Thank you for your letters of 4 March 2009 to the Minister for Transport, Infrastructure and Climate Change and myself. This is a response on behalf of the Scottish Government.

As you note, as a result of the proposed introduction of the Forth Crossing Bill in autumn 2009, the timescale for the Committee to consider and report to Parliament with recommended Standing Order rules is short. For those persons that will be affected by the Bill it is important that they are aware as soon as possible of the procedures that will be put in place to allow them to make representations to Parliament and, if necessary, object to the Bill.

I note that the Committee has agreed to use the term "Hybrid Bills". This is currently most recognisable as a term covering Bills subject to a particular Westminster procedure. There may be a case for using different terminology to distinguish any Scottish Parliament procedures from the Westminster concept. For example the current Presiding Officer recommendation on the content of Bills refers to the "public bills which affect particular private interests", rather than "hybridity".

However, whatever the label, such a bill should be taken forward as a public bill which attracts certain private bill procedures and requirements before its introduction and for part of its passage through Parliament. In particular: pre-introduction notification and consultation requirements; an objection period at Stage 1; and distinct evidence and amendment phases at Stage 2.

The responses to the Committee's questions are outlined in annex A attached. In order to complete the revision of Standing Orders as quickly as possible Scottish Government officials stand ready to work with your officials should any further questions arise.
General: Procedural overview

We note the Committee is focussing on Standing Orders for public Bills introduced by the Scottish Government. There is also a distinction to be made between construction Bills (with a definition similar to Rule 9A.1.1A) and other types of public Bill which affect private interests. Our comments below are mainly from the perspective of the Bill for the new Forth crossing, which will obviously falls into a construction category. However, we do note that applying all of the new rules to non-construction Bills would not seem to be suitable. The Committee may wish to consider a split similar to that for private Bills, where some rules only apply to the construction Bills defined in Rule 9A.1.1A.

Issues for Consideration

Question 1

Accompanying documents (Rules 9.3, 9A.2, 9A.3)
In relation to Private Bills there are a number of Presiding Officer determinations which detail aspects of the documentation, consultation, notification and procedures of Private Bills (see Rule 9A.3 and the Presiding Officer’s determinations Annexes B to S).

To what extent should the existing Presiding Officer Private Bill determinations apply to Hybrid Bills?

1. On accompanying documents we would envisage that, as the type of bill under discussion is a public Bill, rule 9.3 of the Standing Orders would be the starting point.

2. In terms of accompanying documents an addition to rule 9.3 of the Standing Orders would be useful, setting out any additional documents required. For a “construction Bill”, it would be appropriate to use private Bill rules 9A.2.3(c)(ii) and (iii) on maps, plans and sections and an environmental statement.

3. This type of Bill could also attract a rule on mandatory pre-introduction consultation, similar in intent to rule 9A.1.4B accompanied by a determination similar to that in Annex P of the Private Bills Guidance.

4. The inclusion of a statement by the Government in similar terms as 9A.2.3(d)(i), (iv) and (v) would be useful to ensure that the Parliament is informed of the arrangements that have been made regarding notification, advertising and project information distribution.

5. The summary table below provides comments on the existing Presiding Officer Private Bill determinations, recommendations and suggestions reproduced at Annexes B to S of the Private Bills Guidance and their suggested application to a “construction bill”.

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ANNEX A
<table>
<thead>
<tr>
<th>Presiding Officer’s determination/recommendation/suggestion (Annexe reference)</th>
<th>Required for Forth Crossing Bill (yes/no/in part)</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B (Proper form of private bills)</td>
<td>No</td>
<td>Determination (see Business Bulletin 65/2001) is made under Rules 9.2.3 and 9A.1.4, in the same terms for public and private bills. No particular adaption needed although Committee may wish to consider the paragraph stating “Any Bill introduced as a Public Bill should not normally contain provisions that would affect a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class”.</td>
</tr>
<tr>
<td>C (Structure and content of private bills)</td>
<td>No</td>
<td>Already provided for under Annex B of the Guidance on public bills.</td>
</tr>
<tr>
<td>D (Proper form of accompanying documents)</td>
<td>No</td>
<td>The accompanying documents would be prepared in the same manner as for other public bills. The determination for private Bills is not appropriate as it generally provides for statements on the documents that they have been prepared by an agent on behalf of a promoter. See below for book of reference.</td>
</tr>
<tr>
<td>E (Layout of accompanying documents)</td>
<td>No</td>
<td>Annex E suggests the layout of a book of reference. The Parliament may want to suggest a book of reference layout for Government Bills, but such a suggestion does not seem</td>
</tr>
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</tr>
<tr>
<td></td>
<td></td>
<td>essential, particularly if a determination of the type in Annex M is made.</td>
</tr>
<tr>
<td>F</td>
<td>(Model notification letter)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Not required but a model notification letter would be useful for Government and those affected by the project. Appropriate amendments would have to be made.</td>
</tr>
<tr>
<td>G</td>
<td>(Notification and consent)</td>
<td>In Part</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Only (1) Determination By The Presiding Officer On The Notification Arrangements For Private Bills Affecting Persons Or Classes With An Interest In Heritable Property is required for the Forth Crossing Bill.</td>
</tr>
<tr>
<td>H</td>
<td>(Advertisement on intention to introduce private bill)</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appropriate amendments would have to be made.</td>
</tr>
<tr>
<td>I</td>
<td>(Distribution of Private Bill and certain accompanying documents)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corresponding rule to 9A.4.2 may be useful but with distribution by the Scottish Parliament.</td>
</tr>
<tr>
<td>J</td>
<td>(Fees and Costs)</td>
<td>No</td>
</tr>
</tbody>
</table>
|   |   | No determination on fees and reimbursement of costs required for public bills.  

Parliament should consider if a fee should be charged for objectors. This determination sets a fee of £20 for objections to private bills. |
<p>| K | (Classes of works) | Yes |
|   |   | List of works needed to define a “construction bill” |
| L | (Estimate of expense and funding statement) | No |
|   |   | Financial information on the bill should be provided under the financial memorandum required for all public bills. |</p>
<table>
<thead>
<tr>
<th>M (Maps, plans, sections and book of reference)</th>
<th>Yes</th>
<th>Appropriate amendments would have to be made (e.g. to remove references to promoter).</th>
</tr>
</thead>
<tbody>
<tr>
<td>N (Environmental Statement)</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>O (Entitlement to reduced fees)</td>
<td>No</td>
<td>Determination of fees not required for public bill.</td>
</tr>
<tr>
<td>P (Mandatory consultees and consultation on environmental impact)</td>
<td>Yes</td>
<td>See earlier comments.</td>
</tr>
<tr>
<td>Q (Proper form of objections to private bills)</td>
<td>Yes</td>
<td>Appropriate amendments would have to be made.</td>
</tr>
<tr>
<td>R (Model layout for objection to private bill)</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>S (Proper form of amendments)</td>
<td>No</td>
<td>Determination made under Rules 9.10.1 and 9A.12.1 (i.e. same form already provided for public bills).</td>
</tr>
</tbody>
</table>

**Question 2**

*Because Hybrid Bills will interfere with private rights, Standing Orders will require to provide for consultation and notification (including advertising) be undertaken by the Scottish Government on the purpose and effect of the Bill prior to the introduction.*

*To what extent should such consultation and notification take place? (see Rules 9.3.3(c)(iii), 9A.1.4B, 9A.2.3(b)(iii) and 9A.2.3(d)(i) and (iv), 9A.6A, Determinations at Annex F, Annex G, Annexe H, Annexe I, Annex P)*

6. Consultation on the Forth Crossing Project is ongoing, public exhibitions have been held and views sought. Details of the consultation process will be set out in in the policy memorandum that will accompany the bill. Work is continuing to identify those affected by the bill but formal notification can only be given once the Parliament’s rules have been published. The additional rules and determinations for consultation and notification for private bills would seem suitable to use for “construction” bills. Regarding the specific rules and determinations identified:
• Rule 9.3.3(c)(iii) – The Scottish Government’s policy memorandum is the appropriate place for reporting on consultation activity.

• Rules 9A.1.4B, 9A.6A and annex P – The rules and determination seem appropriate to ensure that the relevant organisations are consulted on a construction Bill.

• Rule 9A.2.3(b)(iii) – This specific rule on general and mandatory consultation is not required, as the detail on the consultation would be provided in the policy memorandum under rule 9.3.3(c)(iii).

• Rule 9A.2.3(d)(i) and annexes F and G – The rule and determinations seem appropriate for notification purposes where heritable property is affected.

• Rule 9A.2.3(d)(iv) and annex H – The rule and determination seem appropriate for advertising purposes.

• Rule 9A.4.2 and annex I - A rule and determination seem to be required for the distribution of documents, but see comments in table above on Annex I and below in response to Question 6.

Question 3

What information about the financial cost of the Bill should be required by Standing Orders (Rules 9.3.2, 9.3.4, 9A.2.3(c)(i) and 9A.14, Determination at Annex L)

7. The information on the financial costs of the bill should be that required under Standing Orders for public bills (Rules 9.3.2, 9.3.4). The rules and determination for private bills would not be required.

Question 4

Introduction (Rules 9.2 and 9A.1)
Should Standing Orders define whether a Bill falls to be considered as a Hybrid Bill and if so, on what grounds should this be determined and by whom? (Rules 9.1, 9.1.3, 9A.1)

8. Rule 9.1 would require textual amendment to reflect either the special Chapter 9 rules or the separate Chapter which will apply to these public Bills. There would be a definition of a Bill which falls to be considered as a hybrid bill/public Bill affecting private interest. The definition would need to be carefully drawn and provide the basis for the Presiding Officer to decide if a Bill meets the definition.

9. The rules could also define a particular class of construction Bill which seeks to authorise the construction of such classes of works (and the compulsory acquisition or use of any lands or buildings) as may be determined by the Presiding Officer. This could link in to annex K which already details the classes of works for such private bills. Again interpretation of the provisions of a Bill would be made by the Presiding Officer with reference to the rules.
Question 5

Should Standing Orders require that there be a fee for introducing a Hybrid Bill, and if so, how much should that fee be? (Determination Annex J)

10. No fee should be required for introducing a public bill.

Question 6

In relation to Public Bills, the Bill and accompanying documents are printed, published and distributed by the Scottish Parliament whilst in Private Bills some of the other accompanying documents such as the maps, plans and sections are printed, published and distributed by the promoter.

Who should be responsible for printing, publishing and distributing any of the accompanying documents on introduction and during Parliamentary proceedings? (Rule 9.4, 9A.2.3(d)(v) and 9A.4, Determinations at Annex H, Annex I)

Who should meet the costs of this? and who should meet the costs incurred during the Parliament’s consideration of the Bill? (Rules 9.4, 9A.1.8, 9A.2.3(d)(vi), Determinations at Annex J and Annex O)

11. As with public bills the Parliament should be responsible for printing, publishing and distributing the accompanying documents. However, due to their size and specialist nature the additional documents referred to in paragraph 2 above can be printed by the Government to help reduce costs. The Parliament should advise on the required number of these documents before the introduction of the bill.

12. In terms of advertising the bill, rule 9A.2.3(d)(iv) and annex H could be used with relevant textual amendments.

13. As the bill is a public bill the costs associated with the bill, once introduced, should be met by Parliament (except for the printing of the additional documents referred to in paragraph 11 above).

Question 7

Does there require to be any assignation of copyright to the Parliament?

14. It does not appear that assignation would be required but our respective officials may wish to discuss the matter in more detail.

Question 8

Objections (Rule 9A.6)

On what grounds should it be possible for parties to object to the whole Bill? to specified provisions? (Rule 9A.6 and determinations at Annex J, Annex Q, Annex R)
To what extent should Standings Orders for considering Hybrid Bills replicate the current Private Bill procedures for considering Private Bill objections to the whole and/or specified provisions? (Rules 9A.6, 9A.8, 9A.9)

15. In the same way as for private bills any objection, whether to the whole or to part, should specify how the objectors interests would be adversely affected by the bill.

16. It would seem appropriate that the Standing Orders for considering objections to a public bill with private interests would replicate the current private bill procedures as these have been tested a number of times in the recent past.

17. In particular the distinction between specific objections and general whole Bill objections should be maintained. At Stage 1 the lead Committee should be able to give preliminary consideration to the former (e.g. determining the general admissibility where interests are clearly not adversely affected). The Committee would be expected to give full consideration to whole Bill objections as part of its Stage 1 consideration of the general principles of the Bill. The Stage 2 Committee would determine objections to specific provisions in its quasi-judicial capacity at Phase 1.

Question 9

Committee Consideration
Should Standing Orders specify which type of Committee should be able to consider a Hybrid Bill and what restrictions, if any, should apply that Committee’s membership and participation by non-Committee members? (Rules 9.6.1, 9.13A, 9A.5, 12.2.3)

To what extent should Standing Orders set out the responsibilities of members of the lead Committee in considering evidence, attending meetings, hearing evidence and decision taking on objections? (Rules 9A.5.4A, 9A.5.5 and 9A.5.6)

18. Rule 9.6.1 could be amended to cover the establishment of a suitable Committee. Rule 9A.5 would provide an appropriate template.

19. Rule 9A.5.2 and Rule 9A.5.3 (other than (e)) would be suitable for membership of the Committee. Rules 9A.5.4A, 9A.5.5 and 9A.5.6 would be a suitable template for setting out the general responsibilities of members of the lead Committee, particularly its responsibilities in considering objections by adversely affected persons

20. Stage 2 could allow for a split in a similar way to the Consideration Stage in Private Bills: allowing for a quasi-judicial evidence taking phase and an amendment phase. Rules 9A.9.2 and 9A.9.7 provide a starting point.

Question 10

Should Standing Orders provide for consideration of any provisions within the Bill which confer powers to make subordinate legislation? If so, how and when should such consideration take place and by whom? (Rules 9.4A, 9.6.2, 9.7.9 and 9.7.10)
21. Yes, as for any public bill Standing Orders should provide for consideration of any provisions within the Bill which confer powers to make subordinate legislation. The normal rules on memorandum on delegated powers and Subordinate Legislation Committee consideration (as identified in the question) should apply.

**Question 11**

*Should Standing Orders provide for consideration of the financial costs of the Bill by any other Committee (other than the lead Committee), and if so, which Committee, by what procedure and to what timescales? (Rules 9.6.1 and 9.6.3)*

22. Yes, as for any public bill Standing Orders provide for consideration of the financial costs of the Bill by any other Committee (other than the lead Committee). The normal rules (as identified in the question) should apply during stage 1.

**Question 12**

*To what extent should the lead Committee be able to utilise advisers and assessors when considering the Bill? What aspects of the Committee’s work should advisers and assessors be able to undertake? (Rules 9A.9.1B to 9A.9.4A)*

23. The Committee should be able to utilise advisers and assessors as it sees fit. As with private bills it may help the Committee to be able to direct the Parliamentary Corporation to appoint an assessor to consider and report on specific objections at Stage 2. It would be expected that while the assessor would make recommendations on objections the final decision would be for the Committee. Rules 9A.8.2A and 9A.9.1B to 9A.9.4A would provide appropriate examples under the private bill Standing Orders.

24. The Committee should be able to appoint advisers at any Stage. An adviser would be able to assist on more general technical matters relating to the Bill, whereas the role of an assessor would be restricted to considering and reporting on specific objections by adversely affected persons. It does not appear to be appropriate to request an assessor to consider the general principles of the Bill.

**Question 13**

*Who should be able to amend the Bill at Stage 2? At Stage 3? (Rules 9.7.7, 9.10, 9A.9.9, 9A.10, 9A.12)*

25. Rule 9A.12.14 restricts the members who may lodge amendments at Consideration Stage to members of the Private Bill Committee. Rule 9.7.7 allows a member who is not a member of the Stage 2 Committee to participate to move, debate etc, an amendment. As the Bill is a public bill, the normal rules for amendment by non-committee members should apply, including the rule that only members of the Committee can vote at stage 2. This and other protections (such as reconsideration provisions) should ensure amendments do not disturb a provision in the Bill reflecting a decision or agreement on an objection.
Question 14

What form should amendments take and what, if any, restrictions, should there be on the effect of amendments (e.g. should they be able to overturn the lead Committee’s decision on an objection)? (Rules 9.10, 9A.9.5 to 9A.9.9, 9A.10 and 9A.12)

26. The form of amendments would be as for any public bill. There should be no restrictions on the effect of amendments. The protections referred to above, on Committee members voting at Stage 2 and the power of the convener and member in charge at Stage 3, should apply.

Question 15

In what circumstances should Standing Orders provide for reconsideration of the Bill (such as if amendments were lodged which if agreed by the Committee or Parliament would affect new private interests) and what procedures should apply to such reconsideration? (Rules 9.7.8A to 9.7.8C, 9.9, 9A.10.5, 9A.10.6, 9A.11)

27. Powers for the Committee convener similar to those in Rule 9A.10.5 and Rule 9A.10.6 would seem appropriate for this type of Bill, to provide further protection for private interests. That is the ability to move a motion adjourning Stage 3 to allow new amendments to be proposed or to refer parts of the Bill back to Stage 2.

28. As this is public Bill with a member in charge (unlike a private Bill with a non MSP promoter), we would also suggest these powers are conferred on the member in charge. This would provide a means by which private interests could be safeguarded from amendments to the Bill later in the process.

Question 16

To what extent, if any, should Standing Orders provide for:

- Withdrawal of a Hybrid Bill;
- Timescales for consideration of the Bill at each stage including minimum timescales between moving from one Stage to the next;
- Committee reports (and timescales)

29. The Standing Orders for public bills provide the necessary rules: rule 9.13 for withdrawal of bills; rule 9.5 provides for timescales for consideration; and rule 9.5.3A provides for committee reports at stage 1. The special procedure may require to provide a gap between the two distinct phases of Stage 2.