



The Scottish Parliament  
Pàrlamaid na h-Alba

## SUBORDINATE LEGISLATION COMMITTEE

### AGENDA

3rd Meeting, 2013 (Session 4)

Tuesday 22 January 2013

The Committee will meet at 10.30 am in Committee Room 6.

1. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Order 2013 \[draft\].](#)

2. **Instruments subject to negative procedure:** The Committee will consider the following—

[Non-Domestic Rates \(Levying\) \(Scotland\) \(No. 3\) Regulations 2012 \(SSI 2012/353\);](#)

[Scottish Administration \(Offices\) Order 2012 \(SI 2012/3073\);](#)

[General Pharmaceutical Council \(Amendment of Miscellaneous Provisions\) Rules Order of Council 2012 \(SI 2012/3171\);](#)

[Police Act 1997 \(Criminal Records\) \(Scotland\) Amendment Regulations 2012 \(SSI 2012/354\);](#)

[Sports Grounds and Sporting Events \(Designation\) \(Scotland\) Amendment Order 2013 \(SSI 2013/4\);](#)

[Plant Health \(Scotland\) Amendment Order 2013 \(SSI 2013/5\);](#)

[Restriction of Liberty Order etc. \(Scotland\) Regulations 2013 \(SSI 2013/6\).](#)

3. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[National Library of Scotland Act 2012 \(Commencement\) Order 2013 \(SSI 2013/1 \(C.1\)\).](#)

4. **Post-16 Education (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.

5. **Forth Road Bridge Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.

6. **Budget (Scotland) (No.2) Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.
7. **Proposed Government Bills:** The Committee will consider correspondence from the Referendum (Scotland) Bill Committee in relation to the timetable for the scrutiny of proposed Government Bills.

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The papers for this meeting are as follows—

**Agenda Items 1, 2 and 3**

Legal Brief (private) SL/S4/13/3/1 (P)

**Agenda Item 2**

Instrument Responses SL/S4/13/3/2

**Agenda Item 4**

[Post-16 Education \(Scotland\) Bill - as introduced](#)

[Post-16 Education \(Scotland\) Bill - Delegated Powers Memorandum](#)

Briefing Paper (private) SL/S4/13/3/3 (P)

**Agenda Item 5**

[Forth Road Bridge Bill - as introduced](#)

[Forth Road Bridge Bill - Delegated Powers Memorandum](#)

Briefing Paper (private) SL/S4/13/3/4 (P)

**Agenda Item 6**

[Budget \(Scotland\) \(No.2\) Bill - as introduced](#)

[Budget \(Scotland\) \(No.2\) Bill - Delegated Powers Memorandum](#)

Briefing Paper (private) SL/S4/13/3/5 (P)

**Agenda Item 7**

Briefing Paper SL/S4/13/3/6

**SUBORDINATE LEGISLATION COMMITTEE****3rd Meeting, 2013 (Session 4)****Tuesday 22 January 2013****Instrument Responses****INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE****Scottish Administration (Offices) Order 2012 (SI 2012/3073)****On 9 January 2013, the Scottish Government was asked:**

1. Article 1(4) states that articles 2(b) to (d) and 4 “come into force on the day on which section 119 of the Police and Fire Reform (Scotland) Act 2012 comes into force”. It appears to be intended that those articles shall come into force on the day on which section 119 is brought *fully* into force. By S.S.I. 2012/333, section 119 has already been brought into force on 1 January 2013 for the purposes of inserting sections 43B(1), (3)(b) and (4) to (7), 43C(1), (2) and (3), 43E, 43F(1), (3) and (4) and 43G of the Fire (Scotland) Act 2005.

As it appears it would have been possible either to have referred in article 1(4) to the day on which section 119 comes *fully* into force, or to have provided that articles 2(b) to (d) and 4 shall come into force on the day on which section 119 comes into force for the remaining purposes, on what basis is it considered that the commencement provision is sufficiently clear?

2. The instrument has been made on 12 December 2012, and laid at Westminster and the Parliament on 19th. Please explain the lapse of this period between making and laying?

**The Scottish Government responded as follows:**

1. The Scottish Government thanks the Subordinate Legislation Committee for bringing this point to its attention. We agree that it would have been more clear to have specified commencement by reference to section 119 coming fully into force or coming into force for remaining purposes. We do, though, consider that the commencement provision is sufficiently clear as it stands. The purpose of the section 126(8)(b) Order in relation to fire and rescue is to provide that the new office-holders created by section 43A of the Fire (Scotland) Act 2005 are to be office-holders in the Scottish Administration. Until section 43A is in force there is no HM Chief Inspector, Inspector or Assistant Inspector of the Scottish Fire and Rescue Service. The intention is to bring the Act fully into force with the next commencement order. The only logical interpretation of article 1(4) of the Order is that the provisions referred to therein come into force on the day on which section 43A comes into force as that is the point at which the new offices will exist. Any alternative interpretation would run counter to the general intention of the Order and to that of S.S.I. 2012/333 (which commenced the other provisions in section 119). S.S.I. 2012/333 made express transitional provision when commencing the other provisions within section 119 to

make it clear that they relate to the current Inspectors rather than the new office-holders and that is also mentioned in the Explanatory Notes to that Order. In conclusion, we consider it sufficiently clear that the provisions of the section 126(8)(b) Order mentioned in article 1(4) come into force on the commencement of section 119 in full because that is when section 43A will come into force.

2. The time between the making of the instrument and its laying in both Parliaments is due to the time it takes physically to create a made version of the Order, receive it from the Privy Council, and from there through the necessary publishing stages with TSO before it can then be laid. In this case the time gap also included a weekend. There was no delay in the process.

**General Pharmaceutical Council (Amendment of Miscellaneous Provisions)  
Rules Order of Council 2012 (SI 2012/3171)**

**On 11 January 2013, the Scottish Government was asked:**

1. In rule 13(2) in the schedule to the Order, is there an error because the substitution of words is to be made in paragraph (1) rather than (2) of rule 16 of the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010?
2. Given that this is a U.K. statutory instrument approving the rules which have been made by the Council on 15 November 2012, would it be proposed to correct this apparent error, and if so, how?

**The Scottish Government responded as follows:**

1. The Scottish Government agrees that the reference in rule 13(2) in the schedule to the Order should have been to paragraph (1) rather than (2) of rule 16 of the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010. This is an obvious typing error. The words being substituted by rule 13(2) appear only in paragraph (1) and not paragraph (2) of rule 16, and so it is thought there is no room for dubiety about the legal meaning.
2. The Scottish Government considers that this error should be rectified by means of a correction slip. The Scottish Government has obtained the agreement of the General Pharmaceutical Council and the UK Government Department of Health that a correction slip will be issued.

**Non-Domestic Rates (Levying) (Scotland) (No. 3) Regulations 2012  
(SSI 2012/353)**

**On 9 January 2013, the Scottish Government was asked:**

Regulation 6(2) contains an error, as it states that nothing in paragraph (2) shall affect the continuing operation of the Non-Domestic Rates (Levying) (Scotland) Regulations 2012 as regards any day prior to 1 April 2013, when it should refer to paragraph (1).

Would you propose to correct this by means of an amendment?

**The Scottish Government responded as follows:**

The Scottish Government acknowledges that the point raised is an error and thanks the SLC legal advisers for bringing them to the Government's attention. The Government will lay amending Regulations, to come into force on 31 March 2013 which will correct this error prior to the Regulations coming into force.

**Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2012 (SSI 2012/354)****On 11 January 2013, the Scottish Government was asked:**

1. The Explanatory Notes indicate that the database mentioned in regulation 5(1)(b) of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 is now held by the Home Office. On the basis that the usual approach of referring to its being held by “the Secretary of State” would be ineffective, standing section 126(3) of the Police Act 1997, why is it considered sufficiently clear to refer to the holder of this database in general terms as “a Minister of the Crown”, particularly as section 126(1) defines “Minister of the Crown” as including a Northern Ireland department?

2. In the equivalent regulations for Northern Ireland (the Police Act 1997 (Criminal Records) (Amendment No. 3) Regulations (Northern Ireland) 2012), the Department of Justice in Northern Ireland has framed the amendment so as to refer expressly to “the Secretary of State for the Home Department”. Does the Scottish Government agree that the amendment effected by regulation 2 might have been more clearly formulated had that approach been adopted?

**The Scottish Government responded as follows:**

1. As has been acknowledged in the question, the usual approach would have been to refer to the database as being held by “the Secretary of State”. As also acknowledged in the question, this would have been ineffective given the wording of section 126(3) of the Police Act 1997 which provides that references to the Secretary of State must be construed as references to the Scottish Ministers. The Government considers that in legal terms a similar effect is achieved by using the term “Minister of the Crown” since this will include any Secretary of State. It will also cover other Ministers (and a Northern Ireland department in line with section 126(1)), but the Government considers that the formulation is sufficiently clear as a legal means of describing the holder of the database. Without the unusual situation caused by section 126(3) the provision would simply have referred to the database being held by the Secretary of State without any reference to the Home Department (that is the approach adopted for England and Wales in the Police Act 1997 (Criminal Records) (Amendment No. 3) Regulations 2012). It is considered to be sufficient that the Explanatory Note makes clear to the reader where the database is currently held.

2. The Government notes that in the equivalent regulations for Northern Ireland (the Police Act 1997 (Criminal Records) (Amendment No. 3) Regulations (Northern Ireland) 2012), the Department of Justice in Northern Ireland has framed the amendment so as to refer expressly to “the Secretary of State for the Home Department”. This approach was considered for the drafting of the Scottish Regulations. However, the Government did not consider that it was sufficiently clear that, by using the term “the Secretary of State for the Home Department”, the provision in section 126(3) regarding construction of the term Secretary of State would be rendered inapplicable. It was considered a safer approach to refer to a “Minister of the Crown”.



**SUBORDINATE LEGISLATION COMMITTEE****3rd Meeting, 2013 (Session 4)****Tuesday 22 January 2013****Note from the Clerk**

1. The Referendum (Scotland) Bill Committee, at its meeting on 17 January 2013, considered a letter from the Deputy First Minister which set out the Scottish Government's planned timetables for the two proposed Scottish Government Bills which will provide for a referendum on independence in 2014.
2. Alongside the correspondence, the Committee also considered a note by the clerks on the implications for the Committee's scrutiny of the two Bills. The note included an indicative timetable, which at present gives two options for scrutiny of the Bills.
3. Further to this meeting, the Convener of the Referendum (Scotland) Bill Committee has written to this Committee inviting its views on the proposed timetable for scrutinising the Bills.
4. Assuming both Bills contain delegated powers it will be incumbent upon this Committee to report to the Referendum (Scotland) Bill Committee in relation to them. As such, the Referendum (Scotland) Bill Committee is seeking the views of this Committee on the proposed timetable before it makes any final decision on it.
5. A copy of the letter from the Convener of the Referendum (Scotland) Bill Committee and the note from the clerks to that Committee outlining the indicative timetable for scrutiny of the Bills is attached as an annex to this paper.

**Recommendation**

6. **The Committee is invited to consider the indicative timetable for the Bills and report to the Referendum (Scotland) Bill Committee any views the Committee may have in relation to the timetable.**

## **Referendum (Scotland) Bill Committee**

Nigel Don MSP  
Convener  
Subordinate Legislation Committee  
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18 January 2013

Dear Nigel,

### **Scrutiny timetable for referendum legislation**

The Referendum (Scotland) Bill Committee, at its meeting yesterday, considered a letter from the Deputy First Minister which set out the Scottish Government's planned timetables for the two Government Bills which will provide for a referendum on independence in 2014.

Alongside the correspondence, the Committee also considered a note by the clerks on the implications for the Committee's scrutiny of the two Bills. The note includes an indicative timetable, which at present gives two options for the Referendum Bill. A copy of the Committee paper is attached to this letter (which also contains a link to the Minister's correspondence).

I am conscious that your Committee will also have an important role to play in scrutinising these two Bills and that your own scrutiny timetable will need to fit with ours. For this reason, I wanted to ensure you were aware of the likely parameters, and that you had an opportunity to comment before any final decisions are taken.

The Referendum (Scotland) Bill Committee will consider these matters again at its next meeting, on 31 January, and I would therefore welcome any views you have before then (and, if possible, by Friday 25 January).

Yours sincerely,

Bruce Crawford MSP  
Convener

## Referendum (Scotland) Bill Committee

### Work Programme

Note by the Clerk

1. This paper sets out the background to an indicative timetable for the Committee's scrutiny of the two Government Bills providing for a referendum on independence in 2014, following correspondence with the Deputy First Minister, in which the Scottish Government set out its intentions for the two bills. The correspondence is available on the Committee's web-pages, here:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/58029.aspx>

#### *The Franchise Bill*

2. The Franchise Bill is expected to be introduced in "early March", which the Deputy First Minister's letter describes as "shortly after" the section 30 Order is made. (The section 30 order is expected to be made at a meeting of the Privy Council on 12 February, and so will come into force on 13 February.)
3. It is anticipated that the Bill will set out who is entitled to vote at the referendum, provide for collection of data on young people who will not appear on the local government register and, from that data, provide for compilation of a register to be held separately from other electoral registers. The Bill will also set out who will have access to that register and the data held on it.
4. To allow Electoral Registration Officers sufficient time to prepare for the canvass, the Government's intention is for the Franchise Bill to complete its parliamentary passage by the end of June 2013, coming into force later in the summer.
5. To meet this aim, Stage 3 proceedings for the Franchise Bill would require to be held no later than Thursday 27 June 2013.

#### *Referendum (Scotland) Bill (the Referendum Bill)*

6. The Government's intention is to introduce the Referendum Bill "shortly after" the Franchise Bill and "later in March" – i.e. presumably mid-March. The Government's aim is for the Bill to complete its parliamentary passage by "around late October".
7. For planning purposes, it has been assumed that Stage 3 proceedings on the Referendum Bill would require to be held no later than Thursday 31 October 2013, although it may be that holding Stage 3 in the first sitting week of November would still be consistent with the Government's aspiration.

#### *Timetable*

8. The attached timetable shows the overlap between the two Bills and sets out the key dates in the scrutiny of each Bill, based on the latest date for Stage 3 proceedings for each Bill and applying the relevant standing orders on minimum intervals between Stages.<sup>1</sup> The information contained within that timetable is explained in more detail below.

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<sup>1</sup> These are: 12 sitting days between the end of Stage 1 and the day Stage 2 begins (Rule 9.5.3A), and 10 sitting days between completion of Stage 2 and the day of Stage 3 (Rule 9.5.3B). There is also a requirement that the

*Franchise Bill deadlines*

9. For Stage 3 of the Franchise Bill to be taken in the final week of Chamber business before the summer recess (i.e. Tuesday 25, Wednesday 26 or Thursday 27 June), the last Thursday on which Stage 2 proceedings could be conducted is Thursday 6 June. This has a knock-on effect in terms of other key dates, with the following dates applying (working backwards):
- Stage 3 proceedings – Tuesday 25, Wednesday 26 or Thursday 27 June
  - Stage 2 proceedings (1 day) – Thursday 6 June
  - Stage 1 Debate – no later than Thursday 16 May
  - Stage 1 Report publication – no later than Thursday 9 May.
10. In effect, the Committee would need to undertake initial consideration of its draft Stage 1 report at its meeting on Thursday 25 April, with finalisation of the report at its meeting on Thursday 2 May, to guarantee publication of the report by 9 May.
11. In the event that the Committee was not able to sign off the Stage 1 report until Thursday 9 May, with publication on Friday 10 May, a suspension of Rule 9.6.3A would be required to facilitate the Stage 1 debate on Thursday 16 May – i.e. on the 4th rather than the 5th sitting day after publication.

*Referendum Bill deadlines*

12. For the Referendum Bill to complete Stage 3 no later than Thursday 31 October, the last Thursday on which a one-day Stage 2 could take place is 26 September. This would then require the following dates to apply:
- Stage 2 proceedings – Thursday 26 September
  - Stage 1 Debate – no later than Monday 9 September
  - Stage 1 Report publication – no later than Monday 2 September.
13. Since this would require the Stage 1 report to be finalised at the last meeting before the recess, it would be simpler to publish the report immediately thereafter (i.e. just before, or at the beginning of, the recess). This in turn would allow the Stage 1 debate to take place a week earlier (i.e. on 3, 4 or 5 September) – although it should be noted this would require suspension of Rule 9.6.3A, since the recess period, although long, does not count towards the required interval between report publication and Stage 1 debate.
14. However, given the size and importance of the Referendum Bill, and the potential for controversy on some of its details, it is inadvisable to allow only a single Thursday morning for Stage 2. To allow two consecutive Thursdays for Stage 2 proceedings, Stage 2 would need to begin on Thursday 19 September. The impact on dates for Stage 1 Report publication and subsequent Stage 1 Debate would then be:
- Stage 2 proceedings (day 2) – Thursday 26 September

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Stage 1 debate should not take place earlier than the 5th sitting day after publication of the Stage 1 report (Rule 9.6.3A). Sitting days exclude public holidays and recesses.

- Stage 2 proceedings (day 1) – Thursday 19 September
  - Stage 1 Debate – Thursday 27 June
  - Stage 1 Report publication – Thursday 20 June (i.e. finalisation of the report on Thursday 13 June)
15. This is set out in the column marked “option 1” in the attached table. The main disadvantage of this option is the relatively limited time it allows for Stage 1 oral evidence-taking (a total of 3 or 4 full meetings). Another disadvantage is that even two Thursdays for Stage 2 may not be enough if a large number of admissible amendments are lodged.
16. An alternative would be to allocate all three mornings in the week beginning 23 September (Tuesday 24, Wednesday 25 and Thursday 26) for Stage 2. The effect of the Rules is that there would still be a single lodging-deadline for Stage 2 amendments, and a single Marshalled List created, but the Committee would have up to three meetings to dispose of them all (and two of those meetings could run for longer than a normal Thursday meeting). If the number of amendments turned out to be relatively small, the Committee could begin Stage 2 on the Wednesday or even the Thursday; nevertheless, for planning purposes, the Committee would need to be prepared to begin the Stage on the Tuesday until shortly beforehand.
17. This alternative option is shown as “option 2” in the attached table. Its advantage is that it allows more time for Stage 1 evidence-taking (a total of 5 or 6 full meetings) than option 1. Its obvious disadvantage, however, is that Committee members would need to avoid competing commitments on mornings that do not normally need to be kept clear for Referendum Committee business. Securing availability of committee rooms on those three days, and avoiding clashes with other committees (for members serving on more than one) may also be a challenge.

*Timescales for written evidence*

18. The maximum period of time between introduction and Stage 3 of the Franchise Bill will be four months/seventeen weeks. This is less than the average time taken for other Government bills lodged this session to go from introduction to completion of Stage 1, and will mean that the time available for submission of written evidence at Stage 1 will be no more than around 5 weeks (or 3 weeks if written evidence is to be available in time to inform questioning of the Minister at the final oral-evidence session).
19. By comparison, the Finance Committee issued a call for evidence in relation to the Freedom of Information (Amendment) (Scotland) Bill on 14 June 2012, with a deadline for responses by 8 August 2012, a period of eight weeks; the Justice Committee had a period of ten weeks for written submissions on the Scottish Civil Justice Council and Criminal Legal Assistance Bill.
20. There are other examples of very short timescales being required. The Welfare Reform Committee allowed approximately two weeks (Friday 23 March to Wednesday 11 April 2012) for written submissions on the Welfare Reform (Further Provision) (Scotland) Bill. The Stage 1 Report was published on 16 May, eight weeks after the Bill was introduced, with the Stage 1 Debate being held on 23 May.

*Pre-Stage 1 general evidence*

21. At its meeting on 13 December 2012 the Committee agreed to conduct some pre-Stage 1 general evidence sessions, seeking information from organisations with experience on an extended franchise. Witnesses confirmed to date are:

<b>Date</b>	<b>Names</b>	<b>Organisation</b>
Thursday 31 January	Bryan Byrne (Central); Joan Hewton (Lothian)	Scottish Assessors Association
Thursday 7 February	Michael de la Haye	States Greffe, Jersey, by Video Conference
Thursday 21 February	Gordon Blair, Chief Legal Officer, West Lothian Council	(SOLAR)

22. Clerks have also been in touch with the Isle of Man and Guernsey – other Crown dependencies which have recently lowered their voting age to 16 – and witnesses from those jurisdictions may also be included.

23. As members are aware, the 2010 pilots of Health Board elections in Dumfries & Galloway and Fife used a minimum voting age of 16 (although this only included “attainers” and so in practice excluded some 16-year olds). An independent evaluation of the pilot has recently been published by the Scottish Government:

<http://www.scotland.gov.uk/Publications/2012/12/8580>

24. The relevant paragraphs are 2.6 and 2.7, and 3.30 – 3.36.

**Conclusion**

23. The Committee is invited to consider the timetable.

Date	Franchise Bill	Referendum Bill (option 1)	Referendum Bill (option 2)
17 January Committee meeting	Appoint adviser(s); consider timetable		
24 January	Reserve date if required for Committee meeting		
31 January Committee meeting	Pre-Stage 1 oral evidence		
7 February Committee Meeting	Pre-Stage 1 oral evidence		
<b>RECESS: 9 – 17 FEBRUARY 2013</b>			
Wednesday 13 February	Section 30 Order made		
21 February Committee meeting	Pre-Stage 1 oral evidence		
28 February	Reserve date if required for Committee meeting		
Early March	<b>Introduction</b>		
7 March Committee meeting	Oral evidence? (subject to introduction date)		
14 March Committee meeting	Oral evidence		
Mid/late March		<b>Introduction</b>	<b>Introduction</b>
21 March Committee meeting	Oral evidence	Agree approach (call for evidence, witnesses etc.)	Agree approach (call for evidence, witnesses etc.)
28 March Committee meeting	Oral evidence		
<b>RECESS: 30 MARCH – 14 APRIL</b>			
18 April Committee meeting	Review evidence and conclusions	Oral evidence	Oral evidence
25 April Committee meeting	Draft Stage 1 Report	Oral evidence (1 panel maximum)?	Oral evidence (1 panel maximum)?
2 May Committee meeting	Finalise Stage 1 Report	Oral evidence (1 panel maximum)?	Oral evidence (1 panel maximum)?
Friday 3 May – Thursday 9 May	<b>Stage 1 Report publication</b>		
9 May Committee meeting		Oral evidence	Oral evidence
16 May (am) Committee		Oral evidence? / review evidence	Oral evidence

<b>Date</b>	<b>Franchise Bill</b>	<b>Referendum Bill (option 1)</b>	<b>Referendum Bill (option 2)</b>
meeting		and conclusions	
16 May (pm)	<b>Stage 1 Debate in Chamber</b>		
<b>PUBLIC HOLIDAYS: Friday 24 and Monday 27 May</b>			
30 May Committee meeting		Draft Stage 1 Report	Oral evidence
6 June Committee meeting	<b>Stage 2 proceedings</b>		
13 June Committee meeting		Finalise Stage 1 report	Oral evidence / review evidence and conclusions
20 June		Deadline for Stage 1 report publication	Draft Stage 1 Report
Tuesday 25 – Thursday 27 June (pm)	<b>Stage 3 proceedings</b>		
27 June (am) Committee meeting			Finalise Stage 1 report (or in 1st week of recess if need be)
27 June (pm)		<b>Stage 1 Debate in Chamber</b>	
<b>SUMMER RECESS: 29 JUNE – 1 SEPTEMBER</b>			
3, 4 or 5 September			<b>Stage 1 Debate in Chamber</b>
19 September Committee meeting		<b>Stage 2 proceedings</b> (day 1)	
26 September Committee meeting		<b>Stage 2 proceedings</b> (day 2)	<b>Stage 2 proceedings</b> (over 3 days – Tuesday 24, Wed 25 and Thur 26, if required)
<b>RECESS: 12 – 27 OCTOBER</b>			
29, 30 or 31 October		<b>Stage 3 proceedings</b>	<b>Stage 3 proceedings</b>