PROCEDURES COMMITTEE

AGENDA

16th Meeting, 2004 (Session 2)

Tuesday 7 December 2004

The Committee will meet at 9.30 am in Committee Room 6.

1. **Item in private:** The Committee will decide whether to take item 5 in private.

2. **Private Bills:** The Committee will take evidence from—
   
   Alison Gorlov, partner, John Kennedy & Co., and Ian McCulloch, partner, Bircham Dyson Bell, on behalf of the Society of Parliamentary Agents,
   
   and then from—
   
   Tom Adam, Clackmannan Railway Concern Group (objectors to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill).

3. **Commissioner for Public Appointments:** The Committee will take evidence from—
   
   Karen Carlton, Commissioner for Public Appointments in Scotland,
   
   and then consider options for Parliamentary consideration of statutory consultations and reports by the Commissioner.

4. **Visit to Dublin:** Members who participated in the recent fact-finding visit to Dublin in connection with the Private Bills inquiry will report back to the Committee.

5. **Final review of oral questions:** The Committee will further consider the timing of First Minister's Question Time and Question Time.

Andrew Mylne
Clerk to the Committee
Room TG.01
Ext 85175
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The following papers are attached for this meeting:

Agenda item 3
Memorandum by the Office of the Commissioner  PR/S2/04/16/1
Note by the Senior Assistant Clerk  PR/S2/04/16/2

Agenda item 4
Note by the Clerks  PR/S2/04/16/3

Agenda item 5
Paper on scheduling options (NB: paper re-circulated from the last meeting)  PR/S2/04/16/4
Correspondence with the Minister for Parliamentary Business on timing of review  PR/S2/04/16/5

The following papers are attached for information:

Correspondence with the Convener of the Environment and Rural Development Committee on Financial Memorandums  PR/S2/04/16/6
Note by the Clerk on a recent House of Lords report on the legislative process at Westminster  PR/S2/04/16/7
Minutes of the last meeting  PR/S2/04/15/M

Note: The following papers, circulated for previous meetings, are also relevant to this meeting agenda:

Agenda item 2
Submission by Society of Parliamentary Agents  PR/S2/04/13/7
Submission by Clackmannan Railway Concern Group  PR/S2/04/12/3
(These and other submissions are available on the Procedures Committee page of the website, via “Current business”.)
PROCEDURES COMMITTEE

Commissioner for Public Appointments inquiry

Memorandum from the Office of the Commissioner for Public Appointments in Scotland

Background Information

1. The Office of the Commissioner for Public Appointments in Scotland (OCPAS) was established by the Public Appointments and Public Bodies etc. (Scotland) Act 2003 to create and regulate a public appointments process

   - which is open and transparent;
   - which attracts a wide and diverse range of applicants;
   - in which selection is based on merit;
   - which delivers a quality outcome; and
   - which commands public confidence.

2. The role of the Commissioner is to regulate, monitor, report and advise on the way in which Ministers make appointments to the boards of public bodies within the Commissioner’s remit, to ensure that appointments are made in a way which is open, transparent and merit based.

3. Independent Assessors (IAs) are appointed by the Commissioner to monitor and report on the application of the Code of Practice for Ministerial Appointments to Public Bodies. Their role is to assist Ministers in making appointments which command public confidence and to provide assurance that the processes used for appointment to the boards of bodies conform to the principles and practice contained in the Code of Practice for Ministerial Appointments to Public Bodies. IAs ensure that appointments are made in a way which is free from personal and political bias.

4. From October 2004 IAs’ fees and expenses for participation in appointments to regulated bodies are paid for by the Commissioner’s office, further emphasising the independence of their role from the Executive. Prior to this the Executive sponsor Departments were responsible for covering these costs.

5. Under the legislation the Commissioner must:

   - prepare and publish a Code of Practice for Ministerial Appointments to Public Bodies and must revise this Code when appropriate. The Commissioner is required to consult the Parliament on the content of the Code and subsequent revisions;

   - report to the Parliament any case where the Code of Practice has been breached (in a material regard) and Scottish Ministers have failed or are likely to fail to act on this breach (in which case the Commissioner may direct Scottish Ministers to delay making the appointment/recommendation until the Parliament has considered the case);
• prepare and publish a strategy for ensuring that appointments are made in a manner which encourages equal opportunities, in consultation with the Parliament;

• lay annually a report before the Parliament on the exercise of her functions.

Options for reporting to/consulting with the Scottish Parliament

6. The Commissioner is happy to discuss options for reporting to and consulting with the Parliament when she appears before the Committee on 7 December.

7. In the meantime, she has submitted for the Committee’s information an example of information on the process used in another jurisdiction where there is a requirement for parliamentary consultation before exercising a right or function under legislation. This can be found in the annex to this paper.

Non-compliance with the Code of Practice for Ministerial Appointments to Public Bodies

8. The Commissioner believes that cases of non-compliance are likely to be rare. The Scottish Executive is conscientious in following the Code of Practice and if a deviation in the Code is highlighted by an Independent Assessor during an appointments round, the Executive generally is quick to address this. Since the Commissioner was appointed in June 2004 she has not had to approach the Executive’s senior management with any concerns. Likewise no formal complaints about an appointments round have been received by the Commissioner in that time.

9. Should it happen that a case of serious non-compliance is reported to the Commissioner, prior to reporting to the Parliament the Commissioner would take the following action:

• the breach will be investigated by the Commissioner;

• if the Commissioner considers the breach to be material and it has not yet been actioned by the Executive, the Commissioner will meet the Scottish Executive Department Head to discuss and resolve the area of non-compliance;

• if appropriate, the Commissioner will also meet with the relevant Minister;

• should the Commissioner be dissatisfied with the response or the action taken by the Executive/Scottish Ministers and the breach remains material, she will report to the Parliament.

November 2004
ANNEX: Victoria, Australia and the Audit Act 1994

Victoria's Constitution Act 1975 provides that the Auditor-General is an independent officer of Parliament. The position, therefore, has a special relationship with Parliament. There is a statutory requirement to develop an annual plan and present the plan to Parliament, after consultation with the Public Accounts and Estimates Committee.

Rather than leaving the framework for consultation to the Parliament itself to determine, the Audit Act 1994 specifically provides a framework with which the Auditor General's annual plan must comply.

Section 7A of the 1994 Act states:

(1) Before the beginning of each financial year, the Auditor General must—

   (a) prepare a draft annual plan describing the Auditor General's proposed work program for that year; and

   (b) submit the draft to the Parliamentary Committee.

(2) The Parliamentary Committee must consider the draft annual plan and may comment on it.

(3) After considering the draft annual plan, the Parliamentary Committee must return it with any comments to the Auditor General.

(4) As soon as practicable after the passage of the annual appropriation Acts for a financial year, the Auditor-General must complete the annual plan for that year, after considering any comments received from the Parliamentary Committee.

(5) The Auditor General must indicate in the annual plan the nature of any changes suggested by the Parliamentary Committee that the Auditor General has not adopted.

(6) Before the beginning of the financial year to which an annual plan relates, the Auditor General must—

   (a) present the annual plan to the Parliamentary Committee; and

   (b) give the annual plan to the clerk of each House of the Parliament.

(7) The clerk of each House of the Parliament must cause the annual plan to be laid before the House on the day on which it is received or on the next sitting day of the House.

(8) An annual plan that is given to the clerks under sub-section (6)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.

Thus in this instance the consultation procedure is through the Parliamentary Committee.
PROCEDURES COMMITTEE

Commissioner for Public Appointments – Consultations and Reports to the Parliament

Note by the Senior Assistant Clerk

Purpose

1. This paper invites the Committee to:

   a) consider how to give effect to the requirement in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 that the Parliament is consulted on the Code of Practice for Ministerial Appointments to Public Bodies and Equalities Strategy drawn up by the Commissioner for Public Appointments in Scotland;

   b) consider how, in procedural terms, the Parliament would deal with any reported breach of the Code of Practice; and

   c) agree that any procedure drawn up in respect of consulting the Parliament on the Code of Practice be extended to cover all statutory consultations.

Background

2. The Public Appointments and Public Bodies etc. (Scotland) Act 2003 was passed towards the end of the first session of the Parliament. It provides for the appointment of a Commissioner for Public Appointments, to be appointed by The Queen on a nomination from the Scottish Parliament. The first Commissioner for Public Appointments in Scotland, Karen Carlton, was appointed on 1 June 2004.

3. Under the Act, the Commissioner is required to prepare and publish a Code of Practice in respect of the making of appointments or recommendations for appointments by the Scottish Ministers to the public bodies listed in schedule 2 to the Act. In preparing or revising the Code, the Commissioner is required to consult both the Scottish Ministers and the Parliament.

4. 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.

5. 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 in 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.
6. Finally, the Commissioner must lay annually a report before Parliament on the exercise of his/her functions.

7. There are currently no provisions within the Parliament’s Standing Orders which relate to the Commissioner’s role and, consequently, there is a lack of clarity over the way in which a breach of the Code would be dealt with in procedural terms. It is also unclear how the requirement for the Parliament to be consulted on the contents of the Code and Equalities Strategy would operate in practice. As indicated above, this has also highlighted the fact that the Parliament has, as yet, no procedure in place for handling statutory consultations.

**Code of Practice**

8. The Office of the Commissioner for Public Appointments is currently working on the draft Scottish Code and it is expected that the draft will be ready for publication in February 2005.

**Informing the Parliament**

9. Once the draft Code is available there is an obligation on the Commissioner to consult the Parliament. As a first step in any consultation procedure, the Commissioner would need to bring the consultation document to the attention of the Parliament. There are two ways this could be done. The more formal mechanism would be to lay the consultation document before the Parliament. Guidance on laying documents before the Parliament is already in existence and could be made available to the Commissioner. Details of all documents laid before the Parliament are published in Section H of the Business Bulletin, so all members would at this point, be informed of the document. Alternatively, the Commissioner could write to the Presiding Officer. The Presiding Officer could then inform members of the consultation document via an announcement in the Business Bulletin. In either case the net result would be similar, in that members would be informed via the Bulletin of the consultation document.

10. The laying of a document before Parliament is a more formal procedure in that documents must be numbered in a certain way, can only be laid when the Office of the Clerk is open and so on. As this is a more formal procedure, it would provide a definite record which might be helpful to anyone wishing to track the process. However, there is also a convention that laid documents are not made publicly available prior to being laid before the Parliament. In the case of a public consultation document this may appear unnecessarily restrictive, particularly given that the Office of the Clerk is closed on a number of days during the summer recess period. It is also worth noting that the Act did not specify that the document should be laid before Parliament.

The announcements section is normally reserved for important issues which require to be brought to the attention of members urgently. To use such a mechanism simply to inform members of the publication of a consultation document could undermine this device.

12. One possible variation here might be to record receipt of the consultation document in Section H, but not as a laid document. Committee reports and European documents are currently recorded in this way and it would be straightforward to add a new category for statutory consultation documents to Section H.

13. **Members’ views on the different approaches outlined above are invited.**

**Consulting the Parliament**

14. It is for consideration how the consultation on the draft Code of Practice, and other statutory consultations, should be handled after this. Three possible options are set out below. It should be stressed that the options set out below relate to the handling of statutory consultations, i.e. consultations required by legislation. These procedures would not apply to all consultation documents simply sent to the Parliament.

**Option 1**

15. It could be argued that, once members had been informed of the consultation document via the Business Bulletin then, in effect, the Parliament had been consulted and the Commissioner’s obligation fulfilled. However, some provision would need to be made should members wish to debate the consultation document or register their concerns. In such an instance, it would be open to any member(s) of the Parliament to lodge a motion to make known their views on the document. It would then be a matter for the Parliamentary Bureau to decide if and when to debate such a motion in the chamber.

16. This would perhaps be the most straightforward way in which to deal with consultation documents and would require relatively little by way of Standing Order changes. However, it should be noted that such a procedure would place the onus on members to actively object to a document. It must also be borne in mind that, even if a member lodged a motion in relation to a consultation document, there is no guarantee that the Bureau would allocate time for a debate on the matter. This may not therefore be considered sufficient for meaningful consultation of the Parliament as a whole.

**Option 2**

17. Another option would be to make it mandatory for the Parliament to debate any motion lodged by a member in relation to the consultation document. Such a process would mirror that currently used in relation to Negative SSIs, where motions to annul must be debated. Such a procedure would
however give a single member the power to force a debate on the consultation document perhaps when the majority of other members were content with the proposals. Although such a procedure may be appropriate in relation to secondary legislation such as SSIs, it is for consideration whether it should apply to a statutory consultation document.

**Variation on Options 1 & 2**

18. Under both of the options above, it would be possible for the Bureau to refer the matter to a Parliamentary committee. For example, the Bureau could refer the consultation document to a lead committee and ask that committee to report back to the Parliament. Once the lead committee had prepared a response, it would then be for the Bureau to take a decision on whether to allocate time for a debate on the response or simply to allocate time for a debate if it were agreed that a debate on responses should be mandatory. A motion for debate in the name of the Committee Convener could then be lodged.

19. Such an approach would enable the Parliament to scrutinise and to formally respond to a statutory consultation but would not create significant additional demands in terms of chamber debating time.

20. The Bureau does not, at the moment, have the power to refer consultations to a committee so it would be necessary to amend Standing Orders to give the Bureau this more general power of referral.

**Option 3**

21. Alternatively, it could be argued that the Parliament had not been fully consulted until the matter had been brought before the Chamber and the Parliament had reached a resolution. On this view, the Bureau would need to allocate time in the Chamber for a debate on the consultation document. This process would be broadly similar to that used in relation to Affirmative SSIs. However, the difficulty that arises – unlike with Affirmative SSIs – relates to who would lodge the motion for debate and what form it would take. The Commissioner herself could not lodge the motion for debate nor could the Executive given that the Commissioner operates independently of the Executive. The motion would probably therefore need to be a Bureau motion which was simply a “take note” motion. The Bureau currently has no function under the Rules in this respect, therefore appropriate changes to Standing Orders would need to be made to give the Bureau the power to lodge such a motion and to require it to schedule time for a debate.

**Timescales**

22. Difficulties could arise with any of the options above should the timescale for the response to a consultation document be fairly tight e.g. 6-8 weeks. It would however be difficult to deal with this issue via changes to Standing Orders. Instead it is suggested that any difficulties in relation to timescales
are dealt with on a case by case basis through discussion between the relevant parties.

23. **Members’ views on the options set out above are invited.**

**Reports of Non-Compliance**

**Informing Parliament**

24. There is a duty on the Commissioner to report a case of non-compliance to the Parliament. Again this could be done by laying the report before Parliament or by notifying the Presiding Officer via letter (paragraphs 9-12 above refer). Unlike the draft Code of Practice however, reports of non-compliance will not be published by the Commissioner and made publicly available – the Act requires the Commissioner to report to the Parliament only. Given this, and in view of the sensitive information that these reports may contain, it may be preferable that, even if reports are laid before the Parliament, they are not subsequently published by the Parliament. If Committee members felt such reports should be published then it is possible that any reference to individuals may need to be removed for data protection and other reasons. Similar considerations would apply to any motion and any proposed draft response.

25. A further option would be to follow the procedures currently used in relation to reports from the Parliamentary Standards Commissioner. Reports from the Standards Commissioner are made directly to the Standards Committee and are not formally laid before the Parliament or published. Reports are then considered in private by the Standards Committee. A copy of the Commissioner’s report is however made publicly available at the end of the inquiry together with a copy of the response from the Standards Committee.

**Response from the Parliament**

26. As indicated previously, the Commissioner can also direct Scottish Ministers to delay making an appointment until the Parliament has considered the case set out in the report. The Parliament will therefore need some procedure for considering and reaching a conclusion on any report referred to it.

27. One option would be for the Bureau to refer the report to a committee for consideration and the preparation of a response. The committee report could then be debated and/or endorsed by the Parliament via a motion from the Convener of the committee. Again the Standing Orders would need to be amended to give the Bureau this power of referral.

28. It is for debate which committee reports of non-compliance could be referred to for consideration. One option would be to refer reports to the relevant subject committee – e.g. to a Justice Committee if the public appointment was to a post relating to the justice system. However, an alternative option would be to extend the remit of the Parliament’s
Standards Committee to deal with all reports of non-compliance from the Commissioner for Public Appointments, in addition to reports from the Standards Commissioner. The latter option would at least go some way to ensuring that a common approach was adopted in relation to the consideration and handling of all reports of non-compliance. In either case, the rules could be drafted to ensure that all reports were considered in private by the designated committee if this was felt necessary. Alternatively, as indicated in paragraph 25, the Rules could be drafted to allow reports from the Commissioner to be sent directly to the Standards Committee without the need for a Bureau referral.

29. It is also worth noting that there may be instances where a report of non-compliance comes to Parliament during a recess period. In such an instance, the appointment would need to be delayed until such time as the Parliament had resumed and had had an opportunity to consider the report.

30. Committee members’ views are invited.

Equalities Strategy

31. It is not yet known what the timescale is for the production of the Equalities Strategy. However it is likely to be received after the draft Code of Practice. In any event, the procedure adopted for the handling of the consultation on the Code would also apply to the Equalities Strategy.

Annual Report

32. The Commissioner must lay annually a report before Parliament on the exercise of his/her functions. Given that this requirement is on the face of the Act and that no additional changes to Standing Orders are required to facilitate this, no expectation is created that the Parliament will debate the report or take any action on it.

Conclusion

33. Committee members are invited to:

a) indicate which of the options they prefer in relation to the handling of the consultations referred to the Parliament under the 2003 Act;

b) agree that any procedure adopted in relation to these consultations be extended to cover all statutory consultations referred to the Parliament; and

c) indicate their preferences in relation to the handling of any reports of non-compliance received from the Commissioner.
PROCEDURES COMMITTEE

Private Bills inquiry

Note of visit to Dublin

Context and background

1. Four members of the Committee, plus supporting officials, visited Dublin on 29 and 30 November in connection with the current inquiry on Private Bills.

2. The members attending were:
   - Iain Smith (Convener)
   - Karen Gillon (Deputy Convener)
   - Bruce McFee
   - Jamie McGrigor

3. The supporting officials were:
   - Andrew Mylne (Clerk to the Committee)
   - Jane McEwan (Senior Assistant Clerk)

4. Alicia McKay from the Parliament’s Directorate of Legal Services, who advises the Private Bills Unit, also attended.

5. The purpose of the visit was to learn more about the Irish system for considering transport infrastructure projects (as provided in the Transport (Railway Infrastructure) Act, 2001 and also to discuss Private Bill procedures in the Houses of Oireachtas. The opportunity was also taken to discuss wider issues of mutual interest with Irish parliamentarians.

6. The visit comprised:
   - a meeting with Maurice Treacy, Principal Officer, Martin Darcy, Higher Executive Officer, Public Transport (Corporate Affairs and Investment Division), and Mairéad Broderich, Assistant Principal Officer, Public Transport (Rail Safety Division), Department of Transport
   - a tour of the Houses of Oireachtas (Dáil and Seanad Chambers, committee rooms etc.)
   - a meeting with John Ellis TD, Chairman of the Joint Transport Committee, and Patrick Timmins, Clerk to the Committee
   - a meeting with Deirdre Lane, Examiner of Private Bills, and Jodie Blake, Clerk Assistant of the Seanad
   - lunch with Dr Rory O’Hanlon TD, Ceann Comhairle (Speaker of the Dáil), Paul Kehoe TD, Fina Gael Whip and member of the Committee on Procedure and Privileges, Liz O’Donnell TD, Progressive Democrat Whip
and member of the Committee on Procedure and Privileges, Dan Caffrey, Clerk Assistant of the Dáil and Bridget Doody, Clerk to the Dáil Committee on Procedure and Privileges.

7. The remainder of this note summarises the main points discussed at the meetings listed above. Briefing notes prepared in advance of the visit are attached as annexes.

8. Other documents obtained during the visit are held by the Clerks and copies may be obtained on request. These comprise:

- Presentation by the Department of Transport (copies of slides)
- Railway Procurement Agency (established under the 2001 Act) – Annual Report and Accounts 2003
- 2 Reports of inquiries on Dublin light rail line proposals – Line A (December 1998) and Line C(S) (October 2000)
- Code of Practice for works on, near or adjacent to the Luas Tramway (Dublin light rail network, operated by Connex Transport Ireland Limited)
- Transport (Railway Infrastructure) Act, 2001 (No. 55 of 2001)
- Standing Orders of the Dáil and Seanad relative to Private Business, 1939 (with manuscript amendments)
- Memorandum of Procedure relating to Private Bills

**Note:** The remainder of this note is based on notes taken by the clerks during the meetings described. Time constraints have not yet allowed it to be checked by relevant Irish officials for accuracy. Should that checking process lead to significant corrections, a revised version will be circulated at a later date.
Meeting with Department of Transport officials

Legislation

9. The Transport Act, 1963 established the Railway Works Order procedure. Under this system the Minister for Transport could authorise heavy rail projects and could establish a public inquiry before granting the Order. In fact, it was little used, since the rail network was being contracted rather than expanded at that time.

10. The Transport (Dublin Light Rail) Act, 1996 introduced an order-making procedure for light railway projects, intended to be simpler and quicker than the normal planning process. It included for the first time a requirement for Environmental Impact Statements to be produced, allowed compulsory purchase powers to be included in orders, and gave the Inspector holding the inquiry the power to compel witnesses to give evidence, summon papers etc. Inquiries were made mandatory rather than discretionary, and there was a general right to make submissions. It also assigned powers to Coras Iompair Eireann (CIE), a state-owned transport company responsible for running the rail network and 90% of buses. This Act was used four times between 1998 and 2001, all in relation to Dublin trams, and was widely regarded as successful, partly because the same very good inspector (a High Court judge) ran the inquiries into each. In three cases the orders were granted; in the other case, the Inspector recommended that the Order should not be granted and the Minister followed this advice. A revised application was submitted, and granted, in relation to this latter case.

11. Both Acts were superseded by the Transport (Railway Infrastructure) Act 2001. This Act has a similar order-making procedure to the 1996 Act, but this now applies to all rail projects. The Act also established the Railway Procurement Agency, a state owned company responsible for the provision of light rail and metro schemes, as determined by the Minister. The new Act has only been used once so far, for a very minor order altering aspects of an existing tram route.

12. CIE remains responsible for the provision and running of the heavy rail system, although this may be transferred in due course to the RPA. Applications for orders normally come from these bodies, although private companies may, with the consent of the RPA, apply for an Order to construct and operate a light rail service. There are no specific criteria to be applied by the RPA when considering such a request from a private company although it would be important for the proposal to be in line with the Government’s transport strategy. There have not as yet been any applications from a private company considered under the 2001 procedures.

13. The order-making procedures under the 2001 Act are about to be used in relation to two major projects – the €450 million Kildare Route Project and the €90 million Cork Commuter Railway expansion. There is also expected to be a
€2 billion Dublin metro project, for which the Madrid metro is being used as a model. A number of other applications are expected over the next few years.

Consultation and objectors
14. There is an onus on the promoter to try to resolve objections before the start of the public inquiry. Around 6 months before the application is submitted, the promoter would be expected to begin consulting with any local communities affected by the proposal. The legislation imposes few restrictions on who may object and “3rd party” objections (e.g. by charities or lobby groups) are admissible, although in practice inspectors have some discretion as to what is considered relevant.

15. Once the inquiry has commenced it is for the Inspector to decide whether, and if so how, to group objections and whether to hear from all objectors. There has only been one instance to date where a significant number of objections to an application have been submitted. In this instance the Inspector did decide to hear from all those who lodged an objection.

16. Objectors are not required to pay a fee in order to lodge an objection, although they are responsible for covering their own costs. Objectors may however apply to the Minister for re-imbursement of the costs incurred, including legal costs.

17. The Act does not specify a list of statutory consultees which must be involved, although the Department does encourage the promoter to contact the relevant statutory bodies as early in the process as possible.

18. The Act also provides for individuals to put submissions directly to the Minister as well as to the public inquiry. The Minister is not bound to follow the inquiry recommendations, and may take other submissions into account in reaching a decision.

Public inquiries
19. The holding of a public inquiry is compulsory, even in cases where there are no objections to an application. All inquiries are conducted by an independent Inspector appointed by the Minister. The Inspector has the power to compel witnesses to attend and to compel the production of relevant documents.

20. The Inspector is usually supported by a civil servant (though not from a transport background) and also has scope to employ additional staff, including expert and legal staff, to advise and assist with the inquiry. The costs of this are borne by the Department of Transport.

21. In addition to considering the specifics of how individuals will be affected, the Inspector may also consider the general policy underlying the application. The Inspector also has a degree of flexibility to amend the proposal. Such changes can be made without there being a need for a new application.

Ministerial decision
22. The Minister has the power to attach conditions to orders. Conditions may cover areas such as the hours of operation of the service or restrictions on the
times construction work may be undertaken. The Department of Transport is responsible for ensuring these conditions are complied with.

Parliamentary involvement
23. All Orders made by the Minister under the Act are laid before both Houses of the Oireachtas and are subject to annulment within 21 days. This is the first and only time Parliament has an involvement in the process although, like any other member of the public, TDs are free to present a submission either to the public inquiry or to the Minister, although this has not happened often. To date there has been no feedback from the Parliament to suggest members are unhappy with this arrangement.

24. Orders come into operation after 8 weeks provided an application for judicial review has not been made.

Timescales
25. A number of time limits are built into the Act. For example, the Minister must acknowledge receipt of an application for an Order within 14 days of receiving it and within 14 days of the acknowledgment the promoter must publish notices in relevant newspapers, serve notices on the relevant authorities etc. Individuals then have up to 30 days to make submissions in writing to the Minister in relation to the Order. However the timing and length of the actual inquiry are matters for the Inspector – and vary from 1 day to 2 weeks or more. There is also no time limit in relation to the Minister making a decision on whether to grant the Order following the submission of the Inspector’s report. The period from the application being submitted to construction work starting was unlikely to be less than 9 months and more typically would take around 12 months.

Funding
26. Before an application for an Order can be submitted, the promoter would normally be expected to submit a Business Case to the Government (since in practice most projects get most of their funding from the Exchequer). Among other things the Business Case must include information on the financial arrangements for the project together with information on the consultation undertaken. Requiring promoters to submit the Business Case helps prevent applications being submitted without the appropriate level of pre-consultation having taken place.

27. “Special contribution schemes” may also be used to assist with the funding for major rail projects. Under these schemes, local authorities can apply a levy on developers who have bought land in close proximity to the proposed rail development and who therefore are likely to benefit from its introduction. The level of the levy varies: for residential developments it is usually in the region of €5000 and for business and retail developments it is related to square footage. Funds gathered under this scheme can sometimes account for a substantial part of the costs of the project. For example, around one third of the costs (€30 million) of the Cork Commuter Railway Expansion are being raised in this way. Projects that can reduce their need for public funding by the use of such schemes are liable to gain more rapid approval from Government.
28. These schemes not only raise money, they also encourage the development of the area served by the line to ensure it makes the best contribution to meeting people’s transport needs. This system was partly modelled on experience from Hong Kong, and can be effective, although there is a risk that transport companies becoming more interested in property development than in making a success of the railway itself.

Meeting with Chairman of Transport Committee

29. Mr Ellis explained that the Transport Committee took a general interest in transport issues, but had no formal role in the scrutiny of major infrastructure projects during the formal public inquiry process. It would usually scrutinise proposals for new road or rail projects at an early stage, including by inviting promoters and other interested parties to give evidence. Proposals making use of public/private finance would come in for particularly close scrutiny, and the Public Accounts Committee was likely also to take an interest in such schemes.

30. The Committee might also get involved at a later stage, particularly where it had become apparent that delivery of a project had encountered problems, such as cost over-runs or delays, or problems of reliability. Such concerns would be raised with members by constituents and might also be aired in the Chamber, for example through oral questions. But the Committee would never in practice make submissions directly to a public inquiry on a project (e.g. an inquiry on a light rail project under the 2001 Act), even though it could do so, in theory. Such inquiries tended to be presided over by persons approved by Government, and were quasi-judicial in nature, and there was a strong presumption against any perception of overlap between Parliament and judicial aspects of government.

31. The Committee had taken evidence on the Dublin light rail system (Luas), and had found the Luas officials frank about some of the unanticipated problems that had been encountered during construction. It was now clear that the Luas project was a success. The reliability of the service was crucial in establishing popular support, and creating the perception that public transport could be a viable alternative to the car – something that some other (heavy) rail services had failed to achieve. The state heavy-rail agency CIE was accountable to the Committee. There was no equivalent body in relation to ferry services, which were privately owned and operated.

32. Ireland generally had an infrastructure deficit, partly because of a concentration in the early years of EU membership on channelling available funds towards education, in particular, so far as possible. This had been in many ways an effective strategy in terms of promoting economic growth, but the result was that Ireland now had some catching up to do, in relation to transport links, compared with other countries. It needed to be borne in mind that it was a small country with a population of only around 5 million, half of whom lived in the Dublin area.
Meeting with Private Bill Office officials

33. The Examiner explained that her role was to conduct the early scrutiny of a Private Bill, checking that it was indeed suitable for the private legislation process and conformed to the relevant standing orders.

34. Private Bills could only normally be introduced in November each year. The main pre-conditions for introduction were the serving of notices on persons likely to be directly affected, and the placing of advertisements in two newspapers circulating in the affected area (and in the Iris Oifigiúil – equivalent to the Edinburgh/London Gazette). These notices and advertisements needed to set out the scope of the project in reasonable detail, including by citing in full the proposed long title of the Bill, since this would largely determine the scope for amendment of the Bill during its Parliamentary stages. Promoters that were corporations must have the consent of 75% of their members or shareholders. The Bill must then be provided to the Seanad, with the promoters responsible for having it printed, and copies must be provided to each Government department.

35. The Examiner would then arrange a meeting, held in public, at which the promoter would normally be represented by counsel, to consider whether the relevant standing orders had been complied with. She would then report to both Houses. If she was not satisfied, the Bill would be referred to the Joint Committee on standing orders, which could then decide whether particular standing orders should be waived – for example, Trinity College had failed to secure the consent of 75% of its members and had applied to have that requirement waived. There was a question as to whether it was appropriate for this initial scrutiny to be conducted by an official rather than directly by members.

36. The number of Private Bills was now very low. There had been none between 1978 and 1990 and only 4 since then. One of these was a “personal” Bill to alter the terms of a trust to allow female inheritance; another was the Trinity College and University of Dublin Bill that altered the founding charters of these universities (and so included text in Latin). The scope for Private Bills had been greatly reduced over the years by the expansion of Government responsibility for trams, waterways, harbours etc., as these came to be seen more in terms of the public interest in national transport infrastructure, rather than as areas of private opportunity.

37. After a Bill was introduced, there was a period of 14 days for anyone to object by petition. Petitioners had to establish vires (right to object) – here the test was relevance to the Bill (similar to the test of relevance for amendments to any Bill). At later stages, members of either House could also object to the Bill and this would trigger an adjournment of the process. It was therefore in the promoter’s interest to lobby members in addition to conducting negotiations with objectors.
38. Promoters and objectors were required to pay fees, the amounts of which had not been altered since 1954 and were still expressed in £,s,d (though now payable in the Euro equivalent). Documents were stamped to indicate that fees had been paid, and this served as a form of documentation of compliance. The underlying principle of charging fees was also that there should be no net cost to Parliament in considering a request for a private benefit. The parties were normally expect to bear their own costs (i.e. costs of preparation and representation), although it was possible for them to ask for an award of costs against an opposing party (particularly promoters applying for their costs against vexatious objectors). In the case of the Trinity College Bill, one petitioner (a Trinity professor) had successfully sought an award of his costs from the University, even though his petition had not been upheld – in such a case, the decision was referred to the taxing master in the High Court for decision.
Annexe A: Approval for Rail Projects – Background Briefing Note

Prior to 2001, legislative approval for major railway infrastructure projects in Ireland was obtained through the passing of a public bill (promoted by Ministers). However in late 2001, the Transport (Railway Infrastructure) Act 2001 was passed. This Act enables the Minister for Transport to authorise by Order, the construction, operation and maintenance of railways. The Act also established the Railway Procurement Agency. The main functions of this Agency are:

a) to secure the provision of, or to provide, such light railway and metro railway infrastructure as may be determined from time to time by the Minister;

b) to enter into agreement with other persons in order to secure the provision of such railway infrastructure; and

c) to acquire and facilitate the development of land adjacent to any railway works subject to an application for a railway order where such acquisition and development contributes to the economic viability of the railway works.

The Railway Order Procedure

The Agency, or any other person with the consent of the Agency, may apply to the Minister for a Railway Order. All applications for a Railway Order must be made in writing and should be accompanied by:

a) a draft of the proposed order;

b) a plan of the proposed railway works;

c) in the case of an application by the Agency, or a person with the consent of the Agency, a plan of any proposed commercial development of land adjacent to the proposed railway works;

d) a book of reference indicating the identity of the owners and occupiers of the lands referred to in the plan; and

e) an environmental impact statement of the proposed works.

The Coras Iompair Eireann (CIE), (Irish Transport Company) which is the main state authority for the provision of public transport, may also apply for Railway Orders under this Act.

The Minister must acknowledge receipt of an application for an Order within 14 days of receiving it. Then, within 14 days of the Minister acknowledging receipt of the application the applicant must:

a) deposit a copy of all relevant documents in a place or places which are easily accessible to the public;
b) publish a notice in one or more newspapers circulating in the area to which the order relates stating that a public inquiry will be held into the application; and

c) serve a notice on the relevant planning authorities and on the owners of any land referred to in the draft order.

Individuals then have up to 30 days to make submissions in writing to the Minister in relation to the proposed order.

Within 14 days of acknowledging an application for an Order, the Minister will direct a public inquiry to be held and within 28 days will appoint an inspector to hold the inquiry. The holding of an inquiry is compulsory under the Act. The Minister may also appoint an assessor to assist the inspector in the inquiry. The inspector will then publish in at least one of the newspapers circulating the area, a notice inviting submissions and detailing where and when the inquiry will commence.

The Act gives the inspector the powers to require any person to attend the inquiry as a witness and to require the production of any documents the inspector considers relevant. Evidence is taken under oath and any interested person is entitled, under the Act, to appear and be heard at the inquiry. Following the conclusion of the inquiry, the inspector prepares a report for the Minister. The Minister will then take a decision, based on the report and the information provided by the applicant. Should the Minister decide to grant the Order, then a notice informing the public of this must be published in at least 2 newspapers circulating in the relevant area. All Orders made by the Minister under the Act are laid before both Houses of the Oireachtas and are agreed unless a resolution annulling the Order is passed within 21 days. The Order will come into operation after 8 weeks provided an application for judicial review has not been made.

The Minister also has the power to amend an Order or to revoke an Order where there is a failure or refusal to comply with a condition or requirement specified in the Order.

Current Situation

The Public Transport (Corporate Affairs and Investment) Division at the Department of Transport are responsible for supporting the implementation of Government policy in relation to CIE Corporate Affairs and investment in the companies, under the National Development Plan and generally overseeing the shareholder interest in CIE and its subsidiaries.

The Division is about to get involved in two very large scale projects. The first, known as the Kildare Route Project, will involve quadrupling the trackwork from Dublin's Heuston Station out to Kildare on the Dublin/Cork line. This is a EUR450 million project and is just about to finish the public consultation stage. The other Project is Cork based and involves the re-opening of 10kms of abandoned track to link Midleton (to the East of Cork) with Cork City. This is at engineering feasibility stage and is expected to cost about EUR90 million all in.
Annexe B: Private Bills Procedure in Ireland – Background Briefing Note

Summary of System

Commencement of Proceedings

The first official step in the promotion of a Private Bill is the publication of a Notice in the months of October and November, or with the written consent of the Chairman of the Joint Committee on Standing Orders, in the months of March and April. The Notice should set out the principal subject matters of the Bill and the powers which are sought. It is usual to publish the Notice in a Dublin newspaper (if any) which circulates in the affected area and to publish it in one local newspaper. The Notice must also appear in the Irish State Gazette (Iris Oifigiuil).

The Application for the Bill is then lodged in the Private Bill Office.

Examination of Bills

The examination of Bills commences on the 15 January and 15 June. The Examiner is required to give at least 7 days’ notice of the day appointed for the examination of each Bill.

Responses from those wishing to oppose a Bill on questions relating to compliance with Standing Orders should be deposited not later than 3 days before the day appointed for examination.

Should the Examiner report any non-compliance with Standing Orders, the report is referred to the Joint Committee on Standing Orders. The Committee will then decide whether Standing Orders ought, or ought not, be dispensed with.

First Stage in the Senate

When the Examiner has reported compliance to both Houses or the Standing Orders not complied with have been dispensed with, the Bill is laid on the Table of the Senate and is deemed to be read the First Time.

Second Stage in the Senate

The Second Stage must take place within 14 days after the First Stage and four days’ notice must be given of the day proposed for the Second Stage.

If, when the motion for the Second Stage is made, any member of the Senate objects, the motion is postponed to a day to be fixed by the Cathaoirleach (Chairman). If the Second Stage is passed, a Joint Committee of the Dail and Senate is established to consider the Bill.

Petitions against a Bill

Petitions against a Bill must be lodged with the Private Bill Office within 14 days of the Bill passing the Second Stage in the Senate. All petitions against a Bill are referred to the Joint Committee on the Bill.
Joint Committee on a Bill

The Joint Committee will set a date for considering the Bill and the Clerk to the Committee shall give 4 days notice of this date to the Private Bill Office. Parties appearing before the Committee (other than petitioners in person) must pay fees in advance to do so. The “filled-up Bill” which contains any proposed amendments to the Bill is then circulated 2 days prior to the meeting. The Committee then takes evidence from those promoting and those opposing the Bill and may also take evidence from officials of relevant Departments of State. Each petitioner has a right to appear before the Committee (either through Counsel or in person). At the end of the Committee’s deliberations a revised draft Bill is produced along with the Committee’s Report.

Report Stage in the Senate & Amendments

The Report of the Joint Committee is made to both Houses and the Bill as amended is reprinted. There should be at least 10 days between the day the revised Bill is lodged and the Fourth Stage taking place.

On the Fourth Stage in either House, amendments may be put down by members or by the parties promoting the Bill. Amendments on behalf of the Promoters are put down in the name of the Leas-Cathaoirleach (Deputy Chair of the Senate) or the Leas-Ceann Comhairle (Deputy Chair of the Dail). The Leas-Cathaoirleach or the Leas-Ceann Comhairle may refer an amendment(s) to the former Committee on the Bill. If this is the case, no further proceedings may be taken in the House until the Committee has reported. The Joint Committee may only accept or reject the amendment(s) – it cannot amend the amendment or propose alternatives. The Promoters and petitioners may be heard on amendments.

Fifth Stage in the Senate

The Bill then proceeds to the Fifth Stage in the Senate. No amendments may be made at this Stage. After the Bill has passed the Fifth Stage it is sent to the Dail to be taken through the Fourth and Fifth Stages – the earlier Stages are deemed to have been passed.

Fourth Stage in the Dail

A re-printed version of the Bill is produced on referral to the Dail. This version illustrates all amendments made by the Senate. At least 15 clear days must lapse between the day the Bill is referred to the Dail and the Fourth Stage taking place.

Fifth Stage in the Dail

After the Bill has passed the Fourth and Fifth Stages in the Dail, the Bill if amended by the Dail is sent back to the Senate. When the Bill has been passed by both Houses it is reprinted and sent to the President for signature.
Hybrid Bills

There is a separate procedure for Bills introduced as Public Bills but then deemed by the Examiner to affect private interests in the same way as a Private Bill. Such a Bill is classified as a Hybrid Bill, and must satisfy the same requirements in relation to notification as a Private Bill. After Second Stage it is referred to a Joint Committee (which operates in the same way as a Private Bill Joint Committee). After the Joint Committee reports, the Bill may then be referred to a Committee of the whole House (i.e. the House in which the Bill was introduced) and from that point on follows the Public Bill procedures.

Points to note

- Petitions against (i.e. objections) are not submitted until after the equivalent of Stage 1/Second Reading.

- Issues of compliance with standing orders are dealt with by an examiner which is separate from the Joint Committee that takes evidence on the Bill.

- In Committee, the Bill is amended by a looser process involving the promoters setting out for approval the amendments it proposes to make, without committee members moving and debating amendments.
Annexe C: System of Government in Ireland – Background Briefing Note

The Houses of the Oireachtas

The National Parliament of Ireland (Oireachtas) consists of the President and two Houses, the Dáil Éireann (House of Representatives) and the Seanad Éireann (The Senate). The President is elected directly by the people and at the nomination of either not fewer than 20 members of the Dáil Éireann or not fewer than 4 administrative counties. The term of office is 7 years and a President can only serve a maximum of two terms. The President does not have an executive or policy role but is the people’s representative at home and abroad. The Powers and functions of the President are laid out in the Constitution and exercised only on the advice of the Government. The current President is Mary McAleese, inaugurated in November 97.

The Dáil Éireann and Seanad Éireann are similar to the House of Commons and House of Lords at Westminster. However, whilst the House of Lords has been initiating legislation for years, the Seanad Éireann has only started doing so in recent years.

The Dáil Éireann

- **Deputies** – The Dáil Éireann has 166 elected Deputies (TDs), elected by proportional representation under the single transferable vote system and representing 42 constituencies (multi-member). Of the 166 Deputies, 22 are women – 13.25%, comparable with the Scottish Parliament’s 39.7%.

- **Elections** – By law, elections to the Dáil Éireann must be held at least once every five years, with the last election being held on 17 May 2002. Of the 2.8 million electorate, 63% turned out to vote, compared with the Scottish Parliament’s turnout of 49% at the May 2003 elections. The Fianna Fail party won 80 seats, the Fine Gael 31, Labour 21, the Progressive Democrats 8, the Green Party 6, Sinn Fein 5 seats and others 8.

- **Business** – The Dáil Éireann usually meets in Plenary session on Tuesdays, Wednesdays and Thursdays. It can initiate financial legislation and amend the Constitution. It has its own specialised Committee system which advises on a wide range of legislative, social, economic and financial business, as well as the processing of legislation and the examination of Government expenditure.

- **Government** – In addition, the Dáil Éireann is the House from which the Government (Executive) is formed and to which it is responsible. The Taoiseach (Prime Minister) and at least 6 and not more than 14 Ministers are appointed by the President, with the approval of or on the nomination of Dáil Éireann. The Taoiseach and the Tanaiste (Deputy Prime Minister) and the Minister for Finance must be members of the Dáil Éireann, with the other members being of either House, as long as no more than two are members of the Seanad.

- **Ceann Comhairle** – The first business after the election of a new Dáil Éireann is to elect the Ceann Comhairle (Chairperson) by a formal vote by public ballot in
which every Member of the Dáil Éireann votes. The current Ceann Comhairle is Dr Rory O’Hanlon.

- The Ceann Comhairle has a range of functions. In terms of organising Parliamentary business, he convenes sessions at the request of the Prime Minister, directs the preparation of the Order Paper which governs each sitting, examines Motions, amendments and Parliamentary Questions to ensure compliance with Standing Orders and examines requests for the setting up of committees and/or committees of enquiry. His chairing functions include opening, suspending and adjourning sittings, making announcements, taking disciplinary measures in the event of a disturbance, interpreting the rules or other regulations governing the life of the Dáil Éireann and giving and withdrawing permission to speak.

- Amongst the special powers of the Ceann Comhairle are the making of recommendations for establishing the House’s budget as Chairman of the Dáil Éireann Committee on Procedures and Privileges, giving approval to the Clerk for recruitment of staff, making recommendations to the Prime Minister as to the appointment of the Clerk and representing the Parliament internationally. The Ceann Comhairle must be politically impartial but can use casting vote rights.

The Seanad Éireann

- **Senators** – The Seanad Éireann has 60 Members (Senators) - who are either nominated or elected and who represent 41 multi-member constituencies. There are 10 female Senators in the Seanad Éireann – 16.67%.

- **Elections** – Of the 60 senators, 43 are elected by 5 panels representing vocational interests, namely Culture and Education, Agriculture, Labour, Industry and Commerce and Public Administration and 3 each by the National University of Ireland and the University of Dublin (Trinity College). The Taoiseach – Prime Minister - nominates 11. Voting is conducted according to the single transferable vote system and by secret postal ballot and elections to the Seanad Éireann must be held within 90 days of the dissolution of the Dáil Éireann. Elections are held every 5 years with the last elections being on 16 July 2002. The distribution of seats in the last election resulted in 30 seats for Fianna Fail, Fine Gael 15, Independents 5, the Labour Party 5, the Progressive Democrats 4 and others 1.

- **Cathaoirleach** – The Cathaoirleach (Chairman) of the Seanad Éireann is also elected for a five year/term period by a formal vote by public ballot and has similar powers to that of the Ceann Comhairle. The current Chairman is Senator Rory Kiely.

- **Business** – The Seanad Éireann meets on Wednesdays and Thursdays. Although its main business is the revising of legislation sent to it by the Dáil Éireann, the Government has made greater use of it in recent years in the initiation of legislation. The Seanad Éireann, however, cannot initiate financial legislation or Bills to amend the Constitution and can only make recommendations, not amendments. Senators also sit on the Joint Committees.
PROCEDURES COMMITTEE

Final review of oral questions

SCHEDULING OPTIONS

[NOTE: This paper was issued for the last meeting (as PR/S2/04/15/4) and is re-circulated unaltered for this meeting.]

Background

1. At its last meeting on 9 November the Committee agreed that it wished to give further, more detailed, consideration to the options for scheduling FMQT and Question Time as suggested by Jamie McGrigor MSP.

2. This paper therefore provides further information on the implications for business scheduling of Jamie McGrigor’s proposal. The business implications of some possible variations on his proposal are also set out below.

Summary of Jamie McGrigor’s proposal

3. Jamie McGrigor outlined his proposal in a letter to the Committee of 27 October 2004 (paper PR/S2/04/14/7, circulated for the last meeting). In summary, he proposed that the two themed sections of QT be taken on a Wednesday afternoon as the second item of business following Time for Reflection (TfR). He also suggested that business on Wednesdays should be moved forward to start at 2.00 pm to take account of the inclusion of themed questions. In addition he proposed that general questions be taken immediately before FMQT on a Thursday afternoon, thereby reinstating the link between QT and FMQT.

4. Jamie McGrigor’s letter also included proposals to change the process by which questions are selected to give a greater role to party spokespersons. However, the merits of this aspect of his proposal are largely distinct from the merits of the timing aspects, and need not stand or fall together. This paper deals only with the timing aspect of his proposal; the issue of question selection and the duration of Question Time and FMQT are addressed in separate papers.

5. In terms of benefits, Jamie McGrigor points out in his letter that his proposal would help to increase the impact of Question Time by linking general questions with FMQT and, as a result, increasing Members’ attendance at general questions.
Effect on Parliamentary debating time

Wednesday

6. Moving themed questions to Wednesday afternoon, even with a 2 pm start, means losing 10 minutes of debate time – i.e. leaving 2 hours 15 minutes, rather than 2 hours 25 minutes as at present. Under current PO guidance, such a change would not affect the speaking times for a single debate in that period, although it would reduce slightly the number of backbench contributions.

Thursday

7. Removing FMQT from its current slot before lunch on Thursday would (all other things being equal) add 30 minutes to the time available for Thursday morning debates – i.e. from 2 hours 30 minutes to 3 hours. Assuming there was still a 2 pm start on Thursday afternoon, then having General Questions (20 minutes) followed by FMQT (30 minutes) would leave a debate slot of 2 hours 10 minutes (rather than 2 hours at present).

8. Annex A shows the current structure of the Parliamentary week. Jamie McGrigor’s preferred option (as described above) is shown in Annex B.

Variation 1: keeping FMQT at noon

9. Jamie McGrigor indicated that his basic idea (of joining general questions to FMQT rather than themed questions) could also work if FMQT remained at 12 noon on Thursday – though that is not his preferred option.

10. Under this option, general questions would be taken at 12.00 noon on a Thursday, followed by FMQT from 12.20 to 12.50 pm, followed by the lunch break. The morning debate time would remain unchanged at 2 hours 30 minutes. The afternoon session would then begin at 2.20 pm, leaving an afternoon debate time of 2 hours 40 minutes. Annex C sets out in tabular form how Chamber business would look under this proposal.

11. In considering this option, the Committee will be aware that the lunch-break – 12.50 to 2.20 pm – starts rather late and that the timings are slightly awkward. There is not much that could be done about the former problem without making the morning debate-slot unreasonably short – if the lunch-break was to begin at 12.30 as at present, that would mean general questions beginning at 11.40 am – a debate-time of only 2 hours 10 minutes. However, the afternoon start-time could easily be pushed back to 2.30 pm, allowing 10 minutes longer for lunch and still leaving 2 hours 30 minutes for debate in the afternoon.

12. It is also worth noting that, by scheduling a debate followed by general questions and then FMQT on a Thursday morning, there is a danger that Thursday business may become unnecessarily “front-loaded”.

Annex A

Variation 1: keeping FMQT at noon
Variation 2: harmonised afternoon start-times

13. Another variation that the Committee may wish to consider is to vary the timings to keep the same afternoon start-time on both days. This could involve having general questions (followed by FMQT) at 2.15 pm on a Thursday, with themed questions also beginning at 2.15 pm on Wednesdays. These alternative timings would also offer a compromise between ensuring that there is sufficient time at the lunch break for other business and for debating time either side of questions.

14. Under this proposal, themed questions would take place at 2.20 pm after TfR on a Wednesday, leaving 2 hours for the afternoon debate from 3 to 5 pm. There would be a 3 hour debate slot on a Thursday morning (assuming a break for lunch at 12.30 pm). General questions could then start at 2.15 pm, followed by FMQT at 2.35 pm. This would leave a debate slot of 1 hour 55 minutes on a Thursday afternoon.

15. One advantage of this option is that it gives slightly longer lunch-breaks of 1 hour 45 minutes on each day (better for Cross Party Groups than either of Jamie's options, and arguably a better distribution of time than at present). The disadvantage is the uneven length of the debate slots. Overall debating time is the same as at present (whereas on either of Jamie's proposals it would be 30 minutes more).

16. Annex D sets how Chamber business would look under this proposal.

Other variations

17. Other minor (5 or 10-minute) variations on any of these options would of course be possible – either variations to the duration of the oral question sessions or to start-times for particular items. However, it is probably better for the Committee to choose a preferred model in general terms and leave it to the Bureau to make any final decisions about the details of the business programme.

Effect on lodging deadlines

18. The Committee may also wish to consider whether, if themed questions and general questions take place on separate days, there should be two separate lodging deadlines for questions. In addition, it is for debate whether the selection of a member for a themed question should make them inadmissible for the draw for general questions.

Separate lodging deadlines

19. Paper PR/S2/04/15/3 on question selection sets out in detail the proposal to select members rather than questions across a 2-week cycle and to limit members to one question per week. In summary, this process involves members' names being selected and published two weeks prior to Question
Time, with the questions themselves being lodged and published one week beforehand.

20. It is clear that if the current single lodging deadline (4 pm on Tuesday) is retained for both themed and general questions, then members (and Ministers) will have one day less to prepare for themed questions compared with general questions. (The lodging deadline could be moved back to 4 pm on Monday to avoid this reduction, but that would involve lodging general questions a day further ahead, thus reducing topicality.) If members and Ministers are to be given the same preparation time for both themed and general questions, there would need to be separate deadlines for lodging the questions and two separate sets of questions published in the BB on two consecutive days. (If the process involved selecting members’ names a week earlier, this might also have to involve separate deadlines for opting-in for themed and general questions.) Clearly such a process would be administratively complex and potentially confusing to those involved. It may, therefore, be simpler to retain the single deadlines for both themed and general questions.

21. The Committee is invited to consider whether the complexity of having a dual process for selecting and publishing names and then questions justifies giving members the same amount of time to prepare for each item of business.

Participation in themed questions and general questions

22. On the question of whether members could participate in both the themed questions and general questions, the paper on question selection suggests that in order to maximise the number of members taking part in Question Time and to better allow in-depth questioning, the names of those selected in each draw would be excluded from subsequent draws for the same week.

23. The argument in favour of this approach is slightly less clear if themed questions and general questions were to become events on different day.

24. On a related point, the current distinction between themed and general questions is enforced a mechanism to ensure that questions falling within one of the themes for the week cannot be accepted for the general part of QT in the same week. This ensures a better spread of questions across all subjects and allows the questioning of more Ministers. Again, it is less clear that this would remain appropriate if themed and general questions were taken on different days.

25. The Committee is invited to consider whether allowing questions to be selected for general QT that also fall under one of the themes for that week would diminish the individuality (and therefore usefulness) of having general questions in the first place. The answer may depend on whether the Committee is minded to retain singular lodging deadlines for themed and general questions.
Recommendation

26. Committee members are invited to:

   a) indicate their preferred option in relation to the timing of oral questions and FMQT; and

   b) indicate whether, if general questions and themed questions are to be taken on separate days, there should be separate lodging deadlines for each and whether members drawn for themed questions should be eligible to take part in the draw for general questions.
## Diagram illustrating current system

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**Total**
- Oral questions = 1hr 30
- Debates (2hr 25 + 2hr 30 + 2hr) = 6hr 55
- Lunches (2hr + 1hr 30) = 3hr 30
### Diagram illustrating Jamie McGrigor’s scheduling proposal

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<th>Time</th>
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<td></td>
<td><strong>General QT (2.00-2.20)</strong></td>
</tr>
<tr>
<td>2.30</td>
<td><strong>TfR, plus</strong></td>
<td><strong>FMQT (2.20-2.50)</strong></td>
</tr>
<tr>
<td>3.00</td>
<td><strong>Themed QT (2.05-2.45)</strong></td>
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</tr>
<tr>
<td>3.30</td>
<td><strong>Debate (2.45-17.00)</strong></td>
<td><strong>Debate (2.50-5.00)</strong></td>
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<tr>
<td>4.00</td>
<td><strong>2 hr 15</strong></td>
<td><strong>2 hr 10</strong></td>
</tr>
<tr>
<td>4.30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.00</td>
<td></td>
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</tr>
<tr>
<td>5.30</td>
<td><strong>Decision Time /</strong></td>
<td><strong>Decision Time /</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Members’ Business</strong></td>
<td><strong>Members’ Business</strong></td>
</tr>
<tr>
<td>6.00</td>
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</tr>
</tbody>
</table>

**Total**

- Oral questions = 1hr 30
- Debates (2hr 15 + 3hr + 2hr 10) = 7hr 25
- Lunches (1hr 30 + 1hr 30) = 3hr
### Diagram illustrating Variation 1

<table>
<thead>
<tr>
<th>Wednesday</th>
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</thead>
<tbody>
<tr>
<td>9.30</td>
<td>Debate (9.30-12.00)</td>
</tr>
<tr>
<td>10.00</td>
<td>2 hr 30</td>
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<tr>
<td>10.30</td>
<td></td>
</tr>
<tr>
<td>11.00</td>
<td></td>
</tr>
<tr>
<td>11.30</td>
<td></td>
</tr>
<tr>
<td>12.00</td>
<td>General QT (12.00-12.20)</td>
</tr>
<tr>
<td>12.30</td>
<td>FMQT (12.20-12.50)</td>
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<td>Lunch (12.30-2.00)</td>
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<tr>
<td>1 hr 30</td>
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<tr>
<td>1.30</td>
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<tr>
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<td></td>
</tr>
<tr>
<td><strong>TfR, plus Themed QT (2.05-2.45)</strong></td>
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</tr>
<tr>
<td>2.30</td>
<td></td>
</tr>
<tr>
<td>Debate (2.45-17.00)</td>
<td>3.00</td>
</tr>
<tr>
<td>2 hr 15</td>
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<td>Decision Time / Members' Business</td>
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<td></td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
<tr>
<td>Oral questions</td>
<td>= 1 hr 30</td>
</tr>
<tr>
<td>Debates (2 hr 15 + 2 hr 30 + 2 hr 40)</td>
<td>= 7 hr 25</td>
</tr>
<tr>
<td>Lunches (1 hr 30 + 1 hr 30)</td>
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## Diagram illustrating Variation 2

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<th>Wednesday</th>
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</thead>
<tbody>
<tr>
<td>9.30</td>
<td>Debate (9.30-12.30) 3 hr</td>
</tr>
<tr>
<td>10.00</td>
<td></td>
</tr>
<tr>
<td>10.30</td>
<td>Lunch (12.30-2.15) 1 hr 45</td>
</tr>
<tr>
<td>11.00</td>
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</tr>
<tr>
<td>11.30</td>
<td>1.30</td>
</tr>
<tr>
<td>12.00</td>
<td>2.00</td>
</tr>
<tr>
<td>12.30</td>
<td>2.30</td>
</tr>
<tr>
<td>Lunch (12.30-2.15) 1 hr 45</td>
<td>3.00</td>
</tr>
<tr>
<td>Debat (3.00-5.00) 2 hr</td>
<td>General QT (2.15-2.35)</td>
</tr>
<tr>
<td>3.30</td>
<td>FMQT (2.35-3.05)</td>
</tr>
<tr>
<td>4.00</td>
<td></td>
</tr>
<tr>
<td>4.30</td>
<td></td>
</tr>
<tr>
<td>5.00</td>
<td>5.00</td>
</tr>
<tr>
<td>Decision Time / Members' Business</td>
<td>Decision Time / Members' Business</td>
</tr>
<tr>
<td>5.30</td>
<td>6.00</td>
</tr>
</tbody>
</table>

**Total**
- Oral questions = 1hr 30
- Debates (2hr + 3hr + 1hr 55) = 6hr 55
- Lunches (1hr 45 + 1hr 45) = 3hr 30
LETTER FROM THE MINISTER FOR PARLIAMENTARY BUSINESS

I note that, at its last meeting on 9 November, the Committee began its final review of oral questions and will continue to consider the matter further at its next meeting on 23 November. I understand that officials received copies of the relevant papers earlier today.

I am obviously keen to let the Committee have the Executive's considered comments before you reach a final view and formally report to the Parliament. I will write to you again setting out our thoughts on how the current format and structure of oral questions is working in good time before the Committee's last meeting of the year on 21 December.

I hope that this is helpful. I am sending a copy of the letter to the Clerk to the Committee, Andrew Mylne.

Margaret Curran
18 November 2004

REPLY BY THE CONVENER

Thank you for your letter of 18 November, in which you indicate your intention to submit an Executive view on the issues under consideration in the above review in time for the Committee's meeting on 21 December.

It might be helpful if I explained the Committee's timetable for this review. As you know, the changes made to the timing and format of First Minister's Question Time and Question Time earlier in the session, on the Committee's recommendation, were implemented on a trial basis. Although our initial intention was to review them before the summer recess, the Committee agreed at its meeting on 8 June to further extend the trial period to October and to complete its final review by the end of 2004. The work carried out by the Committee since then – including the consideration given to the issues at the last meeting – has been based on meeting that timetable, to which the Committee remains committed.

To achieve this, I expect the Committee to reach a final view on these matters at its meeting on 7 December, with a view to agreeing a draft report at its last meeting of the year on 21 December. It would therefore be helpful if any Executive view that you wished the Committee to take into consideration could reach me (via the Clerk to the Committee) by Thursday 2 December (when papers for the meeting on
Tuesday 7 December will be circulated). I understand that the Committee clerks have already discussed this timetable with your officials.

Iain Smith MSP
Convener
22 November 2004

REPLY FROM THE MINISTER FOR PARLIAMENTARY BUSINESS

Thank you for your letter of 22 November setting out the Committee’s timetable for completion of its review.

As you know, it has always been one of my key priorities to work in close collaboration with the Parliament’s Committees. It was on that basis that I wrote previously to explain that I would provide the Committee with the Executive’s collective view on the various options being considered. Given that all Ministers have a direct interest in this topic, securing collective agreement will take some time to achieve and I regret that this process will not be complete before the Committee reaches its final decision-making stage.

Margaret Curran MSP
24 November 2004
LETTER FROM CONVENER OF ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

The Environment and Rural Development Committee has published its Stage 1 Report on the Water Services etc (Scotland) Bill this morning. I enclose a copy of Volume 1 for your information. Volume 2 contains the evidence received and is accessible through the Committee’s web page.

The Committee heard evidence at Stage 1 of significant disagreement over assumptions underlying the cost estimates contained in the Financial Memorandum. The Minister for Environment and Rural Development made a commitment at Stage 1 to continue to examine the issue, with a view to narrowing the range associated with the possible costs of establishing the regime for licensing competition in the water industry.

The Committee concluded that it could not have full confidence that the core costs associated with the Bill had been accurately presented, or that it had been provided with sufficient information to enable it to assess the likely impact of the Bill on the industry. The Committee recommended that further information should be provided to the Parliament before it considers the Financial Resolution for the Bill, and that an updated Financial Memorandum should be provided to the Parliament prior to Stage 3. The Committee noted that the Parliament’s Standing Orders do not currently require a Financial Memorandum which is considered to provide insufficient information to be updated. The Committee recommended that the Procedures Committee should consider whether the Standing Orders should be amended to establish such a requirement.

I understand that the Procedures Committee is leading a debate in the Parliament on 11 November on its recent report on the timescales and stages of bills, and that procedures relating to the Financial Memorandum may be discussed as part of that debate. I would therefore draw your attention to our comments on the Water Services etc (Scotland) Bill, and would be grateful for your consideration of our recommendation.

Sarah Boyack MSP
Convener
9 November 2004

REPLY FROM CONVENER

Thank you for your letter of 9 November, drawing attention to your Committee’s concerns about the Financial Memorandum for the Water Services etc. (Scotland) Bill.
Your Committee’s Stage 1 Report on the Bill recommends that my Committee consider amending standing orders to require the provision of a revised Financial Memorandum (FM) before Stage 3 if the original Memorandum “is considered to provide insufficient information” (paragraph 178). However, it is not clear to me from this what the purpose of this revised procedure would be, or how it would work.

The procedural requirements for FMds are set out in Rule 9.3.2 which, in particular, makes clear that the figures included are the “best estimates” of the member introducing the Bill. That Rule does not – indeed, could not – require the figures to be demonstrably accurate or beyond dispute. Testing that is a perfectly proper part of the process of political scrutiny of the Bill that follows the publication of these documents.

My particular doubt about your suggestion centres on the idea of “requiring” a Financial Memorandum to be updated. Of course, it is always possible that new and better information may come to light after a Bill’s accompanying documents have been published. If, as a result, the member in charge wishes to update the document – on the grounds that he or she no longer regards the figures in it as his or her “best estimates” – that can be accommodated within existing procedures. The member in charge would supply the amended text to the Parliament’s Legislation Team, who would arrange for it to be published.

But that does not appear to be the situation with the Water Services Bill, where (as I understand it) the Executive is standing by its original figures. In a situation of that sort, I do not see how the member in charge could appropriately be required to update the Financial Memorandum.

I also note that your recommendation is for a revised Financial Memorandum where the problem is one of “insufficient information”. Again, it is not clear how this fits with the situation described in your Report, where the problem appears to be a dispute about the accuracy of the figures rather than about the completeness of the information.

If the aim is to ensure that the Parliament is in the best possible position to judge the likely cost implications of a Bill, that is surely best achieved by giving it access to the full range of opinions on any point of dispute. I am not sure in what way our current procedures fail to do that, since they allow members preparing for Stage 1 to take full account not just of the Executive’s view (as published in the FM) but also the views of other witnesses and of the lead committee itself (as published in the Stage 1 Report).

For the above reasons, I would need a better idea from your Committee of the procedural suggestion it is making before I could invite my Committee to consider it. Therefore, if you wish to pursue the matter, perhaps you could provide a fuller explanation of what it would involve, which I could then refer to my Committee as a possible topic for a short inquiry.

Iain Smith MSP
Convener
23 November 2004
PROCEDURES COMMITTEE


Note by the Clerk

Members may be interested to note the recent publication by the House of Lords Select Committee on the Constitution of a report entitled “Parliament and the Legislative Process” (14th Report, 2003-04). Copies of the Report can be found on Parliament’s website at:
http://www.publications.parliament.uk/pa/ld/ldconst.htm#reports

The press release issued at the time is attached.

A number of the recommendations propose changes that would make the Westminster legislative process more like the Scottish Parliament process. In particular, the Report recommends:

- the establishment of “business committees” in each House (similar to the Parliamentary Bureau);
- the inclusion in the Explanatory Notes accompanying a Bill of a clear explanation of the Bill’s purpose (perhaps similar to the separate Policy Memorandums that accompany SP Bills);
- that all Bills should be scrutinised at some point (i.e. in one or other House) by a committee with the power to take evidence (including outside Westminster). (This is not currently a normal part of the Westminster process, and indeed is very unusual.)

These recommendations were no doubt partly informed by evidence the Committee received that referred to the Scottish Parliament – including from Robin Cook (who had visited the Parliament while Leader of the House) and from Barry Winetrobe (who has also given evidence to this Committee). The paragraphs of the Report dealing with business committees specifically refers to the adoption of this approach by all three devolved institutions.

Other recommendations include:

- the greater use of “pre-legislative scrutiny” by Commons departmental scrutiny committees – and accordingly that all Government Bills should normally be published in draft;
- various measures for improving public involvement, including better material explaining what consultations are currently under way, more use of informal meetings and seminars to gather evidence, greater use of e-consultation and the commissioning of public opinion polls by committees in appropriate instances;
- adoption of a “rolling legislative programme” and greater use of “carry-over” (to avoid the current rush of Government Bills introduced after each Queen’s Speech, in order to get through both Houses by the end of the same year-long session);
- post-enactment reviews of legislation by Departments, and scrutiny by committees of the effects of Acts.
Present:

Mr Richard Baker          Mark Ballard
Cathie Craigie            Jamie McGrigor
Iain Smith (Convener)

Apologies were received from Karen Gillon (Deputy Convener).

The meeting opened at 10.16 am.

1. **Item in private:** The Committee agreed to take item 3 in private.

2. **Private Bills:** The Committee took evidence from—

Jackie McGuire, Head of Administration and Legal Services, and Mac West, Development Manager, Roads and Transportation, Clackmannanshire Council (promoters of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill) and Tara Whitworth, Technical Director, Jacobs Babtie (project manager and technical adviser to the promoters); and

John Dick, Kincardine Railway Concern Group (objectors to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill).

3. **Final review of oral questions (in private):** The Committee considered a number of outstanding issues in relation to the inquiry. It agreed that Question Time should be based on a new system for selecting members’ names rather than questions, in which each member would be limited to asking one question per week. In addition, it was agreed that each member who wished to participate in one or more of the three random draws would have to enter his or her name separately, two weeks in
advance; that the number of questions selected for Question Time should be reduced to around 10 for each theme and for general questions; that there should be more variation in the amount of time allocated to different questions within a theme and to each theme; that the Scottish Executive and the Parliamentary Bureau should review, possibly in summer 2005, the number and breadth of the existing themes; and that where non-consecutive questions listed for a theme (or for general questions) were on related topics, the Presiding Officer should be encouraged, where appropriate, to call the later question as a supplementary to the earlier question.

The Committee agreed to further consider the timing of Question Time and First Minister’s Question Time at its next meeting.

The meeting closed at 12.34 pm.