknesses in the process, and that as a consequence there is a real risk that the process does not best serve the needs of the country. At worst, it could lead to breaches of European law and Human Rights. The process appears unnecessarily biased towards political needs and is at risk of manipulation.

The main observations that are set out in the attached relate to:

- Accessibility
- Public Consultation and Notification
- Guidance on Objections
- Committee Membership and Roles
- Timetable Pressures
- Scope of Bills and Committees’ abilities to make amendments
- Environmental statements and the requirements of Directive 85/337/EEC of the Council of the European Communities
- Over-reliance on statutory consultees in the Preliminary Stage
- Aggregation of Objectors
- Process

I trust that you will find this of help to your Committee.

Accessibility

The process of objecting to a Private Bill can be daunting and intimidating. Taking account of many people’s reluctance to express themselves, the process is one of attrition which tends to silence those who might otherwise object. There is evidence that some objectors have been intimidated by the
process and were unable to voice their objections. Factors which contribute to the process being daunting or intimidation include:

- practical difficulty in accessing, digesting and understanding information on the proposals
- the requirements for detailed written submissions and evidence
- limited funding, lack of access to experts, and the requirement for a £20 fee
- the semi-judicial nature of proceedings
- lack of flexibility in arranging meetings, and the imposition of deadlines
- the reams of minutes and other papers circulated by the Committee and their clerks

Only by overcoming these and other aspects of the process can the ordinary populace have their objections heard. Most objectors were engaged in the process in their spare time, and it was only through the strength of their convictions that they saw the process through. It is not surprising that there was some fall-out. One can only speculate at the number of people who did not engage in the process due to initial hurdles.

Public Consultation and Notification

The Parliamentary guidance requires that prospective objectors should have been informed about the SAK Bill, either by way of newspaper advertisements or directly by the promoter in advance of its introduction. There are apparent weaknesses in this process, relying on newspaper articles or the efforts of the promoter to identify prospective objectors. A similar situation seems to have arisen in Galashiels which is the site of the proposed Waverley railway. It does not make sense to rely on the promoter to fulfil this function, when they have a vested interest in minimising the number and extent of objections. The use of one local newspaper in a region covered by four local newspapers was flawed. It is apparent that a number of people who might have objected were not aware of the proposals or of the process and its timetable, and were effectively disenfranchised. A mechanism that requires positive or negative consent from all within (say) 4 miles of such works would be more effective as a consultation mechanism, and in identifying potential objectors.

Guidance on objections

In its Guidance on Private Bills, the Parliament requires objectors to state “if the objection is to the whole Bill or only to certain provisions, in which case, these should be clearly identified”. With the benefit of hind-sight, this guidance is unhelpful. During the Preliminary Stage, it became apparent that there was no scope within the SAK Bill for manoeuvre or compromise, and consequently when it became clear that my objections could not be accommodated within the scope of the bill, I had no choice but amend my objection to being an objection against the whole Bill.
The guidance offered by the Parliament should be more explicit, as given lack of flexibility in any Bill, objectors will have little alternative but to press their objections against the whole of a Bill.

Committee Membership and Roles

The membership and composition of Bill committees can constrain the process for the following reasons:

- Lack of experience and limited resources

The relatively small number of available MSPs, combined with a requirement for 5 members to form the Bill Committee is likely to put pressure on the body of MSPs. Furthermore, they are required to deal with issues with which they are unlikely to be familiar. This lack of familiarity can lead to both inefficiency, and a lack of sustained or meaningful challenge - particularly when faced with the professional witnesses and experts engaged by, and paid by, the promoter. The SAK Bill was treated as a learning process, and this is not best way to take quality decisions.

- Potential for conflicts of interest

By establishing a Bill Committee composed of MSPs, the process presents members with significant potential for conflicts of interests that could influence their objectivity whilst in committee.

While originally most such Private Bills were promoted by private individuals or companies, they are now promoted by local governments or other public bodies in pursuit of central government policies.

As members of political parties, members are subject to not insignificant peer pressure to follow party lines and support party policy. They are conditioned to accept policy, and are aware of the reputational and career consequences of challenging policy in a public arena. There is scope for members to be influenced by informal political networks; and for cronyism. No matter the stated intention, these factors provide scope to undermine the primary purpose of committees which is to approve a Private Bill that can undermine the property rights of individuals, and remove rights, enjoyments and impose nuisance on communities. It is not simply enough for committee members to be seen to be independent of such pressures, but also to be independent. MSPs who are members of political parties are unlikely to truly satisfy these pre-requisites.

Prior to their membership of the SAK Committee, there is evidence that Bill Butler, David Mundell, Rob Gibson and Nora Radcliffe were supportive of developing transport policy as regards railways.
Timetable Pressures

The Committee was subject to further pressures as regards the timetable for the Bill, and the publicised dates for key decisions. The pressure on members of the Bill Committee to keep on target and internalise any problems was apparent. This was the first bill of its kind, and the credibility and reputation of the Parliament, was being challenged, with a background of under-performance and under-delivery exemplified by the Holyrood debacle. The media had been conditioned, and failure of the SAK Bill would have been perceived as a failure - even though such an outcome might arguably have been the best result for the country. All this made it difficult for the Committee to refuse the Bill.

Scope of Bills and Committees’ abilities to make amendments

It became apparent that the SAK Committee had very little ability to make changes to the Bill that was proposed by the promoter. During the Consideration Stage reference was made to a “Bill within a Bill”, and discussions with the clerks indicated that any fundamental amendments would mean that the Bill would fail.

The way in which the SAK Bill had been drafted meant that the Parliament was offered no additional flexibility to influence or limit the operations of the railway in the terms expressed in the environmental statement. The eventual works could bear little resemblance to the works anticipated by the environmental statement. These are matters that I developed in sections 2 and 3 of my written evidence. The Committee considered that it secured commitments from the promoter to honour mitigation works for a period of 12 months, but these are not embraced in the statute. Nor are any more long lasting commitments, and consequently the communities that will be affected by the adverse environmental and other effects are in the hands of the promoters and future railway operators to ensure that such commitments are honoured for many years into the future. It was reckless for the Committee to fail to address these risks in the Bill, whilst granting the promoter and future operators long-lasting powers over the communities involved.

As there were no such powers within the proposed Bill, I was advised by the clerks that it was not possible for the Committee to make or propose such amendments, and that it would be for the Committee to refuse the Bill, and for the promoter to re-launch the process. Given the pressures on the Committee, this seems like a non-starter. All of this seems a very roundabout way of achieving such things, when in comparable circumstances, a local planning authority can propose and developers can amend planning applications to deliver benefit for both promoters and objectors. Failure to agree to amend the opening hours of a pub for example can lead to planning permission being with-held. This is not the case for a railway that could operate 24 hours a day, 7 days a week.
Environmental statements and the requirements of Directive 85/337/EEC of the Council of the European Communities

One of the functions of the Committee was to understand the environmental impacts of the scheme, and to consider the environmental statement, to ensure that it took full account of Directive 85/337/EEC of the Council of the European Communities. I am of the opinion that the SAK Committee failed in this matter and that the environmental statement did not give sufficient or adequate consideration of the environmental benefits that the scheme might purport to have.

Instead the statement drew proxy comparisons with transport and other policies, that were non-specific and did not quantify the environmental benefits of the scheme. This did nothing to satisfy the requirements of Directive 85/337/EEC of the Council of the European Communities and the Environmental Impact Assessment (Scotland) Regulations 1999 which have no requirements to identify “policy”. Without an objective explanation and evaluation of the environmental benefits of such a scheme it was unreasonable to expect any Bill Committee to understand the extent of environmental damage or benefit a scheme might bring. In future, environmental statements should provide an assessment of the purported environmental benefits of such schemes, and avoid confusing policy with pollution, emissions, contaminants and the other environmental effects of such schemes.

There are conflicts between environmental priorities as outlined in Directive 85/337/EEC and many existing policies. It is unsafe to assume that consistency with policy automatically implies an environmentally sound approach or benefit. Each case must be judged on its own net environmental worth. Neither the SAK Environmental Statement nor the Committees’ reports facilitated this. The Parliament failed to identify or understand the environmental effects of the scheme.

Over-reliance on statutory consultees in the Preliminary Stage

In the Preliminary Stage, the Bill Committee did not hear evidence as regards objections from any of the objectors. As regards environmental objections, the Committee sought out and relied upon the comments and occasional objections of “statutory consultees”. The level of challenge from the statutory consultees was variable and sometimes poor, reflecting little understanding of the local issues, the proposed scheme and the role of the Committee. Some appointed representatives of the statutory consultees showed signs of being over-whelmed by the process, and generally this phase of the Preliminary Stage was unsatisfactory, with many of the potential environmental issues being lost in “design development”, to be determined by the promoter, in the Committee’s urge to clear the Preliminary Stage.

The independence of some statutory consultees that are dependent on the Executive for funding must also be a consideration.
It is not clear why the Committee did not hear evidence from objectors at this stage. By ensuring the Parliament’s adoption of the Bill at the Preliminary Stage, without an appreciation of the cases of the objectors, the process had the effect of presenting the Bill as a fait accompli, and meant that objectors could only be catered for within the scope of the bill. As outlined above, the Committee had little room for manoeuvre, and this was a contributing factor in the failure of the Committee to recognise any of the objections.

**Aggregation of Objectors**

The aggregation of objections and under-lying objections may have been an administrative expedient, but was unhelpful in its misrepresentation of the depth of objections to both the Parliament, and the media. In the SAK bill, there were some 11 objection groups that were created from the 50 or so objections received. Some of these objections represented the views of communities, including a number of households made up of several people. It was apparent that hundreds, if not thousands, of people whose homes border the proposed line objected to the scheme.

**Process**

Having presented my written evidence at the Consideration Stage in accordance with the required timetable, I was advised by the Convener of the SAK Bill Committee that neither sections 6 or 7 of my evidence would be heard by the Committee as these sections related to the Preliminary Stage of the Bill. I was advised of this just as I was about to present my verbal evidence, and no further explanation has been forthcoming. I had no prior warning that my evidence would be undermined in this fashion. Had I been convinced by the benefits of the scheme, I would have been more accepting of the proposal, but these areas were fundamental to my overall view of the Bill as they concerned potentially fundamental flaws and weaknesses in the promoter’s case that had not been well addressed by the Committee during the Preliminary Stage of the Bill.

If a committee or its advisers determines that the written evidence of an objector is inadmissible, the process should at least recognise common courtesy and provide for advance written notification of the matter. Consideration should also be given to providing an appeal mechanism to ensure that common justice is served.

Graham Bisset
24 September 2004
PROCEDURES COMMITTEE

MINUTES

11th Meeting, 2004 (Session 2)

Tuesday 22 June 2004

Present:

Mr Richard Baker  Mark Ballard
Cathie Craigie  Linda Fabiani (Committee substitute)
Karen Gillon (Deputy Convener)  Jamie McGrigor
Iain Smith (Convener)

Apologies were received from Bruce Crawford.

The meeting opened at 10.16 am.

1. Work programme: The Committee agreed that its next major inquiry would be on Private Bill procedures, particularly options to remove some, or all, of the responsibility for “works” Bills from the Parliament. The Committee also agreed to undertake a smaller scale inquiry on whether there should be prohibitions on petitions being lodged by MSPs and on petitions that have been closed being re-submitted within a year. The Committee further agreed to hold an awayday in September to include (if possible) a briefing on Private Bills, consideration of the Committee’s work programme for the year ahead and training on questioning techniques.

2. Bills – timescales and Stages: The Committee considered the summary of evidence and the list of issues raised during the course of the inquiry and agreed that: there should a minimum period of 5 sitting days between the publication of a Stage 1 report and the date of the Stage 1 debate; the minimum interval between Stages 1 and 2 should be extended from 7 to 8 sitting days; there should be a single lodging deadline, Marshalled List and groupings for all Stage 2 amendment proceedings held in the same week; the minimum notice period for Stage 2 amendments should be extended from 2 to 3 sitting days, with the lodging-deadline on the last day before the Stage (or day of the Stage) moved back from 2 pm to 12 noon; the minimum interval between Stages 2 and 3 should be 9 sitting days
regardless of whether the Bill was amended at Stage 2; the minimum notice period for Stage 3 amendments should be extended from 3 to 4 sitting days, with the lodging-deadline on the last day before the Stage (or day of the Stage) moved back from 4.30 pm to 2 pm; there should be a single lodging deadline, Marshalled List and groupings for all Stage 3 amendment proceedings held in the same week; Stage 3 timetabling motions should allow a degree of flexibility to the Presiding Officer to depart from deadlines as proceedings unfold; there should be a new Rule to allow motions without notice to be moved during Stage 3 proceedings to vary previously-agreed deadlines; the Executive memorandum on delegated powers should be one of the accompanying documents required on introduction of a Bill; and a revised memorandum should be provided within a prescribed period after the end of Stage 2 where the delegated powers have been amended.

The Committee agreed to consider a draft report in private at its next meeting.

3. **A new procedure for Members’ Bills (in private):** The Committee considered proposals for the implementation of the standing order changes and agreed a revised draft report and standing order changes, subject to confirmation of final changes by correspondence.

The meeting closed at 12.23 pm.

Andrew Mylne
Clerk to the Committee