Public bill process – overview
1. Does the current three stage process deliver legislative scrutiny that is fit for purpose? In particular, how effective are the procedures for each of the main stages, the timescales allowed for these stages, and the time allowed between stages? To what extent does the current legislative process encourage engagement from interested parties?

The Justice Committee has extensive experience of dealing with legislation, having completed consideration of six bills so far this session with scrutiny of a further five currently ongoing.

The Committee has concerns about the volume of legislation referred to it which frequently results in it not having time in its business programme to consider other matters within its remit. The volume of legislation to be considered can also have an impact on the Committee’s ability to engage effectively with stakeholders.

As a unicameral parliament, the ability of committees to scrutinise issues within their remits and to hold the Government to account effectively is of vital importance. The impact that the volume of legislation to be considered has on the ability of committees to carry out their scrutiny function is therefore of serious concern. There appears to be a greater emphasis on the business in the chamber while the work of committees is largely considered less of a priority. The majority of the scrutiny of legislation takes place in committees and greater regard should therefore be given to the role of committees in the process and the impact that referral of legislation has on their work more generally. We are also of the view that general consideration should be given to rebalancing the priorities of the business of the Parliament.

With regard to the three-stage legislative process, we believe that this largely works well. However, the limit to only two amending stages does not always allow enough time for issues to be considered in great detail and it also runs the risk of any new issues arising during the process not being properly scrutinised, particularly where these arise in the final amending stage. This can also be compounded by the occasional adherence to the minimum periods between stages in timetabling legislation which does not allow a lot of time for members to reflect on changes to the Bill which have been brought forward.

We believe that there should be a presumption against significant new issues being introduced during amending stages as these will not have been subject to the same scrutiny as issues included in the Bill on introduction. However, we acknowledge that sometimes this is unavoidable. We therefore consider it to be of even greater importance that sufficient time is factored into the timetable for scrutiny of Bills to enable evidence to be taken at Stage 2 where this is necessary. Consideration could
also be given to extending the minimum period between stages where a Bill has been subject to extensive amendment at Stage 2 or a number of issues have been raised at Stage 1.

**Accompanying documents**

2. Are any changes needed to the rules on the supporting documents which should accompany a bill on introduction?

The Parliament does not appear to have a great deal of control over the quality of accompanying documents which can vary quite substantially between Bills. These documents are of assistance to the Committee in scrutinising Bills as well as helping stakeholders and the public more generally in understanding the legislation.

In addition, one of the Committee’s roles at Stage 1 is to consider and report on the Policy Memorandum accompanying the Bill. However, it is not always apparent that comments made are taken on board and acted on for future Bills and so it is unclear what the purpose is of that part of rule 9.6.3.

We suggest that consideration could be given to setting up a monitoring mechanism to ensure that policy memorandums are fit for purpose and that comments made by committees in their Stage 1 reports are taken on board.

We also note that, under rule 9.7.8A, revised Explanatory Notes are required to be prepared in advance of Stage 3 reflecting changes made to the Bill at Stage 2. However, the deadline for the member-in-charge to lodge this document is the same as the deadline as that for lodging amendments to the Bill. The document is therefore of little use in preparing amendments for Stage 3 and so consideration should be given to revising this deadline.

**Purpose of stage 1**

3. Stage 1 involves a lead committee considering whether the general principles behind a bill should be agreed to. In recent times stage 1 reports have frequently looked in detail at the specifics of a bill, including recommending amendments at the amendment stages. Does the stage 1 procedure provide for adequate scrutiny? Are there any changes which could be made to improve stage 1 scrutiny of public bills?

The practice of considering the specifics of the Bill and recommending amendments to the Bill at Stage 1 works effectively. In particular, it gives committees the opportunity to highlight issues raised by witnesses which elicits a direct response from the Scottish Government and flags up issues to be explored further at Stage 2.

In addition, although committees consider and make recommendations on the various provisions in Bills, the rule requires them to consider and report on the general principles of the Bill. There are sometimes circumstances where committee members may not necessarily be in favour of all of the provisions in the Bill and therefore reaching a conclusion on the general principles of the Bill as a whole could run the risk of the Bill being lost where the committee cannot support it in its entirety.
An example of this is the Justice Committee’s recent Stage 1 consideration of the Criminal Justice (Scotland) Bill where some Committee members did not support one particular provision in the Bill. However, there was overall agreement that the rest of the Bill should proceed to Stage 2. The Committee therefore recommended that the general principles be agreed to with the exception of that one particular provision. Considering and reporting on the various provisions in the Bill therefore gives Committees the flexibility to reach different conclusions on the detailed parts of the Bill.

It is also not always clear what the “general principles” are. The rule could therefore be revised to set this out as well as describing the current practice of committees in considering the detail of the Bill. This would be particularly helpful for the purposes of public transparency and accessibility.

**Time allowed for stage 1**

4. **Are changes needed to the timescales for stage 1 and how they are set?**

The Committee would like to emphasise the need for enough time to be factored into the process to allow proper scrutiny of Bills at Stage 1. The process often involves consideration of a range of views on complex matters and so time needs to be taken to do this properly. The majority of Justice Committee business arises from Scottish Government matters referred to the Committee by the Bureau and so this issue is particularly pertinent to its remit.

There is also not a lot of room for slippage in the Committee’s consideration of Bills as any delay has an impact on subsequent pieces of legislation or other business referred to the Committee. In setting Stage 1 timetables, account should therefore be taken of the workload of the Committee as a whole, not just the time required to consider the Bill being referred. Again we would like to emphasise the importance of the role of committees and the need for sufficient time to be factored into legislative timetables as well as time being allowed generally in committee business programmes to scrutinise matters within their remits effectively. We therefore believe that a formal view should be sought from committees regarding the timetabling of legislation when a Bill is referred to a committee for consideration. The Convener could also be invited to attend the Parliamentary Bureau when the timetabling of legislation is under consideration.

As an example, during Stage 1 consideration of the Criminal Justice (Scotland) Bill, the Committee was also required to consider at the same time the justice budget, a super-affirmative instrument on independent prison monitoring and an LCM criminalising forced marriage. All of these issues were substantial items of business and so the Committee was required to meet twice a week on more than one occasion, in addition to holding lengthy meetings, in order to give consideration to these issues. Taking such an approach is not sustainable and does not support effective scrutiny and therefore seeking a formal view on the timetabling of legislation from the Committee should go some way to avoiding these types of circumstances arising in future.

The management of business during this period was made particularly difficult for the Committee due to the unsatisfactory process for dealing with LCMs. In this case, the
provisions on the criminalisation of forced marriage arose as a consequence of an amendment to a Westminster Bill. The Committee, therefore, received very little notice of the issue and so did not have the capacity to allocate time for proper scrutiny of the issue into its work programme. We recognise that this inquiry is focused on the primary legislation process in the Scottish Parliament, however, we also wish to highlight our concerns regarding the arrangements in place for scrutinising LCMs and we therefore believe there would be merit in also reviewing this process.

On a related issue, a number of issues on the Justice Committee’s agenda have arisen following the use of the emergency bill procedure or a truncated bill timetable. While recognising that issues do occasionally arise which need to be dealt with urgently, we do not favour the use of the emergency legislation procedure and we therefore believe that it should be used only where absolutely necessary. This was the case with the scrutiny of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill which was originally proposed as emergency legislation but was subsequently referred back to the Justice Committee for scrutiny. As a consequence, the Committee did not produce a Stage 1 report and instead reported on the Bill at Stage 2. This demonstrates the need to give careful consideration to applying the emergency bill procedure.

**Amendment stages**

5. The amendment stages involve line by line consideration of a bill in committee (stage 2) and then in the Chamber (stage 3). Are any changes needed to the rules on the deadlines for lodging amendments? Is the procedure for considering amendments in committee and the Chamber (using a marshalled list of amendments and groups of amendments) sufficiently transparent and understandable? Are there any alternative approaches which might be less technical and more accessible?

The legislative process is complex but this appears to be necessary to ensure fairness. It is therefore difficult to envisage a different way to approach the process without there being wholesale consideration of how amendments are considered and disposed of. In terms of public accessibility, perhaps providing members of the public with a quick guide to the legislative process would help in understanding the process.

Consideration also needs to be given to allocating adequate time for consideration of amendments. In line with our earlier comments, we believe that more time needs to be factored into the Bill process generally and the timetable for Stage 2 in particular to give committees the time necessary to consider and dispose of amendments. With regard to Stage 3, more time needs to be allocated in the business programme to avoid debates being squeezed. We therefore recommend that consideration be given to taking Stage 3s over more than one day to allow for enough time to be factored in where necessary.

With regard to the amendment deadlines, we believe that more time is required between the deadline for submitting amendments and the meeting at which the amendment is due to be taken. This would allow for consideration to be given to the allocation of sufficient time for proceedings on amendments.
The role of secondary committees

6. Committees considering primary legislation receive reports from the Delegated Powers and Law Reform Committee (DP&LR) and the Finance Committee and from other subject committees which have an interest in a particular bill. How well does this reporting process work in practice at stage 1? To what extent do the DP&LR and Finance Committees have an opportunity to scrutinise changes made to bills at stage 2?

The Committee has concerns regarding the designation of subject committees as secondary committees. In general, the secondary committee considers only the aspects of the Bill within its remit. However, this often leads to duplication in consideration of the Bill. For example, during consideration of the Police and Fire Reform (Scotland) Bill, witnesses called by the Justice Committee had already given evidence on the same issues to the Local Government Committee which had been designated as secondary committee. We therefore believe that further consideration should be given to this process to ensure clearer demarcation of responsibility in order to avoid duplication of evidence.

The Committee also had a different experience of the division between lead and secondary committee scrutiny when it was designated as lead committee in consideration of the Victims and Witnesses (Scotland) Bill. In this case the Health and Sport Committee was designated as secondary committee. The Justice Committee considered Part 1 of the Bill which brought forward reforms to the justice system relating to victims and witnesses, while the Health and Sport Committee considered Part 2 of the Bill which dealt with the establishment of a National Confidential Forum. In practice the Committees shared consideration of the Bill with no crossover in scrutiny; therefore the requirement for the Health and Sport Committee to report to the Justice Committee was largely redundant. There would therefore be merit in reviewing how the rules work in these types of circumstances.

With regard to the delegated powers and financial aspects of Bills, it is important that these be given proper scrutiny. The Finance and Delegated Powers and Law Reform Committees perform essential roles in this regard and so, in line with our earlier comments, it is therefore important that sufficient time is allocated to the Stage 1 timetable to give these committees and any other secondary committee sufficient time to properly scrutinise legislation.

JUSTICE COMMITTEE
SCOTTISH PARLIAMENT
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