

PROCEDURES COMMITTEE

AGENDA

2nd Meeting, 2007 (Session 2)

Tuesday 6 March 2007

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

- 1. **Decision on taking business in private:** The Committee will consider whether to take item 5 in private.
- 2. **Revised Guidance volumes:** The Committee will be invited to clear for publication new editions of the *Guidance on Motions* and *Guidance on Parliamentary Questions* prepared by the Chamber Desk and a new edition of the *Guidance on Public Bills* prepared by the Legislation Team.
- 3. **Review of Parliamentary Time:** The Committee will consider correspondence in relation to the Committee's 11th Report, 2006.
- 4. **Annual report:** The Committee will consider a draft annual report for the Parliamentary year from 7 May 2006 to 2 April 2007.
- 5. **Legacy paper:** The Committee will consider a draft legacy paper report.

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The following papers are attached for this meeting:

Aganda itam 2	
Agenda item 2 Note by the clerks	PR/S2/07/2/1
Draft Guidance on Motions	PR/S2/07/2/2
Draft Guidance on Parliamentary Questions	PR/S2/07/2/3
Draft Guidance on Public Bills	PR/S2/07/2/4
Agenda item 3 Correspondence with Presiding Officers and Minister for Parliamentary Business	PR/S2/07/2/5
Agenda item 4 Draft annual report	PR/S2/07/2/6
Agenda item 5 Draft legacy paper report (PRIVATE PAPER – MEMBERS ONLY)	PR/S2/07/2/7
The following papers are attached for information:	
Crerar Review	PR/S2/07/2/8
Convener letter to Conveners' Group on electronic voting in committees	PR/S2/07/2/9
Executive response to Committee's 10th Report, 2006, Scottish Commission for Public Audit	PR/S2/07/2/10
Note on lead committee participation in Stage 1 debates	PR/S2/07/2/11
Extracts from House of Commons Scottish Affairs Committee Report on the Sewel Convention	PR/S2/07/2/12
Minutes of the last meeting	PR/S2/07/1/M

PROCEDURES COMMITTEE

Revised procedural Guidance

Note by the clerks

Background

- 1. Since early in Session 1, the Parliament has published a number of volumes of Guidance on various key aspects of procedure and practice.
- 2. Current volumes are as follows (with the responsible clerking team given in brackets):
 - Guidance on Committees (Committee Office).
 - Guidance on Motions (Chamber Desk)
 - Guidance on Parliamentary Questions (Chamber Desk)
 - Guidance on Public Bills (Legislation Team)
 - Guidance on Private Bills (Private Bills Unit)
- 3. Most are, or have been, published in hard copy; and all are available electronically (in HTML) on the Parliament's website (under Parliamentary Business / Parliamentary procedure).
- 4. In broad terms, each volume outlines the procedures and practices associated with the relevant area of the Parliament's work, amplifying and explaining the relevant Rules, conventions and practices. This can involve, for example, explaining how the interpretation of particular Rules has been developed, referring to any relevant Presiding Officer rulings or determinations, and perhaps giving examples of when a particular procedure has been used.
- 5. The Guidance is written mostly for an internal audience MSPs and their staff, clerks and others directly involved in the relevant aspect of the Parliament's business (for example, the Guidance on Private Bills is used by promoters and their agents, and by objectors). However, it is also intended to be of more general interest to any member of the public wishing to find out in detail how the Parliament works.
- 6. While much of this material is broadly descriptive, some of it is prescriptive and is relied on by clerks in advising members. In this connection, in particular, it has been considered useful to submit new volumes of Guidance, or substantial revisions to existing volumes, to the Procedures Committee for consideration, and for a member of the relevant clerking team to attend the meeting and to respond to any comments made by Committee members. While responsibility for the content of Guidance remains for the relevant clerking team, they will obviously aim to ensure that Committee members' concerns have been addressed before the text is finalised. In this way, the final published version can carry a greater degree of authority which can be useful to

clerks in carrying out their role advising members on the procedural options available to them.

Motions and Parliamentary Questions

- 7. The first two volumes attached are a draft fourth edition of the *Guidance* on *Parliamentary Questions* and a draft second edition of the *Guidance* on *Motions*. Subject to the Procedures Committee's approval, it is intended to publish these and issue them to members at the beginning of the new session.
- 8. The Guidance on Parliamentary Questions was last updated for the beginning of Session 2. Other than stylistic changes and changes to reflect determinations by the Presiding Officer, the only changes of substance reflect the changes in arrangements for oral questions as recommended by the Procedures Committee in its 2nd Report 2005, Final Review of Oral Questions, set out in Section 4 of the Guidance.
- 9. The first edition of the *Guidance on Motions* was produced in summer 1999 and, inevitably at that time, reflected limited experience and is therefore incomplete and out of date in a number of respects. This new draft reflects the experience of the last two sessions. In all respects it reflects established practice and precedent but in some cases the practice has not been set out in guidance before. It has also been updated to reflect the recommendations of the Procedures Committee's 4th Report, 2006, *Motions and Decisions*. It is envisaged that the guidance will be published on the Parliament's website and in hard copy. Copies will be sent to all MSPs.
- 10. **Hugh Flinn, Head of the Chamber Desk** will attend the meeting to answer any questions about these two volumes of guidance.

Public Bills

- 11. The last complete edition of the *Guidance on Public Bills* was published in 2001, although it was updated in 2002. A new edition is now required to bring it up to date. In particular, the draft new edition reflects the Rulechanges recommended by the Committee in the following reports:
 - 2nd Report, 2004, Emergency Bills
 - 6th Report, 2004, A new procedure for Members' Bills
 - 7th Report, 2004, Timescales and Stages of Bills
 - 6th Report, 2006, Public Bills and Substitution
 - 8th Report, 2006, Consolidation Bill procedure
- 12. Substantial changes compared with the current, published edition are clearly marked, to enable members to focus on new text for approval.
- 13. **Peter McGrath, Head of the Legislation Team**, will attend the meeting to answer any questions about this volume.

SCOTTISH PARLIAMENT

GUIDANCE ON MOTIONS

Draft 2nd Edition, May 2007

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Foreword

This guidance is intended to support and expand on the Parliament's Standing Orders (http://www.scottish.parliament.uk/business/so/sto-c.htm) in relation to the processing of motions. It takes account of changes to Standing Orders agreed by the Parliament and of experience gained since 1999 and has been approved by the Procedures Committee.

Motions are normally lodged with the Chamber Desk, which is situated in room T1.01 at the top of the staircase from the Garden Lobby. It is part of the Chamber Office, which is in turn part of the Directorate of Clerking and Reporting. The Chamber Desk is open for business between 9.00 am and 5.30 pm, Mondays to Thursdays and from 9.00 am to 4.30 pm on Fridays (note: it does not open for business at weekends or on public holidays and revised times will be indicated to Members in advance of any recess (normally 10.00 am to 4.00 pm)).

Contact details for the Chamber Desk are-

Clerk Team Leader Extension No. 85182 Senior Assistant Clerk Extension No. 85181

Assistant Clerks Extension Nos. 85185 and 85196

Support Manager Extension No. 85199

Admin. Support Staff Extension Nos. 85194, 85193 and 85250

General Extension No. 85171

Fax: Extension No. 85184

Email: chamber.desk@scottish.parliament.uk

Section 1: Introduction

Purpose of Motions

- 1.1 A motion is one of the means by which Members can initiate debate or propose a course of action. Under Rule 8.1.1 of Standing Orders Members may, except where Standing Orders provide otherwise, give notice of a motion or move a motion about any matter. This includes those matters that are reserved to Westminster. All motions lodged are published in the next Business Bulletin. As a general rule a Member seeking to move a motion, whether in the chamber or in committee, will require to lodge notice of it with the Chamber Desk.
- 1.2 Where motions are to be debated they are lodged in accordance with the business programme agreed by the Parliament and form the basis for the debate. Such motions, if agreed to, become resolutions of the Parliament. Any Member can lodge an amendment to such a motion and the Presiding Officer selects which amendments will be debated. However, the majority of motions are not intended for debate and are lodged for a variety of reasons, such as drawing attention to a particular topic, seeking support for a cause or highlighting a particular event. Others are lodged to congratulate constituents or organisations. Members can also lodge motions for Members' Business which gives them the opportunity to debate matters of interest to them or which affect their constituents (see paras 2.17 to 2.21). Such motions are not moved and so do not result in a resolution of the Parliament.

Chamber Desk

1.3 The wording of motions can be discussed with clerks at the Chamber Desk. Clerks also provide advice and assistance on general matters relating to the processing of motions (content, timings, lodging arrangements, etc) as well as the arrangements for lodging parliamentary questions (see *Guidance on Parliamentary Questions*, http://www.scottish.parliament.uk/business/pqa/).

Section 2: Procedures for Lodging and Processing Motions

2.1 This section deals with the detailed arrangements for lodging a motion. These arrangements also apply to lodging an amendment to a motion (further guidance on amendments is given in sections 5 and 6). This guidance applies both to motions taken in meetings of the Parliament and in committees. Therefore, where there is a reference to the Presiding Officer, this should also be read as a reference to a convener when dealing with a motion or an amendment to a motion that is being considered in committee.

Where Motions are Lodged

2.2 Motions are lodged with the Chamber Desk and should contain the text of the motion, a title and the name of the Member giving notice of it. Clerks ensure that all motions conform to the admissibility criteria set out in Rule 8.2.2 of Standing Orders. This will also ensure that any restrictions that apply to particular motions, for example motions that may be moved only by Members of a particular committee or by the Member in charge of a Bill, are complied with.

Role of Chamber Desk

- 2.3 Members may seek advice from clerks about whether a motion complies with Standing Orders and with this guidance before lodging it. Any advice given to Members by clerks prior to a motion being admitted is strictly confidential as are all discussions or correspondence on motions prior to them being lodged. Clerks may make minor alterations to motions, eg to format, grammar or spelling, but will not make any alteration that materially alters the sense of a motion without first consulting the Member. If a motion requires such an alteration in order to be admissible the clerk may give appropriate advice but it is for the Member to make and/or agree the necessary changes.
- 2.4 If a motion has been admitted and has appeared in the Business Bulletin but requires further minor editorial adjustment, the clerks will amend it and notify the adjustment to Members in the Business Bulletin by means of an asterisk (*) (which identifies new or altered motions) in the text to show the extent of the alterations made. In the event of substantial adjustment being required, the Member will be encouraged to withdraw the motion and submit a new one. If, however, deadlines are tight, for example because the motion is to be debated that day, then the new, or altered, motion may either be moved without notice with the permission of the Presiding Officer (see paragraph 2.28) or taken at short notice (see paragraph 2.29).

Who can Lodge Motions

2.5 The Member in whose name the motion is to appear may lodge the motion themselves or confer authority on someone else, eg a research assistant, to lodge a motion on his or her behalf. Members who agree to allow someone else to lodge a motion on their behalf must provide the Chamber Desk in advance with a signed copy of the authorisation form contained in Annex A. Copies of this form are available from the Chamber Desk. Members can authorise more than one person to

lodge motions on their behalf. Without this authorisation, the clerks will not accept a motion from anyone other than the Member. The authorisation applies for the whole parliamentary session unless the Member alters or revokes it. All alterations or revocations must be notified in writing to the Chamber Desk by the Member personally (not another authorised person)..

How a Motion is Lodged

- 2.6 Standing Orders allow for a motion to be lodged in person or by email. A Member wishing to lodge a motion by email must, before doing so, advise the clerk that he or she intends to lodge documents in this way. This is done by completing the appropriate notification form (see Annex B). Copies are available from the Chamber Desk. Lodging electronically will speed up the whole process and reduce the risk of errors if the motion requires to be retyped. However, if a Member is in any doubt about the format of his or her motion, he or she may find it helpful to discuss the wording with clerks before lodging it. Motions will not be accepted orally, by telephone or by fax. Nonetheless, motions written in any form will be accepted if they meet the criteria for admissibility.
- 2.7 Members may lodge motions from their parliamentary, constituency office or home email addresses, providing they have completed the necessary authorisation form stating the full email addresses to be authorised. Emailed motions will be accepted only from these addresses. The mailbox name need not contain the Member's name but must be an address which the Member has notified the Chamber Desk to be their authorised email address. Specific arrangements for the Scottish Executive are set out in Rule 17.4.2.

Admissibility Criteria

- 2.8 Rule 8.2.2 contains the criteria for admissibility of a motion—
 - the first criterion is that a motion should be in English. Where a Member wishes a motion to be printed in the Business Bulletin in a language other than English, for example Scots Gaelic or Scots, then he or she must provide the appropriate translation. The translation will be printed in addition to, and directly after, the version in English. Clerks will, where practicable, arrange for the translation to be checked before it is accepted as accurate. Responsibility for the accuracy of the translation, however, remains with the Member.
 - the second criterion is that a motion must not contain offensive language. This
 precludes not just obvious obscenities, but also language that is intemperate,
 inflammatory, sarcastic or provocative or to which other Members might
 reasonably take offence. There is no requirement that a motion should avoid
 obvious political content. It is quite permissible, for example, to be openly
 critical of the stance adopted by another party or the Scottish Executive.
 - the third criterion is that a motion must not breach any enactment or rule of law and is not contrary to the public interest. This means, for example, that the terms of a motion should not disclose any information that is protected by

an interdict or court order (eg the identities of children in custody disputes) or that is commercially sensitive, confidential or the publication of which may cause personal distress or loss. Particular care should be taken over any motion that gives the names of individuals since they may be the names of people whose identity needs to be protected in their own interests (eg victims of sexual harassment). In addition, a motion on a matter that is sub judice (Rule 7.5) may only be lodged to the extent permitted by the Presiding Officer. It is generally inappropriate to identify Parliament or MSPs' staff or Executive officials by name in a motion as they have no means by which to respond. References to job titles are acceptable. Where clerks are in any doubt about the application of this criterion they will seek legal advice from the Parliament's legal advisers.

- 2.9 There will be instances where discussion with the Member does not result in a motion that the clerk considers admissible, or where the Member is not available to resolve the issue, or where the matter is not clear-cut and the clerk requires guidance. In these circumstances the clerk will refer the matter to the Chamber Desk Clerk Team Leader and at this stage the Parliament's legal advisers may be consulted for guidance. If agreement cannot be reached, the matter will be raised with the Head of the Chamber Office and if the Member remains dissatisfied, the matter can be raised with the Director of Clerking and Reporting who may consult the Clerk/Chief Executive of the Parliament where appropriate. If the matter cannot be resolved, the final decision on the motion's admissibility rests with the Presiding Officer.
- 2.10 The criteria described in paragraph 2.8 above also apply to motions without notice when clerks are advising the Presiding Officer on whether the criteria have been met and the motion is admissible. If there is any doubt, the meeting at which the motion is to be, or is being, considered may be suspended or the Presiding Officer may decide to take the motion at the end of the meeting so that, for example, legal advice can be sought. A motion without notice, unless the Standing Orders specifically provide for it, may only be moved at the Presiding Officer's discretion.

Declaration of Registrable Interest

2.11 Detailed guidance on the declaration of registrable interests in relation to motions can be found in the Code of Conduct for Members of the Scottish in particular. 5.3.7 http://www.scottish.parliament.uk/msp/conduct/index.htm. Members with registrable interest in a motion are required to declare their interest when lodging it (this also applies to amendments and indications of support for motions). If an interest is declared the clerk will ensure that an "R" is placed at the end of the motion when it appears in the Business Bulletin. The Business Bulletin will draw attention only to the existence of a declared registrable interest and will not identify the particular interest that is being referred to. It is for the Member to decide whether a registrable interest is relevant to a particular motion. The Standards clerks are always happy to advise Members. If a Member has made a declaration, and his or her motion is selected for debate, then he or she must make an oral declaration of the interest prior to moving the motion. Anyone wishing to examine Members'

interests should consult the Register of Members' Interests, which is available at http://www.scottish.parliament.uk/msp/membersPages/index.htm.

Style and Layout

- 2.12 Motions should be clearly worded and avoid any ambiguity. The following paragraphs set out the normal style that should be adopted for lodging motions.
- 2.13 When framing a motion the form "That the Parliament" should always be used followed by an appropriate verb to reflect what it is that the Member wishes the Parliament to do. For example—

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"That the Parliament agrees..."
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2.14 A motion should be constructed within one sentence and appropriately punctuated to indicate different ideas. For example—

"That the Parliament notes A; recognises B; agrees C, and calls on D to"

2.15 Where it is appropriate to break up a motion into numbered paragraphs, these should be separated (a), (b), (c) and so on, followed by (i), (ii), (iii) and so on and (A), (B), (C) and so on. For example—

"That the Parliament acknowledges the importance of X and calls on the Scottish Executive to consult (a) all interested parties with a view to introducing legislation to (i) ensure that... and (ii) promote measures to (A) end... and (B) begin..., and (b) local authorities to allocate funding in (i) 2003-04 and (ii) 2004-05...."

2.16 A motion should have a brief title that summarises its subject matter. Members should ensure that an appropriate title is supplied when lodging the motion.

Members' Business

- 2.17 Members' Business debates will normally follow the conclusion of Decision Time each day and last for up to 45 minutes. The Member whose motion is being debated will be allocated seven minutes to speak to the motion at the start of the debate, as will the Minister responding at the end of the debate. As with other debates, the Presiding Officer will select Members to speak and allocate time for speeches. Members' Business debates are concluded without any question being put.
- 2.18 The Parliamentary Bureau will select motions to be debated as Members' Business using the following criteria:

[&]quot;That the Parliament approves..."

[&]quot;That the Parliament notes..."

[&]quot;That the Parliament calls on..."

[&]quot;That the Parliament recognises..."

[&]quot;That the Parliament acknowledges..."

- a. Motions will (a) have an explicit local or regional dimension; or (b) raise issues of national policy in a local or regional context and have cross-party support¹; or (c) raise issue-commemorating anniversaries or marking national "weeks" or special events and have cross-party support; and
- b. As Members' Business debates provide an opportunity for particular issues to be raised without a decision being taken, motions will not "call on" anybody to undertake specific actions or to take or reverse particular decisions.
- 2.19 The Chamber Desk will advise on compliance with the above at the time of lodging. Those motions which require cross-party support (b and c in the first criterion above) will be given a hash symbol once they have attained the requisite support and will initially be published in the Business Bulletin with a diamond symbol. Only those motions with a hash symbol will be eligible for selection for Members' Business debates. The Parliamentary Bureau will be the final arbiter in any unresolved dispute.
- 2.20 The Bureau may exceptionally select for debate a motion which falls outwith the above criteria, should it have cross-party support and a majority of Members in the Bureau supports its selection.
- 2.21 In order for the Parliamentary Bureau to be given as much notice as possible of motions to be debated and for checks against the above criteria to be made, the Parliamentary Bureau will only select for debate from those motions that comply with this guidance and that are lodged by the Monday of the week preceding the debate.

Timing

2.22 Motions may be lodged only on days when the office of the Clerk is open. Motions received after 4.30 pm will not normally appear in the Business Bulletin for the following day. Chamber Desk clerks will record the time at which motions are received. If a motion is sent by email, the time at which it is deemed to be received is the time it is delivered to the Chamber Desk email inbox. Members should note that a motion received before 4.30 pm will not normally appear in the Business Bulletin for the following day if a decision on its admissibility cannot be made before that time.

2.23 As a matter of good practice, motions to initiate business already agreed to in the Business Programme should be lodged at least two sitting days in advance of the relevant debate and amendments should be lodged at least one day in advance of the debate. In both cases the motion and amendment should be lodged by 4.30 pm for publication in the following day's Business Bulletin.

Publication of Motions in Business Bulletin

2.24 Once a motion has been received and checked for admissibility by the clerks in the Chamber Desk, they will arrange for its publication in the next day's Business

¹ In the context of Members' Business motions, "cross party support" means the support of members of at least half of all groups represented on the Parliamentary Bureau.

Bulletin. All motions lodged between Monday and Friday and which are extant, will be reprinted in the Business Bulletin published the next Monday, which will also include all motions to be debated that week. A complete list of extant motions and amendments to motions is available in the Chamber Desk where advice on the current supporters is also available (the names of all supporters to each motion shown on the Parliament's website will be updated daily) http://www.scottish.parliament.uk/business/motionsAndAmendments/motions.htm. The Business Bulletin will show all new indications of support for motions.

Removal of Motions by the Parliamentary Bureau

2.25 The clerks will maintain and publish from time to time a list of all admissible motions lodged and not yet taken by the Parliament. Motions will normally remain on this list for six weeks (excluding recess time) after which the Parliamentary Bureau has agreed that all motions should be removed from the list unless:

- they have the support of at least 30 other Members and these supporters come from more than two political parties;
- they have remained highly topical; or
- they have been selected for Members' Business.

Arrangements for Indicating Support

2.26 Once a motion has been lodged, and both before and after it appears in the Business Bulletin, any Member may add his or her name in support of it. This can be done in writing or the Member may arrange for any other person to do so on his or her behalf, but only if that person has been authorised to do so by the Member and the Chamber Desk has been notified of that authorisation in writing. Email from the Member's email address is also acceptable if the Member has notified the Chamber Desk that he or she intends lodging documents by email. Annex C provides instructions for setting up voting buttons for supporting motions.

Different arrangements for the Scottish Executive are set out in Rule 17.4.2.

Motions Moved Without Notice

2.27 Under Rule 8.1.2 a motion may be moved without notice only as permitted by the Standing Orders or, exceptionally, as permitted by the Presiding Officer.

Motions at Short Notice

2.28 Normally, a motion for which notice is required shall not be taken until the sitting day after that on which notice was given. A Member may, however, lodge a motion to be taken at shorter notice (usually the same day) under Rule 8.2.6. In this event the Chamber Desk will refer the motion to the Presiding Officer, who may decide to allow the Member to seek the Parliament's approval to move the motion. In

that case the Member will, at the time scheduled by the Presiding Officer, move without notice that the motion should be taken at shorter notice (see section 6).

Withdrawal of a Motion

2.29 A Member may withdraw a motion in his or her name at any stage before it is moved by notifying the Chamber Desk that it is withdrawn. If the motion is being debated that day, the Member, or an authorised assistant, should notify the Chamber Desk in writing immediately (telephone notifications are only acceptable in cases of extreme urgency). If a motion is withdrawn, any amendments to it will automatically fall. It is the normal practice of the Chamber Desk to notify supporters of a motion, and any amendments to it, if it is withdrawn.

2.30 Normally the Chamber Desk will ensure that notification of a motion's withdrawal appears in the Business Bulletin. However, if it is too late for such notification to appear in the Business Bulletin, the Member should notify the Presiding Officer. If a Member is unable to withdraw a motion before it is called by the Presiding Officer the Member should say "not moved". Any other Member who has indicated support for it before the end of the previous sitting day may move it instead (Rule 8.3.2). The process for withdrawing a motion after it has been moved is set out in paragraph 4.3.

Business Motions and Role of the Parliamentary Bureau

2.31 Business motions normally give an outline of proposed business in the Chamber and, in some cases, recommend lead committees for the consideration of legislation or give proposed timetables for stages of Bills. Their content is agreed by the Parliamentary Bureau and they are normally lodged in the name of the Minister for Parliamentary Business. Notice of an amendment to a business motion may be lodged by a Member with the Chamber Desk. If, when notice of an amendment to a business motion is given, it is supported by at least 10 Members, that amendment must be taken by the Parliament (Rule 8.11.4).

Section 3: Motions Relating to Legislation

Bills

3.1 The procedures on Bills, both public (including those lodged by Members and by committees) and private, are covered in chapters 9 and 9A respectively of Standing Orders. Further details can be obtained from the *Guidance on Public Bills* (http://www.scottish.parliament.uk/bills/billguidance/gpb-c.htm) and from the Legislation Team:

Clerk Team Leader Extension no. 85206 Senior Assistant Clerk Extension no. 85235 Assistant Clerk Extension no. 85253

and the Non-Executive Bills Unit (NEBU):

Team Leader Extension no. 85951

Senior Assistant Clerks Extension no. 85249 and 85417 Assistant Clerks Extension no. 85321 and 85246

and, in the case of individual public Bills, from the clerks to the lead committee considering that Bill. In the case of subordinate legislation, further details can be obtained from chapter 10 of Standing Orders and from clerks to the Subordinate Legislation Committee (extensions 85212, 85931 and 86282).

The role of the Chamber Desk relates to the lodging of motions at Stages 1 and 3 (public Bills) and Preliminary and Final Stages (private Bills) and amendments to those motions. Amendments to public Bills are lodged with the clerks to the committee considering that Bill; amendments to private Bills are lodged with clerks in the Non-Executive Bills Unit. Guidance on the timing for lodging amendments to Bills which are progressing through the Parliament is provided in Section J of the Business Bulletin.

Public Bills

3.2 When the Parliament debates and decides on the general principles of a Bill, this is done on a Stage 1 motion in the name of the Member in charge of the Bill—

"That the Parliament agrees to the general principles of the [short title] Bill."

- 3.3 Such a motion may be amended but the Presiding Officer has indicated that reasoned amendments to Stage 1 motions will only be selected for debate if they are so worded that they do not cast any doubt on what the status of the Bill would be if the amended motion were agreed to. Such amendments will therefore only be selected if—
 - (a) it would remain clear from the amended motion that the general principles of the Bill would be agreed to (and the Bill would proceed to Stage 2); or

- (b) it would be clear from the amended motion that the general principles of the Bill would not be agreed to (and that the Bill would fall).
- 3.4 For example, amendments in category (a) might be worded to add a reason why, in agreeing to the motion, the Parliament does so with some regret or misgivings—

Insert at end—

"but, in so doing, expresses reservations about...."

3.5 Amendments in category (b) should be worded so as to reverse the terms of the motion for a reason stated in the amendment—

Leave out from "agrees" to end and insert—

"does not agree to the general principles of the [short title] Bill because...."

3.6 After proceedings on amendments at Stage 3 are concluded the Parliament must decide whether to pass the Bill. The debate takes place on a motion by the Member in charge of the Bill—

"That the Parliament agrees that the [short title] Bill be passed."

- 3.7 Such a motion may be amended, subject to criteria similar to those that the Presiding Officer applies in selecting amendments to Stage 1 motions outlined in paragraphs 3.3 to 3.5 above, as well as the criteria listed in paragraph 5.8 that apply to all amendments. Thus, an amendment to a Stage 3 motion will be selected only if—
 - (a) it would remain clear from the amended motion that the Bill would be passed; or
 - (b) it would be clear from the amended motion that the Bill would not be passed (and that the Bill would fall).

Private Bills

- 3.8 Although the procedures are different, private Bills in the Scottish Parliament are very similar, in terms of layout, structure and the conventions of legislative drafting, to public Bills.
- 3.9 Once a Private Bill committee has published its Preliminary Stage report on whether the general principles of the Bill should be agreed to and whether it should proceed as a private Bill, a motion in the name of the committee convener that reflects the recommendations of the report will be lodged as follows—

"That the Parliament agrees to the general principles of the [name of Bill] and that the Bill should proceed as a private Bill".

- 3.10 If a motion in that form is agreed to by the Parliament, the Bill proceeds to Consideration Stage. If such a motion is not agreed to, the Bill falls (Rule 9A.8.10).
- 3.11 Alternative forms of motion may be used where the committee either does not recommend that the general principles be agreed to, or that the Bill should proceed as a private Bill, or both—

"That the Parliament does not agree to the general principles of the [short title] Bill and does not agree that the Bill should proceed as a Private Bill".

3.12 If any such motion in that form is agreed to (whether by division or otherwise) the Bill falls. If any such motion is not agreed to, the Bill also falls. The Bill could only proceed to Consideration Stage on the basis of such a motion if the motion was first amended. The necessary amendment (in relation to the motion given as an example above) would be—

"leave out "does not agree to the general principles of the [short title] Bill and does not agree" and insert—

"despite the recommendation of the [name] Committee, agrees to the general principles of the [short title] Bill and agrees ..."."

- 3.13 Any Member may lodge such an amendment which is subject, like all amendments to motions, to selection by the Presiding Officer (under Rule 8.5.6).
- 3.14 After proceedings on amendments at the Final Stage are concluded the Parliament must decide whether to pass the Bill. The convener of the committee therefore moves—

"That the Parliament agrees that the [short title] Bill be passed".

- 3.15 Such a motion may be amended, but subject to similar criteria that the Presiding Officer applies in selecting amendments to Stage 3 motions outlined in paragraph 3.7. Thus, an amendment to a Final Stage motion will be selected only if—
 - (a) it would remain clear from the amended motion that the Bill would be passed; or
 - (b) it would be clear from the amended motion that the Bill would not be passed (and that the Bill would fall).

Subordinate Legislation

3.16 Most statutory instruments are considered, in the first instance, in committee although they can, on a motion of the Parliamentary Bureau, be debated by the full Parliament. Where a statutory instrument falls within the remit of more than one committee the Parliament will, on a motion of the Parliamentary Bureau, designate a

lead committee and may nominate any other committees it wishes to consider the instrument before reporting back to the lead committee.

Negative procedure

3.17 When a statutory instrument is subject to negative procedure, under Rule 10.4.1 a Member may propose by motion to the lead committee that the committee recommends that nothing further be done under the instrument. This is a motion to annul and should be worded as follows—

"That the [name of committee] recommends that nothing further be done under the [name and number of statutory instrument]".

3.18 A motion to annul must be lodged no later than 40 days after the instrument is laid (no account being taken of any time during which the Parliament is dissolved or is in recess for more than four days) although, in practice, it is highly desirable for any such motion to be lodged as early as possible. The Business Bulletin lists all extant instruments showing the date by which the instrument is subject to annulment. If the lead committee reports to the Parliament recommending that nothing further be done under the instrument then the Parliamentary Bureau will, no later than 40 days after the instrument is laid, propose a motion to that effect.

Affirmative procedure

3.19 When a statutory instrument is subject to affirmative procedure (whether draft or made, ie the instrument is signed by a minister but requires the approval of the Parliament by resolution to come into, or remain in, force), a motion to approve must be lodged by the Scottish Executive. Such motions are lodged under Rules 10.6.1 and 10.6.2 and can be proposed to the lead committee by any Member of the Executive or junior Scottish Minister. The motion should be worded—

"That the [name of committee], recommends that the [name and number of statutory instrument)] be approved".

- 3.20 On a motion of the Parliamentary Bureau, an instrument, or draft instrument, may be considered at a meeting of the Parliament rather than in committee. Any Member may give notice of, or move, a motion in relation to that instrument or draft instrument.
- 3.21 When a Member does not want the instrument to be approved, he or she may simply vote against the approval motion. However, there is scope for a Member to lodge a reasoned amendment to the approval motion, again no later than 40 days after the instrument was laid. As with other amendments to motions, it is for the convener (or, for those instruments considered by the full Parliament, the Presiding Officer) to decide whether to select the amendment for debate (Rule 8.5.6). If the lead committee recommends the approval of the instrument, the Parliamentary Bureau shall by motion propose that the Parliament approves the instrument. Such motions are worded—

"That the Parliament agrees that the [name and number of statutory instrument] be approved."

3.22 The convener (or Presiding Officer) will only select amendments for debate that are so worded that, if accepted, there would be no doubt that the instrument was either approved or not approved as the case may be. Such amendments would, for example, approve the instrument, albeit with regret or misgivings, or not approve the instrument, giving reasons for not doing so. A reasoned amendment could be worded—

Insert at end (of motion in para 3.21above)

"but, in doing so, regrets[text of reason]."

Legislative Consent Motions

- 3.23 Under the "Sewel Convention", the UK Parliament is committed not to legislate on devolved matters, or to alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers, without the express consent of the Parliament. Motions seeking the Parliament's consent to the relevant provision in a relevant UK Parliament Bill are known as legislative consent motions. Such motions must identify the relevant Bill by reference to its short title and the House of the UK Parliament in which, and the date on which, it was introduced.
- 3.24 Under Rule 9B.3.2, a legislative consent motion cannot be lodged before a legislative consent memorandum on the relevant UK Bill has been lodged with the clerk. Additionally such motions are not normally lodged until after the publication of the report by the relevant lead committee on the memorandum.
- 3.25 The following example shows how a legislative consent motion is typically worded—

Consumers, Estate Agents and Redress Bill - UK Legislation—That the Parliament endorses the principle of giving consumers an effective voice as set out in the Consumers, Estate Agents and Redress Bill, introduced in the House of Lords on 16 November 2006, and agrees that the relevant provisions to achieve this end in the Bill should be considered by the UK Parliament.

3.26 Further details on legislative consent memorandums, along with a list of all memorandums introduced, can be found in the Parliamentary Business section of the Parliament's website:

(http://www.scottish.parliament.uk/business/legConMem/index.htm). Further information about the Sewel Convention and the Parliament's scrutiny process can be found in the Procedures Committee's 7th Report, 2005.

Section 4: Parliamentary Procedure on Motions

Moving of Motion

- 4.1 Only a small proportion of motions lodged are selected for debate and indeed some motions are lodged primarily to provide the Member with a means of highlighting an issue, with no expectation of the motion being debated. A motion that is to be debated by the Parliament on a particular day will appear in the Daily Business List (Section A) of that day's Business Bulletin. Under Rule 8.3.2 the motion may be moved by the Member who lodged it or by any other Member who has added his or her name to it by the end of the previous sitting day (and whose name will therefore appear in the Business Bulletin as a supporter of the motion). These are—
 - motions concerning the appointment of persons as Law Officers, members of the Executive or junior Scottish Ministers, or motions for the removal of a judge – which may be moved only by the First Minister (Rule 8.9);
 - motions for a tax-varying resolution which may be moved only by a member of the Executive (Rule 8.10);
 - business motions which may be moved only by a member of the Parliamentary Bureau (Rule 8.11);
 - motions for a financial resolution for a Bill which may be moved only by a member of the Executive or a junior Scottish Minister (Rules 9.12.7 and 9A.14.7)
- 4.2 If the Member moving the motion wishes to make a speech in respect of a motion he or she should do so before moving the motion. They should end their speech by formally moving the motion (eg "I move the motion in my name" or "I move motion S2M-xx"). Other speakers may then be called by the Presiding Officer. If the Member does not wish to make a speech in support of the motion (or if no time has been allocated for debate) the Member should simply say "formally moved".

Withdrawal of a Motion After it has been Moved

4.3 At any time during the debate, and before the question is put, the mover of the motion may seek to withdraw it (Rule 8.3.6). He or she should briefly explain why, then state "accordingly, I withdraw this motion." The Presiding Officer will then ask the Chamber whether any Member objects to the motion being withdrawn. If no Member objects, the motion is withdrawn. If any Member objects the debate on the motion continues as before. There is nothing to prevent the mover making more than one attempt to withdraw the motion.

Debates without Motions

4.4 It is also possible for debates to take place without a motion. Such debates are commonly described as "subject debates" and conclude without any decision being taken.

Section 5: Amendments to Motions and Amendments

Giving Notice of Amendments

- 5.1 As soon as a motion has been lodged, amendments may be lodged with the Chamber Desk. Amendments to motions are subject to the same admissibility criteria as motions and will be printed in the Business Bulletin (Rule 8.5.5). The Presiding Officer will select which, if any, amendments are to be taken in the debate on the motion (Rule 8.5.6). While a Member may lodge an amendment at any time after the motion has been admitted, only amendments lodged with the Chamber Desk no later than 4.30 pm on the day before the debate will appear in the Business Bulletin. Any amendment received after that time will not normally be printed in the next day's Business Bulletin.
- 5.2 If an amendment to a motion (or an amendment to an amendment etc) is lodged on the day when the relevant motion is due to be taken, or after the printing deadline for the Business Bulletin the previous day, the Chamber Desk will immediately send a copy of the amendment to the Presiding Officer. If the Presiding Officer agrees that the amendment should be taken, then the daily business list section of the Business Bulletin will be re-issued to include the new amendment. Alternatively, in urgent cases, an addendum may be issued setting out the text of the amendment only. If the Presiding Officer does not agree that the amendment should be taken, the Member will be informed accordingly. The amendment will not be printed in Section A of the Business Bulletin.
- 5.3 Members may support amendments under the same procedures as set out for motions in paragraph 2.24.

Wording, Style and Layout of Amendments to Motions

- 5.4 The following conventions apply to the wording of amendments to motions—
 - they should begin "[name of Member]: [title of motion], as an amendment to motion S2M-xx in the name of [Member who lodged motion]"
 - they should "leave out" and/or "insert" words
 - to insert words, it should use the forms: "after "word" insert "new words"" or "insert at end" "new words""
 - to re-word entirely a motion beginning "That the Parliament believes...", the amendment should read "... leave out from "believes" to end and insert "new words"" (if the word "believes" occurs more than once, use "leave out from first "believes").
 - where a Member seeks to make two or more separate changes to the wording
 of a motion, for example they wish to leave out some words in the first line of
 a three-line motion, and insert new words in the third line, then all the text
 between the two insertion points should be deleted and then re-inserted by
 means of the amendment.

5.5 Examples of amendments to motions are given below—

Motion—

That the Parliament notes the *Guidance on Motions* and directs that the document be published and made available to every Member of the Parliament.

Amendments—

- (a) leave out "notes" and insert "commends"
- (b) leave out from "notes" to "document" and insert "believes that the *Guidance* on *Motions* and the *Guidance* on *Parliamentary Questions* are useful reference documents and directs that the documents"
- (c) insert at end "and published on the Parliament's website"
- (d) leave out from "notes" to end and insert "commends the *Guidance on Motions* and directs that the document be published and made available to every Member of the Parliament and on the Parliament's website".

Amendments to Amendments

5.6 Amendments to a motion may themselves be amended (Rule 8.7). Such amendments should be worded in the same way as amendments to a motion but beginning "[name of Member]: [title of motion], as an amendment to amendment S2M-xx.1) in the name of [Member who lodged amendment], ...". It can be procedurally complex to deal with amendments to amendments. Clerks may therefore seek to encourage Members to lodge an alternative amendment to the original motion, rather than an amendment to an amendment already lodged. Amendments to an amendment are usually appropriate only where the amendment to the amendment involves changing or adding only a word or two as the prime purpose of an amendment to an amendment should be to make a specific change or build on a proposition. In particular, they should not leave out the entire text of an amendment and replace it with a new text. Nor should their purpose be regarded solely as a device to secure a vote at Decision Time. If amendments to amendments were taken on this basis the potential for retaliatory amendments to amendments would be almost infinite.

Pre-emption of Amendments

- 5.7 In wording amendments Members should take account of whether their amendment can be pre-empted if other amendments taken before it are agreed to. An amendment is pre-empted if:
 - the text in the motion that it amends would no longer be in the motion if an earlier amendment was agreed to. Thus in the example in paragraph 5.5 above, if an amendment that leaves out from "notes" to end and insert "believes ..." is carried all other amendments in the format leave out from "notes" to end will be pre-empted as "notes" is not in the motion as amended.

- the consequent resolution would have contradictory or incompatible statements contained within it. For example if amendment 1 called for action on a matter and amendment 2 then called for an opposite action, it would not be competent for them to be part of the same resolution.
- the amendment would result in a substantive motion that altered the original intention of the amendment.

The Presiding Officer will not put the question on an amendment if it has, in his opinion, been pre-empted by the Parliament's earlier agreement to another amendment to the same motion.

Selection and Order of Amendments

- 5.8 The Presiding Officer balances the following criteria when selecting amendments—
 - the extent to which the amendment has supporters other than the mover of the amendment;
 - the number of competing amendments;
 - the content of the amendment, in terms of its relevance to the subject matter of the motion; and
 - whether the amendment alters significantly the content of the motion.

In addition, the Presiding Officer will take into account any other factors that he considers appropriate.

- 5.9 The Presiding Officer also seeks to ensure that, over time, the proportion of amendments selected from opposition parties reflects their share of opposition representation in the Parliament. Executive amendments to opposition motions would normally be selected. When selecting amendments from a large number of admissible amendments, the Presiding Officer will pay particular regard to the third and fourth bullet points above.
- 5.10 Where the Presiding Officer has decided that more than one amendment should be taken by the Parliament, they will appear in print immediately following the original motion, indented to show that they are subsidiary items. They will normally appear in order based on the size of the party on whose behalf the amendment is lodged, with the amendment from a Member of the largest party taken first. With amendments to an opposition group motion, an amendment on behalf of the Executive will be listed first. Amendments to an amendment will, in turn, appear immediately following the amendment to which they relate, further indented, in the order in which they relate to that amendment. For example—

S2M-100 Mr Joe Bloggs: Loch Ness Research—That the Parliament regrets the recent allocation by the Institute of Lost Causes of research funding to establish whether the Loch Ness Monster exists.

- **S2M-100.1 Dr Jane Spires: Loch Ness Research**—As an amendment to motion S2M-100 in the name of Mr Joe Bloggs, leave out from "regrets" to end and insert "regards the allocation of public funds to the "Nessie Research Project" as a scandalous waste of public money."
 - **S2M-100.1.1 Mr Tom Wilkie: Loch Ness Research**—As an amendment to amendment S2M-100.1 in the name of Dr Jane Spires, leave out "scandalous" and insert "outrageous."
- **S2M-100.2** Mr Peter McTaggart: Loch Ness Research—As an amendment to motion S2M-100 in the name of Mr Joe Bloggs, leave out "regrets" and insert "welcomes."
- 5.11 An amendment to a motion on the list referred to in paragraph 2.25 above will be included on that list. If a motion falls or is removed from that list, the amendment to that motion falls.

Section 6: Parliamentary Procedure on Amendments to Motions

Procedure

- 6.1 Amendments to motions are taken immediately after the motion is moved (Rule 8.6.1). Where the Presiding Officer has selected more than one amendment for debate, each is moved in turn in the order printed in Section A of the Business Bulletin (together with any amendments to it) before the original motion (or the motion as amended) is disposed of. The substantive debate will normally take place on the motion and amendments together, with each speaker able to comment on the relative merits of the various amendments.
- 6.2 The procedure to be followed, using the above example, would normally be as follows—
 - the Presiding Officer calls motion (S2M-100), the proposer speaks in support of it (also commenting on the amendments) and then formally moves it;
 - the Presiding Officer calls the first amendment (S2M-100.1), the proposer of that amendment speaks in support of it (also commenting on the original motion and the other amendments) and then formally moves it;
 - the Presiding Officer calls the amendment to the first amendment (S2M-100.1.1), the proposer of that amendment speaks in support of it (also commenting on the original motion and the other amendments) and then formally moves it;
 - the Presiding Officer calls any subsequent amendments (S2M-100.2) (and any amendments to these amendments), the proposer of each amendment speaks in support of it (also commenting on the original motion and the other amendments) and then formally moves it; and
 - the Presiding Officer calls other speakers to speak (each of whom may comment on the original motion and any of the amendments).
- 6.3 Under Rule 11.4.2, the Presiding Officer shall put questions on amendments to a motion in the order in which those amendments were moved. The question on an amendment to an amendment shall, however, be put before the question on the amendment. Therefore the Presiding Officer would first put the question on the amendment to the first amendment. Subject to any pre-emptions, the question on the first amendment is then put, then the question on the second amendment and finally the question on the original motion (as amended). Thus, the order of questions would be—

S2M-100.1.1, then

S2M-100.1 - if this amendment is agreed to, amendment S2M-100.2 would be pre-empted as there is nothing for that amendment to "hook" on to, the word "regrets" no longer being part of the motion (as now amended), so the next question would be on S2M-100 as amended. If S2M-100.1 is not agreed to, the next question would be—

S2M-100.2, then

S2M.100 (as amended, if S2M-100.2 is agreed to)

In most cases, the Presiding Officer will put the question on a motion and amendments at Decision Time (which normally begins at 5pm, after the main business of the day but before Members' Business). With certain specific types of motions (listed in Rule 11.3.1) or where the Presiding Officer decides that it is appropriate to do so (under Rule 11.3.3), motions and amendments may be decided on at times other than Decision Time.

Motions and Amendments Without Notice

- 6.4 Under Rule 8.2.6, a motion may be moved without notice for a motion to be taken at shorter notice (ie earlier than the sitting day after the day on which notice of it is given). This is normally a three-stage process whereby the Member will first seek the permission of the Presiding Officer to move a motion without notice that motion S2M-xxx be taken at that day's meeting of the Parliament. If the Presiding Officer grants permission the Member will then have the opportunity to explain to the Parliament his or her reasons as to why the motion should be debated at short notice. The Presiding Officer will then put the question to the Parliament "that motion S2M-xxx be taken at this meeting of the Parliament". If the Parliament agrees, then the Member may move the motion on which he or she is seeking a debate. Subject to the decision of the Presiding Officer this may take place immediately after the Parliament's agreement or at a later time the same day.
- 6.5 As soon as a motion is moved without notice, it is open to other Members (at the discretion of the Presiding Officer) to propose, speak in support of and move amendments to that motion, also without notice (Rule 8.4.2).

Section 7: Application of Standing Orders to Committees and Sub-committees

- 7.1 Motions and amendments during committee proceedings are usually considered in connection with debates on subordinate legislation. Rule 8.8 states that Rules 8.1 to 8.7 apply in respect of the consideration by committees of motions and amendments with such modifications as are appropriate, for example, the selection of any amendments would be done by the convener of the committee rather than the Presiding Officer. Notices of motions and amendments for committee business are lodged with the Chamber Desk in the normal way.
- 7.2 Committees also lodge motions as a basis for debates in the Chamber on committee business (Rule 5.6.1(a), usually on committee reports. Such motions are usually lodged by the convener and would be printed in the Business Bulletin as "[Name of convener], on behalf of the XYZ Committee: [title of report]", indicating that the convener, in moving the motion, will be speaking on behalf of the committee as a whole.
- 7.3 Further information about the operation of committees and the committee structure can be obtained in *Guidance on Committees* http://www.scottish.parliament.uk/business/parliamentaryProcedure/g-committee/cg-c.htm

SCOTTISH PARLIAMENT

GUIDANCE ON PARLIAMENTARY QUESTIONS

Draft 4th Edition, May 2007

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Foreword

This guidance is intended to support and expand on the Parliament's Standing Orders (http://www.scottish.parliament.uk/business/so/sto-c.htm) in relation to the processing of parliamentary questions. It takes account of changes to Standing Orders agreed by the Parliament and of experience gained since 1999 and has been approved by the Procedures Committee.

Questions are normally lodged with the Chamber Desk, which is situated in room T1.01 at the top of the staircase from the Garden Lobby. It is part of the Chamber Office, which is in turn part of the Directorate of Clerking and Reporting. The Chamber Desk is open for business between 9.00 am and 5.30 pm, Mondays to Thursdays and from 9.00 am to 4.30 pm on Fridays. It does not open for business at weekends or on public holidays. Revised times will be indicated to Members in advance of any recess (normally 10.00 am to 4.00 pm).

Contact details for the Chamber Desk are—

Clerk Team Leader Extension No. 85182 Senior Assistant Clerk Extension No. 85181

Assistant Clerks Extension Nos. 85185 and 85196

Support Manager Extension No. 85199

Admin. Support Staff Extension Nos. 85194, 85193 and 85250

General Extension No. 85171

Fax: Extension No. 85184

Email: chamber.desk@scottish.parliament.uk

Section 1: Introduction

Procedure for Submitting Parliamentary Questions

- 1.1 There are two types of question: written and oral. Written questions are the most common type of question. Oral questions are answered on one day each week (except during recesses) and can be lodged for answer either at Question Time or at First Minister's Question Time. Emergency oral questions provide an opportunity for Members to lodge an oral question to the Scottish Executive on a matter of such importance and urgency that it merits being answered on the day it is lodged. Written and oral questions can be lodged for answer by the Scottish Parliamentary Corporate Body (SPCB) and oral questions to the SPCB are answered two or three times each year. All questions, whether addressed to the Executive or the SPCB, are lodged in the same way.
- 1.2 The arrangements for lodging and processing all types of question are explained in more detail in section 2 below, which sets out the criteria for admissibility of questions (paragraph 2.2) and the "who", "how" and "when" for lodging of questions (paragraphs 2.36-2.41). Where the guidance varies between different types of question, this is shown in sections 3, 4 and 5, which address written, oral and emergency questions respectively. Finally, section 6 covers questions to the Presiding Officer.

Role of the Chamber Desk

1.3 Matters relating to the wording and admissibility of questions should always be discussed with clerks at the Chamber Desk. They also provide advice and assistance on general matters relating to the processing of questions (content, timings, lodging arrangements, etc) as well as the arrangements for lodging motions and amendments to motions (see *Guidance on Motions* at http://www.scottish.parliament.uk/business/parliamentaryProcedure/g-motions/dgm.htm).

Section 2: Lodging and Processing Questions

Purpose of Questions

2.1 Parliamentary questions provide a means for Members to obtain factual and statistical information from the Scottish Executive or the SPCB. Although they are one of the ways in which individual MSPs can hold the Executive to account, they should not be used to make political statements. Of course, questions that seek to obtain information can have other purposes as well. For example, if a Member wishes to press the Executive to act in a particular way, a question asking for information in the format "To ask the Scottish Executive whether it will take action [to achieve the objective desired by the Member]" could be lodged. It is for individual Members to take responsibility for the quantity, quality and relevance of their questions and to take account of the availability of all other sources of information so that the system is used in the most efficient, effective and appropriate manner.

Admissibility

- 2.2 The admissibility of questions is governed by Rule 13.4.1 of the Standing Orders. This states that to be admissible a question must—
 - (a) comply with the requirements of Rule 13.3.3 (i.e. the general admissibility requirements discussed further below); and
 - (b) not seek information provided in response to a similar question in the six months before the Member seeks to lodge the question.

Other admissibility criteria specific to oral questions are included in Section 4.

Any dispute on admissibility is ultimately a matter to be determined by the Presiding Officer.

General Admissibility Considerations

2.3 The criteria set out in Rule 13.3.3 are explained in more detail below.

(a) A question shall be brief, clearly worded, and address specific points

- 2.4 Questions should be no longer than is necessary to elicit the information sought. Consideration should therefore be given to whether the question contains any material that is not strictly necessary. Words that are intended to convey a sense of why the Member is asking the question will be admitted in cases where this is likely to assist comprehension of the question.
- 2.5 Questions should be unambiguous and, for transparency, capable of being understood by those who are not specialists in the subject matter of the question. This does not necessarily prohibit the use of technical terms, but clerks will often request further explanation of such terms in order to reach a judgement about the appropriateness of the language used. Further clarification will be necessary on some occasions and Members should note that it is not sufficient that the person answering the question is likely to know what is meant. Questions should be

comprehensible to all those who might read them. Identifying ambiguities and any possible misinterpretations at the lodging stage will help Members to obtain the information sought as quickly as possible.

2.6 Questions should not be vague. Such questions are difficult to answer in anything other than the most general terms, an exercise that is of little value to anyone, particularly the Member asking the question. Questions that attempt to engage in "fishing expeditions", rather than seek specific pieces of information, will not be admitted. An example would be a question that asked the Executive whether it had any contact with international organisations over a given period, without being more specific either about the subject matter of the contact or the names of the organisations.

(b) A question shall relate to a matter for which the First Minister, the Scottish Ministers, or the Scottish Law Officers have general responsibility

2.7 A number of factors are relevant to determining whether a matter is one for which the Executive has general responsibility. Clearly, it does not have general responsibility for matters that are identified in Schedule 5 to the Scotland Act 1998 as reserved matters unless they have been the subject of Executive devolution. However, where a decision or policy on a UK Government matter has an impact on a matter for which the Executive has responsibility, questions can be admitted in the format—

"To ask the Scottish Executive what representations it has made to Her Majesty's Government about"

Information about the impact of a decision or policy on a matter reserved to the UK Government or UK Parliament may also be sought by asking—

"To ask the Scottish Executive what the implications are of (the decision or policy on a reserved matter) for (the devolved matter)."

- 2.8 "Representations" questions that simply seek to obtain information about a UK Government matter, rather than about the impact of a such a matter on something for which the Executive has general responsibility, for instance, will not be admitted. Such information should be sought by members from the department or body that is directly responsible or by arranging for a question to be tabled in the House of Commons or House of Lords to the relevant UK Government department.
- 2.9 The actions, decisions or practices of the former Scottish Office, or of the current Scotland Office, are not matters within the general responsibility of the Executive. However, questions seeking factual information or statistics on matters for which it now has general responsibility in relation to the period when the Scottish Office was responsible for those matters (i.e. before 1998) are acceptable.
- 2.10 Questions about the actions of ministers in their official capacities are admissible, but questions about activities undertaken by ministers in a personal, party or constituency capacity will not be admitted. Questions about the actions or opinions of MSPs who are not ministers are also prohibited. It is generally

inappropriate to ask questions that identify Executive officials by name, as officials have no means by which to respond, although references to job titles are acceptable.

- 2.11 Where specific responsibility for a matter lies with a public body whose powers, remit and funding are within the general responsibility of the Scottish Executive, such as a local authority, NHS board, executive agency or non-departmental public body (e.g. Scottish Fisheries Protection Agency, Scottish Enterprise), Members should consider whether the information could be more appropriately obtained by writing directly to the body in question. If questions relate to operational matters solely within such bodies' responsibilities, clerks may suggest to Members that they write directly to the body concerned.
- 2.12 Questions that relate to matters that are the responsibility of private individuals or bodies or non-governmental organisations are normally inadmissible, although questions that ask about the Executive's position on or response to actions or proposals of such individuals or bodies may be admissible, where such a response is within the Executive's general responsibility.
- 2.13 Members are not encouraged to ask questions about detailed matters such as an individual constituent's application for an agricultural subsidy and clerks will remind Members that writing directly to the minister or department concerned is a more appropriate way of raising such issues. In addition, Members wishing to enquire about progress with correspondence with ministers may contact the Scottish Executive Ministerial Correspondence Unit on 0131 244 3080.
- 2.14 On 11 January 2000 the Presiding Officer ruled that questions asking ministers to provide information on or to comment about the actions of another Member were out of order and that such questions would not be accepted.

(c) A question shall be in English

2.15 Questions must be in English, but Members may provide a translation in any other language, such as Scots or Gaelic, which will appear in the *Business Bulletin* beneath the English text. It is the Member's responsibility to ensure that the translation is correct. Clerks will, where practicable, arrange for the translation to be checked.

(d) A question shall be prefaced by the name of the Member asking it

2.16 This enables the Member who asked a question to be clearly identified.

(e) A question shall not contain offensive language

2.17 This precludes not just obvious obscenities but also language that is intemperate, inflammatory, sarcastic or provocative, or to which those answering or reading it could reasonably take offence. The clerks will proceed on the assumption that questions are being asked solely to gain factual information and on this basis assess whether the question is expressed in a way that is appropriate for eliciting that information.

(f) A question shall not express a point of view

2.18 This is closely related to (a) and (e) above. Questions should seek information, not give it, and must not be used as a vehicle for expressing an opinion. In particular, questions should not take the form—

"To ask the Scottish Executive whether it agrees that ..."

where what follows is an expression of opinion or belief.

2.19 Care should also be taken to ensure that questions do not contain implicit criticisms. This precludes some particular forms of words, for example—

"To ask the Scottish Executive whether it will ... and, if not, why not." Such questions prejudge the answer to the first part of the question, implying that the answer should be the opposite, thus expressing an opinion. This form of words will not be admitted, although it may be possible to agree an alternative form of words in some cases, for example—

"To ask the Scottish Executive whether it will ... and what the reasons are for its position on this matter."

2.20 In other cases it will be necessary for Members to await an answer to the first part of a question before lodging a question worded—

"To ask the Scottish Executive, further to the answer to question [number] by [minister's name] on [date of previous answer], what its reasons are for not...."

2.21 Questions that contain critical or contentious material in the form of factual assumptions will not be admitted. Responsibility for ensuring that a factual assertion on which a question is based is accurate rests entirely with the Member. On occasions, the clerks may request further information or make minor changes to questions in cases where it is not clear whether a statement contained within a question is a fact or an opinion. The clerks may also ask a Member for the source of information contained in a question.

(g) A question shall not breach any enactment or rule of law or be contrary to the public interest

2.22 The wording of a question should not disclose any information that is protected by an interdict or court order (e.g. the identity of children in custody disputes) or that is commercially sensitive, confidential or the publication of which may cause unnecessary personal distress or loss. Particular care should be taken over questions that name individuals since they may be people whose identity needs to be protected in their own interests (for example, victims of sexual harassment). Care should be taken to comply with the Data Protection Act 1998 and clerks will provide advice if necessary.

(h) A question shall not contravene the sub judice rule (Rule 7.5.1)

2.23 Questions should not refer to any matter in relation to which legal proceedings are active, except with the express written permission of the Presiding Officer.

2.24 When clerks are in any doubt about the application or effect of this criterion they will seek advice from the Parliament's legal advisers.

Other Admissibility Considerations

Six month rule (Rule 13.4.1(b))

2.25 When a question is lodged the clerks will check for previous answers on the topic and draw the Member's attention to answers that provide the information requested. In some such instances, the Member may wish to lodge a question that follows on from the previous question. In such cases, Members will be advised to begin their questions in the following way—

"To ask the Scottish Executive, further to the answer to question [number] by [minister's name] on [date of previous answer],"

- 2.26 On occasions where it becomes apparent after further discussion that the Member intends to seek information other than that contained in the previous answer, the clerks will suggest any necessary changes in the question's wording.
- 2.27 The clerks may also draw a Member's attention to similar questions that have not yet been answered, although the Member is still free to lodge the question in such circumstances. The clerks are happy to provide advice in advance to Members who wish to clarify whether a particular question has already been answered before seeking to lodge a question. The Scottish Parliament Information Centre is also available to assist in this respect and in clarifying whether information is already available in published sources.
- 2.28 If a Member has lodged a question but the information sought has not been provided in the answer, questions phrased in identical terms will not be ruled inadmissible under Rule 13.4.1(b). However, Members and clerks should consider in such cases whether phrasing the question in a different way would increase the chances of the desired information being provided.
- 2.29 Where a similar question has been answered in the last six months but the Member is seeking updated information, the question will be admitted but the wording of the question should make this clear. In addition, where there has been a change in circumstances such that Members may reasonably expect the answer to a question to be different to one provided in the previous six months, the question will not be ruled inadmissible under Rule 13.4.1(b). A "further to" question may be advisable in both sets of circumstances.

Style

2.30 A number of general points about the style of questions flow from the above. In addition, clerks will routinely adjust the style of wording to conform with certain conventions. Examples are—

- using the form "To ask the Scottish Executive whether ..." rather than "if". "If" should only be used in the conditional sense, as in "To ask the Scottish Executive, if it decides to ..., whether it will do so this year".
- the Scottish Executive should be referred to in the singular i.e. "whether it will..." rather than "whether they will...".
- questions should be couched in indirect speech, without a question mark at the
 end. When lodged, a question is notice of an intention to ask a question. It is, in
 other words, a statement about what the Member wants to ask rather than the
 form of words that would be used to ask the question directly. To illustrate, a
 question submitted in the form "When will the Scottish Executive publish ..." will
 be converted to read "To ask the Scottish Executive when it will publish ...".
- avoid unnecessarily long-winded forms of words such as "To ask the Scottish Executive whether it will provide a list showing how many ..." when saying "To ask the Scottish Executive how many ..." would have the same effect.
- questions should not ask the Executive to act in particular ways but should seek information. For example, "To ask the Scottish Executive to amend the law relating to ..." will be amended to read "To ask the Scottish Executive whether it will amend the law relating to ...".
- where it is necessary to break a question up into numbered sections in order to make clear, for example, that the information being requested is required in relation to each of a number of bodies separately rather than all of the bodies combined, such sections should be numbered (a), (b), (c) and so on, followed by (i), (ii), (iii), followed by (A), (B), (C) and so on, if necessary, and separated by semi-colons. Where a series of questions, for example, asks for the same information in relation to a number of different bodies, consideration should be given to whether the questions can be combined into one question such as "To ask the Scottish Executive how many staff are employed by (a) [organisation X]; (b) [organisation Y]; and (c) [organisation Z]".
- it is only occasionally necessary to include "in Scotland" or "Scottish" in a question. This is implicit in most questions.
- it is not necessary to include "if any" in a question, such as "To ask the Scottish Executive what plans, if any, it has to ...". The response that the Executive has no such plans can just as easily be given in response to the question "To ask the Scottish Executive what plans it has to ...".

Role of the Clerks

- 2.31 Clerks may edit questions in order to ensure that the wording complies with the Standing Orders on admissibility and ensure consistency of style, provided that such changes do not materially alter the sense of the question.
- 2.32 Clerks will seek to avoid outright rejection of questions under the admissibility criteria in Rule 13.4.1. Their approach will be to assist the Member in making such adjustments as are necessary to enable the question to be admitted. This includes suggesting alternative forms of wording. If more substantial editing that would materially alter the sense of the question is necessary, the question will not be finally accepted until the Member has approved the change. This means that it will not

appear in the *Business Bulletin* and not be sent to the Executive or the SPCB for answer until such approval has been obtained.

- 2.33 In some cases it will not be possible to adjust a question to make it admissible. In such cases, the clerks will advise the Member of the reason why the question cannot be admitted, with reference to the appropriate provision in Standing Orders or to this guidance. A written explanation may be provided in some cases and will always be made available on request.
- 2.34 All general discussions or correspondence on the lodging of questions and any advice given to Members by clerks prior to final acceptance of a question is strictly confidential.

Resolution of Disputes on Admissibility

2.35 If a Member disagrees with a clerk's decision on the admissibility of a question, the clerk will refer the matter to the Chamber Desk Clerk Team Leader or the Head of the Chamber Office. If the Member remains dissatisfied, the matter will be raised with the Director of Clerking and Reporting, who may consult the Clerk of the Parliament where appropriate. If the matter is still unresolved, the final decision rests with the Presiding Officer under Rule 13.4.2.

Who Can Lodge Questions

- 2.36 The Member in whose name the question is to appear must normally lodge the question.
- 2.37 In addition, a Member may confer authority on someone else to lodge a question on his/her behalf under Rule 17.4.1(b) which states that documents such as questions may be lodged with the Clerk by "being lodged with, or notified in writing to, the Clerk by any other person on behalf of the Member, but only if that person has been authorised to do so by the Member and the Clerk has been notified of that authorisation in writing" (see Annex A). For example, Members may authorise their research assistants to lodge questions on their behalf (in person or by post but not by email except under delegated access (see Annex C)).
- 2.38 Authorisation can be given on an ad hoc basis or for a longer period, up to the full parliamentary session. Members who agree to allow someone else to lodge a question on their behalf must provide the Chamber Desk in advance with a signed copy of the authorisation form in Annex A (copies of this form are available from the Chamber Desk). This allows the Chamber Desk to accept any questions in the name of the Member from the person named in that form. Without this authorisation, the clerks will not accept questions from anyone other than the Member him/herself.
- 2.39 All alterations or requests to remove a person should be notified in writing to the Chamber Desk by the Member personally. Members can authorise more than one person to lodge questions on their behalf.

How Questions are Lodged

- 2.40 Questions may be lodged in person or by email. A Member wishing to lodge a question by email must, before doing so, complete the notification in Annex B (copies of this form are available from the Chamber Desk). Members may also email questions from their constituency or home address, providing they have completed the necessary authorisation form, stating the full email address to be authorised. **Only emailed questions showing the Member's mailbox name will be accepted.** The mailbox name need not contain the MSP's name but must be an address that the MSP has notified the Chamber Desk to be their email address. Use of the email facility speeds up the whole process and cuts down on the risk of errors that could arise if the question needed to be retyped. However, if a Member is in any doubt about the format of his/her question, he/she may find it helpful to discuss the wording first with the clerks.
- 2.41 Questions will not be accepted orally, by telephone or by fax. A supply of forms for submitting questions is available at the Chamber Desk for Members who wish to write their question. Nonetheless, questions presented in any format, including on the back of an envelope, will be accepted if they meet the admissibility criteria and are signed by the Member or an authorised signatory.
- 2.42 All questions (with the exception of those addressed to the SPCB and those addressed to the First Minister for First Minister's Question Time) should be addressed to the Scottish Executive, including those questions that fall within the responsibility of the Lord Advocate or the Solicitor General for Scotland. Only the First Minister may answer a written question concerning a matter for which the First Minister is solely responsible, although an oral question concerning such a matter may exceptionally be answered by any other member of the Executive. Only the Lord Advocate or the Solicitor General for Scotland may answer a written question concerning the operation of the systems of criminal prosecution and investigation of deaths in Scotland, although an oral question concerning such a matter may exceptionally be answered by another member of the Executive. Other questions addressed to the Executive may be answered by any member of the Executive or by a junior Scottish Minister (as specified in Rules 13.5.1 and 13.7.1). In practice, questions will normally be answered by the minister whose responsibilities cover the subject matter of the question.

Declaring Registrable Interests

2.43 Detailed guidance on the declaration of registrable interests in relation to questions can be found in the *Code of Conduct for Members of the Scottish Parliament* (http://www.scottish.parliament.uk/msp/conduct/index.htm) and, in particular, section 5.3.7 - 5.3.10 therein. The Standards and Public Appointments Committee clerks are always happy to advise Members on such matters. Where a Member does declare a registrable interest relating to a question an "*R*" will appear beside the question in the *Business Bulletin*.

Deadline for Lodging Questions

2.44 Questions may only be lodged with the Chamber Desk. If admissible, the question will appear in the *Business Bulletin* the following day. **Members should** note that questions received after 4.30 pm will not normally appear in the next

Business Bulletin. In addition, some questions that are lodged earlier may not appear in the *Business Bulletin* for the following day if a decision on admissibility or final wording cannot be made before 4.30 pm. During recess, when the *Business Bulletin* is published weekly on Monday, questions appear in the next available *Business Bulletin*.

2.45 Chamber Desk clerks will record the time at which questions are submitted. If questions are sent by email, the time at which they are deemed to have been lodged is the time they are delivered to the Chamber Desk email box.

Withdrawal of Questions

2.46 Rule 13.3.5 provides for withdrawal of questions. This should be done by notifying the Chamber Desk in writing, in person, by post or by email, subject to the same authorisation procedures as for lodging questions. All outstanding questions will automatically be withdrawn when a Member ceases to be a Member of the Parliament.

Searching for Questions and Answers

2.47 There is a search facility on the Parliament's website for questions that have received written answers: http://www.scottish.parliament.uk/webapp/search_wa.

Section 3: Written Questions

Lodging Questions

3.1 There is no limit to the number of questions for written answer that may be lodged by a Member. However, Members are expected to exercise responsibility in relation to the quantity and relevance of their questions. Members should consider all other sources of information, e.g. the Scottish Parliament Information Centre or correspondence with the relevant minister, before lodging a question, particularly where the question is seeking purely factual or statistical information.

Answers to Questions

- 3.2 The Scottish Executive should normally give answers to written questions within 10 counting days of the question being lodged. Counting days are those days when the office of the Clerk is open. In the case of a question lodged during the 14 days before a period when the Parliament is in recess for more than 4 days and during that recess, an answer should normally be given within 20 counting days of the day on which the question is lodged. The Executive should send each answer to the Member that asked the question and to the Chamber Desk. Questions may be answered by Scottish Ministers or junior Scottish Ministers. The full text of answers to written questions, together with the date on which they were received, will appear in the *Written Answers Report*, part of the *Official Report*.
- 3.3 The Executive may issue holding answers, i.e. "I shall reply to the Member as soon as possible", within the 10 or 20 counting day period. When the Executive issues a holding answer to the Member, it should also copy it to the Chamber Desk. Holding answers are not printed in the *Written Answers Report* when they are given, although the numbers of questions that receive a holding answer appear in the *Written Answers Report* on a daily basis. The Chamber Desk ensures that arrangements are in place to track answers to questions and should be fully aware of when an answer is due to be received, has been received or has received a holding answer and be in a position to relay this information to Members quickly and accurately.
- 3.4 A complete list of questions and answers is normally published on the Parliament's website the day after they have been received from the Executive (http://www.scottish.parliament.uk/webapp/search_wa). The Chamber Desk arranges for the weekly list of questions and answers to be published in the *Written Answers Report* and the list normally appears on the Parliament's website each Monday.

Questions Initiated by the Scottish Executive

3.5 Written questions that are initiated by the Executive in order to facilitate the provision of information to the Parliament will be are identified in the *Business Bulletin* by a " Δ " appearing next to the question number. The answers to any such questions received before 4.00 pm will be posted on the front page of SPEIR (the Parliament's intranet) on the day they are received (http://intranet/) under the "Latest Publications" heading.

Section 4: Oral Questions

4.1 An oral question is a question that is lodged for answer by the Scottish Executive at General or Themed Question Time, or by the First Minister at First Minister's Question Time. General Question Time, First Minister's Question Time and Themed Question Time normally take place on a Thursday in the chamber. General Question Time takes place between 11.40 am and 12 noon, First Minister's Question Time between 12 noon and 12.30 pm and Themed Question Time between 2.15 and 2.55 pm. If they are to be held at different times or on a different day, an announcement about arrangements will be made in the *Business Bulletin*.

General and Themed Question Times

- 4.2 Members wishing lodge a question for answer at General or Themed Question Time should submit their names to the Chamber Desk for random selection at any time from when General and Themed Question Times have ended (normally 2.55 pm) in the third week before the week in which the question is to be asked, until 12 noon on the Wednesday of the second week before the week in which the question is to be asked (between 21 and 15 days before). For example, if a Member wished a question to be answered at Question Time on Thursday 16 June 2011, he/she could submit his/her name at any time between the end of Question Time on Thursday 26 May and 12 noon on Wednesday 1 June. During recess and when General and Themed Question Times are not held on a Thursday, the times for lodging questions will be different. Details of changes will be published in the *Business Bulletin*. All names submitted by the deadline will be included in the electronic random selection.
- 4.3 The random selection of names is carried out in the order that each Question Time takes place, beginning with General Question Time. Ten names are selected for each Question Time and a name, once selected, is excluded from any subsequent selections on that day. As soon as possible after the random selection, the Chamber Desk prepares three lists of names in the order determined by the random selection. The lists are published in the *Business Bulletin* the next day although Members may contact the Chamber Desk after the random selection to find out if their name has been selected.
- 4.4 Under Rule 13.7.A3 the Parliament may, on a motion of the Parliamentary Bureau, decide which subject areas are to be included in Themed Question Time. Members may submit their names for selection in each subject area and for one general question. As described above, in any given week the maximum number of times that a Member may be selected to ask a question is one.
- 4.5 A running rota of subject areas included in Themed Question Time during Session 2 was as follows:-

Week 1	Enterprise,	Lifelong	Learning	and	Transport;	Justice	and	Law
	Officers	_						

- Week 2 Education and Young People, Tourism, Culture and Sport; Finance and Public Services and Communities
- Week 3 Environment and Rural Development; Health and Community Care

Week 4 Justice and Law Officers; Enterprise, Lifelong Learning and Transport

Week 5 Finance and Public Services and Communities; Education and Young People, Tourism, Culture and Sport

Week 6 Health and Community Care; Environment and Rural Development.

Members should indicate clearly for which subject area they are submitting their names.

- 4.6 Names sent by email to the Chamber Desk from outside the Parliamentary estate cannot be assumed to arrive instantly. Members who have emailed their names may telephone the Chamber Desk (0131 348 5199) before 12 noon to check whether the name has arrived so that they can make alternative arrangements before 12 noon if necessary. If names are sent by email, the time at which they are deemed to have been submitted is the time they are delivered to the Chamber Desk email box.
- 4.7 Failure to submit a name on time will mean that it will not be included in the electronic random selection. Standing Orders do not allow any scope for discretion, even when the question is delayed because of circumstances beyond the Member's control.

Lodging Oral Questions to the Scottish Executive

- 4.8 Members may lodge a question only for the Question Time for which they have been selected. The admissibility criteria set out in section 2 apply equally to oral questions. In addition, questions relating to a subject area which is not relevant to the appropriate Themed Question Time cannot be admitted (Rule 13.4.1(d)) and questions submitted for General Question Time should not concern either of the subject areas to be taken at Themed Question Time in the same week (Rule 13.4.1(c)).
- 4.9 It has become common practice for Members to ask oral questions about meetings that ministers have had or may have in the future. It is helpful if such questions specify the subject matter of the meeting about which information is sought, as this will enable, for example, other Members to be aware of any likely constituency or subject interest, should they wish to ask a supplementary question. It will also assist the Executive in giving a more detailed and informed response.
- 4.10 Oral questions may normally be lodged at any time from the time of the random selection of names to 12 noon on the Wednesday of the week before the question is to be asked (Rule 13.6A.4). All questions are checked against the admissibility criteria by the Chamber Desk, including to ensure that they relate to the subject area for which the Member's name has been selected. Members should ensure that they or somebody on their behalf are available to respond to any inquiries from clerks about the wording of questions. As soon as possible after the 12 noon deadline, the Chamber Desk prepares a list of questions in the order determined by the random selection of names. The list is published in the *Business Bulletin* on the Thursday one week before the relevant Question Time.

4.11 Failure to lodge an oral question on time will mean that it will not be included in the list. Standing Orders do not allow any scope for discretion, even when the question is delayed because of circumstances beyond the Member's control.

Chamber Proceedings on Oral Questions

Rule 13.7 deals with the procedure for asking oral questions in the chamber. When asking the question, the Member must repeat the full text of the question as printed in the *Business Bulletin*.

- 4.13 Oral questions selected for First Minister's Question Time or lodged for General or Themed Question Time but not answered in the chamber because of lack of time, or not asked because the Member is unable to be in the chamber at the time, are treated as written questions and answered in accordance with Rule 13.5. Such questions do not need to be lodged again as written questions in order to be answered. Rule 13.7.10 requires such a question to be given a written answer, normally on the next day when the office of the Clerk is open. In practice, the Executive usually provides an answer on the day that the question was due to be asked.
- 4.14 Rule 13.7.5 provides that the Member who asks the question may ask one supplementary question. Additionally, at the discretion of the Presiding Officer, any Member, including the Member who asked the question, may ask further supplementary questions. Supplementary questions must be on the same subject matter as the original question and should otherwise comply with the admissibility criteria.
- 4.15 Answers to oral questions appear in the *Official Report* as part of the record of proceedings, as do the answers to any supplementary questions. Answers to oral questions not reached or not asked will appear in the *Written Answers Report*.

Lodging an Oral Question to the First Minister

4.16 Oral questions for answer at First Minister's Question Time may normally be lodged at any time from the end of the preceding First Minister's Question Time until 2.00 pm on the third day before the First Minister's Question Time for which the question is being submitted i.e. normally the Monday of the same week. Where the Monday is a day when the office of the Clerk is closed or where First Minister's Question Time is on a day other than a Thursday, an announcement on the arrangements for lodging First Minister's Questions will be made in the *Business Bulletin*.

Processing Oral Questions to the First Minister

- 4.17 A Member may lodge only one question for answer at any one First Minister's Question Time. All oral questions that have been lodged on time will be checked by the clerks in the Chamber Desk against the admissibility criteria.
- 4.18 As soon as possible after 2.00 pm on the Monday, all admissible questions for answer are passed to the Presiding Officer's office. That afternoon, the Presiding Officer will normally select six questions for answer at First Minister's Question Time.

The first two or three questions selected are normally from the leaders or representatives of non-Executive groups. The remaining questions are selected with consideration of criteria such as topicality and party balance. Once the Presiding Officer has selected the six questions, the Presiding Officer's office will notify the Chamber Desk of the questions selected and these will appear in the *Business Bulletin* the next day, normally the Tuesday before the First Minister's Question Time.

- 4.19 The Presiding Officer balances the following criteria when selecting these questions—
- preference is given to topical questions and questions suitable for supplementary questions
- reasonable political balance between the parties in their share of questions is maintained over time
- questions from non-Executive group leaders or representatives are taken first but otherwise "diary" questions on the lines of "To ask the First Minister when he last met X" are avoided
- unnecessary duplication with questions already lodged to be asked at General or Themed Question Time on the same day is avoided
- subject to the above, account is taken of individual Members' previous record of selection for First Minister's Question Time.

First Minister's Question Time

- 4.20 Rule 13.7 deals with the procedure for asking oral questions in the chamber, including at First Minister's Question Time. In asking the question, the Member must repeat the full text as printed in the *Business Bulletin*.
- 4.21 Rule 13.5 provides that a question selected for First Minister's Question Time but not answered in the chamber because of a lack of time will be treated as a written question and answered in accordance within the timescales indicated in paragraph 4.13. Such questions do not need to be lodged again by the Member. Similarly, a question that is not asked and has not been withdrawn, for example because the Member concerned is unable to be in the chamber at the time, is treated as a written question and normally answered the same day.

Rule 13.7 provides for supplementary questions. At First Minister's Question Time any Member may, at the discretion of the Presiding Officer, ask a supplementary question. Supplementary questions must be on the same subject matter as the original question and otherwise comply with the admissibility criteria. However, once the questioner has asked a supplementary, any other Member who asks a supplementary does not need to ask a supplementary question related to the subject matter of the supplementary question asked by the original questioner. They must however ask a supplementary question that relates to the subject matter of the original question. In Session 2 the Presiding Officer adopted the practice whereby he exercised his discretion to take supplementary questions to question two on urgent issues.

4.23 Answers to First Minister's Questions answered orally will appear in the *Official Report* as part of the record of proceedings, as will the answers to any

supplementary questions. Answers to questions not reached or not asked will appear in the *Written Answers Report*.

Section 5: Emergency Questions

- 5.1 Where an oral question is of an urgent nature the Member lodging it may, if it is lodged by 10.00 am on a day on which there is a meeting of the Parliament, request that it be answered that day. The procedures for emergency questions are set out in Rule 13.8. Rules 13.3 and 13.4, which relate to admissibility of questions and other general issues, also apply to emergency questions. Emergency questions are also subject to the following specific procedures.
- 5.2 Emergency questions may be answered only on days when a meeting of the Parliament is taking place. Any Member may lodge an emergency question. The question must be lodged with the Chamber Desk by 10.00 am on a day when there is a meeting of the Parliament, even if no question time is not scheduled for that day.
- 5.3 Once an emergency question has been lodged it is passed to the Presiding Officer, who decides whether the question is sufficiently urgent to allow it to be put as an emergency question and answered at that day's meeting of the Parliament and, if so, at what time. If the Presiding Officer selects the question, the Member who lodged the question and the Executive will be notified immediately and all Members will be informed that an emergency question is to be taken by the publication of a revised *Business Bulletin*.
- 5.4 At the time allocated by the Presiding Officer, the Member who lodged the question may ask the question (Rule 13.8) and ask one supplementary question. In asking the question, the Member must repeat the full text as printed in the *Business Bulletin*. Other Members may then, at the discretion of the Presiding Officer, ask a further supplementary question.
- 5.5 If the Presiding Officer does not allow the emergency question to be put, the question falls. The Member who lodged the question will be notified of this decision by the Chamber Desk. Emergency questions lodged, but not allowed by the Presiding Officer, will not appear in the *Business Bulletin* and are not answered unless the Member resubmits the question as an oral or written question.

Section 6: Questions to the Scottish Parliamentary Corporate Body

- 6.1 Rule 13.9 provides for questions to be asked of the SPCB on matters concerning the SPCB or the staff of the Parliament. These questions can be either oral or written questions and Rules 13.3, 13.4 and 13.5 and sections 2 and 3 of the guidance will therefore apply as appropriate. Questions will be answered by a member of the SPCB.
- 6.2 The SPCB is responsible for providing the Parliament, or ensuring that the Parliament is provided with, the property, staff and services required for its purposes. The SPCB does not have responsibility for the procedures of the Parliament and questions to the SPCB on those matters are therefore not admissible.

Oral Questions to the SPCB

- 6.3 SPCB Question Time takes place during a 15-minute period decided by the Parliament under Rule 5.4.1. An announcement about arrangements will be made in the *Business Bulletin*.
- 6.4 A Member may lodge an oral question for answer by a member of the corporate body at SPCB Question Time during the period commencing when the Parliament agrees that it should be included in the business programme and normally ending at 4 pm on the Tuesday of the week before the SPCB Question Time. Only one question may be lodged per Member (Rule 13.9.4).
- 6.5 All questions that have been lodged on time are checked against the admissibility criteria by the Chamber Desk and admissible questions collated for selection. Under Rule 13.6.7 it is for the Presiding Officer to determine the number of questions to be randomly selected. If fewer questions than the number determined by the Presiding Officer are lodged, they will all be listed for answer at Question Time in the order determined by random selection. If there are more than may be selected the required number of questions, the questions are selected electronically on a random basis to determine their order. The list of selected questions is published in the *Business Bulletin* on the Thursday one week before SPCB Question Time.
- 6.6 Selected questions that are not answered at SPCB Question Time receive a written response. Questions that are not selected electronically do not appear in the *Business Bulletin* and are not answered.

GUIDANCE ON PUBLIC BILLS

Directorate of Clerking and Reporting

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Foreword

The second edition of this guidance was published in September 2001, since when there have been a number of changes to Standing Orders affecting how public Bills are dealt with, as well as the continuing development of administrative practice, precedent and convention as more legislation has gone through the Parliament. This third edition of the guidance has been prepared to take account of those developments. It is hoped that it will prove to be a useful source of reference to a wide range of readers – Members, Parliament and Executive staff, and outside parties with an interest in the legislative process, whether as witnesses, practitioners or observers.

The aim of this document is not just to explain the Rules but to provide guidance on how they are to be applied in particular instances. However, it is only guidance and cannot itself impose a definitive interpretation. In particular, it cannot supersede the power of the Presiding Officer to determine any question that may arise as to the interpretation or application of the Standing Orders under Rule 3.1.1(c). And while every effort has been made to ensure the Guidance is as up-to-date as possible at the time of publication, procedures and practices can be expected to continue to develop.

This Guidance was prepared by the Legislation Team in the Parliament's Chamber Office, and comments or suggestions should be addressed to the clerks in that Team in the first instance. The Team can be contacted in Room T2.60, the Scottish Parliament, Edinburgh EH99 1SP.

March 2007

Part 1: Public Bills

Introduction

1.1 A Bill is a draft Act, and contains the text that will, if the Bill is passed and enacted, become part of the statute law. Most Bills, and the only ones dealt with in this Guidance, are "public Bills" – that is, Bills introduced by members and dealing with matters of public policy and the general law. (Private Bills – that is, Bills introduced by private individuals or bodies seeking powers or benefits in excess of or in conflict with the general law – are subject to distinct Rules and are the subject of separate Guidance.¹) Bills are also items of Parliamentary business, subject to a process of scrutiny over various Stages. The main purpose of this Guidance is to describe that process as it applies to public Bills in the Scottish Parliament.

Devolution and the limits of legislative competence

- 1.2 Before devolution, all Bills affecting Scotland were introduced in, and subject to the procedures of, the United Kingdom Parliament (that is, the two Houses at Westminster). Some such Bills were limited in extent to Scotland, while others applied to the whole of Great Britain or the United Kingdom (often with some distinct provisions applicable only to Scotland).
- 1.3 Section 28(1) of the Scotland Act 1998, which established the Scottish Parliament, provides that "subject to section 29, the Parliament may make laws, to be known as Acts of the Scottish Parliament". The limit on that power to legislate, set out in section 29, is the limit of "legislative competence".
- 1.4 Legislative competence is defined according to five criteria (set out in section 29(2)). Expressed in general terms, those criteria are:
- that the Parliament can only legislate for or in relation to Scotland;
- that it cannot legislate in relation to the "reserved matters" set out in Schedule 5
 to the Act (which include key elements of the constitution, foreign affairs, defence
 and social security, plus a range of more specific matters in home affairs, trade
 and industry, energy and transport, among others);
- that it cannot modify certain enactments set out in Schedule 4 to the Act (which
 include the Human Rights Act 1998 and certain provisions of the Acts of Union
 and the European Communities Act 1972);
- that its legislation must be compatible with the European Convention on Human Rights and with European Community law; and
- that it cannot remove the Lord Advocate from his or her position as head of the system for criminal prosecutions and the investigation of deaths.
- 1.5 While many of the limits on legislative competence are clear-cut, others may be subject to differences of interpretation. As such, the precise boundaries of the

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¹ http://www.scottish.parliament.uk/business/bills/billguidance/gprb-c.htm

Parliament's powers to legislate can ultimately be decided only by the courts. The Scotland Act requires the legislative competence of any Bill to be assessed before it is introduced in the Parliament, and provides an opportunity for it to be challenged after it is passed but before it can become law (as described in Part 2 below).

1.6 Although the Scottish Parliament has the power to legislate on a wide range of matters devolved to it - including most aspects of civil and criminal justice, health, education, local government, transport and housing - the United Kingdom Parliament retains a general power (under section 28(7) of the Scotland Act) to legislate on all matters, both reserved and devolved. However, the exercise of this power is subject to the "Sewel Convention"2, according to which Westminster will not legislate on a devolved matter - or to alter the legislative competence of the Parliament, or the executive competence of Scottish Ministers - without the consent of the Scottish Parliament. The Parliament's consent is obtained by the Parliament's agreement to what is known as a legislative consent motion. The procedure associated with this process is contained in Chapter 9B of the standing orders and is not further covered by this Guidance.3

The Scotland Act and Standing Orders

- 1.7 The Scotland Act provides minimum requirements about the process to be followed by the Parliament in passing Bills. Section 36(1) requires there to be at least three distinct stages to which Bills are subject – namely a stage when members can debate and vote on the general principles of the Bill; a stage when they can consider and vote on its details; and a final stage when the Bill can be passed or rejected. This 3-stage model may be departed from in relation to specific types of Bill, and an additional stage must be provided for where a Bill is subject to challenge after being passed.
- 1.8 The Standing Orders of the Parliament provide its procedural framework. The process governing the passage of a public Bill is set out in Chapter 9 of the Standing Orders. (Private Bills are dealt with separately in Chapter 9A.) However, the rules in Chapter 9 need to be read in the context of the Standing Orders as a whole including in particular, the rules relating to the management of business (Chapter 5), proceedings in committee (Chapters 6 and 12) and in the Parliament (Chapter 7), and on decision-making and voting (Chapter 11). It should be borne in mind, in particular, that any of the rules (except to the extent that they reflect requirements of the Act) may be suspended or varied on a particular occasion or for a particular purpose (Rule 17.2).

Structure and style of Bills

Bills in the Scottish Parliament are very similar, in terms of layout, structure and the conventions of legislative drafting, to Bills in Westminster. This is primarily because the Acts of the Scottish Parliament (ASPs) to which they are intended to give rise form part of the UK "statute book" alongside existing statute law in the

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² Named after Lord Sewel, the Minister who announced the Government's intention to establish such a convention during the passage of the Scotland Bill.

³ For further details, see Procedures Committee, 7th Report, 2006.

relevant area, most of which consists of Acts passed by the UK Parliament before devolution.

- 1.10 Rule 9.2.3 requires Bills to be in "proper form". The Presiding Officer has made a determination of "proper form" which, together with recommendations on the content of Bills, is reproduced at Annex A. An illustration of the form of a Bill and its principal components is set out at Annex E.
- 1.11 Users of this Guidance who are unaccustomed to dealing with primary legislation may find it useful to familiarise themselves with the information given in Annex B, which explains the structure of Bills and certain common features of drafting.

Part 2: Stages of Bills – the general rules

2.1 This Part of the guidance serves to amplify and explain the Standing Orders as they relate to the various procedures that a Bill goes through from before introduction to Royal Assent and beyond. The description relates principally to an Executive "programme" Bill – that is, a Bill introduced to give effect to Executive policy – and to the "general rules" in Chapter 9 (Rules 9.2 to 9.13A). There are also "special rules" (Rules 9.14 to 9.21) which apply different procedures to particular types of Bills. These are described in Part 3 of the guidance. The rules relating to amendments (principally Rule 9.10) are further explained in Part 4 of the guidance. The three-stage process is also illustrated by means of the diagram in Annex D.

Executive Bills – preparation for introduction

The Bill team and drafters

- 2.2 For Executive Bills, the legislative process begins with the formulation of policy by Ministers and civil servants. Once it has been decided that primary legislation is necessary in order to give effect to the policy, a "Bill team" consisting of administrators and solicitors is formed to develop the policy in detail. The Bill team solicitor prepares drafting instructions, on the basis of which the drafter (who works closely with the Bill team but is not a member of it) prepares the Bill.⁴
- 2.3 In many cases, there will be a public consultation process during the preparation of the Bill. This may involve the publication of an Executive consultation document and/or detailed proposals. The latter may include a consultation draft of the Bill. The committee of the Parliament expected to consider the Bill when it is introduced may consider the proposals (or draft Bill) at this stage, perhaps taking evidence from interested individuals and bodies. Such "pre-legislative scrutiny" can be useful in allowing members to familiarise themselves with the subject-matter prior to introduction.
- 2.4 Once the Executive has finalised the text of the draft Bill, there is a three-week period during which officials of the Parliament take certain steps preparatory to formal introduction.⁵ This period begins with the drafter sending a copy of the draft Bill to the Head of the Chamber Office and to the Parliament's Director of Legal Services, together with a note of the Executive's view on legislative competence, draft accompanying documents and a covering letter.
- 2.5 The drafter's covering letter sets out the Executive's view on the following issues:
- Content: whether the Bill conforms to the Presiding Officer's recommendations on the content of Bills in particular, whether the short and long titles accurately and neutrally reflect what the Bill does (see Annex A).

⁴ The Executive drafters are known collectively as the Office of the Scottish Parliamentary Counsel (OSPC).

⁵ Because the Parliament has the exclusive right to publish the Bill and the accompanying documents after introduction, the final text of the Bill and accompanying documents are confidential during this pre-introduction period.

- Scope: what is the extent of the purposes of the Bill, and hence what sorts of amendments would be relevant to the Bill (see paragraphs 4.11 to 4.18).
- Crown Consent: whether the Bill or any provision of it affect the prerogative, private interests or hereditary revenues of the Queen (or the interests of the Prince of Wales in his capacity as Prince and Steward of Scotland or Duke of Cornwall) and so require the signification of Crown consent (under paragraph 7 of Schedule 3 to the Scotland Act and Rule 9.11).
- Hybridity: whether the Bill or any provision of it affects private individuals of any
 category or class in a manner different to others of the same category or class,
 so that those adversely affected might reasonably demand the right to make
 representations to the Parliament.
- Financial provisions: whether any provisions of the Bill would have implications for expenditure from the Scottish Consolidated Fund, or would impose or increase any charge or payment payable into the Fund, thus requiring a financial resolution under Rule 9.12.3 or 9.12.4 (see paragraphs 2.75 to 2.87).
- Subordinate legislation: whether the Bill contains provisions conferring power to make subordinate legislation and so requires to be considered by the Subordinate Legislation Committee under Rule 9.6.2 (see paragraph 2.24).
- 2.6 During the 3-week pre-introduction period, the Parliament's Directorate of Legal Services prepares advice to the Presiding Officer on legislative competence. At the same time, the clerks consider the points raised in the drafter's letter, with the Head of Chamber Office sending a response shortly prior to introduction. The clerks also prepare advice to the Presiding Officer on whether a financial resolution is required. They also make final formatting changes to the Bill to ensure that it conforms to the Presiding Officer's determination (under Rule 9.2.3) on "proper form" (reproduced in Annex A). All reasonable efforts are made to ensure that the proposed date of introduction can be met.

Accompanying and other documents

- 2.7 All Bills submitted for introduction must be accompanied by the various documents required under paragraphs 2 to 4 of Rule 9.3. For most Executive Bills⁶, these accompanying documents are—
- Explanatory Notes (under Rule 9.3.2A);
- a Financial Memorandum (under Rule 9.3.2);
- an Auditor General's Report (if required under Rule 9.3.4);
- an Executive statement on legislative competence (under section 31(1) of the Act and Rule 9.3.3(a)); and

⁶ Different requirement apply to Budget, Consolidation, Codification, Statute Law Repeals and Statute Law Revision Bills (see below). For the requirements in relation to Members' Bills and Committee Bills see paragraphs 3.12 and 3.29.

a Policy Memorandum (under Rule 9.3.3(c)).

All Bills must also be accompanied by a statement by the Presiding Officer on legislative competence (under section 31(2) of the Act and Rule 9.3.1).

2.8 Under Rule 9.3.6, the Parliament may decide (by agreeing to a motion lodged by the member proposing to introduce a Bill) to allow a Bill to be introduced without one or more of the accompanying documents required under Rule 9.3. This Rule does not, however, permit the Parliament to waive the requirement for a Presiding Officer statement on legislative competence (or, if the Bill is to be introduced by an Executive Minister, the requirement for an Executive statement), since that is a requirement of the Act and not just of the Standing Orders.

Explanatory Notes

2.9 The Explanatory Notes normally provide a brief overview of what the Bill does, followed by a more detailed commentary on the individual provisions. They are required to be neutral in tone – that is, they explain what the Bill does without seeking to justify or advocate. They can be useful to the reader in describing the legal context in which the Bill operates and explaining technical terms or drafting conventions used in the Bill. Straightforward or self-explanatory provisions do not require explanation in the Notes.

Financial Memorandum

2.10 The Financial Memorandum sets out estimates of the expected costs of the Bill to the Scottish Administration (i.e. the Executive, in the broad sense of Ministers, departments and agencies), to local authorities and to other bodies, individuals and businesses. In each case, the Memorandum indicates the timescales over which such costs are expected to arise and the margin of uncertainty in estimates given.

Auditor General's Report

2.11 This document is required only in relation to a Bill containing provisions "charging expenditure on" the Scottish Consolidated Fund. A charge on the Fund is a charge which the Executive is required to pay without obtaining further authority from the Parliament by means of a Budget Bill. By agreeing to the provision, the Parliament voluntarily gives up its right to scrutinise the budget for the item concerned (see also paragraph 2.80, below).

Executive statement on legislative competence

2.12 This statement is always in a standard form of words, to the effect that the relevant Minister considers the Bill to be within the Parliament's legislative competence.

Policy Memorandum

2.13 The Policy Memorandum, published separately from the other accompanying documents for an Executive Bill, sets out the Bill's policy objectives, what alternative approaches were considered, the consultation undertaken and an assessment of the effects of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and other matters considered relevant. It

provides an opportunity to argue the case for the Bill, and so can provide a useful complement to the Explanatory Notes.

Presiding Officer's statement on legislative competence

2.14 The duty on the Presiding Officer to make a statement on legislative competence differs from that on the Executive. Unlike the Executive statement, the Presiding Officer's statement may indicate a view that the Bill is (or specified provisions of it are) outwith competence, giving reasons. A statement in such terms does not prevent the Bill from being introduced. The Presiding Officer's statement, although it must express a definite view one way or the other, is ultimately only an opinion (as indeed is the Executive's), and should not be regarded as precluding the Parliament, or any committee, from critically examining a Bill on grounds of legislative competence during its passage.

Memorandum on delegated powers

- 2.15 Where an Executive Bill contains provisions conferring powers to make subordinate legislation, the member in charge must also lodge with the clerk a memorandum on delegated powers. This must set out:
- the person on whom any such power is conferred;
- the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power;
- the Parliamentary procedure (if any) to which the power is to be subject; and
- the reason for opting for that procedure.

The memorandum is not formally an accompanying document, and therefore need not be lodged on the point of introduction. Instead it is lodged "immediately after" introduction (Rule 9.4A.1), and needs only to be published, not printed. In practice, this means that the memorandum tends to enter the public domain at the same time as the Bill and accompanying documents, by being published on the Parliament's website on the day after introduction.

Role of the clerks in relation to accompanying documents

2.16 Accompanying documents (other than the Presiding Officer's statement on legislative competence) are prepared by or on behalf of the member in charge of the Bill (in the case of Executive Bills, by the Bill Team). The clerks have a role in ensuring that they are presented appropriately and conform to Standing Orders.

Introduction of the Bill

2.17 Once the Presiding Officer has made a statement on legislative competence, and the other pre-introduction steps have been taken, the Bill may be formally introduced. A Bill may be introduced on any sitting day (Rule 9.2.1) by being lodged with the clerks. The Bill must be signed by the member introducing it and by any supporters whose names are to appear on the published version (Rules 9.2.2 and 4).

Member in charge of the Bill

- 2.18 The member who introduces the Bill is also, in the first instance, the "member in charge" of it. As such, he or she has certain specific rights in relation to the Bill at later stages during its passage. That member may also designate another member as member in charge. (In the case of an Executive Bill, only a junior Minister may be the designated member in charge (Rules 9.2A.1(b) and 9.2A.5); and in the case of a Committee Bill, only a member of the committee may be the designated member in charge (Rules 9.2A.3(b) and 9.2A.5).) Such a designation is made in writing to the clerks, and only one other member may be so designated at any time. designation of another member does not prevent the member who introduced the Bill from exercising any rights conferred by the Rules on the member in charge (Rule $9.2A.4)^{7}$.
- 2.19 Although such a designation may be made at any time, it is most conveniently made at the time of introduction. It gives the member who introduced the Bill an assurance that any necessary procedural steps can still be taken should he or she be unavailable for a period or on a particular occasion. In the case of an Executive Bill, it is likely that the member introducing the Bill (who must be a member of the Executive, i.e. a Cabinet Minister) will designate the relevant junior Scottish Minister as "member in charge".
- In the case of an Executive Bill or Committee Bill, the member who introduces the Bill becomes the original member in charge by virtue of that member's role (as Minister or committee convener), rather than in an individual capacity. If another member takes over that role during the passage of the Bill, the new Minister or convener automatically assumes the status of member in charge (Rule 9.2A.1 and

Printing the Bill and accompanying documents

- On the day of introduction, the Bill and accompanying documents are sent by the clerks to the Parliament's printers (currently RR Donnelley) for publication, both in hard copy and on the Parliament's website, the following day (Rule 9.4).8
- The introduction of a Bill is recorded in Section G of the Business Bulletin.

Stage 1

Lead and secondary committees

2.23 Once a Bill has been introduced, the Parliamentary Bureau refers it to whichever committee has the Bill within its remit. For the purposes of Stage 1, this committee is known as the "lead committee". If there is more than one committee to which the Bill is relevant, the Bureau must recommend to the Parliament which is to be the lead committee. In that case, the other committees, known as "secondary committees" may (but need not) report on the Bill to the lead committee (Rule 9.6.1).

⁷ The Rules on member in charge were amended by the Parliament on 31 January 2002 (Procedures Committee, 1st Report, 2002)

Bills appear in "pdf" format on the website, so that page and line breaks remain identical to the printed version. This is necessary to ensure that the internet user can make sense of amendments, which are worded by reference to the page and line numbers.

The Bureau also establishes a timescale within which the lead committee is expected to report.

Subordinate Legislation Committee

2.24 If the Bill contains powers to make subordinate legislation, it is considered by the Subordinate Legislation Committee, which reports on the relevant provisions to the lead committee (Rule 9.6.2). The committee may also report on any provisions in the Bill which confer other delegated powers – for example, powers to issue guidance or codes of conduct (which are non-legislative in nature). In considering those provisions, the committee normally considers the delegated powers memorandum provided by the Executive, and may also take evidence from officials and other interested parties. The committee considers in particular whether any of the powers delegated by the Bill concern matters which should be the subject only of primary legislation and whether the parliamentary control proposed in each case is appropriate.

Stage 1 Report

- 2.25 The lead committee's role is to report to the Parliament on the general principles of the Bill that is, on the principal purposes of the Bill, rather than the fine detail. (In other words, the report should look at the Bill "in the round" without anticipating the detailed scrutiny that is more properly a matter for Stage 2.) It is normal (but not obligatory) for a Stage 1 Report to include a recommendation to the Parliament as to whether the general principles of the Bill should be agreed to.
- 2.26 For any substantial Bill, the lead committee can be expected to take evidence from a range of witnesses over a number of meetings. Where time permits, a call for written evidence may be issued at the beginning of the inquiry. For any Executive Bill, officials or the Minister (or both) are likely to be invited to give evidence.
- 2.27 The lead committee must include in the Stage 1 Report consideration of the Financial Memorandum, taking into account any report on that document that may (but need not) be made to it by the Finance Committee. In the case of an Executive Bill, the Report must also include consideration of the Policy Memorandum. This enables the lead committee to consider, for example, whether sufficient consultation was undertaken before introduction.
- 2.28 The Stage 1 Report is normally published with any reports by the Subordinate Legislation Committee, Finance Committee or secondary subject committees included as annexes. If a date for the Stage 1 debate has been set, the Stage 1 Report must be published not later than the fifth sitting day before that date (Rule 9.6.3A).

Stage 1 debate

2.29 The Parliament is then required to consider the general principles of the Bill and decide whether to agree to them (Rule 9.6.4). This debate cannot take place earlier than the fifth sitting day after publication of the Stage 1 Report (unless a motion proposing that the debate takes place earlier is agreed to) (Rule 9.6.3A). This is intended to ensure that there is, in the normal course of events, at least a week between publication of the Stage 1 Report and the Stage 1 debate.

- 2.30 Any member may, before that day, lodge a motion "That the [short title] Bill be referred back to the [name] Committee for a further report on the general principles of the Bill" (or of specified sections of the Bill). If such a motion is agreed to, the Bill returns to the lead committee for a further report (Rule 9.6.6). Otherwise, the Bill's general principles are debated and decided (which need not involve members voting in a division).
- 2.31 The debate takes place on a motion by the member in charge of the Bill ("That the Parliament agrees to the general principles of the [short title] Bill"). Such a motion may be amended, but the Presiding Officer has indicated that amendments will only be selected for debate if they are so worded that they cannot cast any doubt on what the status of the Bill would be if the amended motion were agreed to. Such amendments will therefore only be selected if—
 - (a) it would remain clear from the amended motion that the general principles of the Bill would be agreed to (and the Bill would proceed to Stage 2); or
 - (b) it would be clear from the amended motion that the general principles of the Bill would not be agreed to (and that the Bill would fall).

As an example, amendments in category (a) might be worded to add a reason why, in agreeing to the motion, the Parliament does so with some regret or misgivings – e.g. Insert at end "but, in so doing, expresses reservations about [etc.]". Amendments in category (b) should be worded so as to reverse the terms of the motion for a reason stated in the amendment – e.g. Leave out from "agrees" to end and insert "does not agree to the general principles of the [short title] Bill because [etc.]". ¹⁰

Crown consent

2.32 If the (or a) fundamental purpose of the Bill requires Crown consent (see paragraph 2.5 above), this is signified by the relevant Minister at the beginning of the Stage 1 debate. (If Crown consent is required only in respect of minor or subsidiary provisions of the Bill, it may be signified at Stage 3.)

Stage 2

Stage 2 committee

2.33 If the Parliament agrees to the general principles of the Bill at Stage 1, the Bill proceeds to Stage 2. (If the general principles are rejected, the Bill falls – Rule 9.6.7.) The Parliamentary Bureau may refer the Bill back to the Stage 1 lead committee for Stage 2 or propose (by motion) that a different committee or committees take that Stage. The Stage 2 committee can be a Committee of the Whole Parliament¹¹, of which all MSPs are members and the Presiding Officer is the convener. The Bureau may also propose that the Bill be divided among two or more

⁹ This happened with the St Andrew's Day Bank Holiday (Scotland) Bill 2005 (SP Bill 41, Session 2)

¹⁰ These criteria were announced in Business Bulletin No.26/2001 (9 February 2001).

¹¹ An example of a Bill dealt with at Stage 2 by a Committee of the whole Parliament was the Census (Amendment) (Scotland) Bill 2000 (SP Bill 8, Session 1).

committees for Stage 2 consideration - preferably with each committee being allocated whole Parts or Chapters to deal with. 12

Timescale for Stage 2

The Bureau may set a timescale within which Stage 2 is to be completed. Except for Budget and Emergency Bills, there must be at least eleven whole sitting days between the completion of Stage 1 (i.e. the decision at the end of the Stage 1 debate) and the beginning of Stage 2 (Rule 9.5.3A). Thus, if the Stage 1 debate takes place on a Wednesday, Stage 2 could begin on the Friday of the second week thereafter (assuming all intervening weekdays are sitting days). Since committees normally only meet on Tuesdays, Wednesdays or (occasionally) Mondays, this rule effectively ensures that two whole weeks of Parliamentary business must pass before Stage 2 commences.

Proceedings at Stage 2

2.35 The principal role of the Stage 2 committee is to consider and dispose of The procedures which require to be followed in so doing are explained in more detail in Part 4 of this Guidance. However, it is also open to the committee, within the timescale available, to take further evidence on the Bill at Stage 2.

Lodging amendments etc.

2.36 As soon as a decision has been taken at Stage 1 in favour of the Bill, it is open to members to lodge amendments to the Bill (Rule 9.7.5). As explained in Part 4 below, any member of the Parliament (not just members of the Stage 2 committee) may lodge amendments at Stage 2, and there is no limit on the number of amendments that may be lodged. There is no selection of amendments at Stage 2, so all admissible amendments may be moved. Further details of the procedures relating to amendments at Stage 2 are set out in Part 4.

Order of consideration

2.37 Under Rule 9.7.4, the "default order" for consideration of the sections and

schedules of the Bill is with the sections taken in the order they arise in the Bill and each schedule taken immediately after the section which introduces it. 13 If any other order is to be followed, it must be decided by the Parliament (on a motion by the Parliamentary Bureau) or, if the Parliament does not so decide, by committee decision, usually on a motion by the convener. No such motion should be lodged by the convener until the clerk has given the member in charge notice of, and an opportunity to comment on, the order proposed.

2.38 Where the order of consideration is to be decided by motion, this should, if at all possible, be done before the meeting at which the committee commences Stage 2 consideration - to allow the Marshalled List of amendments (see Part 4 below) to reflect the agreed order. If the order is to be decided during the committee meeting

¹² The Public Finance and Accountability (Scotland) Bill 1999 (SP Bill 2, Session 1) was dealt with at Stage 2 by both the Finance Committee and the Audit Committee.

¹³ Where a schedule is introduced by more than one section, it would normally be taken after the last such section.

at which Stage 2 begins, the clerk will aim to secure the informal agreement of committee members in advance, to allow the Marshalled List to be finalised in advance of the formal decision being taken.

Recording decisions in committee

- 2.39 For each week of Stage 2, a Marshalled List is published and a groupings list prepared. Both documents are available on the Parliament's website, in the Document Supply Centre and at the committee meeting. The clerks provide the convener with a procedural brief to assist him or her in calling amendments according to the groups and putting all the necessary questions to the committee. The Committee Minutes list how all amendments were disposed of and all sections and schedules agreed to (whether or not amended). The same information can be obtained by reference to the Official Report.
- 2.40 There is normally no separate report of the committee's Stage 2 proceedings. The Official Report and the "As Amended" print of the Bill (if there is one) serve the purpose that would otherwise be served by a discursive report. It is, however, open to a Stage 2 committee to prepare a Stage 2 report perhaps to explain why particular amendments were made or to draw the Parliament's attention to provisions of the Bill where, although the committee could not agree on any particular amendments, it agrees that some amendment is required.

The Bill as amended

- 2.41 If any amendment (however small) is agreed to, the Bill is re-printed in amended form (Rule 9.7.8). The re-printed Bill shows all amendments made by sidelining in the right margin. Except where it would clearly be appropriate to do so (such as to take account of the internal restructuring of a section caused by amendment), provisions in the Bill as introduced are not re-numbered so, for example, a new section inserted by amendment between sections 1 and 2 will appear as 1A, whereas the removal by amendment of section 3 will not cause section 4 to be re-numbered. These presentational conventions are intended to assist members and others see clearly where amendments have been made, but they apply only for the duration of the Bill: all numbering is corrected for the Act.
- 2.42 The re-printing of a Bill is recorded in Section G of the Business Bulletin. In most cases, re-printed Bills are published within a day of the end of Stage 2.

Revised or supplementary accompanying documents

- 2.43 If any amendment is made to the Bill at Stage 2 inserting a new section or schedule or substantially changing an existing provision the member in charge must produce revised or supplementary Explanatory Notes. This must be done no later than four sitting days before Stage 3 starts (Rule 9.7.8A). The Notes should fulfil the same purpose that the Explanatory Notes provided on introduction i.e. they (or, in the case of supplementary Notes, they, when read with the original Notes) should provide an objective explanation of what each provision of the Bill does, to the extent that any provision requires explanation.
- 2.44 An amended Bill may have been changed in a way that the member in charge did not welcome and the member may even have it in mind to propose amendments reversing those changes at Stage 3. This does not negate the requirement to

explain neutrally what those provisions would do (to the extent that is necessary), although it would be permissible for the Notes to draw attention to perceived anomalies or to errors in such provisions that are objectively evident.

2.45 The member in charge must also lodge with the clerks a revised or supplementary Financial Memorandum if a Bill has been amended so as to substantially alter any of the costs set out in the original Memorandum. This must be done at least four sitting days before Stage 3 (Rule 9.7.8B). The Memorandum (or, in the case of a supplementary Memorandum, that document read together with the original Memorandum) must provide the same information in respect of the Bill as amended as the original Memorandum provided for the Bill as introduced.

Subordinate legislation

2.46 If any amendments are made to insert provisions in the Bill conferring power to make subordinate legislation, or to make substantial alterations to such provisions already in the Bill, the Subordinate Legislation Committee must report to the Parliament on those provisions (Rule 9.7.9). If a Bill is so amended, that committee may also consider and report on any new or substantially altered provisions conferring other delegated powers. In the case of an Executive Bill, the member in charge must also, no later than the end of the second week before the week in which Stage 3 will take place or commence, produce a revised or supplementary memorandum on delegated powers for the Committee's consideration (Rule 9.7.10). (See paragraph 2.15 for a discussion on Delegated Powers Memorandums.)

Stage 3

2.47 Stage 3 takes place at a meeting of the whole Parliament (Rule 9.8.1). Except in the case of a Budget or Emergency Bill, the day on which Stage 3 begins must be at least nine whole sitting days after the day on which Stage 2 ends. (Rule 9.5.3B) Thus, if Stage 2 ends on a Tuesday, Stage 3 cannot take place until the no earlier than the Tuesday of the second week thereafter (assuming that all intervening weekdays are sitting days).

Amendments at Stage 3

2.48 Amendments for Stage 3 may be lodged as soon as Stage 2 is completed (Rule 9.8.3). Where the Bill was amended at Stage 2, Stage 3 amendments must relate to the "As Amended" version of the Bill. Amendments lodged before that version is ready can only be published once the page and line references have been checked against the amended Bill.

Order of consideration

2.49 Rule 9.8.5 requires amendments at Stage 3 to be taken by reference to the order of the sections and schedules in the Bill (with amendments to the Long Title taken last), unless the Parliament agrees to a Bureau motion proposing an alternative order. Any such motion should be taken as early as possible before Stage 3, to ensure that the Marshalled List reflects the agreed order.

Selection of amendments

2.50 As at Stage 2, any member may lodge amendments, there is no limit to the number of amendments that may be lodged, and all admissible amendments are printed in the Business Bulletin. Unlike at Stage 2, however, only those amendments selected for debate by the Presiding Officer appear in the Stage 3 Marshalled List (Rule 9.10.8).¹⁴

Proceedings on amendments

2.51 The first part of the Stage 3 proceedings consists of the moving and disposal of those amendments selected for debate. Stage 3 proceedings on amendments are similar to those at Stage 2, except that all members may vote, and there is no requirement to agree to each section and schedule. Unlike at Stage 2, there is likely to be a timetabling motion agreed to by the Parliament, setting out deadlines by which debates on particular groups of amendments must be concluded. As this is best understood in the light of the discussion on the purpose and procedural implications of grouping amendments, the discussion on the timetabling motion takes place later in this guidance (see paragraphs 4.84 to 4.95).

Adjournment to a later day

2.52 If the debate on the motion to pass the Bill is scheduled to take place later in the same day as the day on which Stage 3 amendments are disposed of, either the member in charge or a Minister, if any, with general responsibility for the subject matter of the Bill may move, "That further Stage 3 consideration of the [short title] Bill be adjourned to [date]/a later day". (The motion may, but need not, name a day.) This motion, which must be moved immediately after the last amendment is disposed of, may be moved without notice and cannot be amended or debated – so the question is put on it straight away. If the motion is agreed to, no further proceedings take place on the Bill until the day named in the motion (or until the day subsequently appointed by the Bureau as the "later day") (Rule 9.8.5C). In the interim, further amendments may be lodged only by either the member in charge or (in the case of a non-Executive Bill) a Minister, if any, with general responsibility for the subject matter of the Bill, and such amendments may be lodged only for the purpose of "clarifying uncertainties" or "giving effect to commitments given at the earlier proceedings at Stage 3" (Rule 9.8.5D). This limited right to lodge amendments also exists where the debate on the motion to pass the Bill is already scheduled to take place on a later day.

2.53 These two categories of permissible additional amendments correspond to two possible reasons the member in charge may have for moving to adjourn to a later day. The first reason is to gain an opportunity to consider the implications of any unexpected or unwelcome decision to agree to Stage 3 amendments. In particular, any substantial new material inserted into an Executive Bill by a non-Executive amendment may require some adjustment to its drafting, and further changes elsewhere in the Bill may also be necessary before the Bill is, once again, fit to be enacted. It is important to note that the Parliament's agreement to a motion

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¹⁴ Selection of amendments is explained in more detail in Part 4 below.

to adjourn Stage 3 would not permit the Executive to lodge amendments that would have the effect of reversing amendments to which the Parliament has agreed.

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

Re-commitment

- 2.55 It may emerge during or shortly before Stage 3 proceedings that adjourning Stage 3 consideration is not sufficient to resolve outstanding difficulties with the Bill. It may become apparent, in other words, that although there is still general support for the Bill, the limited scope for further Stage 3 amendments does not allow the necessary changes to be made. This would be the case, in particular, if the Executive wished to overturn an unwelcome amendment agreed to at Stage 3. In such a case, the member in charge may move "That the [short title] Bill be recommitted for further Stage 2 consideration in respect of [specified sections and/or schedules]", under Rule 9.8.6. Only whole sections and (normally) whole schedules should be specified in the motion, and no more than half of the sections of the Bill may be so specified on the ground that where the difficulties with the Bill are more widespread it would be better to withdraw it and introduce a new Bill in its place.
- 2.56 If the motion is agreed to, it is for the Bureau to determine which committee should conduct the proceedings on re-commitment and the timetable for those proceedings. A Bill may be re-committed only once (Rule 9.8.8). Proceedings on re-commitment follow the same rules as for Stage 2 (except that only those sections and schedules specified in the motion to re-commit need be agreed to).
- 2.57 A Bill amended on re-commitment is re-printed and then returns to Stage 3. There must be at least four whole sitting days between the end of proceedings on re-commitment and the resumption of Stage 3 (assuming the Bill has been amended on re-commitment) (Rule 9.5.3C). Stage 3 amendments may again be lodged but only to those sections and schedules specified in the motion to re-commit or to other parts of the Bill (including the long title) if they are necessary in consequence of amendments made on re-commitment.

Debate on motion to pass the Bill

2.58 After proceedings on amendments at Stage 3 are concluded (including any adjourned proceedings under Rule 9.8.5C, and any further Stage 3 proceedings after re-commitment), the Parliament must decide whether to pass the Bill. The debate takes place on a motion by the member in charge of the Bill "That the Parliament agrees that the [short title] Bill be passed". Such a motion may be amended, but subject to similar criteria that the Presiding Officer applies in selecting amendments to Stage 1 motions (see paragraph 2.31 above). Thus, an amendment to a Stage 3 motion will be selected only if—

- (a) it would remain clear from the amended motion that the Bill would be passed; or
- (b) it would be clear from the amended motion that the Bill would not be passed (and that the Bill would fall).
- 2.59 If there is a division when the question on the motion is put, the result is only valid if at least a quarter of MSPs vote. If the majority votes against the Bill, or the result is invalid, the Bill falls.

Crown consent

2.60 If provisions of the Bill require Crown consent, and that consent has not been signified at Stage 1 (or if the provision giving rise to the need for consent has been inserted by amendment), it is signified at this Stage by the relevant Minister during his or her speech.

"As Passed" print

2.61 If a Bill is amended at Stage 3, it is re-printed to show the Stage 3 amendments. (As with other amended versions, the Bill shows by sidelining amendments made since the previous versions, and leaves numbering uncorrected.) If it was not amended at Stage 3, the previous print of the Bill serves the purpose of showing the Bill in the form in which it was passed.

Reconsideration Stage

Powers of law officers and Secretary of State

2.62 Section 32 of the Scotland Act provides that a Bill, once passed, may be submitted for Royal Assent by the Presiding Officer after the expiry of a four-week period. During that period, the Bill is subject to legal challenge by the Advocate General for Scotland, the Lord Advocate or the Attorney General under section 33, and may also be subject to an order made by the Secretary of State under section 35. The Presiding Officer may, however, submit the Bill for Royal Assent after less than four weeks if notified by all three Law Officers (under section 33(3)) and the Secretary of State (under section 35(4)) that they do not intend to exercise those powers.

2.63 The Secretary of State may only make a section 35 order on the ground that the Bill is incompatible with international obligations or defence or security interests, or because it would adversely affect the operation of the law on reserved matters, where that law is modified by the Bill. Such an order, which must specify the provisions of the Bill objected to and the reasons, prohibits the Presiding Officer from submitting the Bill for Royal Assent. A challenge from one of the Law Officers is made on grounds of legislative competence and takes the form of a reference to the Judicial Committee of the Privy Council (JCPC). Once such a reference has been made, the Bill cannot make further progress towards Royal Assent until the JCPC

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¹⁵ The JCPC consists of Law Lords and other senior judges and sits in London. Its role in dealing with "devolution issues" in this and other contexts is likely to be assumed in due course by the Supreme Court established under the Constitutional Reform Act 2005 (c.4).

has either decided (or otherwise disposed of) the reference, or has referred a question arising from it to the European Court of Justice (ECJ).

Motions to reconsider the Bill

2.64 Where the JCPC refers to the ECJ a question arising from the case brought by the Law Officer, proceedings on that case are stayed pending the ECJ judgement. Since the ECJ can often take two years or more to decide a question referred to it, section 34 of the Scotland Act allows the Parliament to have a reference to the JCPC withdrawn if the JCPC has in turn made a reference to the ECJ. This is effected by a motion, under Rule 9.9.1 of Standing Orders, "That the Parliament resolves that it wishes to reconsider the [short title] Bill". Such a motion may be moved only by the member in charge of the Bill and only if neither the reference to the JCPC nor the JCPC's reference to the ECJ has been decided or otherwise disposed of. If the motion is agreed to, the Presiding Officer informs the Law Officers and the one who made the original challenge must then (under section 34(2)) request withdrawal of the reference to the JCPC. Reconsideration Stage may not take place until the withdrawal of the JCPC reference has been formally confirmed.

2.65 If there is no ECJ reference, nothing further can be done in the Parliament until the JCPC has decided (or otherwise disposed of) the Law Officer's reference. If the JCPC decides that the Bill (or part of it) would be outwith the legislative competence of the Parliament, or if a section 35 order is made, the member in charge of the Bill may move "That the Parliament resolves to reconsider the [short title] Bill". If such a motion is agreed to, the Bureau proposes in a Business Motion a time for Reconsideration Stage on the Bill at a meeting of the Parliament.

Amendments at Reconsideration Stage

2.66 The purpose of Reconsideration Stage is to allow those provisions of the Bill subject to a section 33 reference or a section 35 order to be amended so that the problem which led to the reference or order being made is removed. Rule 9.9.4 therefore provides that only amendments aimed at resolving that problem are admissible. The judgment of the JCPC, the question that was referred to the ECJ or the section 35 order will be used by the clerks as a guide to the admissibility of amendments at Reconsideration Stage. Amendments are worded by reference to the "As Passed" version of the Bill. There is no selection of amendments at Reconsideration Stage, so all admissible amendments lodged may be moved.

Proceedings at Reconsideration Stage

- 2.67 The above differences aside, proceedings at Reconsideration Stage are similar to those at Stage 3. Once the amendments have been disposed of, the Bill may be further debated before the Parliament decides whether to approve the Bill. If there is a division, only a simple majority is required (the 25% quota required for the Bill to be passed does not apply).
- 2.68 A Bill approved after reconsideration is again subject to legal challenge by the Law Officers or to the making of an order by the Secretary of State in exactly the same way as it was after it was first passed. There is no limit to the number of times

that the Parliament may approve a Bill or that those persons may exercise their rights under the Scotland Act in relation to it.

Crown consent

2.69 If the Bill has been amended on reconsideration to include provisions that would require Crown consent, consent for those provisions is signified during debate on whether to approve the Bill.

From Bill to Act

- 2.70 If a Bill that has been passed (or approved after Reconsideration) has not been subject to a section 33 reference or a section 35 order within the statutory 4-week period or if the Secretary of State and all three Law Officers have confirmed that they will not exercise their powers under those sections the Presiding Officer then sends the Bill, together with draft Letters Patent, to the Palace for Royal Assent.
- 2.71 To prepare for this, a version of the Bill is prepared for the Palace, showing the Bill in its final form. ¹⁶ This is the same as the previous, published version but with all numbering corrected and any necessary "printing points" taken in. Printing points are non-substantial corrections (i.e. typographical points and other minor corrections that do not alter the legal effect of the Bill).

Preparation of the Official Print

2.72 At the same time, the "Official Print" version of the Act is prepared. This is produced on special archive-quality paper bound with ribbon. The Official Print is identical, in terms of its legislative text, to the Bill that was passed by the Parliament. (This is made possible by the drafting convention that, within the text of a Bill, all references are, for example, to "this Act" rather than "this Bill".)

Royal Assent

- 2.73 Royal Assent, when the Bill becomes an Act, is treated (under section 28(3) of the Scotland Act) as taking place at the beginning of the day on which Letters Patent signed by the Queen are recorded in the Register of the Great Seal by the Keeper of the Registers of Scotland (under section 38(1)(a)). When the Keeper confirms that Royal Assent has taken place (under section 38(2)), the Clerk of the Parliament writes the date of Royal Assent on the Official Print (under section 28(4)). The Clerk also assigns an "asp number" in the form "2007 asp 1" (for the first Act given Royal Assent in 2007). (This number is the equivalent of the chapter number assigned to an Act of the UK Parliament.) The Clerk then sends a certified copy of the Official Print to the Queen's Printer for Scotland, as authority to publish the Act. The Official Print itself is sent to the Keeper of the Records of Scotland for inclusion in the National Archives of Scotland. (NAS also hold the signed Letters Patent.)
- 2.74 The "Queen's Printer" version of the Act which is identical to the Official Print except with the date and asp number added is available to the public through Stationery Office bookshops and on the OPSI (Office of Public Sector Information) Internet site. (It is not a publication of the Parliament and therefore does not appear

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¹⁶ This version of the Bill is not published.

on the Parliament's website, although there is a link to it.) The text of the Act is also sent to the Statutory Publications Office for inclusion in the electronic Statute Law Database.

Financial Resolutions

2.75 Where a Bill contains particular provisions affecting payments into or out of the Scottish Consolidated Fund (the "SCF"), it cannot proceed beyond Stage 1 unless the Parliament has, by resolution, agreed to the relevant provisions. That resolution is known as a "financial resolution" and the rules governing such resolutions are set out in Rule 9.12.

Principles behind the Rule

- 2.76 Rule 9.12 is intended to give effect to the principles of the Financial Issues Advisory Group (FIAG) which reported to the Consultative Steering Group (CSG) before the establishment of the Parliament. In its report, FIAG advocated a clear separation between "policy Bills" that would create powers or functions, and "Budget Bills" that would allocate resources. The latter, it argued, should never do more than provide authorisation for the spending of money on existing functions, whereas separate provision would always be needed in policy Bills for conferring the functions which give rise to the demand for funding and it is this sort of provision that requires the consent of the Parliament by means of a financial resolution. Such a resolution recognises that the new (or increased) demand for funding in a policy Bill is something that will require to be met from the SCF. This is distinct from the annual Budget process, which determines the amounts of funding allocated.
- 2.77 In recommending this system, FIAG was attempting to give effect to the established principle that the executive arm of government has a unique responsibility in relation to the management of public funds. If it is to fulfil this function of "balancing the books", the executive must maintain control both over the raising of revenue and over public spending. Hence the need for a mechanism to secure executive consent for payments either into or out of central funds.

When a resolution is required

- 2.78 It is for the Presiding Officer to decide, in every case, whether or not a financial resolution is required for a Bill (Rule 9.12.2). This decision is made at around the time of introduction, and communicated to the member introducing the Bill and to relevant Ministers and committee conveners.
- 2.79 The clerks' advice to the Presiding Officer is based on the following general considerations:
- First, the question of whether a resolution is required does not turn on the
 particularities of drafting it is the overall effect of the Bill that is important (i.e.
 what the Bill does, not what it says). On the other hand, the policy intentions
 behind the Bill, where these are not reflected in the Bill, are not normally relevant.
 What matters is the mechanisms that the Bill provides, not the way in which
 particular Ministers currently intend to use those mechanisms.

 Secondly, the need for a resolution does not just arise in relation to mandatory provisions (e.g. those using "must") in a Bill, but also in relation to optional provisions (e.g. those using "may"). Budgetary authorisation may be required to ensure that a mechanism provided in the Bill can be used, as well as for what the Bill requires to be done. The question is whether, if the mechanism were resorted to, there would be a legitimate claim against the SCF.

Rule 9.12.3: resolutions required on grounds of expenditure

- 2.80 Rule 9.12.3(a) makes clear that a resolution is required in every case where a Bill "charges expenditure on" the SCF. Such charges which the Executive is required to pay without obtaining further authority from the Parliament by means of a Budget Bill are provided for only in exceptional cases. An example is provision for judicial salaries. By agreeing to such a provision, the Parliament voluntarily gives up its right to scrutinise the budget for the item concerned. (It is for this reason that, where a Bill contains such a provision, it must be accompanied on introduction by a report by the Auditor General for Scotland (under Rule 9.3.4).)
- 2.81 Under Rule 9.12.3(b) a resolution is only required in relation to other expenditure charged on or payable out of the Fund if two tests are satisfied. The first test is what the "likely effect" of the Bill would be. This means that a resolution may be required even where the Bill does not directly require or render certain new or increased expenditure, but where such expenditure is the likely outcome of its implementation, taking into account the wider context in which the Bill operates. If, however, the implications of a Bill for expenditure are very indirect or uncertain a resolution may not be required.
- 2.82 The second test is that the expected expenditure (whether it is new or increased) must be "significant". As a result, a resolution may not be required for a Bill which will require expenditure but where the amounts involved are expected to be trivial or easily capable of being absorbed within existing budgets. Whether expenditure is "significant" is a matter of judgement not only is there no quantifiable amount that represents the threshold, it may vary according to context. Thus, for example, there may be a need to impose a new administrative function on a number of statutory bodies, where the annual cost of fulfilling the function is expected to be the same in cash terms no matter which body is involved. A Bill to impose that function on the Scottish Legal Aid Board might not require a resolution, since it could readily be absorbed by the Board's existing staff and administrative budget, whereas a Bill to impose it on an ombudsman with very few existing functions and a tiny staff, would.

Rule 9.12.4: resolutions required on grounds of charges or payments

- 2.83 Under Rule 9.12.4, a financial resolution is required if a Bill satisfies the two tests set out in sub-paragraphs (a) and (b) of that Rule. The first test is that it would impose or increase a charge, or otherwise require a payment to be made, including by provision that is to be made by subordinate legislation (as the words in brackets make clear).
- 2.84 The second test is that the charge or payment must be made with one exception to persons with a statutory duty to pay the amounts involved into the Scottish Consolidated Fund. In practice, this means the Scottish Ministers and other

office-holders in the Scottish Administration, together with directly-funded bodies. It excludes most non-departmental public bodies (NDPBs), whose income is not payable into the Fund.

- 2.85 The exception (set out in brackets in Rule 9.12.4(b)) relates to bodies which are not required to pay income received (e.g. from charges or payments) into the SCF, but who are only not so required because a provision in an ASP allows them instead to keep that income. Bodies in that position, in other words, have the power to "recycle" income offsetting it directly against money they would otherwise require to be given from the SCF for expenditure purposes.
- 2.86 The purpose of the exception is to ensure that a Bill which authorises such a body to levy charges or payments is not automatically exempted from the need for a financial resolution just because the body isn't required to pay the income into the SCF. Without this exception, an arbitrary distinction would be drawn between public bodies which have this limited type of financial autonomy and those which don't even though the impact on the SCF of a Bill authorising either type of body to raise new income would be essentially the same.
- 2.87 Rule 9.12.5 provides two exemptions from the application of Rule 9.12.4. The first is a similar exemption for insignificant amounts as is provided in relation to expenditure by Rule 9.12.3. The second is an exemption for charges or payments which are levied to recover the cost of goods or a service provided. In relation to goods, the exemption applies so long as the goods are to be sold for reasonable amounts. In relation to a service, the exemption applies so long as the amount charged can wholly or largely be accounted for by reference to the cost of the service. This would cover, for example, a charge for providing someone required to register information with a copy of their entry in the register. It would allow the charge levied to be at a higher level than would be justified only in terms of marginal cost recovery (i.e. the cost of the paper, photocopier toner and staff time making the copy) but not substantially higher. The underlying intention is that a financial resolution should only be required in cases where charges or payments can be levied in such a way as to generate substantial profit or to contribute significantly to the income of the body in question.

Lodging and moving motions for resolutions

2.88 Under Rule 9.12.7, a motion for a resolution may be lodged and moved only by a member of the Executive or a junior Scottish Minister. (For non-Executive Bills, it is for the member in charge of the Bill to approach the Executive, once it has been decided that a resolution is required, to request it to lodge and move a suitable motion.) The motion must be lodged within 6 months of the completion of Stage 1 (Rule 9.12.8(a)) and amendments to such a motion are inadmissible (Rule 9.12.7). If no motion is lodged within this time or if such a motion is lodged but not agreed to by the Parliament when it is taken, the Bill falls (Rule 9.12.8).

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¹⁷ Rule 8.3.2 does not apply to motions for financial resolutions, with the result that a Minister may move such a motion without having either lodged it or added his or her name as a supporter.

Amendments to Bills

2.89 Rule 9.12.6 provides that an amendment to a Bill cannot be agreed to if the effect of the amendment would be that the Bill, had it been introduced in that form, would need a resolution that it doesn't have. Rule 9.12.6 does not affect the admissibility of amendments, and an amendment to which it applies may be lodged and printed in the Business Bulletin and in a Marshalled List. However, such an amendment cannot be moved unless, by the time the point in the Bill to which it relates is reached, a suitable financial resolution in relation to the Bill has been agreed to.

Withdrawal of Bills

- 2.90 Rule 9.13 allows a Bill to be withdrawn during Stage 1 by the member in charge of the Bill. The consent of the Parliament (or of the other members whose names appear on the Bill as supporters) is not required. Withdrawal is effected by writing to the Clerk, who will include a notice of the Bill's withdrawal in Section G of the Business Bulletin.
- 2.91 After a Bill has received the Parliament's endorsement of its general principles, it is treated as the property of the Parliament as a whole, and can only be withdrawn if the Parliament agrees. This requires the member in charge to move, "That the [short title] Bill be withdrawn." If there is a division on this motion, it is decided by simple majority of those voting.

Part 3: Stages of Bills – the special rules

3.1 This Part of the Guidance explains the special procedures applicable to Bills other than the Executive "programme" Bills dealt with in Part 2.

The Non-Executive Bills Unit

3.2 The Non-Executive Bills Unit (NEBU) is a clerking team within the Parliament whose role is to assist both members and committees in preparing members' or Committee Bills and taking them through Parliament. This may include helping members prepare draft and final proposals, analysing consultation responses, obtaining drafting support for Bills and preparing Bill drafting instructions, helping members prepare Bill accompanying documents, and giving procedural advice as the Bill goes through Parliament. Any member considering whether to propose a Member's Bill should contact NEBU at the earliest opportunity. ¹⁸

Members' Bills

The draft proposal

- 3.3 Any MSP who is not a member of the Executive may seek to introduce a Bill, by one of two ways. The first is by encouraging a committee to make a proposal for a Committee Bill (see paragraph 3.22 below). The other is by proposing a Member's Bill under Rule 9.14. Members have the right to lodge up to two Members' Bills per session.
- 3.4 The first formal step in introducing a Member's Bill is to lodge with NEBU a draft proposal for a Bill (Rule 9.14.3). The proposal consists of the proposed short title of the Bill and a brief explanation of its proposed purposes. With the proposal must also be lodged either a document consulting on the policy objectives of the draft proposal, or a written statement (a "statement of reasons") explaining why the member thinks that a case for the Bill has already been established and that consultation is unnecessary. The draft proposal is published in the following day's Business Bulletin, along with information about the consultation or about where copies of the statement of reasons may be obtained.
- 3.5 The presumption behind this formal encouragement to consult on the proposed Bill is that consultation can add value to the process, by exposing ways in which the policy might be developed and improved and offering stakeholders a chance to participate in improving that policy. To ensure adequate time to respond, Standing Orders require consultation to last 12 weeks or more.
- 3.6 Allowing members to lodge a statement of reasons rather than a consultation document amounts to recognition that there may be particular circumstances that justify a member not consulting (for instance, because the Executive has already recently consulted on matters closely related to the proposed Bill). Where a member lodges a statement of reasons, the committee to which the Parliamentary Bureau refers the proposal has one month to determine whether the statement is adequate

¹⁸ Further guidance on proposals for Members' Bills is available to members on request from NEBU.

justification for not consulting. (If the committee does not come to a view within that time, the member may proceed to lodge a final proposal.) If the committee decides it is not satisfied with the statement, the proposal will fall unless the member then lodges a consultation document within two months.

The final proposal

- 3.7 The next formal step is the member lodging a final proposal for the Bill with NEBU. If the member lodged a consultation document, the earliest point at which this can be done is at the end of the consultation period. If the member instead lodged a statement of reasons, the first point at which the final proposal can be lodged is any time after the committee has decided that it is satisfied with the statement, or (if the committee does not come to a view within one month of the draft proposal being lodged) the end of that month.
- 3.8 If the member chose to lodge a consultation document, the final proposal must be lodged with a summary of consultation responses (including any conclusions the member draws from those responses), together with copies of those responses. If the member instead lodged a statement of reasons, it is the statement (or a revised version of it) that must be lodged with the final proposal.

The right to introduce a Member's Bill

- 3.9 The final proposal is then published in the Business Bulletin for one calendar month, whilst the consultation summary or (as the case may be) statement of reasons is made available via the "Proposals for Members' Bills" page of the Parliament website. During this period, any member may notify support for the proposal, this being recorded in the bulletin. If, at the end of the month, at least 18 other members, drawn from at least half the parties or groups represented on the Parliamentary Bureau, have indicated their support, the member has the right to introduce a member's Bill. This is unless a Minister has indicated either:
- that the Executive will introduce legislation (which could be a Bill or a statutory instrument) to give effect to the proposal within the same session (i.e. the period, usually of four years, between general elections to the Scottish Parliament), or
- that Her Majesty's Government will introduce such legislation within the same or next session (a session at Westminster meaning a Parliamentary year, rather than the span of years between UK general elections).

Such an indication must be given in writing to the clerk, who will arrange for it to be published in the Business Bulletin (Rule 9.14.7A).

Introduction of Members' Bills

3.10 While there is no limit to the number of proposals that each member may lodge (but he or she cannot have more than two – whether draft or final – in progress simultaneously (Rule 9.14.17), the member may only introduce two Members' Bills in any session. This includes any Committee Bills that result from draft proposals submitted by that member (Rule 9.14.2).

- 3.11 NEBU can assist in introducing a member's Bill. This includes preparing drafting instructions (an external drafter drawn from a drafting panel maintained by NEBU will draft the Bill if the member works with NEBU) and helping members prepare accompanying documents. (NEBU assistance on introducing a Member's Bill is subject to authorisation from the Scottish Parliamentary Corporate Body.)
- 3.12 As with any Executive Bill, the finalised text of a Member's Bill should be submitted for a Presiding Officer statement on legislative competence three weeks before the proposed date of introduction. Whether or not the member (or NEBU acting on the member's behalf) sends a "three-week letter" to the Head of Chamber Office (see paragraph 2.4), advice relating to the matters set out in the bullet points under paragraph 2.5 is likely to be sent to the member by the Head of Chamber Office shortly before the time of introduction.
- 3.13 On introduction, a Member's Bill must be accompanied by the same types of accompanying documents as are required for an Executive Bill. This exception is that the Bill need not be accompanied by a statement from the member in charge stating that in his or her view its provisions would be within the Scottish Parliament's legislative competence. A memorandum on delegated powers is not required either.

Stage 1 of Members' Bills

- 3.14 Stage 1 consideration of a Member's Bill is no different to that for an Executive Bill with one important exception. This is that the lead committee has the option, under Rule 9.14.18, of recommending to the Parliament (on a motion of the convener) that the general principles be not agreed to, on one of three grounds:
- the consultation on the draft proposal, or the published material referred to in the statement of reasons does not demonstrate a reasonable case for the policy objectives of the proposal or does not demonstrate that legislation is necessary to realise those objectives;
- the Bill appears to be clearly outwith the Parliament's legislative competence and it is unlikely that this could be rectified by amendment;
- the Bill has deficiencies of drafting that make it unfit to be passed and which are so serious that they would be difficult or impractical to resolve by amendment at stage 2 or 3.

If the motion is agreed to, the Bill falls.

3.15 The use of this power effectively allows a committee to curtail Stage 1 consideration and, in particular, not to produce a report on the general principles. A committee considering whether use of the power would be appropriate might wish to consider whether evidence should be taken on disputed matters before coming to a view, in order to help put beyond doubt that any of the three grounds applies. This would apply in particular where the Committee is minded to propose rejecting the Bill on competence grounds but the Presiding Officer's statement on legislative competence indicated that the Bill was competent. In similar vein, it might be considered unusual for the same committee that indicated satisfaction with a

statement of reasons to go on to propose early rejection of a Bill because it now considers that the statement failed to make a case for legislation, although there might be circumstances where those decisions would be consistent.

Congruence between draft proposal, final proposal, and Bill

- 3.16 The Standing Orders require that a member's final proposal must be broadly similar to, but not necessarily the same as, the draft proposal (Rule 9.14.8). In other words, both the draft and final proposal must be about "the same thing" they must both seek to promote the same overall aim or address the same perceived problem. On the other hand, since the main purpose of the draft proposal stage is to enable the development of policy, it would be within the rules to make quite significant change in policy, especially where it is apparent that the change arises from taking on board constructive criticism made during consultation.
- 3.17 By contrast, by the time a final proposal is lodged, the assumption is that the member's policy will be reasonably well developed. This is reflected in the requirement in Rule 9.14.12 that a member's Bill should "give effect" to a final proposal (Rule 9.14.12). So a draft Bill which contained provisions extending substantially beyond the terms of the final proposal or which did not provide a substantial element of what was outlined in the final proposal could not be introduced. This approach also serves to protect the interests of members who have signed up to the final proposal with a reasonable expectation of what the Bill resulting from it would be like. (And it is only proposals that have obtained a particular level of support that may be introduced as Members' Bills.)
- 3.18 Members should discuss the wording of draft and final proposals with NEBU before they are lodged.

Participation in meetings by member proposing Member's Bill

- 3.19 Under Rule 9.13A.1, a member who has lodged a draft proposal for a Member's Bill accompanied by a statement of reasons and who is also a member of the committee considering the statement may not participate in the committee's consideration of the proposal as a committee member. Such a member may participate in another capacity (for example, the member may be invited to give evidence in relation to the statement of reasons). This also applies where the member making the proposal is a committee substitute on the committee considering the proposal. Rule 9.13A.2 makes equivalent provision relating to the period after the Member's Bill is introduced (i.e. Stage 1 and 2 committee consideration). ¹⁹
- 3.20 Where a member is prevented from participating in proceedings as a committee member by Rule 9.13A, a committee substitute (Rule 6.3A) or a Bill substitute (Rule 6.3B) may participate instead.

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¹⁹ This rule applies not just in respect of Member's Bills but also to Ministers or junior Ministers who are members in charge of Executive Bills. However Ministers and junior Ministers by convention do not sit on Parliamentary Committees so in practice (as long as this convention remains) the rule has no application to them.

Committee Bills

- 3.21 Any committee may make a proposal for a Bill to the Parliament under Rule 9.15.2. Such a proposal may originate from within the committee (prompted, perhaps, by evidence received in the course of an inquiry, or by a petition referred to the committee). A member of the committee who wishes the committee to make a proposal should raise the matter with the convener, who can then invite the committee to decide whether to conduct an inquiry on the subject.
- 3.22 An alternative route is provided in Rule 9.15.4, which allows any MSP to submit a draft proposal for a Committee Bill to the Parliamentary Bureau. (In practice, members are advised to contact NEBU in the first instance for assistance with the wording of a draft proposal. NEBU can then refer the agreed draft to the Bureau on the member's behalf.) This is the mechanism used where the MSP concerned is not a member of a committee within whose remit the Bill would fall. A draft proposal is not printed in the Business Bulletin, but is referred by the Bureau to an appropriate committee. The committee is required to consider a draft proposal referred to it in this way (Rule 9.15.4). In doing so, the committee may (but need not) conduct an inquiry on the merits of the draft proposal before reaching a decision on whether to propose a Bill.
- 3.23 If a committee makes a proposal, whether in response to a draft proposal referred to it or on its own initiative, it does so in the form of a report to the Parliament. Unlike the short description required for a proposal for a Member's Bill, a report containing a proposal for a Committee Bill should set out clearly, and in reasonable detail, why a Bill is considered to be necessary and what it would contain (Rule 9.15.5). In particular, the report must make clear that the committee is proposing a Committee Bill under Rule 9.15.²⁰ The report may, but need not, include a draft Bill (Rule 9.15.5).²¹ Because there is no Stage 1 report on a Committee Bill (see below), it is important that a committee developing a proposal for such a Bill takes similar evidence to the evidence it would expect to take at Stage 1 of a Bill, and otherwise consults adequately on the proposal, before finalising its report.
- 3.24 Committees are advised to involve NEBU at an early stage during any inquiry on a Committee Bill proposal. NEBU's role at this stage is primarily to help the committee to ensure that the proposal both expresses the policy of the committee and provides a suitable basis for the drafting of a Bill. To do this, a proposal must be sufficiently detailed to allow the Parliament to make a properly informed decision as to whether to support it, but not so detailed as to restrict the ability of the drafter subsequently called upon to implement the committee's policy in legislative terms.
- 3.25 Once the committee report containing the proposal has been published, the Convener should lodge a motion such as the following:

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²⁰ See for example the Justice and Home Affairs Committee's 9th Report, 2000, *Proposal for a Protection from Abuse Bill* (SP Paper 221).

²¹ NEBU would not expect to instruct the preparation of a draft Bill until the committee has obtained the Parliament's approval for its proposal.

[Convener's Name] on behalf of the [Name] Committee: Proposal for a [proposed short title] Bill—That the Parliament agrees to the proposal for a Committee Bill under Rule 9.15 contained in the [Name] Committee's Nth Report, 2001 (SP Paper X).

The Bureau must allocate time in a Business Motion for consideration of the proposal on the basis of the committee's report (Rule 9.15.6).

- 3.26 If the Parliament agrees to the proposal, the committee convener may instruct the drafting of a Bill to give effect to the proposal (or, if a draft Bill already exists, introduce it) but not until the fifth sitting day after the debate and not if the Executive has indicated by that time that it will introduce in the same session an Executive Bill to give effect to the proposal or that Her Majesty's Government proposes to legislate to the same effect, within two sessions (Rule 9.15.7: This is equivalent to Rule 9.14.13 in relation to Members' Bills discussed further at paragraph 3.9 above.)
- 3.27 A Committee Bill may be introduced only if it is broadly consistent with the terms of the proposal that was agreed to by the Parliament. If, in the course of finalising the Bill, the Committee decides not to include in the Bill a substantial element of the proposal, or to include in the Bill substantial provisions that were not mentioned in the proposal, it would need to obtain the Parliament's agreement to a further report containing a revised proposal. (It is partly to avoid any such difficulties that committees are advised to involve NEBU from the earliest stage in the preparation of any proposal.) If the proposal is agreed to, NEBU will develop drafting instructions in consultation with the committee, arrange for a Bill to be drafted, and provide support to the member in charge of the Bill during its passage.
- 3.28 A Committee Bill is introduced by the convener of the committee. Explanatory Notes, a Financial Statement and a Presiding Officer Statement on Legislative Competence are required but not a Policy Memorandum, because it is expected that in many cases the information contained in the committee report proposing the Bill would contain the sort of information found in a Policy Memorandum. NEBU would normally be expected to provide assistance to the committee in preparing any accompanying documents.
- 3.29 At Stage 1, a Committee Bill is not referred to a lead committee for a report on its general principles. But the Finance Committee will consider and report on the Financial Memorandum in the normal way unless it was the Finance Committee which proposed the Bill. Similarly the Subordinate Legislation Committee Bill must report on any provisions conferring powers to make subordinate legislation unless it initiated the Bill. Once those committees have reported to the Parliament (Rule 9.15.8), the Stage 1 debate takes place in the normal way. And after Stage 1, a Committee Bill proceeds in a similar manner to an Executive Bill.

Budget Bills

3.30 A Budget Bill is a Bill consistent with the description of a Budget Act, as defined in section 29(3) of the Public Finance and Accountability Act 2000 (asp 1). Broadly, Budget Acts are Acts authorising the use of resources by the Executive,

authorising payments out of the Scottish Consolidated Fund, enabling sums otherwise payable into the Fund to be applied for other purposes, and governing maximum amounts of expenditure and borrowing by certain statutory bodies.

- 3.31 A Budget Bill may be introduced only by a member of the Executive, and is accompanied only by the two mandatory statements on legislative competence (Rule 9.16.2). It is referred immediately for a Stage 1 debate, without the need for a Stage 1 report. If it contains provisions conferring power to make subordinate legislation, a memorandum on delegated powers will be required and it will be considered by the Subordinate Legislation Committee under Rule 9.6.2, but that committee is only required to report on it before Stage 3 (Rule 9.16.3).
- 3.32 Stage 2 of a Budget Bill is taken by the Finance Committee. At all Stages, amendments may be lodged and moved only by a member of the Executive or junior Minister (Rule 9.16.6). Otherwise, the procedures at amending Stages are the same as for other Executive Bills.
- 3.33 Budget Bills are subject to an accelerated timescale. Stage 3 must be completed not later than 30 days after introduction (although that Stage cannot begin until 20 days after introduction) (Rule 9.16.5). The normal rules on intervals between Stages do not apply (Rule 9.16.4).
- 3.34 A Budget Bill that is dependent on the Parliament passing a tax-varying resolution (under section 73 of the Scotland Act) to increase the basic rate of income tax falls if the requisite resolution is disagreed to. However, if a Budget Bill falls or is rejected for that or any other reason, another Bill in the same or similar terms may be introduced immediately afterwards.
- 3.35 The special rules applicable to Budget Bills reflect the convention that the Executive has a right of veto in relation to the Parliament's budgetary decision-making. However, the Budget Bill itself is only the final stage in the annual budget scrutiny process. The first two stages of that process, which involve reports by the Finance Committee and debates in the Parliament, provide subject committees and the Parliament as a whole with the opportunity to comment on the Executive's budgetary plans for the coming financial year.

Consolidation Bills, Codification Bills, Statute Law Repeals Bills and Statute Law Revision Bills

Consolidation Bills

3.36 Where the statutory basis of the law in a particular area is scattered among a wide range of Acts, or where those Acts have been heavily amended, it may be appropriate to introduce a single Consolidation Bill to re-enact the existing provisions in a more logical and coherent form. Such Bills are usually prepared by the Executive in conjunction with the Scottish Law Commission. A Consolidation Bill may make various minor amendments to the law (particularly to give effect to

Scottish Law Commission recommendations²²) as well as simply re-stating it, but may not contain substantial new provisions, nor make substantial changes to the existing law.

- 3.37 The only accompanying documents required for a Consolidation Bill are a Presiding Officer's statement on legislative competence (and, assuming it is an Executive Bill, an Executive statement), plus tables of derivations and destinations. These tables show the connections between the provisions of the Bill and the equivalent provisions of existing statute law which are restated. The table of derivations follows the order of the Bill, while the table of destinations follows the chronological order of the restated statutes (listed by year and chapter/asp number). If a provision giving effect to a Law Commission recommendation charges expenditure on the Scottish Consolidated Fund, an Auditor General's Report is also required.
- 3.38 Once introduced, the Bill is referred to a Consolidation Committee established (on a motion by the Bureau) for the purpose of considering the Bill. Where possible, at least one member of the committee should be a member of a relevant subject committee (Rule 9.18.4). The remit of such a committee is limited to consideration of the Bill in the terms set out in the Rules, and it is established only for the duration of the Bill that is, until the Bill has received Royal Assent, falls or is withdrawn. In other respects, a Consolidation Committee is subject to the same Rules as other committees of the Parliament.
- 3.39 The Consolidation Committee's role at Stage 1 is more restricted than that of a lead committee. Rather than considering the general principles of the Bill, it is required to report only on whether the Bill should proceed as a Consolidation Bill. (In other words, the question is not whether the committee approves of the law that the Bill consolidates, but only whether it approves of it being consolidated.) Similarly, the motion which is the subject of the Stage 1 decision is "That the Parliament agrees that the [short title] Bill should proceed as a Consolidation Bill." As with any other Stage 1 motion, that motion may be amended (although, as with other Stage 1 motions, amendments which would cast doubt on the outcome of the amended motion will not be selected). There is normally no debate on the motion, although exceptions may be made (if, for example, the Consolidation Committee has raised serious doubts in its report about the rationale for, or the scope of, the consolidation exercise). If the Parliament does not agree to the motion, the Bill falls (Rule 9.18.5).
- 3.40 Amendments to such a Bill at Stage 2 (or Stage 3) are inadmissible if the ordinary rules on admissibility (other than the prohibition on "wrecking" amendments see paragraph 4.19) apply or if they would result in the Bill no longer falling within the definition of a Consolidation Bill in Rule 9.18.1. Any amendment that would cause the Bill to make substantial new provision in the area of the law with which it deals is therefore inadmissible. Amendments may, however, propose changes to

²² Such recommendations may, if they relate to aspects of Scots law identical or similar to the law in other parts of Great Britain, be made jointly by the Scottish Law Commission and the Law Commission of England and Wales.

how the Bill restates the law and how (if at all) it gives effect to any Scottish Law Commission recommendations.

3.41 At Stage 3, there is a presumption that there will be no debate on the motion that the Bill be passed, although again exceptions may be made.

Codification Bills

3.42 A Codification Bill restates both statute law and common law (a Consolidation Bill deals only with statute law). Such Bills are subject to the same requirements in relation to accompanying documents and the same procedure as Consolidation Bills (with appropriate modification e.g. the committee established to consider the Bill would be a Codification Committee) (Rule 9.18A.2). Any MSP has the right to introduce a Consolidation Bill.

Statute Law Repeals and Statute Law Revision Bills

- 3.43 Statute Law Repeals and Statute Law Revision Bills are also intended to tidy up the "statute book", mainly by repealing spent enactments or enactments no longer in force. In the case of a Statute Law Revision Bill, this involves re-enacting those provisions in particular statutes that still have application while repealing the remainder of them.
- 3.44 The Rules applicable to Consolidation Bills also apply to these Bills with some modifications. Tables of derivations and destinations are not required. The committees established to consider such Bills are known as "Statute Law Repeals committees" and "Statute Law Revision committees". At Stage 1, the motion is "That the Parliament agrees that the statute law which is repealed/revised in the [short title] Bill should be repealed/revised". Amendments to a Statute Law Repeals Bill must not cause it to cease to be a Statute Law Repeals Bill: so, for example, an amendment proposing the inclusion in the Bill of a repeal of an enactment which is not spent or which (while spent) does not flow from a Scottish Law Commission recommendation would be inadmissible. Similarly, amendments to a Statute Law Revision Bill may vary the extent of the repeals made by the Bill (but not by adding repeals of provisions still in force or which are still necessary), and may also vary the way in which the Bill re-enacts provisions of Acts which are otherwise spent.

Emergency Bills

3.45 An Emergency Bill is an Executive Bill that needs to be enacted more rapidly than the normal timetable allows, for example to amend the law in response to a recent court judgement which has exposed a loophole or problem of interpretation in an existing enactment. Such a Bill must first be introduced as an Executive Bill and then be converted to an Emergency Bill by the Parliament, on a motion by a Minister (or junior Minister)²³. Unless the Parliament agrees (under Rule 9.3.6) to waive the

²³ The first Bill that the Parliament passed was an Emergency Bill (Mental Health (Public Safety and Appeals) (Scotland) Bill 1999 (SP Bill 1, Session 1)). The Erskine Bridge Tolls Bill (SP Bill 33, Session 1) and the Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill (SP 65 Bill, session 2) were also Emergency Bills.

requirement, an Emergency Bill must be introduced with the same accompanying documents as any other Executive Bill.

- 3.46 Rule 9.21.2 provides that Stages 1 to 3 of an Emergency Bill are taken on the same day unless the Parliament agrees to a motion by the Bureau proposing an alternative timescale. The Bureau is required to propose, by motion, a timetable for the various stages. This does not affect the power to adjourn Stage 3 under Rule 9.8.5C or refer the Bill back for further Stage 2 consideration.
- 3.47 Stage 2 of an Emergency Bill must be taken by a Committee of the Whole Parliament.
- 3.48 Emergency Bills may be amended. The Presiding Officer may determine a time by which amendments must be lodged. If no determination is made, the normal notice periods apply (which in practice is likely to mean that all amendments would be manuscript amendments). So, for example, if Stage 1 of an Emergency Bill finished at 11 am and Stage 2 was due to start at 2 pm that day, a Stage 2 deadline of 1 pm might be set. This allows time (albeit very limited) both for members to lodge amendments and for a Marshalled List and groupings to be prepared and made available to members. Manuscript amendments could still be lodged after 1 pm but would be subject to the normal test for manuscript amendments set out in Rule 9.10.6.

Part 4: Amendments

- 4.1 This Part of the Guidance explains the rules and procedures relating to amendments in more detail. It begins by explaining the principles behind amendments, then deals with how they are lodged and printed and the creation of Marshalled Lists. Finally, it explains how amendments are grouped and (at Stage 3) selected, and how the proceedings on amendments unfold.
- 4.2 An amendment is a proposal to change the wording of the text of a Bill. It is the only mechanism that may be used to make such a change, and also a key mechanism for allowing debate on the Bill's provisions. (Some amendments sometimes known as "probing amendments" are lodged primarily to allow an issue to be debated, without any intention to effect a change in the Bill's text.) All amendments must conform to the rules governing the admissibility, style and content of amendments.

Basic principles

4.3 The Standing Orders relating to amendments are based on two guiding principles: the rule of separate textual amendments and the rule of progress.

Separate textual amendments

- 4.4 This is the principle that every substantive change to the text of a Bill requires an individual amendment to be lodged, moved and agreed to. As a legislature, the Parliament must agree to the precise form of words that has legal effect, and not just to the underlying policy behind those words. This means that it cannot simply agree, for example, to change every occurrence of a particular word or phrase to something else, since the legal effect of such a change will depend on the context in which the word or phrase occurs and may be different in each case.
- 4.5 When the Parliament (or a committee) agrees to an amendment, it is precisely that amendment and only that amendment that may be made to the Bill (the only other changes that are permitted being strictly non-substantive "printing points" see below). The Parliament (or the committee) cannot decide only on the principle underlying a change to the text of a Bill; it must also decide on the precise manner in which that change is to be made.
- 4.6 Some major changes to the legal effect of a Bill can be achieved by a single amendment, whereas other, less substantial changes may require dozens of separate amendments. However, for non-Executive amendments at Stage 2 in particular, it is not always necessary to lodge every amendment that would be required since the principal purpose may simply be to allow an issue to be discussed. If a member wishes to question, for example, why a new body established by an Executive Bill is so named, a single amendment to change the name of the body the first time it occurs would be sufficient. If that amendment was agreed to, it would then be up to the Executive either to seek to have the amendment reversed at Stage 3, or to lodge the further amendments necessary to re-name the body throughout the Bill. It follows that, at Stage 3, a single such amendment, while still admissible, has little prospect of success. The fact that, if

agreed to, it would create an inconsistency in the Bill which could only be corrected at the cost of delaying the passage of the Bill creates a presumption against it being selected and, if moved, makes it less likely to be agreed to.

The rule of progress

4.7 The second basic principle is that amendments must be taken and disposed of strictly in order. This order is not always the order in which the sections and schedules to which they relate appear in the printed Bill but, whatever the order is, it must be followed. It is never permitted to return to a point in the order earlier than the last amendment moved at that Stage of the Bill. This obviously makes it important that amendments are marshalled accurately and that a degree of formality is applied in the manner in which amendments are called and disposed of, since mistakes often cannot be rectified at the same Stage. The rule of progress also explains the importance of wording amendments consistently – since this will determine their relative places in the Marshalled List and hence their precedence in debate.

Admissibility of amendments

4.8 Rule 9.10.5 establishes four criteria for the admissibility of amendments. These are amplified below by reference to the paragraphs of that Rule.

(a) Proper form

- 4.9 Amendments are almost never ruled inadmissible on this ground alone. The clerks will ensure, as a matter of course, that an amendment that is otherwise admissible is put into proper form. The Presiding Officer has made a determination on the form of amendments, which is reproduced in Annexe C.
- 4.10 It is implicit in this first criterion that an amendment is inadmissible if an identical amendment has already been lodged. This includes not just amendments which admit of only one wording (e.g. "Leave out section 1") but also amendments which differ from an amendment already lodged only in trivial respects that would have no legal effect. A member seeking to submit such an amendment has the choice of either changing the amendment to make it substantively different from the one already lodged, or indicating support for that amendment.

(b) Relevance

- 4.11 This is a key criterion. An amendment is inadmissible if it is outwith the scope of the Bill though this is not always easy to determine. As noted at paragraph 2.6 above, the clerks take a general view of the scope of a Bill in advance of introduction. Their aim in doing so is to establish in general terms what advice they would give at later Stages should an amendment of questionable relevance be lodged.
- 4.12 It is sometimes wrongly imagined that the long title alone can be used to determine the "scope" of the Bill. The long title is intended to provide a concise description of the main purposes of the Bill and so is a useful guide to scope; but it is not definitive. Indeed, the reason why amendments to the long title are permitted (and are taken last) is to allow it to be adjusted to take account of amendments

made elsewhere in the Bill – amendments that had to be within the scope of the Bill to be admissible, but were not consistent with the long title as it stands.

- 4.13 The wording of the long title can also mislead in relation to relevance. The long title may, for example, include the words "to make further provision about" a particular subject, but this is merely a convenient shorthand, and does not imply that any amendment about that subject would be relevant to the Bill. Similarly, it is commonplace for the long title of a large Bill to end with the words "and for connected purposes" but this does not open up the Bill to amendments which would, in the absence of those words, be irrelevant to the other purposes of the Bill.
- 4.14 As a rule-of-thumb, where a Bill has only one or two purposes when it is introduced, any additional purpose is unlikely to be relevant; but if the Bill has three or more purposes when it is introduced, it may be relevant to add a further purpose by amendment, so long as the new purpose is no more remote in terms of subject-matter from the existing purposes than those purposes are from each other. Some Bills (sometimes called "miscellaneous provisions" Bills) consist of a large number of distinct purposes within a broad area of policy (or with a general common theme). With such a Bill, it is usually possible to introduce by amendment any number of new purposes within that area of policy (or theme). However, even with such a Bill, amendments to introduce purposes in another area of policy altogether (or not sharing the theme) would not be relevant.
- 4.15 The following are examples of the sorts of rulings on relevance that might be made:
- In relation to a Bill about the administration of justice (the organisation of the courts, avenues of appeal etc.), amendments that would create new offences (except offences directly concerned with the administration of justice) would normally be irrelevant – because they would make it into a Bill about what the law should be, rather than just about how it should be administered.
- In relation to a Bill about school education, amendments to impose similar obligations (e.g. in relation to class sizes) on providers of nursery education would normally be ruled irrelevant.
- In relation to a Bill the purpose of which is to deregulate in a particular area, amendments to regulate would normally not be relevant. (But if the Bill completely or substantially deregulated, then amendments to impose regulation at a lower level than before might be relevant – since the Bill's overall purpose of reducing regulation would still be achieved.)
- 4.16 As well as being relevant to the Bill as a whole, each amendment must be relevant to the provision to which it is made. An amendment to a section, for example, is admissible only if it is relevant to the subject matter of the section. Similarly, an amendment to leave out a section and insert a new section in its place is appropriate only where the new section has essentially the same purpose as the old (but uses a different form of words to achieve that purpose). If the new section is doing something quite distinct, two amendments should be lodged, one to leave out the existing section, the other to insert the new one the point being that the

Parliament (or committee) should, in that case, have the option of agreeing to one amendment without the other. (Similar considerations apply to amendments to leave out smaller provisions such as subsections and insert new such provisions in their place.)

- 4.17 Where an amendment is relevant to the Bill but not to any existing section (or schedule), it should be put in the form of a new section (or schedule). In that case, care must be taken to place it appropriately in the Bill. In particular, if the Bill is divided into Parts and Chapters or under italic headings, a new section must be placed under a Part, Chapter, or italic heading to which it is relevant (which is easier if one of those headings is "General" or "Miscellaneous"). If the new section is not relevant to any existing heading, it may be necessary to prefix it with its own heading.
- 4.18 Under Rule 9.10.9, an amendment to insert a new section or schedule should "normally" specify where it is to be inserted. "Normally" here means "wherever possible". For any new section/schedule amendment that is admissible, it must be possible to find a place in the Bill where it can be relevantly inserted and it should be lodged as an amendment to that place in the Bill if possible. But if proceedings at the Stage in question have already progressed beyond the last place where the new section or schedule could relevantly be inserted, then the amendment may be lodged as an amendment to an unspecified place in the Bill. Such an amendment would be printed under the heading "At an appropriate place in the Bill".

(c) Consistency with general principles

- 4.19 This criterion is intended to rule out so-called "wrecking amendments" amendments that would reverse, substantially alter or render ineffective a principal purpose of the Bill. The rationale for this rule is that, by the time the Bill comes to be amendable, the Parliament has already voted at Stage 1 in favour of its general principles. The purpose of Stage 2 (and of amendments at Stage 3) is to subject the Bill to detailed scrutiny and to improve the means by which it gives effect to those general principles. The proper course, therefore, for members who oppose the basic thrust of the Bill is to oppose the motion to approve the general principles of the Bill at Stage 1 or, if any amendments agreed to at Stages 2 and 3 are insufficient to make it acceptable in their view, to oppose the motion to pass the Bill at the end of Stage 3. What they should not do is attempt, by amendment, to frustrate the general principles of the Bill already agreed to by the Parliament.
- 4.20 In determining whether an amendment would "wreck" the Bill, a similar rule-of-thumb to that described under *Relevance* above is employed. That is, where a Bill is introduced with only one or two principal purposes, an amendment to leave out (or substantially alter) that purpose or one of those purposes would not normally be admissible; but where the Bill was introduced with three or more purposes, it may be possible to leave out by amendment any one of them without wrecking the Bill. In taking a view in any particular case, account would be taken of how substantial the purpose is, the extent to which the remaining purposes would be affected by its removal (or substantial alteration) and how close it is in terms of subject-matter from the other principal purposes of the Bill. Thus it would normally be possible to remove by amendment from a multi-purpose Bill a minor purpose that stands apart from the

remainder of the Bill and on which the rest of the Bill does not depend, but not to remove a more substantial purpose which is more central to the Bill as a whole.

(d) Consistency with decisions already taken

4.21 This final criterion of admissibility is intended to prevent decisions taken on one amendment being effectively overturned by a decision on a subsequent amendment at the same Stage. Rule 9.10.11 prevents a later amendment already on the Marshalled List (i.e. which was admissible when it was lodged) being called; but this rule prevents such an amendment being lodged if the amendment with which it is inconsistent has already been agreed to. It also prevents an amendment being lodged if another amendment which would have essentially the same effect has already been disagreed to. The rationale for this rule is to prevent a member who has been defeated once on an issue simply coming back again with a similar amendment later during the same Stage. (This Rule does not prevent amendments to reverse a decision taken at one Stage being lodged for a subsequent Stage.)

Admissibility of amendments at Reconsideration Stage

- 4.22 The above four admissibility criteria apply to all amendments. In addition, however, amendments at Reconsideration Stage are admissible (under Rule 9.9.4) only if they are intended to resolve the problem which gave rise to the Law Officer's reference or section 35 order (see paragraphs 2.62–2.65 above). The reference or order is likely to specify particular provisions of the Bill, but this does not mean that any amendment to those provisions is admissible; and amendments to other provisions may also be admissible if they are necessary in consequence of amendments to those provisions which aim to resolve the problem.
- 4.23 Additional criteria of admissibility also apply in relation to Consolidation, Codification, Statute Law Repeals, and Statute Law Revision Bills (see paragraphs 3.40, 3.42 and 3.44 above).

Determining admissibility

- 4.24 The clerks aim, where possible, to ensure that amendments submitted conform to the above criteria. Where the changes that are required to make an amendment admissible are non-substantive, the clerks will make them without necessarily consulting the member as part of the process of preparing the amendment for publication. But where it is only possible to render an amendment admissible by making substantive changes to the wording, the clerk will aim to clear these changes with the member wherever possible. In any case of dispute about the admissibility of an amendment, the decision rests with the convener or (as the case may be) the Presiding Officer (under Rule 9.10.4).
- 4.25 The clerks may, if need be, hold back amendments of doubtful admissibility from printing while the issue is resolved, to avoid the situation where an amendment appears in print and is subsequently deemed inadmissible. Where an amendment is so held back, the member who submitted it will be informed. However, where an amendment of doubtful admissibility is lodged on the last day before the deadline, it may sometimes be necessary to print it before its admissibility is decided, to ensure

that notice is given. This may lead to a delay in publication of the Marshalled List until the amendment's admissibility is decided.

Lodging amendments

When amendments may be lodged

- 4.26 A Bill can be amended at Stage 2 and at Stage 3 (Rules 9.7.5 and 9.8.3). A Bill that is re-committed under Rule 9.8.6 may be further amended at that Stage and again when it returns to Stage 3 (to the limited extent specified in that Rule). A Bill may be amended at Reconsideration Stage to the extent allowed under Rule 9.9.4. At each amending Stage, amendments may not be lodged until the previous Stage has been completed. For Stage 2 amendments, this means as soon as the Parliament has decided in favour of the general principles of the Bill at Stage 1.
- 4.27 At Stage 2 and Reconsideration Stage, amendments should be lodged no later than three sitting days before the day the Stage takes place or begins (Rule 9.10.2). So for a Bill being taken at Stage 2 on a Tuesday, the last day on which amendments may be lodged is the previous Thursday. Where Stage 2 is being taken over more than one week, further amendments may be lodged for the second or subsequent weeks so long as the same three-day limit is observed. So if the second day at Stage 2 was scheduled for the following Wednesday, amendments for that day could be lodged until the Friday of the previous week. The purpose of the three-day notice period at Stage 2 is to ensure that members (and others with an interest in the Bill) have an opportunity to consider amendments in advance of the debate, and to allow the clerks adequate time to prepare the Marshalled List and advise on groupings (see below).
- 4.28 At Stage 3, amendments must be lodged no later than four sitting days before the Stage (Rule 9.10.2A). So for a Bill being taken at Stage 3 on a Wednesday, the last day on which amendments may be lodged is the previous Thursday. This longer notice period applies because the Marshalled List can only be published after the Presiding Officer has selected amendments for debate, and also because since this is likely to be the final opportunity to amend the Bill it is appropriate to ensure that adequate notice is given to anyone with an interest in it of any potentially important changes that are being proposed.
- 4.29 On each day when amendments may be lodged, the clerks will accept amendments up to 4.30 pm. The only exception is the final day on which amendments may be lodged before Stage 2 or Reconsideration Stage (or a day at either Stage), when the cut-off is 12 noon (Rule 9.10.2).
- 4.30 Amendments for a second or subsequent day of a Stage are accepted only if they are to a part of the Bill not already dealt with at that Stage. The deadline is worked out in the same way as for the first day of the Stage. The exception is where two or more Stage 2 committee meetings take place in one week or where Stage 3 takes place over two days in one week. In those circumstances there is only one deadline for all the meetings taking place over the week, and that is the usual Stage 2 or 3 deadline for the first meeting taking place in the week. So if a committee is holding two Stage 2 meetings, on Tuesday and Wednesday, the deadline for

submitting amendments to be considered on *either* day will be 12 noon three sitting days before Tuesday (i.e., the previous Thursday). And if amendments are being considered at Stage 3 on both Wednesday and Thursday then the deadline for both days will be 4.30pm four sitting days before Wednesday (i.e., the previous Thursday).] It follows from this that there is no need to prepare more than one marshalled list and list of groupings (see discussion below) per week.

- 4.31 If, at Stage 3, the debate on the motion to pass the Bill is scheduled for another day (or if proceedings are adjourned under Rule 9.8.5C) a separate deadline applies in relation to the more limited range of amendments that may then be lodged under Rule 9.8.5D. The usual rule as to Stage 3 deadlines for amendments (i.e., four sitting days prior to the date of the meeting) applies.
- 4.32 Amendments lodged after the deadline may be accepted as "manuscript amendments" under Rule 9.10.6, but only at the discretion of the convener (at Stage 2) or Presiding Officer (at Stage 3 and Reconsideration Stage). Procedures for dealing with such amendments are set out below.
- 4.33 At all Stages, members are advised to lodge amendments as early as possible before the deadline. This ensures that other members are given maximum notice of what is proposed, thus allowing them a better opportunity to prepare for the debate. Greater notice of an amendment gives members of other parties more opportunity to consider whether they can support it and also allows the member who lodged the amendment to enter into a dialogue with those other parties about possible changes of wording that might make the amendment capable of receiving those parties' support.
- 4.34 Members are also encouraged to contact the relevant clerks as early as possible to discuss amendments they propose to lodge. By giving the clerks more time to assist members with the wording of their amendments, this reduces the chances of drafting problems that might prevent the amendments being acceptable to other parties.
- 4.35 Section J of the Business Bulletin sets out lodging deadlines for all Bills in progress, where these are known.

Where amendments are lodged

4.36 Amendments to Bills are lodged with the clerks to the committee dealing with (or which has dealt with) Stage 2. Section J of the Business Bulletin will state which committee is dealing with which Bill in progress.

Which parts of the Bill may be amended

4.37 Any part of the "legislative text" of the Bill (i.e. the words that have legal effect) may be amended. This includes every section and schedule of the Bill and the long title (though normally only in consequence of amendments made elsewhere). The short title may be amended where it is cited in the Bill itself (usually in the final section).

- 4.38 The parts of the Bill that may not normally be amended are Part and Chapter titles, italic cross headings, section or schedule titles, or any of the numbers assigned to any of the component parts of the Bill. (Cross-references in the text of one provision to another provision may, however, be amended.) The principle behind this distinction is that the Parliament must decide what the legislative effect of the Bill is to be, and these other elements can then be adjusted administratively to reflect what the Parliament has decided. So, for example, an amendment to change substantially a particular section might necessitate a change to the italic heading above it, so that the heading continues to describe accurately the provisions that fall under it. If the italic heading is not adjacent to the section in question, a separate amendment to the heading would be inadmissible; but if the two are adjacent, an amendment to leave out the section and insert a new section in its place might replace the heading as part of the amendment.
- 4.39 Similar considerations apply with punctuation and numbering. For example, an amendment which involved breaking up a subsection into two paragraphs, (a) and (b), might only insert the (b) (and the text of that paragraph), leaving the (a) to be inserted later as printing. A separate amendment intended to do nothing more than insert the (a) would normally be permitted only if it was necessary to make clear the effect of the principal amendment.
- 4.40 Amendments to amendments are permitted (Rule 9.10.7), and are subject to the same rules as other amendments, save for minor differences of style.

Who may lodge amendments

- 4.41 Any MSP may lodge an amendment not just members of the relevant committee. And there is no limit to the number of amendments that each MSP may lodge.
- 4.42 The convener of a committee may lodge (or support) an amendment on behalf of the committee if the committee has made a formal decision during a meeting to that effect. Such "committee amendments" are printed in the name of the convener followed by the words "(on behalf of the [name] Committee)". There is no procedural distinction between committee amendments and amendments in the name of an individual member, but the stated endorsement of the committee may be helpful as an indication of cross-party support.²⁴
- 4.43 As with other items of business, amendments (under Rule 17.4) may be lodged in writing by the member; on his or her behalf by a third party whom the member has authorised in writing; or by e-mail if the member has authorised the lodging of business from his or her e-mail account.
- 4.44 Each amendment must be in the name of just one member, but may also have up to four supporters or five if one is the member in charge of the Bill (Rule 9.10.3). Supporters' names need not be attached to the amendment when it is submitted they may be added at any time when that amendment could be lodged

²⁴ The principle of Committee amendments was agreed to by the Procedures Committee at its 4th Meeting, 2001.

- (Rule 9.10.3). (Where supporters' names are added to an amendment that is in print, the amendment is not reprinted just because new names have been added. The additional names will, however, appear when the Marshalled List is printed.)
- 4.45 Part of the rationale for allowing members to support amendments is that member B cannot lodge a particular amendment if member A has already done so but B may add his or her name in support of A's amendment. An amendment may be withdrawn in advance of the Stage by the member who lodged it, but only with the consent of all supporters and only during the same period when supporters' names may be added (Rule 9.10.7A). So by adding his or her name to A's amendment, B can prevent the amendment being withdrawn in advance of the Stage, and so be assured of the opportunity (under Rule 9.10.14) to move it if A does not. Where the member who lodged an amendment seeks to alter it (or lodge a new version in substitution), the consent of any supporters to the original amendment is only required if the alteration is substantial (or the new version substantially different). If any such supporters' consent has not been obtained, their names must be left attached to that version of the amendment (which cannot therefore be withdrawn in advance of the Stage).
- 4.46 Executive amendments are prepared by the OSPC drafters and lodged in the name of the relevant Minister, but other members may add their names as supporters just as with non-Executive amendments.
- 4.47 There is no obstacle to members lodging amendments to their own Bills indeed, such "member-in-charge amendments" are common. Members should not, however, normally lodge amendments to their own amendments the better course usually being to lodge a revised amendment in place of (or in addition to) the original.

Correcting amendments after lodging

- 4.48 All members and others with an interest in a Bill are advised to check Section G of the Business Bulletin every day during the period when amendments may be lodged, to ensure they have seen and considered all amendments lodged to the Bill. It is particularly important that members who lodge amendments check them carefully in the next day's Bulletin. The clerks do often make minor changes of wording and structure to ensure that amendments are, so far as possible, consistent with the structure and drafting style used in the Bill. As noted above, clerks make every effort to clear changes of substance with members before sending them for printing, but this is not always possible and occasionally the purpose of an amendment may be misunderstood. It is the responsibility of members to ensure that amendments published in their name achieve the intended purpose.
- 4.49 Members who wish to correct amendments that have been published should contact the relevant clerks as early as possible. If the corrections are substantive (i.e. non-trivial) but do not change the overall purpose of the amendment, the corrected amendment will appear on the Marshalled List marked with an asterisk (*). This alerts other members to the fact that the amendment is not the same as the version previously published with that amendment number. (New amendments i.e. those not previously published are also asterisked on the Marshalled List.) Where

a more fundamental correction is sought, a new amendment must be lodged and is printed in the Bulletin as "in substitution for" the earlier amendment. This procedure ensures that maximum notice is given of the new amendment, while simultaneously alerting other members to the fact that the earlier amendment has been superseded.

4.50 It follows that major corrections (i.e. those which would require an "in substitution" amendment) can only be made up to the deadline for lodging amendments at that Stage, whereas minor corrections may be made at any time until the Marshalled List is finalised. Either way, members should notify the clerks of all corrections as early as possible, in order to ensure that the Marshalled List shows amendments as the member lodging them would wish them to appear. The published Marshalled List is treated as a definitive document – that is, the only amendments that may be moved and agreed to (aside from any manuscript amendments that may be lodged) are those printed on the List.

Daily lists and Marshalled Lists

Rules on marshalling

4.51 The preparation of both daily lists of amendments and Marshalled Lists is based on rules determined by the Clerk of the Parliament (under Rule 9.10.8). These rules were announced in Business Bulletin No.46/1999 (2 September 1999). They are subject to the "order of consideration" – that is, the order in which the sections and schedules of the Bill are to be considered. At Stage 2, the order of consideration is the order set out in Rule 9.7.4, or such other order as is decided by the committee under that Rule; at Stage 3, it is either the order in which the sections and schedules appear in the Bill or such other order as the Parliament has decided under Rule 9.8.5. The long title is always considered last.

4.52 The rules are as follows:

An amendment to insert a new section or schedule before or after an existing section or schedule is taken before or after (as the case may be) amendments to the existing section or schedule.

An amendment to leave out a section or schedule and insert a new section or schedule in its place is taken after all amendments to the section or schedule, but before any amendment to leave out the section or schedule. An amendment to leave out a section or schedule is, in turn, taken before any amendments to divide or move the section or schedule.

Within each section or schedule, amendments are considered in the order determined by the first point in the section or schedule to which they relate, subject to the following rules:

 Amendments to leave out a block of text within a section or schedule (such as a subsection or paragraph) are taken before any amendments to that block of text.

- Amendments to leave out words are taken before any amendments to leave out words beginning at the same place in the Bill and insert other words in their place.
- Amendments to insert new words at the end of the last line of a block of text are taken before amendments to insert new blocks of text at the end of that line; and amendments to insert new blocks of text at the same place in the Bill are taken in the order in which those blocks of text would appear in the Bill if all such amendments were agreed to.

Where the order of amendments to the same place in the Bill is not determined by the above rules, they are normally taken in the order in which they are lodged, but with precedence given to those lodged by the member in charge of the Bill.

4.53 Thus amendments would be marshalled as follows:

Section 12

In section 12, page 10, line 8, leave out subsection (1)

In section 12, page 10, line 8, leave out subsection (1) and insert—

<(1) Text of new subsection.>

In section 12, page 10, line 8, leave out <word>

In section 12, page 10, line 8, leave out <word> and insert <word>

In section 12, page 10, line 8, after <word> insert <word>

In section 12, page 10, line 8, at end insert <words>

In section 12, page 10, line 8, at end insert—

<() text of new paragraph;>

In section 12, page 10, line 8, at end insert—

<() Text of new subsection.>

Leave out section 12 and insert—

<Title of new section

Text of new section.>

Leave out section 12

Divide section 12 into two sections, the first (*Title of first new section*) to consist of subsections (1) and (2) and the second (*Title of second new section*) to consist of subsections (3) to (5)

Move section 12 to after section 14

After section 12

After section 12, insert—

<Title of new section

Text of new section.>

Daily lists of amendments

4.54 Where possible, all admissible amendments lodged on a particular day are printed in Section G of the following day's Business Bulletin under the short title of the relevant Bill. Notice of amendments withdrawn is also included. The amendments in each daily list will normally appear in "marshalled" order, numbered consecutively from top to bottom of the list (except for amendments to amendments, which are numbered by reference to the amendment to which they relate, so amendments to amendment 3 are 3A, 3B, etc.). Amendment numbers on a second daily list begin where the numbers on the first such list left off.

Marshalled Lists

- 4.55 Normally, by the time a Marshalled List is printed, all the amendments to be included will already have been printed in a daily list. The Marshalled List is therefore simply an amalgamation of the various daily lists (minus any amendments that have been withdrawn). At Stage 3, however, the Marshalled List contains only those amendments that have been selected for consideration by the Presiding Officer (Rule 9.10.8).
- 4.56 Because each daily list may contain amendments scattered throughout the Bill, and because amendment numbers do not change once assigned, Marshalled Lists are not numbered consecutively but in an apparently random order. Although this may at first appear odd, it has significant advantages. The fact that each amendment is numbered as soon as it first appears in print makes it easier for members and others with an interest to follow the progress of the amendment which is only possible because amendment numbers do not change once assigned.
- 4.57 Marshalled Lists are numbered by reference to the relevant print of the Bill. So the first Marshalled List at Stage 2 of SP Bill 3 will be SP Bill 3–ML1, the second ML2, and so on. If the Bill is amended at Stage 2 and reprinted as SP Bill 3A, the Stage 3 Marshalled List will be SP Bill 3A–ML; if the Bill is not amended, the Stage 3 Marshalled List will be numbered in the same sequence as those at Stage 2.

Grouping of amendments

- 4.58 The purpose of grouping amendments is to minimise repetition by debating together amendments on particular topics and to allow the committee (or the Parliament) the maximum choice. There are four principal grounds on which amendments are grouped together.
- Amendments that stand or fall together, or are to a lesser extent dependent on each other, are grouped. For example, there might be a series of amendments throughout a Bill to change the name of an organisation, where there would be no

point in agreeing to any one such amendment without also agreeing to all the others, and where a single debate on the issue is all that is required. Another clear case would be an amendment to insert a new schedule and the amendment to insert a provision introducing the schedule, where the Bill would be defective if it included one and not the other.

A less clear case might involve an amendment to insert a new section, and a number of other amendments to insert cross-references to that new section in various existing provisions of the Bill. It might be that the new section would be ineffective without at least some of the other amendments, but members who support the new section might differ on which of the existing provisions of the Bill should be made subject to its procedures, and hence which of the associated amendments should be agreed to.

• Amendments that represent alternative ways of addressing the same issue, or are otherwise closely related in terms of the issue they raise, are grouped. Here the clear case involves directly competing alternatives, where it would not make sense to agree to all of the amendments and where the issues raised are identical: for example, where the Bill makes provision for a specified period of notice (e.g. one month) and there are amendments to substitute different periods (e.g. two months, three months, six months).

A less clear case would be where there are various amendments to a particular provision which are related only by the fact that their subject matter is determined by the provision. Some might make major changes to the provision, others only small changes; some might be mostly technical in nature (e.g. to improve the drafting), whereas others might involve major changes of policy. In this situation, there are likely to be various acceptable ways in which the amendments could be grouped.

- Amendments to amendments are almost always grouped with the amendments to which they relate.
- Similarly, amendments that would be pre-empted by other amendments (see paragraph 4.64) are never grouped in such a way that they could be pre-empted without ever having been debated. In practice this usually means that amendments are grouped with the amendments that would pre-empt them.

4.59 The groupings are determined by the convener or Presiding Officer (Rule 9.10.12). The clerks, in preparing a draft, may seek the views of members and the Executive, but the convener's or Presiding Officer's decision is final. Lists of groupings are prepared no later than the day before the relevant meeting of the committee or the Parliament and are available in advance of the meeting in the Document Supply Centre. Like Marshalled Lists, lists of groupings are numbered by reference to the Bill number (e.g. SP Bill 3-G1 for the first groupings list).

Selection of amendments

4.60 There is no selection of amendments at Stage 2, but at Stage 3 the Presiding Officer has the power to select which amendments of those that have been lodged

(and are admissible) are to be taken (under Rule 9.8.4). The decision of the Presiding Officer on selection is final.

- 4.61 The purpose of selection is to ensure that proceedings on the Bill can be completed in a reasonable time and to avoid repeating unnecessarily discussion of issues fully debated at Stage 2. In making the selection, the Presiding Officer aims to apply the following criteria (striking a balance between them, if need be).
- Trivial amendments or amendments that are technically defective (e.g. "probing" amendments which, if agreed to, would leave the Bill in need of further amendment) should not be selected, to allow the debate to concentrate on the more important issues and on amendments that could improve the resulting legislation. Selection should not, however, reduce the range of important issues considered.
- Amendments which raise issues fully considered at Stage 2, particularly where
 the Stage 2 debate made it obvious that there was little real merit in the
 amendment or little support for it, should not be selected. The fact that an
 amendment was disagreed to on division at Stage 2 is less important than the
 nature of the issue raised, and the overall level of support expressed in debate
 should be the guide.
- An amendment that was fully discussed may, however, be selected if—
 - its wording has been revised to take account of criticisms made at Stage 2, where those criticisms were (or may have been) decisive in its not being agreed to at that Stage;
 - the member in charge (or, if different, the Minister) gave an undertaking to reconsider the issue, particularly if no member-in-charge (or Executive) amendment has been lodged;
 - the response by the member in charge (or, if different, the Minister) to the earlier debate left genuine doubt as to the attitude of the member in charge (or the Executive) to the issue; or
 - there has been (or appears to have been) a change of Executive policy on the issue, or a relevant material development, such that, had it applied when the Stage 2 debate took place, a different result might have obtained.
- The selected list should continue to reflect the major concerns of all political parties and of individual MSPs who have lodged amendments.
- Selection may be used to reduce the number of alternative or overlapping amendments. But there need be no selection among a number of valid alternative amendments (which would in any case be grouped and debated together).

- All Executive amendments are normally selected. With Members' Bills or Committee Bills, member-in-charge amendments are also normally all selected.
- Committee amendments (i.e. amendments lodged by the convener of a committee on behalf of that committee – see paragraph 4.41 above) are normally selected.

Proceedings on amendments - all Stages

4.62 The way in which proceedings on amendments unfold is similar at all Stages, in committees and in the Parliament. In the description that follows, references to the convener should be read as references to the Presiding Officer, and references to the committee as references to the Parliament, in the context of proceedings at Stage 3 or Reconsideration Stage. Guidance that applies only at Stage 2 is set out at the end.

Calling amendments

4.63 It is for the convener to call amendments in turn from the Marshalled List. Each amendment is called – and, if moved, disposed of – individually in its place in the list.

4.64 The only situation in which an amendment on the Marshalled List may not be called is where it would be inconsistent with a decision already taken at the same Stage (Rule 9.10.11). Instances of this are described as "pre-emptions". This will arise in a case where one amendment would, if agreed to, remove the text on which the later amendment relies. An amendment to leave out subsection (1), for example, would pre-empt any amendment to that subsection. Pre-emptions may also arise with amendments aiming at the same result but at different points in the Bill, where agreeing to the later amendment would be inconsistent with disagreement to the earlier. (This would not, however, be treated as a pre-emption in any case where the later amendment may be regarded as the better means of achieving the shared intention). In any instance of pre-emption the convener will, before calling the earlier amendment, draw the committee's attention to the implications for the later amendment of agreeing to the earlier amendment.²⁵

4.65 However, this rule does not preclude all of a number of alternative amendments to the same place in the Bill being taken. Amendments to a provision setting a time limit (of, say, one month) might variously propose changing that limit to two, three and six months. Agreement to the first of those amendments would not prevent the others also being taken – since agreement to the first may be taken to involve only a decision that two months is better than one (which does not preclude a decision that three or six months is better still). Amendments of this sort (i.e. two or more amendments replacing the same text with different text) are referred to as "direct alternatives".

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²⁵ The published groupings will also provide notification of any pre-emptions, as well as of direct alternatives (see paragraph 4.65).

Moving amendments

4.66 If the member in whose name an amendment appears does not wish to move it, he or she should simply say "Not moved" when it is called. In that event, any other member present (whether or not a member of the committee) may move the amendment (Rule 9.10.14). The suggested form of words for moving an amendment – which is usually done at the end of the speech in support of it – is "Accordingly, I move amendment X". The convener then calls other members to speak on the amendment. The member in charge of the Bill (for Executive Bills, the Minister) – and any other Minister present – has a right to speak; other members must rely on being called by the convener (Rule 9.10.13). Except in relation to his or her own amendments, the member in charge is normally the last speaker called before the mover of the amendment. At the end of the debate, the convener gives the member who moved the amendment an opportunity to reply to points made by other speakers, and to indicate whether he or she wishes to press for a decision on the amendment.

Withdrawing amendments which have been moved

4.67 At any time after an amendment is moved, but before the question is put, the member who moved it may seek to withdraw it (Rule 9.10.15). In that event, the convener must ask the committee whether it agrees to the amendment being withdrawn. If any member dissents, the amendment cannot be withdrawn and the question on it must be put. If no member dissents, the amendment is withdrawn, and the next amendment is immediately called.

Putting the guestion and voting on amendments

4.68 After the debate is concluded, the convener "puts the question", normally by saying "The question is that amendment X be agreed to. Are we all agreed?" Members who agree say "Yes", those who disagree say "No". If no member disagrees, the amendment is agreed to. If any member of the committee disagrees to the question on an amendment, the convener will call a division.

4.69 At Stage 2, divisions normally take place by a show of hands (Rule 11.8.3). The convener says "Those in favour?", "Those against?", "Those abstaining?", ensuring that hands are raised for long enough in each case to allow the clerks to note the names of those voting. At Stage 3, or in a Committee of the Whole Parliament at Stage 2, the electronic voting system is normally used. The normal practice is to have a five minute suspension following the first instance of a pressed amendment being objected to (thus precipitating a division), followed by a 30 second division. (If disposal of amendments at Stage 3 extends over both a morning and an afternoon or over two or more days, there will be a five minute suspension for the first division of each morning and afternoon in which amendments are considered).

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²⁶ Alternatives to a show of hands would be the Parliament directing, at the request of the Committee that the Committee use the electronic voting system for divisions at Stage 2 (as happened for Stage 2 of the Planning etc (Scotland) Bill (SP Bill 51 (2005)) or a committee member requesting a roll-call vote. If the convener agrees to the request, the committee votes by the convener calling members in alphabetical order, each responding "Yes", "No" or "Abstain

After the first division, a one-minute voting period is allowed for the first division after a debate on a group. All other divisions are for 30 seconds.

Amendments in groups

- 4.70 As explained above, amendments are grouped in order to avoid repetition and to allow a single debate on the issue raised by a number of amendments. (Some groups may consist of a single amendment.) But grouping does not affect the requirement that each amendment is called, moved and disposed of in its place in the Marshalled List. The result is that a lengthy debate on a group of consecutive amendments may be followed by the disposal of those amendments in quick succession.
- 4.71 The debate on the group normally takes place on the first amendment in the group. (Where amendments have been lodged to the first amendment in the group, the debate normally takes place on the first such amendment to that amendment see below.) If the first amendment in the group is not moved, the debate is deferred until the first occasion on which one of the remaining amendments in the group is moved. The debate on a group is the only opportunity members have to comment on any of the amendments in the group (see paragraph 4.73 below). Members should therefore ensure that their speech relates to all the amendments in the group on which they wish to comment.²⁷
- 4.72 Where amendments are debated in a group because they are so closely related that they must stand or fall together then, if the first is agreed to, it can be expected that the others will also be agreed to when they are called. But each must be called and moved before it can be agreed to. (Similarly, if the first such amendment is disagreed to, it can be expected that the others will not be moved when they are called.) A member who has lodged a number of closely related amendments must therefore ensure that he or she is present (or has a supporter present) not only to move the first in the group, but also if the first is agreed to to move the others when they are reached later in the proceedings. In this connection, it should be borne in mind that grouped amendments may be scattered throughout the Marshalled List and so be taken on different days of a long Stage 2.
- 4.73 Where an amendment is called having already been debated earlier, it cannot be debated again (Rule 9.10.12). When a previously-debated amendment is called, the member concerned need simply say "Moved" or "Not moved", but may also make a brief comment to explain why the amendment is being moved or not, as the case may be. However, it is not appropriate to make a speech at this point since that would be unfair on other members who might wish, but be unable, to reply to substantive points raised.²⁸
- 4.74 Where a number of previously-debated amendments are consecutive in the Marshalled List, they may be moved *en bloc*. (At Stage 2, because of the requirement to agree each section and schedule, this can only be done if the

See the announcement in Business Bulletin No. 87/2001 (30 May 2001).

²⁷ While the calling of speakers in a debate is at the discretion of the convener, members should generally assume they will be called only once in each debate.

amendments are to the same section or schedule.) If no member of the committee objects, a single question on those amendments may also be put, but if any member does object, the amendments should be disposed of individually. If it is clear that the member who lodged a sequence of previously debated amendments does not wish to move them, they need not be called individually. However, if any other member present (whether or not a member of the committee) indicates a wish to move such an amendment not moved by the member who lodged it, they may exercise their right to do so.

Amendments to amendments

4.75 Where there are amendments to an amendment, these will usually be grouped together. The procedure for disposing of them is similar to that described above, except that the amendments to the original amendment must be disposed of before that amendment is disposed of (Rule 9.10.10). Taking as an example an Executive amendment (35, say) to which two non-Executive amendments (35A and 35B) have been lodged, the procedure would be as follows:

- The convener invites the Minister to speak in support of and move amendment 35.
- Immediately, the convener invites Member A to speak in support of and move amendment 35A.
- The debate then takes place on amendment 35A. The convener calls other speakers including Member B (the proposer of amendment 35B). The final speakers are the Minister (to wind up on amendment 35) and Member A (to wind up on amendment 35A and on the debate in general). At this point, Member A has the opportunity either to press amendment 35A to a decision or withdraw it (with the agreement of the committee).
- If the amendment is pressed, the convener puts the question "That amendment 35A be agreed to".
- The convener calls Member B to move (or not move) amendment 35B.
- If the amendment is moved, the convener puts the question "That amendment 35B be agreed to".
- Finally, the Minister has the opportunity either to press amendment 35 to a decision or withdraw it (with the agreement of the committee). If it is pressed, the convener puts the question "That amendment 35 (or amendment 35 as amended) be agreed to".

Manuscript amendments

4.76 Amendments lodged after the normal deadline established by Rule 9.10.2 or 2A are referred to as "manuscript amendments". All late amendments fall into this category, whether they are lodged only minutes after the deadline or immediately before the point in proceedings on the Bill when they would have to be moved. Like any other amendment, a manuscript amendment must be lodged in writing with the

clerk, and is subject to the criteria of admissibility set out in Rule 9.10.5. A manuscript amendment at Stage 3 is also subject to selection by the Presiding Officer under Rule 9.8.4.

4.77 A manuscript amendment may be moved only with the convener's agreement. The convener gives that agreement only if he or she "considers it is justified, in the circumstances, taking account of the disadvantages of lack of proper notice" (Rule 9.10.6). In applying that test, the convener should keep in mind that, although there may be a justification for manuscript amendments in particular circumstances, their frequent use erodes the effectiveness of the normal deadline, the purpose of which is to ensure that adequate notice is given of all amendments, both to members and to outside parties with an interest in the Bill. The disadvantages of reduced notice depend on the scope and complexity of the amendment, and are generally greater the less notice that is given – particularly at Stage 3 (or Reconsideration Stage), normally the final opportunity to amend the Bill. There is a particular disadvantage in taking a last-minute manuscript amendment at a meeting of the Parliament (or a Committee of the Whole Parliament), given the greater disruption that a suspension causes to Chamber proceedings. A last-minute Stage 3 (or Reconsideration Stage) manuscript amendment may still be justified, however, if it would, for example, correct a defect in the Bill (such as a missed consequential) that had only just come to light. Agreement should not normally be given to move a manuscript amendment which could equally well have been lodged before the deadline. But where a nonmanuscript amendment was lodged immediately before the normal deadline, and so is only available in print after that deadline has passed, agreement should normally be given to move any manuscript amendments which are lodged directly in response to that amendment, and on the first available day thereafter.25

4.78 If a manuscript amendment is lodged in time for it to be included in the Marshalled List, it will be printed with an asterisk beside its number to indicate that it is a manuscript amendment. If it is lodged after the Marshalled List has been finalised, the amendment will normally be made available in print separately before it is moved. If the amendment is lodged during the proceedings, it may be necessary for the meeting to be suspended to allow the amendment to be made available. A manuscript amendment to leave out a section or schedule, however, may be moved without printed copies being made available to members.

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²⁹ An example of where an amendment might be lodged "in response" is as follows. Member A lodges (in advance of the deadline) an amendment to a particular subsection. On the final day, member B lodges an amendment to replace that subsection with a newly-worded version, but without incorporating the change proposed in A's amendment. A then lodges a manuscript amendment to B's amendment to make the same change of wording in the new version of the subsection that A's first amendment would have made to the original subsection. Note that, an amendment may be directly "in response" to another amendment without being an amendment to it – that is, it could equally well be framed as a separate amendment to the Bill.

Proceedings on amendments - Stage 2

Agreement to sections and schedules

- 4.79 Rule 9.7.6 requires every section and schedule to be agreed to at Stage 2. The question is put in the form "That section/schedule x be agreed to". (No motion is required for this see Rule 9.7.3.) Before the question is put, the convener may give members the opportunity to raise any issues relevant to the section or schedule that have not been adequately discussed during consideration of amendments to it.
- 4.80 The question on a section or schedule is *only* put if there is no amendment to leave out the section or schedule. In other words, any substantive decision on whether the section or schedule should remain in the Bill is taken on an amendment. If an amendment to leave out the section or schedule is disagreed to, the question that the section or schedule be agreed to is not put (under the final sentence of Rule 9.7.6). And if such an amendment is agreed to, it is no longer possible to agree to the section or schedule, since it no longer exists.
- 4.81 If no amendment to leave out the section or schedule has been lodged in advance, any member may lodge a manuscript amendment to leave it out. So long as such an amendment is admissible, the convener should always consent to it being taken. But, in the case of a section containing provisions central to one of the principal purposes of the Bill, it is important to note that a manuscript amendment to leave it out would be inadmissible under Rule 9.10.5(c) which precludes "wrecking" amendments.
- 4.82 Because the only mechanism available to leave a section or schedule out of a Bill is by means of an amendment, putting the question on each section and schedule is, in practice, a formality. There is no obligation on members to agree when the question is put on the section or schedule, but disagreement does not lead to a division and cannot result in the omission of the section or schedule from the Bill.
- 4.83 Where there is a section or schedule to which no amendments have been lodged, the convener puts the question on that section or schedule at the appropriate point (i.e. immediately after the last amendment to the previous section or schedule has been disposed of) (Rule 9.7.6). Where there are two or more consecutive sections or schedules to which no amendments have been lodged, a single question that they be agreed to may be put (Rule 9.7.3). (But a manuscript amendment to leave out more than one section or schedule is not permitted separate amendments would be required.)
- 4.84 Although all amendments to a section or schedule are taken before the question is put on the section or schedule, amendments to divide or move the section or schedule are taken *after* the section or schedule has been agreed to. This is in order to allow the substance of the section or schedule to be finalised before deciding any issue of where in the Bill the section or schedule should go.

Consideration of the long title

4.85 At the end of Stage 2, any amendments to the long title are disposed of and the question is then put "That the long title be agreed to".

Proceedings on amendments – Stage 3

The timetabling motion

4.84 At Stage 3, it is usual for the Bureau to propose a motion (under Rule 9.8.4A) setting out time limits by which the debate on one or more groups must be concluded. Such a motion is moved before Stage 3 begins. The purpose of the timetabling motion is to seek to ensure a reasonable distribution of debating time, by anticipating which groups are likely to be most and least debated.

Presiding Officer's discretion to depart from the timetabling motion

- 4.85 The Presiding Officer will always seek to adhere to the time limits set out in the timetabling motion. However the Presiding Officer has a power (under Rule 9.8.4A) to depart from any time limits in the motion, to such extent as is considered necessary, for any one of three reasons:
- to enable the following members to speak: the member moving the amendment leading the group, any other member intending to move an amendment in the same group; the member in charge of the Bill and (if different) any member of the Executive or junior minister present at proceedings;
- as a consequence of the non-moving of an amendment leading to a change in the order in which groups are debated; or
- to prevent any debate on a group of amendments that has already begun from being unreasonably curtailed.
- 4.86 Both the first and third reasons set out above have some similarities in that they are intended to address circumstances where there is a danger of the timetabling motion forcing the debate to come to a premature end (or not even to take place at all). The first reason is intended to ensure that those having a right to speak to the amendments (under Rule 9.10.13) are able to exercise that right, and that the "bare bones" of a debate on a group is therefore always possible. The third reason, unlike the first, can only be relied upon if the debate had already begun before the deadline was reached. It is likely to apply in respect of a particularly important group, where only a truncated debate has been possible within the deadlines set in the timetabling motion. The Presiding Officer may consider that it is important to allow the debate to continue, whether to enable the member leading the debate (and who has therefore already exercised his or her right to speak) to sum up or to allow the debate to be opened up to members other than those given a right to speak by standing orders.
- 4.87 The second reason listed above falls into a slightly different category: it addresses the specific, uncommon circumstance of the member called to speak to the lead amendment in a group not moving it, with no other member present doing

so either. This has the potential (depending on which amendments immediately follow in the Marshalled List) to muddle the deadlines set out in the timetabling motion so that they apply to the "wrong" groups of amendments. The second reason allows for corrective action to be taken.

4.88 If the Presiding Officer invokes the power to depart from any time limit under Rule 9.8.4A, this has no effect on subsequent time limits in the timetabling motion: they must continue to be adhered to, unless of course the Presiding Officer uses his or her discretion under the rule again. (In theory, the Presiding Officer can use the discretion as often as is considered necessary.)

Extending time limits in a timetabling motion

- 4.89 Whereas Rule 9.8.4A allows departure from deadlines set out in the timetabling motion under certain circumstances, it would not in itself lead to more Parliamentary time being spent on Stage 3 overall. Instead, its purpose is to allow the reallocation of the total time allotted at Stage 3 so as to give the Presiding Officer greater flexibility to manage the debate than the timetable would otherwise allow. So, any time "gained" for debate on any grouping must be "lost" either in debates on subsequent groupings or in the debate on whether to pass the Bill, or in both.
- 4.90 Rule 9.8.5A may be invoked, however, where it is considered that more debating time on amendments is needed overall at Stage 3. The Rule applies at any time during Stage 3 proceedings subject to a timetabling motion (i.e. during the debate on amendments, but not during the debate on whether to pass the Bill), and permits any member present to seek to move a motion without notice proposing that the next time limit to arise be extended by such amount of time (which cannot exceed 30 minutes) as the member specifies. Such a motion, which cannot be debated or amended, may only be taken with the agreement of the Presiding Officer. Any number of such motions may be sought and moved, but the total amount of time by which a Stage 3 may be extended may not exceed 30 minutes. Additionally, where a motion to extend a particular time limit has been disagreed to, no further motion to extend that time limit may be moved.
- 4.91 While it is open to any member to seek to invoke Rule 9.8.5A at any time during timetabled stage 3 proceedings, the Presiding Officer may be minded to refuse a motion moved early in those proceedings, on the ground that it might yet be possible to overcome apparent timetabling problems by use of Rule 9.8.4A. If the Presiding Officer refuses a motion this would not stop a member from seeking to move another one later.

Effect of agreeing to a motion to extend the time limits in a timetabling motion

- 4.92 The effect of a motion under Rule 9.8.5A being agreed to is that the next deadline is moved forward by whatever amount of time the motion specified, as are any subsequent deadlines in the timetabling motion. (Any previous statement from the Presiding Officer under Rule 9.8.4A that a particular deadline is being departed from for a particular amount of time is superseded by the agreement to the motion.)
- 4.93 Agreement to a motion under Rule 9.8.5A has no automatic effect on any subsequent deadlines in the daily business list. This means (assuming that the

debate on the motion to pass the Bill immediately follows the debate on amendments), that any time gained in debating amendments is lost in the debate on passing the Bill. Rule 9.8.5B, however, empowers the Presiding Officer to make such alterations to the daily business list, including altering the time of Decision Time, as are considered necessary or appropriate, as a consequence of a motion under Rule 9.8.5A being agreed to. In practice, the Presiding Officer is likely to move all remaining deadlines in the daily business list forward by the same amount of time as was specified in the successful motion under Rule 9.8.5A.³⁰

4.94 The wording of Rule 9.8.5B is sufficiently elastic to allow the Presiding Officer effectively to lengthen the debate on whether to pass the Bill. But the Presiding Officer is only likely to use this discretion sparingly, where it is clear not only that there was insufficient time to debate the amendments, but that the time proposed for the debate on the whole Bill is manifestly inadequate too.

4.95 The Presiding Officer is required to notify the Parliament of any changes to the daily business list made by way of rule 9.8.5B. A clear spoken announcement would constitute sufficient notification under the rule.

³⁰ There might be rare circumstances where the Presiding Officer decides not to use this power; for instance where there is reason to believe that moving the deadlines back would cause disruption to a significant proportion of those members in attendance or substantial prejudice to the interests of a particular group represented on the Bureau

11th Report, 2006 – Review of Parliamentary Time

Correspondence about timing of debate

E-MAIL TO THE CLERK FROM HEAD OF CHAMBER OFFICE

The scheduling for debate of the Procedures Committee's report was discussed at the Bureau today. There was a clear majority view that some fairly significant rule changes were being proposed and that it would be more appropriate for the report to be considered at the beginning of Session 3 when the changes would be expected to take effect.

There was also a general opinion expressed that if the report was debated this session it would be rejected. This is because some recommendations contained in the report have insufficient support among the larger parties and that their inclination would be to vote down the report rather than unpick the motion currently lodged.

I was therefore requested to relay the Bureau's view that this debate should not be timetabled this session and to suggest that the report is left as part of the current committee's legacy paper. I would therefore be grateful if you would forward this email on to your committee members and canvass their views to allow me to report back to the Bureau next week.

I should say that Chris Ballance argued for debating the report this session and requested that the minutes record that he did not agree with the majority Bureau view.

Ken Hughes Head of Chamber Office 13 February 2007

LETTER FROM CONVENER TO PRESIDING OFFICER

As you know, I lodged a motion in January for a Procedures Committee debate on its 11th Report 2006 (Parliamentary Time) and its 10th Report 2006 (Scottish Commission for Parliamentary Audit). I had understood from the Minister for Parliamentary Business that a debate on these reports would be scheduled during February or March. I now understand that, at its meeting on Tuesday, the Bureau discussed the scheduling of the debate and was of the view that a debate on the Parliamentary Time report should not be timetabled this session.

I have consulted members of the Committee about the Bureau's discussion and we agree that it would be helpful if we had further clarification of the reasoning behind the Bureau's view. I would request that the Deputy Convener of the

Committee and I attend the Bureau meeting on Tuesday 27 February for this purpose. This would give us a better understanding of which aspects of the Parliamentary Time Report Bureau members had difficulty with and would enable us to explain the reasoning behind the report's recommendations.

I would be grateful if you would arrange for this letter to be circulated to Bureau members.

Donald Gorrie MSP Convener 16 February 2007

REPLY TO CONVENER FROM PRESIDING OFFICER

Thank you for your letter of 16 February requesting the opportunity for you and the Deputy Convener to attend the meeting of the Bureau on 27 February to discuss the proposed debate on the Committee's report on Parliamentary Time.

I am writing to invite you to attend that meeting of the Bureau and I would therefore be grateful if you could arrive at Q1.03 at 2.30 pm on Tuesday.

George Reid 20 February 2007

LETTER TO CONVENER FROM DEPUTY PRESIDING OFFICER

I am writing to you following your attendance at the Parliamentary Bureau meeting on 27 February during which the proposal to debate the Procedures Committee's report on Parliamentary Time was discussed. A majority of the Bureau agreed not to schedule time in the business programme to debate the report and instead recommended that the Committee include the matter in its legacy paper to its successor committee in Session 3.

Murray Tosh Deputy Presiding Officer 28 February 2007



Procedures Committee

Draft Annual Report 2006-07

The Committee reports to the Parliament as follows—

Introduction

1. This Report covers the work of the Procedures Committee during the Parliamentary year from 7 May 2006 to 2 April 2007.

Inquiries and Reports

Review of Parliamentary Time

- 2. Much of the Committee's focus this year was on completing its major inquiry into how effectively the time available for Chamber business is distributed and used. The inquiry reviewed the Parliament's sitting pattern, the allocation of time for different types of business, and the distribution of time within debates. A consultation report was published in September and debated in October, and the feedback used to refine the Committee's final conclusions. Also in October, two members of the Committee visited the House of Commons and met the Leader of the House, the Speaker and members of the Procedure and Modernisation Committees.
- 3. The Committee's final report, published in December, endorsed some current practice, particularly in relation to the existing sitting pattern and the amount of parliamentary time available (although it did feel that time could be better used). A number of Rule-changes were proposed, including earlier deadlines for lodging motions for major debates and Stage 3 amendments to Bills, a longer interval between Stage 2 and Stage 3, and greater flexibility in the timing of Members' Business. Other recommendations included giving all MSPs advance notice of Ministerial statements, greater notice of forthcoming business and additional briefing following Stage 2 of a Bill. The Committee also recommended trialling a new "interpellation" procedure a hybrid between oral questioning and a debate on a motion as a further mechanism for holding Ministers to account.
- 4. The Parliamentary Bureau decided not to allocate time for a debate on this report before dissolution, so the Rule-changes proposed have not so far been implemented.

Public Bills and Substitution

5. In December, the Parliament endorsed Committee recommendations about committee substitution rules and the scrutiny of public Bills. As a result, the member in charge of a Member's Bill is no longer able to participate as a member of any committee considering the Bill at Stage 1 or Stage 2, but a substitute may take his or her place. Similar provision is made for Executive and Committee Bills, and the circumstances in which substitution is permitted were revised, including to cover temporary gaps in committee memberships.

Other reports

- 6. The Parliament also debated, and approved Rule-changes recommended in, the following reports:
 - Motions and Decisions to alter the Rules governing how motions and amendments are dealt with and how decisions are taken;
 - Rule 10.3.2 ("the 20-day rule") to give the Subordinate Legislation Committee more flexibility regarding the timescale to report on statutory instruments;
 - Members' Interests (Parliamentary determinations and resolutions) to enable the Parliament to make determinations or resolutions under the Interests of Members of the Scottish Parliament Act 2006;
 - Consolidation Bill Procedure to improve the Rules on the scrutiny of Bills that consolidate existing law; and
 - Scottish Commission for Public Audit to give the SCPA equivalent rights to a committee in relation to advertising, broadcasting and recording its meetings.

Other inquiries

- 7. Three other issues referred to the Committee were considered during the year:
 - whether the Rule requiring committees to produce annual reports should be removed;
 - whether the Rules requiring committees to vote by show of hands should be amended to facilitate electronic voting during Stage 2 proceedings; and
 - whether the Rules should allow parliamentary questions to be addressed to the "Scottish Government" rather than the "Scottish Executive".
- 8. In all three cases, the Committee agreed not to recommend Rule-changes. These inquiries were concluded by correspondence, without published reports.

Bills, SSIs and petitions

9. The Committee was designated secondary committee in consideration of the Transport and Works (Scotland) Bill, introduced by the Executive to implement a

2005 recommendation of the Committee. The Bill set out a new statutory process to replace the Private Bill process for transport-related projects. In its report to the Local Government and Transport Committee, the Committee welcomed the Bill in general, but expressed a number of doubts about the level of formal Parliamentary oversight of the process.

10. No statutory instruments or public petitions have been referred to the Committee during the year.

Meetings

11. The Committee met 14 times during the Parliamentary year. No meetings were held entirely in private, but **[10*]** included items in private, all of which were to consider draft reports.

[Note:*This figure assumes that the 6 March meeting will include an item in private.]

12. All meetings were held in Edinburgh.

[Note: Total word count (excluding notes in bold): 749.]

Independent Review of Regulation, Inspection, Audit and Complaints Handling of Public Services in Scotland

Note by the clerks

Purpose

1. This paper outlines the purpose of the Independent Review of regulation, inspection, audit and complaints in terms of the handling of public services in Scotland which is being carried out by Professor Lorne Crerar. Following the Committee's inquiry into Crown appointments (2nd Report, 2006), the review is of interest to the Committee as it focuses on the governance of a number of public bodies, including the various commissions and commissioners sponsored by the Parliament. The Committee may wish to consider whether it wishes to input into the Parliament's consideration of the review.

Background

- 2. On 7 June 2006, the Scottish Executive announced an independent review of regulation, audit, inspection and complaints handling of public services in Scotland. The Review is chaired by Professor Lorne Crerar, managing partner of law firm Harper Macleod and, until recently, convener of the Standards Commission of Scotland, responsible for patrolling ethics in public life.
- 3. The Audit Committee is of the view that there would be merit in Professor Crerar engaging with the Parliament prior to publishing his report (expected in June). The Conveners' Group invited Paul Grice to its meeting on 22 February to provide an update on his discussions with Professor Crerar. Paul Grice has undertaken to monitor the progress of the review during dissolution with a view to reporting back to the Conveners' Group early next session.

The Review

- 4. The review aims to make recommendations to Ministers in June 2007 on a framework for the future external scrutiny of public services including:
 - the purpose, principles and role of effective regulation, audit, inspection and complaints handling, including clarifying who the customers and beneficiaries are;
 - governance arrangements;
 - how regulation, audit, inspection and complaints handling can better support continuous improvement in public services;
 - how regulation, audit, inspection and complaints handling can be more efficient and better co-ordinated;
 - the priorities for change; and
 - any legislative or organisational changes that would be required to implement the recommendations.

Committee action

5. Given the timescale and the fact that the meeting on 6 March will be the current Committee's final meeting of this session, members who wish to make a contribution to the Review are invited to pass any comments to the Convener (c/o the clerks) who can then pass them on to Paul Grice on the Committee's behalf.

Electronic voting in committees

Correspondence with Conveners' Group

LETTER TO TRISH GODMAN MSP, CONVENER OF THE CONVENERS' GROUP

Thank you for your letter of 18 January and the attached paper by Karen Whitefield, proposing a change to the standing orders to enable committees to use the electronic voting system during Stage 2 proceedings. This was considered at the Committee's meeting this morning.

The main concern of Committee members was that electronic voting is inherently less accountable and transparent than voting by show of hands, even allowing for the compensating measures used during the pilot (making voting records available to members immediately after the meeting and publishing them in committee minutes within 24 hours). Members were also not convinced that electronic voting had the advantage claimed for it in terms of accuracy.

For these reasons, the Committee felt that voting by show of hands should remain the normal method used in committees, including during Stage 2 proceedings, with electronic voting used only in exceptional cases where a substantial overall time-saving could be expected. On this basis, it was felt sufficient to have just one committee room suitably equipped, and that there was no need to incur the additional costs involved in equipping two further rooms (as outlined in paragraph 22 of the paper).

Given that existing procedures (Rule 11.8.3) do not prevent the use of electronic voting altogether, the Committee concluded that a sufficiently good case had not yet been made for a change to the Rules. It was, however, suggested that this position could be reviewed if a means was found of enabling full voting results (identifying how each member voted as well as the numerical outcome) to be displayed immediately after each division (as mentioned in paragraph 30 of the paper).

Should you wish to read the Committee's full discussion of this issue, I understand that the Official Report of this morning's meeting is expected to be published on Thursday.

Donald Gorrie MSP Convener 23 January 2007

10th Report, 2006 (Scottish Commission for Public Audit)

Response by the Executive

LETTER FROM MINISTER FOR PARLIAMENTARY BUSINESS

The Executive notes the Procedures Committee's Report on the Scottish Commission for Public Audit.

We have no objections to the recommendations which, if agreed, will make the public meetings of the SCPA more open and transparent.

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

Margaret Curran MSP 21 February 2007

Lead committee participation in Stage 1 debates

Letter to Conveners' Group from Presiding Officer

LETTER TO TRISH GODMAN MSP, CONVENER OF CONVENERS' GROUP

I am writing with regard to the recent pilot for representatives of lead committees to be allocated a specific slot during Stage 1 debates.

The pilot was considered at the last meeting of the Parliamentary Bureau. At the meeting, members recommended that the Presiding Officers continue to allocate time for committee representatives during Stage 1 debates and, in line with comments made by conveners, that the representative should be called immediately following the member in charge of the Bill.

Although there are no further Stage 1 debates scheduled to take place this session [*], I am minded to follow this advice and will therefore recommend to my successor that this practice be continued and that the committee representatives be called after the opening speaker.

George Reid 22 February 2007

* Note by the Clerk: It is understood that there will now be one further Stage 1 debate before dissolution, on the Cairngorms National Park Boundary Bill, and that the practice outlined in the letter will be followed on that occasion.

Sewel Convention

Report by House of Commons Scottish Affairs Committee

Note by the Clerk: Members may be interested in the following extracts from the Scottish Affairs Committee's recently-published First Report of Session 2006-07, *Work of the Committee in 2006*:

3 Inquiries

[...]

- 14. The Committee's other inquiry completed during the year was into *The Sewel Convention: the Westminster perspective*. Sewel motions, now officially called "legislative consent motions", express the consent of the Scottish Parliament to Westminster legislating for the UK on matters which might be legislated at Holyrood, although as section 28(7) of the Scotland Act makes clear, such consent is not a statutory requirement. Towards the end of 2005, we announced that we would be holding an inquiry, not into Sewel motions *per se*, but rather how Members of Parliament could be better made aware that a particular Bill before the House of Commons had been subject to a Sewel motion in the Scottish Parliament, and other possible changes to Westminster procedures suggested by the Procedures Committee of the Scottish Parliament in its own report.
- 15. In March, we held four evidence sessions. In Edinburgh, we took evidence from Mr Donald Gorrie MSP, the Convener, Ms Karen Gillon MSP, the Deputy Convener, Mr Alex Johnstone MSP, and Mr Andrew Mylne, the Committee Clerk, of the Procedures Committee of the Scottish Parliament; at Westminster, we took evidence from Ms Margaret Curran MSP, Minister for Parliamentary Business, Mr Murray Sinclair, Head, Constitution and Parliamentary Secretariat, and Mr Paul Allen, Head, Constitutional Policy Unit, the Scottish Executive and from Mr David Cairns MP, the Parliamentary Under-Secretary of State for Scotland, Dr Jim Wildgoose, the Head of Scotland Office, and Mr Glenn Preston, Head of the Scotland Office's Constitutional Branch; from Mr Roger Sands, the (then) Clerk of the House of Commons, and Mr Frank Cranmer, the (then) Clerk of Bills, House of Commons; and from Mr Barry K Winetrobe, Reader in Law, Napier University.
- 16. The Committee published its Report on 19 June, and launched it at a press conference held in Edinburgh. We were delighted that the Convener of the Scottish Parliament's Procedures Committee, Donald Gorrie MSP, was able to accept our invitation to participate actively in the press conference. This was the first time an MSP had taken part—and we believe it was the first time a Member of any devolved legislature had taken part in any select committee's press conference. The Government replied positively to the recommendations contained in the Report. We set out the Government's responses to those recommendations below.

- 17. The Government welcomed the Committee's recommendation that the Clerk of the Scottish Parliament should formally communicate the outcome of that Parliament's consideration of Sewel motions to the Clerks of the two Houses of Parliament, saying that, "combined with the recommendation to "tag" relevant Bills, [it] should serve to increase the awareness at Westminster of those Bills that include provisions that trigger the Sewel Convention and therefore require the consent of the Scottish Parliament."
- 18. The Government welcomed our recommendation to "tag" the Order Paper in the relevant House to alert Members that the Scottish Parliament had agreed a legislative consent motion in respect of provisions in a UK Bill. The Government also welcomed the recommendation that the text of the resolution be made available in the Vote Office.
- 19. In response to our recommendation on improving a Bill's Explanatory Notes, the Government said it intended "to introduce a new section in Explanatory Notes that will state explicitly if the Scottish Parliament's consent is required for provisions in a Bill, when this is known at the time of Introduction. The relevant provisions will also be identified. This will supplement the existing Territorial Extent statement to be included in Explanatory Notes, by explaining which provisions, will trigger the Sewel Convention. The addition to Explanatory Notes should provide a greater degree of clarity to readers."
- 20. The Government was also "happy to accept the Committee's recommendation to include a list of Bills with the Secretary of State for Scotland's Written Ministerial Statement that are identified at the time of the Queen's Speech as including provisions which trigger the Sewel Convention". However, it pointed out that "such a list will not necessarily be exhaustive [since] ... the Legislative Programme needs to retain flexibility and additional measures can be brought in to meet emerging priorities."
- 21. As we considered current procedures were working well, the Committee recommended no change to how the House dealt with those Private Members' Bills (PMBs) which might apply to devolved matters. The Government welcomed "the Committee's acknowledgement of the of the success of the procedures in place for PMBs."
- 22. The Government response was less positive, however, about the Committee's comments less directly related to the workings of the Sewel Convention. In particular, the Government was unconvinced of the merits of a "Super" Scottish Grand Committee (comprising MPs, MSPs and Scottish MEPs), saying it "could put at risk the distinction between legislatures' responsibilities and would potentially blur lines of accountability". In response to the Committee's comments on the West Lothian Question, the Government reiterated its commitment to devolution and to retaining a single class of MP in the House of Commons.
- 23. The Committee's first recommendation was one to which the Scottish Parliament had to respond favourably; this they have now done, and we understand, at the time of agreeing this Report, that the Clerk of the Scottish Parliament and the Clerk of Bills have almost finalised the arrangements to

introduce these new arrangements. We believe, however, that it would be appropriate for the House of Commons to have an opportunity formally to endorse these arrangements, which represent a significant step in inter-institutional arrangements between the legislatures, rather than the executives, and we hope that the Leader of the House finds time to provide an opportunity for this to be done.

24. It is highly unusual for a departmental select committee to propose new working procedures for the House—it must be almost unique to have them accepted—so we wish to record our appreciation to both the Government and to the Scottish Parliament for their constructive responses to our Report.

[...]

5 Relations with the Scottish Parliament

- 32. Our remit under S.O. No. 152 includes relations with the Scottish Parliament, a responsibility we consider to be of high importance. We consider that, due to the liaison during our "Sewel" inquiry, 2006 has been a most constructive year, and particular thanks must go to Donald Gorrie MSP and his colleagues on the Procedures Committee, and to Trish Godman MSP and her colleagues on the Conveners' Group.
- 33. It is our intention to build on the good working relationship formed in 2006 by establishing early contact with the new Parliament following the May 2007 Election.



MINUTES

1st Meeting, 2007 (Session 2)

Tuesday 23 January 2007

Present:

Mr Richard Baker Karen Gillon (Deputy Convener) Alex Johnstone Chris Ballance Donald Gorrie (Convener) Kate Maclean

The meeting opened at 10.20 am.

- Work programme: The Committee noted its work programme for the remainder of the session. It agreed that an issue raised by Carolyn Leckie MSP during the Committee's Chamber debate on 21 December, concerning political balance and committee memberships, should be included in a legacy paper for possible consideration by the Session 3 committee.
- Legacy paper: The Committee agreed to produce a legacy paper and to publish it as a Committee report. It agreed that, in addition to the possible topics of inquiry listed in paper PR/S2/07/1/2, this should refer to a further review of oral questions in the Chamber, and give examples of methods the Committee has used for taking evidence and gathering information.
- 3. Electronic voting in committees: The Committee considered a letter from the Conveners' Group suggesting an amendment to Rule 11.8.3 to enable committees, without the need for a direction by the Parliament, to use the electronic voting system during Stage 2 proceedings. The Committee agreed that committees should continue to vote by show of hands in all but exceptional circumstances, and that a change to the Rules could therefore not be justified at least until it was possible for electronic voting results to be displayed immediately after a division. The Convener would reply accordingly to the Conveners' Group.

The meeting closed at 11.16 am.

Andrew Mylne Clerk to the Committee