



GUIDANCE ON PUBLIC BILLS

Directorate of Clerking and Reporting

3rd edition, June 2007

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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.

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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

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 convention that 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.² 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 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

1.9 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

² This is generally known as the “Sewel Convention” 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 F.

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 E.

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 requirements 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 Scottish Minister⁷ 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. The 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)⁸.

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 Scottish Executive) will designate the relevant junior Scottish Minister as “member in charge”.

2.20 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 3).

Printing the Bill and accompanying documents

2.21 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).⁹

2.22 The introduction of a Bill is recorded in Section G of the Business Bulletin.

⁷ Standing Orders use the terms “member of the Scottish Executive”, “junior Scottish Ministers” and “the Scottish Ministers”. The members of the Scottish Executive are the First Minister, the Law Officers and Ministers appointed under section 47 of the Scotland Act; these office-holders are also collectively known as “the Scottish Ministers”. “Junior Scottish Ministers” are appointed under section 49 of that Act to assist the Scottish Ministers in the exercise of their functions. The current administration uses the terms “Cabinet Secretary” and “Minister” to refer, respectively, to Ministers appointed under section 47 and junior Scottish Ministers; however, in this Guidance we use the terms found in the Scotland Act and Standing Orders.

⁸ The Rules on member in charge were amended by the Parliament on 31 January 2002 (Procedures Committee, 1st Report, 2002)

⁹ 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.

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). 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).¹⁰ 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.]”*.¹¹

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.)

¹⁰ This happened with the St Andrew’s Day Bank Holiday (Scotland) Bill 2005 (SP Bill 41, Session 2)

¹¹ These criteria were announced in Business Bulletin No.26/2001 (9 February 2001).

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 Parliament¹², 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 committees for Stage 2 consideration – preferably with each committee being allocated whole Parts or Chapters to deal with.¹³

Timescale for Stage 2

2.34 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 amendments. 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

¹² 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).

¹³ 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.

each schedule taken immediately after the section which introduces it.¹⁴ 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 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.

¹⁴ Where a schedule is introduced by more than one section, it would normally be taken after the last such section.

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 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 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).¹⁵

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 4.86 to 4.97).

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

¹⁵ Selection of amendments is explained in more detail in Part 4 below.

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 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 re-committed 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).¹⁶ Once such a reference has been made, the Bill cannot make further progress towards Royal Assent until the JCPC 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

¹⁶ 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).

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.¹⁷ 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

¹⁷ This version of the Bill is not published.

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 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.¹⁸ (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).

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.

¹⁸ 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.

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 process for introducing a Member’s or Committee Bill is also illustrated in simplified form in Annex D.

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.¹⁹

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

¹⁹ Further guidance on proposals for Members’ Bills is available to members on request from NEBU.

refers the proposal has one month to determine whether the statement is adequate 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).²⁰

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.

²⁰ 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 9.15.²¹ The report may, but need not, include a draft Bill (Rule 9.15.5).²² 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:

[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

²¹ See for example the Justice and Home Affairs Committee's 9th Report, 2000, *Proposal for a Protection from Abuse Bill* (SP Paper 221).

²² NEBU would not expect to instruct the preparation of a draft Bill until the committee has obtained the Parliament's approval for its proposal.

Committee Bill under Rule 9.15 contained in the [Name] Committee's Nth Report, 2007 (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 Memorandum 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 recommendations²³) as well as simply re-stating it, but may not contain substantial new provisions, nor make substantial changes to the existing law.

²³ 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.

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 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).

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)²⁴. Unless the Parliament agrees (under Rule 9.3.6) to waive the 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.

²⁴ 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.

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 Marshallled 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 Annex 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.²⁵

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 (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

²⁵ The principle of Committee amendments was agreed to by the Procedures Committee at its 4th Meeting, 2001.

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 <words>

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

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 4.42 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.²⁶

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”.

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.

²⁶ The published groupings will also provide notification of any pre-emptions, as well as of direct alternatives (see paragraph 4.65).

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 question 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.²⁷ 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). 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

²⁷ 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

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.²⁸

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.²⁹

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 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.

²⁸ 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.

²⁹ See the announcement in Business Bulletin No. 87/2001 (30 May 2001).

- 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 non-manuscript 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.³⁰

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.

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

³⁰ 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.

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 question on the previous section or schedule is dealt with or, if there are amendments to insert a new section or schedule after the previous section or schedule, after those amendments are 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

4.86 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

4.87 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.

4.88 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.

4.89 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.

4.90 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

4.91 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.

4.92 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.

4.93 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

4.94 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.)

4.95 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.³¹

4.96 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.

4.97 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.

³¹ 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

Annex A: Form and content of Bills

Determination on “proper form”

(Reproduced from Business Bulletin No. 65/2001, 25 April 2001)

The Presiding Officer has determined, under Rules 9.2.3 and 9A.1.4 of the Standing Orders, that the “proper form” of Bills is as follows. (Note: this determination supersedes the determination printed in Bulletin No. 37/1999 and in Annexe A to the 1st edition of the Guidance.)

Structure

The text of a Bill should be set out in numbered sections, supplemented where appropriate by schedules, which should be numbered unless there is only one. Bills may be divided into numbered Parts and Chapters (as may schedules). Each section, schedule, Part and Chapter should have a brief descriptive title. The sections of a Bill (or the paragraphs of a schedule) may also be grouped under italic cross-headings as a guide to the structure of the Bill (or the schedule).

Sections may be divided into numbered subsections, which in turn may be divided into paragraphs, sub-paragraphs etc. Schedules may be similarly divided into numbered paragraphs, sub-paragraphs etc.

Each Bill should be prefaced by a long title beginning “An Act of the Scottish Parliament to ...”. Preambles to Bills are not permitted.

Style and presentation

Section numbers and titles should appear in bold, with each section title appearing above the text of the section. Units of text smaller than sections and schedule paragraphs should appear as indented blocks of text with straight left margins.

Where it is appropriate for repeals and revocations to be listed in tabular format in a schedule, that schedule should be set out in two columns, the first giving the short title and number of each statute or instrument affected, in chronological order; the second listing the provisions to be repealed or revoked, in the order in which they appear in the statute or instrument.

Recommendations on the content of Bills

The Presiding Officer has made the following recommendations about the content of Bills. (Note: these recommendations do not form part of the determination of “proper form” and supersede those printed in Bulletin No. 37/1999 and in Annexe A to the 1st edition of the Guidance.)

Style and content

A Bill should be drafted so that, when read with any relevant existing statutory provision, its intended legal effect is clear.

A Bill should include provision for the short title by which the Act may be cited. The long title should set out the principal purposes of the Bill.

The text of a Bill – including both the short and long titles – should be in neutral terms and should not contain material intended to promote or justify the policy behind the Bill, or to explain its effect. The text of the Bill itself should be identical to the text of the Act to which it is intended to give rise and, in particular, should refer to the Bill as “this Act”.

Any proposed Bill that has such severe deficiencies in drafting that it could not readily be understood or, if enacted, would be manifestly incapable of consistent legal application, should not be introduced.

A Bill whose principal purpose (or one of whose principal purposes) is to make provision manifestly outside the legislative competence of the Parliament should not be introduced.

Any Bill introduced as a Public Bill should not normally contain provisions that would affect a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class.

Any Bill intended to extend other than to the whole of Scotland should set out that intended extent. Any Bill intended to come into force other than on the day of Royal Assent should either give a date or dates for commencement, or make provision for the appointment of the relevant date or dates. Any Bill containing provisions that would confer power to make subordinate legislation should specify what powers, if any, the Parliament is to have to approve or reject the subordinate legislation (or draft subordinate legislation) laid before it under those provisions.

Any Bill introduced to give effect to a proposal for a Member’s Bill (under Rule 9.14) or a Committee Bill (under Rule 9.15) should only contain provisions that are broadly in conformity with the terms of the successful proposal.

Preparation for introduction

The text of a Bill should be submitted to the Clerk in writing or by e-mail in sufficient time before the proposed date of introduction to allow it to be prepared for printing. No Bill may be printed under the authority of the Parliament except by the Clerk. The Clerk will ensure that the printed version of the Bill conforms to the following presentational conventions:

- The text of Bills (sections, schedules and the long title) should be printed in Times New Roman font, 11.5 point, fully justified.
- There should be a running header throughout the body of the Bill containing the Bill’s short title and page number together with, where appropriate, any Part and Chapter titles or schedule and schedule Part titles.
- Bills of more than around six sections should be printed with a Contents page or pages.
- The text of the Bill, including the long title, should be printed with line numbers every fifth line.

- The Bill should be printed with a back sheet setting out the short and long titles, the name of the member who introduced it, the date of introduction, the names of any supporters and the type of Bill.

Annex B: Structure and drafting of Bills

Sections

The main components of all Scottish Bills and Acts are known as sections.³² The sections are consecutively numbered throughout the Bill. The section number appears in bold, followed by the section title.

Subsections

Sections may be divided into two or more numbered subsections, (1), (2) etc. The text of each subsection (or of the section, if it is not divided into subsections) consists of a whole sentence (or occasionally more than one sentence). The division of a section into subsections is *exhaustive*: that is, the subsections make up the whole of the section without remainder.

Paragraphs etc.

Within each subsection (or within a section which is not divided into subsections), further divisions are possible. These divisions, however, are never exhaustive. Instead, they are devices to make the structure of the subsection (or section) clearer and easier to follow. The divisions in question are paragraphs, sub-paragraphs, sub-sub-paragraphs (sometimes known as “heads”) and so on. Each is further indented than the last and are numbered according to the following convention: (a), (b), (c) etc., then (i), (ii), (iii) etc., then (A), (B), (C) etc. There must be at least one word of text at each “level” of this structure before any such division, and the text may also resume after any such division (this is known as a “full-out”).

Although paragraphs are normally numbered (a), (b) etc., they may on occasion be divided into un-numbered paragraphs, for example in a list of definitions. Where such a paragraph is itself divided, the sub-paragraphs are numbered (a), (b) etc. rather than (i), (ii) etc. – since that is the first level of numbering available. By contrast, where a subsection breaks into paragraphs for a second time, these are numbered (i), (ii) etc to ensure that each paragraph within the subsection is uniquely numbered, and so can be referred to unambiguously.

Schedules

After all the sections, there may be a schedule or schedules.³³ Schedules are used to set out supplementary or consequential provisions (although they have the same status in law as the sections). Every schedule must be introduced by a section (or a part of a section). There is a reference below the schedule title to the provision that introduces it.

Schedules are usually divided into paragraphs (not to be confused with paragraphs within subsections) which are consecutively numbered within each schedule. Paragraphs of schedules may consist of a number of sub-paragraphs, which may be divided in turn into smaller components in exactly the same way as subsections.

³² In Westminster Bills, they are “clauses”.

³³ Whereas Scottish Bills and Acts have schedules (with a lower-case s), UK Bills and Acts have Schedules.

Parts, Chapters etc.

Larger Bills are often divided into Parts, which may in turn be divided into Chapters. Chapters cannot exist except within Parts; and some Parts may consist of Chapters and other Parts not. Each Part or Chapter consists of a whole number of sections, plus any schedules introduced by those sections. Parts and Chapters are numbered 1, 2, etc., and may be further subdivided under a number of italic cross-headings.

The division of a Bill into Parts and Chapters can have formal significance in determining the scope of certain provisions. For example, there may be a section entitled “Interpretation of Part 2” containing definitions applicable only to that Part. Italic cross-headings, by contrast, are merely convenient navigational aids to the reader.

Individual schedules may also be divided into Parts (or Parts and Chapters), while the paragraphs making up the schedule may also be grouped together under a number of italic headings .

The long and short titles

Every Bill has a long title and a short title. The long title is set out at the beginning of the Bill and begins “An Act of the Scottish Parliament to ...”.³⁴ It consists of a single sentence, divided if necessary by semi-colons into various limbs, each of which deals with a principal purpose of the Bill. With large and complex Bills, it is common for the long title to end with a form of words such as “and for connected purposes”. A connected purpose is something that the Bill does that is not sufficiently distinct to merit a limb to itself, but which does not fall entirely within one of the preceding limbs. The long title should accurately describe what the Bill does and, as such, is a guide to the scope of the Bill.

The short title is set out at the top of the Bill and in the running header on each page. It is also cited in the text of the Bill itself, usually in the final section. This citation provision is given in the form “This Act may be cited as the Example (Scotland) Act 2001” – the year being that in which Royal Assent is expected to be given.

Common features of drafting

There are certain aspects of drafting style, familiarity with which will aid comprehension of the Bill. What follows is a basic introduction to this subject, which assumes that Scottish Bills and Acts are similar in the relevant respects to UK legislation. Ultimately, of course, it is a matter for the Parliament, in its consideration of Bills, to determine the style in which Scottish statutory provision is made.

Legislative style

The principal concern in drafting a Bill is to achieve the intended legal effect. Normally, this involves making provision that is as clear, certain and unambiguous as possible, leaving minimal scope for the courts to determine what legal effect the provision has. There are, however, cases where statute law explicitly leaves it for

³⁴ The long title is sometimes incorrectly referred to as the preamble. Scottish Parliament Bills do not have preambles.

the courts to determine how a provision is to be applied – for example, what constitutes a “reasonable” fee. Considerations other than achieving the intended legal effect, including comprehensibility and accessibility of language, are necessarily secondary. Making a Bill’s intended effects obvious to the lay reader is never easy; where the legal concepts involved are complex, or where the appropriate mechanism involves amendments to existing Acts, it may be impossible.

More clear-cut are issues of economy and neutrality. Bills never include provisions that do not have legal effect (except for entirely non-substantive provisions, such as indexes of defined expressions). Nothing is said merely by way of explanation or background (except for parenthetical descriptions of legislative provisions – e.g. “section 2 of that Act (which provides for exemptions in certain cases)”). Nothing is repeated unnecessarily or given textual emphasis (e.g. by italicisation), since this would inevitably give rise to uncertainty of application. Equally importantly, evaluative or subjective terminology is never used: however politically controversial the policy behind the Bill, the aim of the Bill itself is simply to state, clearly and objectively, how that policy is to be given legal effect.

There are many common drafting conventions in Bills and Acts. For example, where an ASP delegates powers to the Executive, it will say “the Scottish Ministers may ...” – rather than specifying a particular Minister. This reflects the convention of collective Cabinet responsibility, given expression by section 52(1) and (3) of the Scotland Act. The equivalent term in UK Acts is “the Secretary of State may” and has a formal foundation in the Interpretation Act 1978, which provides a statutory basis for interpreting certain terms in all UK Acts. The Interpretation Act only applies to ASPs to the limited extent provided by paragraph 16 of Schedule 8 to the Scotland Act; however, other interpretation provisions are provided (for the time being at least) by a transitional Order under that Act.³⁵ Other drafting conventions are less formal and have evolved as a practice amongst the Executive (and UK Government) drafters. These include the standard form of words used for the citation provision and for introducing amendments to existing Acts. To some extent, however, different drafters have different preferred styles.

Many Bills employ shorthand terms for individuals or bodies, dates (e.g. “the appointed day”) or existing Acts (e.g. “the 1997 Act”), with a single interpretation or definition provision (often at the end of the Bill) to explain what each such term means or refers to. In order fully to understand a provision of a Bill, it may be necessary to find the appropriate interpretation provision (and there may be different interpretation provisions for particular Parts, Chapter or even sections). Larger Bills often include, towards the end, an “index of defined expressions” to guide the reader to where particular terms are defined.

Provisions amending existing Acts

Bills frequently contain provisions to amend existing Acts (or, occasionally, subordinate legislation). Where this involves inserting text into an existing Act, the text to be inserted will be set out exactly as it would appear in that Act, in double quotation marks. Where the inserted text consists of a block of text beginning on a

³⁵ The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SI 1999/1379).

new line (e.g. an inserted section), it will appear in the Bill indented. Where inserted text extends over more than one page of the Bill, care is needed to identify what text is inserted text and what text is simply the text of the Bill.

Provisions in a Bill that make amendments to existing Acts usually follow certain conventions of wording (although the style depends on the drafter). New provisions are “inserted”, “added” or “substituted”; existing provisions are “repealed”, “omitted” or “cease to have effect” (all amount to the same in legal terms). New sections, subsections etc. to be inserted into an Act are numbered in such a way that the existing provisions of the Act do not require to be re-numbered (so, for example, a new section after section 12 is 12A).

Standard provisions in Bills

There are certain standard provisions that feature in most or all Bills, familiarity with which is useful in gaining an understanding of how the Bill works.

Commencement provisions

There is an important distinction between the enactment of a Bill and its commencement. The former is when, on receiving Royal Assent, it is converted from a Bill to an Act: in loose terms, when it becomes part of the “statute book”. The latter is when it comes into force and so becomes the law of the land. Some provisions of Acts are never brought into force, though they may remain on the statute book for years before being repealed.³⁶

Commencement is usually dealt with in one of the final sections of the Bill. The various possibilities for commencement are:

- after a specified period – e.g. “This Act comes into force at the end of the period of two months beginning with the date of Royal Assent”³⁷;
- on a specified day – e.g. “This Act comes into force on 1st July 2002”;
- on a day (or days) to be determined after enactment by subordinate legislation – e.g. “This Act comes into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed for different purposes”; or
- immediately (i.e. on Royal Assent) – in which case the Bill is silent on commencement.

With a Scottish Bill, the interval between the passing of a Bill and Royal Assent is less predictable in advance than it would be in relation to a UK Bill – because of the possibility of a Law Officer’s reference under section 33 or 34 or a Secretary of State order under section 35 of the Scotland Act. Partly for that reason, most Bills provide for commencement by order made under the resulting Act. (This also allows the timetable for implementing a Bill to be adjusted according to the speed at which

³⁶ The Easter Act 1928 is an example of a whole Act that has never been commenced.

³⁷ The equivalent commencement provision in a UK Act would be by reference to the day the Act is passed – which means the same.

preparatory work is completed.) Commencement on (or immediately after) Royal Assent is used only rarely, where there is a particular need to bring the Act into force with minimum delay.

Standard schedules

There are certain standard schedules that feature regularly in larger Bills. In particular, there is often a schedule of “minor and consequential amendments” to existing Acts, those Acts being listed in order of year and chapter/asp number. Also common are repeal schedules, listing all provisions of existing Acts (and statutory instruments) to be repealed (or revoked) by the Bill. This is set out in two columns, the short title of the Act in the left column and the provisions to be repealed (or revoked) in the right column. (In many Bills, some repeals will instead be provided for in the body of the Bill.) It is quite common for schedules to consist of, or contain, text in columns, tables or lists (rather than text in sentences).

Subordinate legislation provisions

Most Bills contain provisions conferring powers to make subordinate legislation. The principle behind such legislation is that the Parliament does not have time to consider the minutiae of policy and so should be prepared to allow the Executive to give effect to the detail of policy within the general limits imposed by the parent statute. It also enables the Executive to put certain provisions into place at a later date, taking account of changing circumstances, and to adapt provisions more easily as circumstances change, without the need for a Bill on each occasion.

The Parliament has an interest in ensuring that an Act does not delegate to the Executive powers that are unnecessary or inappropriate, since that would undermine the Parliament’s primary legislative role. So provisions in a Bill conferring powers to make subordinate legislation are likely to come in for particularly close scrutiny. Those provisions will specify to what, if any, Parliamentary scrutiny subordinate legislation made under the provisions of the Bill will be subject. The two main variants are:

- Affirmative procedure – where the subordinate legislation is in the form of a statutory instrument which is laid before the Parliament “for approval by resolution”. Most such instruments are laid in draft and cannot be made or come into force until the Parliament has approved them.
- Negative procedure – where the subordinate legislation is in the form of a statutory instrument which must be laid before the Parliament and is “subject to annulment”. Most such instruments are laid as made instruments (i.e. not in draft form) and come into force (or remain in force) unless the Parliament annuls them within a period of 40 days from the day that they are laid.

Some statutory instruments made under the powers in an Act only require to be laid before the Parliament but are not subject to any parliamentary control; and some need not even be laid. Occasionally, an Act may give the Executive power, by subordinate legislation, to amend the Act itself (or other primary legislation). Such provisions in Bills – known colloquially as “Henry VIII provisions” – are regarded by many parliamentarians with particular caution.

Annex C: Form of amendments

Determination on form of amendments

(Reproduced from Business Bulletin No. 65/2001, 25 April 2001)

The Presiding Officer has determined, under Rules 9.10.1 and 9A.12.1 of the Standing Orders, that the form of amendments to Bills is as follows. (Note: This determination supersedes the determination printed in Bulletin No. 37/1999 and in Annexe C to the 1st edition of the Guidance.)

Each amendment shall propose only one change to the text of the Bill; and each amendment to an amendment shall propose only one change to the text of that amendment.

No amendment shall leave out or insert more than one section of, or schedule to, the Bill.

Amendments to leave out sections of, or schedules to, the Bill shall be in the form “Leave out section/schedule x”; and amendments to substitute new such sections or schedules for existing ones shall be in the form “Leave out section/schedule x and insert— [text of new section/schedule]”.

Amendments to insert new sections or schedules in the Bill shall normally be in the form “Before/After section/schedule x, insert— [text of new section/schedule]”.

Amendments to existing sections of, or schedules to, the Bill shall normally begin “In section/schedule x, page y, line z, ...” and shall be to “leave out”, “leave out and insert” or “insert” blocks of text or words.

In all amendments, words in the Bill referred to and text to be included in the Bill shall be framed with angle brackets (e.g. after <word> insert <words>).

Amendments to leave out whole subsections of, or paragraphs of schedules to, the Bill shall do so by reference to those subsections or paragraphs, but amendments to leave out other defined blocks of text shall do so by reference to lines. Amendments to leave out words shall do so by reference to those words or, where appropriate, by reference to the first and last words to be left out.

In amendments to leave out words and insert new words, the first or last words to be inserted shall not normally be the same as the first or last words to be left out.

No amendment shall leave out or insert any item of text smaller than a word.

Amendments to insert blocks of text into the Bill shall set out those blocks of text in the form in which they would appear in the Bill, except that blocks of text that would, if part of the Bill, be numbered shall either be un-numbered in the amendment or numbered so as not to require re-numbering of existing provisions of the Bill.

Amendments to the long title shall begin “In the long title, page x, line y, ...”.

Amendments to amendments shall begin “As an amendment to amendment x, ...” and shall, where appropriate, refer to the text to be amended by reference to subsection, schedule paragraph or line.

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