These comments are made in a purely personal capacity and do not represent the views of any institution or organisation.

1. Overview
The early stages of the current procedure are effective, with draft Bills available and consulted upon prior to the beginning of the formal legislative procedure and strong opportunities for public participation and scrutiny at Stage 1. The position after then is less satisfactory, with scope for very significant change to be introduced at later stages without similar opportunities for public participation and with much less thorough scrutiny of the new provisions. There is no opportunity even for checking that amendments made at Stage 3 are technically correct (hence provisions such as s.14(2) of the Climate Change (Scotland) Act 2012, where there is a cross-reference to another section but which one is not specified).

2. Accompanying documents
The public availability of the policy memorandum and other accompanying documents is much appreciated. However, a glaring weakness is the quality of the Sustainable Development memoranda, a point previously noted by the Rural Affairs, Climate Change and Environment Committee; see Appendix.

3. Purpose of Stage 1
The opportunity to gather evidence from a wide range of sources is a real strength of Stage 1, both in terms of assisting MSPs in understanding the purpose and consequences of a Bill and in ensuring the openness and public engagement which were identified (and largely delivered) as desirable features of the legislative process at Holyrood in comparison to Westminster.

4. Time allowed for Stage 1
5. Amendment stages
As noted above, there is a marked contrast between the process at Stage 1 and later. Very substantial new or altered provisions can be added at the later stages (often in response to what is raised at Stage 1) but these do not receive anything like the same degree of open scrutiny as the initial Bill, nor is there the same opportunity for public participation. It is appropriate that the process should become more streamlined as it progresses, but a consequence is that wholly new provisions can be introduced without either the time or external feedback to ensure proper consideration of what can be fundamental changes.

One particular criticism is the lack of time to take an overview of a Bill when amendments are made at Stage 3, and to address this, changes to the procedure might be made at that stage. There are many options and I do not have the experience of the workings of Parliament to judge their merits.
One possibility is to have the Bill as passed submitted to a form of technical review (perhaps by officials with the power to make references to the Delegated Legislation and Law Reform Committee) with an opportunity for “tidying up” any provisions where there are purely technical glitches (akin to the post-passage re-numbering of sections that already takes place) – see example in para.1 above.

A more dramatic option would be to split the Stage 3 proceedings into two, with a minimum number of days between them so that MSPs have a gap during which to reflect on the impact of the changes made during the main Stage 3 proceedings, before finally approving the Bill. There may need to be clear understandings, if not rules, to limit what can happen at this Stage 3.2, to avoid a mere repetition of earlier political debate.

A third option would be to require all Stage 3 amendments to be considered (but not necessarily voted on) by the relevant committee before the Stage 3 debate so that there is time for significant issues to be identified and considered.

A fourth option of limiting the sort of amendments that can be made at Stage 3 seems undesirable given the potential need to refine adjustments made at Stage 2, including those made in response to what emerges from Stage 1.

6. Role of secondary committees
The role of the Delegated Powers and Law Reform Committee is particularly valuable to ensure that the matters within its remit are properly considered and considered in isolation from the merits of the substantive provisions of the Bill. If this separate consideration was lost, it is highly likely that such technical matters would be squeezed out by the attention paid to the more politically exciting substantive provisions, whilst criticisms could be attacked as being politically motivated rather than being seen as standing apart from the substantive arguments.

7. Additional points
A further point is to note the continuing attachment to the “cut-and-paste” style of amendment of earlier legislation. This makes it very hard to follow during the legislative process exactly what changes are being made to the law and afterwards to work out exactly what the up-to-date version of the law is. It would also make the law much easier to use if amendments were achieved not be adding or omitting individual words or phrases, but by enacting new versions of complete sections or sub-sections (if not larger chunks of legislation). To the extent that the current practice is adopted to restrict parliamentary consideration to the elements that are being changed, as opposed to risking re-opening old battles (or starting new ones) on the text that is to remain constant, surely parliamentary rules could deal with this in another way?

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Appendix

Rural Affairs, Climate Change and Environment Committee
1st Report, 2013 (Session 4)
Stage 1 Report on the Aquaculture and Fisheries (Scotland) Bill
http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/Reports/rur-13-01w.pdf

58. However, the Committee notes the concerns raised by Professor Reid, of Dundee University, regarding the specific inadequacy of the section in the Policy Memorandum on sustainable development. It asks the Scottish Government to consider whether the assessment of sustainable development in the Policy Memorandum fulfils its potential as a means of ensuring a consistent and thorough regard for the environmental, economic and social impacts of the changes proposed by the Bill and the alternatives.

59. The Committee also notes that no adverse effects or trade-offs between economic, social and environmental aims are identified in the assessment of sustainable development in the Policy Memorandum, and is of the view that that section of the Policy Memorandum might have been strengthened by the inclusion of such information. The Committee recommends the Scottish Government gives consideration to these issues when preparing sustainable development sections of future policy memoranda.

Extract from
Colin T. Reid: “Environment and Sustainable Development”
- chap.16 in E. Sutherland, K.E. Goodall, G.F.M. Little and F.P. Davidson (eds) Law Making and the Scottish Parliament: The Early Years at pp.322-323

(1) Procedure

The Standing Orders of the Parliament require most Bills to be accompanied by a Policy Memorandum that among other things sets out “an assessment of the effects, if any, of the Bill on … sustainable development”.¹ This is potentially a strong tool for ensuring that the full implications of proposed legislation are considered across the whole range of elements covered by the concept. However, a study of the first five years of the Parliament by Ross concluded that these memoranda “reveal[ed] no significant pattern and overall, the quality has remained variable”, with “minimal effect on the subsequent parliamentary debates”.² An examination of the memoranda for the Bills that became Acts during 2008 and 2009, reveals the same picture.

The recent memoranda continue to show a remarkable lack of consistency in phrasing, focus and depth. On some occasions there is just a simple statement that

¹ Scottish Parliament, Standing Orders (3rd edn 4th rev, June 2009) orders 9.3(3), (3A); Executive Bills must be accompanied by such a memorandum, Committee and Member’s Bills may be accompanied by one, but Budget Bills are exempt (SO 9.16(2)).
there will be no,\textsuperscript{3} or no direct,\textsuperscript{4} or no negative,\textsuperscript{5} impact on sustainable development, often a somewhat surprising conclusion given the range of social, economic and environmental factors included within sustainable development. Where more is said, on a few occasions there is reference to the wider policy context,\textsuperscript{6} on others the focus is on the operational activities that will flow from the matters dealt with in the Bill,\textsuperscript{7} and only occasionally is there substantial consideration of a range of sustainability issues.\textsuperscript{8} Legislation has even proceeded where the memorandum has noted adverse environmental consequences, with little by way of counter-argument on other grounds.\textsuperscript{9} The memoranda appear not to be fulfilling their potential as a means of ensuring consistent and thorough regard for sustainable development in the legislative work of the Parliament.

\textsuperscript{3} Policy Memorandum (para 38) on the Health Boards (Membership and Elections) (Scotland) Act 2009, which surely is relevant to governance and social justice issues.

\textsuperscript{4} Policy Memorandum (para 31) for the Convention Rights Proceedings (Amendment) (Scotland) Act 2009, which again surely has some relevance to social justice.

\textsuperscript{5} Policy Memorandum (para 178) for the Sexual Offences (Scotland) Act 2009, where the absence of negative effects is only part of the story and there is a contrast with the Memorandum (para 25) on the Offences (Aggravation by Prejudice) (Scotland) Act 2009 where the social benefits of tackling crime are mentioned.

\textsuperscript{6} E.g. the Policy Memorandum (para 49) for the Scottish Register of Tartans Act 2008 expressly refers to the indicators in the Scottish Government’s template for assessing the sustainable impact of policies and that for the Flood Risk Management (Scotland) Act 2009 (paras 182-187) to the Government’s five Strategic Objectives.

\textsuperscript{7} E.g. the Policy Memorandum for the Judiciary and Courts (Scotland) Act 2008 (para 149) refers to the Scottish Courts Service carrying out their (sic.) functions with due regard to energy efficiency and sustainable travel plans; similarly the Memorandum for the Glasgow Commonwealth Games Act 2008 (para 81) notes that although the Bill will have no impact on sustainable development, the Games will and then outlines steps being taken to deal with this.

\textsuperscript{8} E.g. Policy Memoranda for the Climate Change (Scotland) Act 2009 (paras 179-188) and Flood Risk Management (Scotland) Act 2009 (paras 182-187).

\textsuperscript{9} Policy Memorandum (paras 62-67) for the Abolition of Bridge Tolls (Scotland) Act 2008.