On behalf of the Scottish Government, I welcome the opportunity to participate in the Standards, Procedures and Public Appointments Committee’s inquiry into the legislative process. I fully support the principle of periodically reviewing the Scottish Parliament’s working practices and procedures to ensure they remain fit for purpose.

This response sets out the Scottish Government’s preliminary views on the issues raised in the Committee’s call for evidence. I would welcome the opportunity to reflect on the other evidence which the Committee receives and to contribute further to the inquiry in due course. In my submission I suggest a number of issues which the Committee may want to explore, but I would wish to emphasise the importance of ensuring that whatever the outcome of the inquiry the Parliament’s procedures remain flexible and proportionate enough to accommodate the variation in size, type, nature, context and urgency of the Bills it scrutinises.

I would also note that the Committee’s focus is on the parliamentary stages of the legislative process. From the perspective of the promoter of a Bill, the legislative process does of course begin much earlier. The initial policy development process can take place over a considerable period of time and there will usually be at least one public consultation period, supplemented by other forms of stakeholder engagement and impact assessment development.

The Scottish Parliament does not routinely engage with this pre-parliamentary phase of the legislative process and, while I recognise that it is for individual committees to determine their own workplans, the Committee may wish to consider whether there are any recommendations it wishes to make in this area. Committees could, for example, engage with consultations which precede introduction of a Bill. That would enable those committees to engage with legislation earlier in its development and allow for their views to be taken into account as policy develops. Engaging with legislation during the consultation period would also enable committees to develop a familiarity with policy proposals in advance of undertaking formal scrutiny of Bills. This may help to offset concerns which are sometimes expressed, for example, about the time available to committees to conduct Stage 1 scrutiny.

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 those stages, and the time allowed between stages? To what extent does the current legislative process encourage engagement from interested parties?

While issues can sometimes arise in relation to the passage of individual Bills, I am of the view that the current process for scrutinising Bills once they are introduced to the Scottish Parliament is fit for purpose. This is reflected in the significant volume of
robust legislation which has been passed since 1999. I will address the other issues set out above in later questions.

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

I believe that the current accompanying documents provide helpful context to Bills. The Policy Memorandum, Explanatory Notes and Financial Memorandum are important to stakeholders, MSPs and members of the public in helping to explain the purpose of a Bill and the wider context surrounding it. I do not think any significant changes require to be made to the rules on supporting documents which accompany a Bill on introduction. The Committee may, however, wish to consider the following minor points:

- whether the Delegated Powers Memorandum should be formally designated an accompanying document; and
- whether the Financial Memorandum and Explanatory Notes could be separated out (although almost always referred to as separate documents, they are currently produced as a single document).

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 Stage 1 process is arguably the strongest feature of the Scottish Parliament's Bill process. Through the lead committee's call for evidence, stakeholders and members of the public are given an opportunity to offer their views on legislation. The briefing produced by SPICe ensures there is a neutral analysis of the background to a Bill and the policy issues being considered. The oral evidence sessions give lead committees the opportunity to question officials, stakeholders and Ministers on the purpose of a Bill and to explore any issues of concern. The opportunity for secondary committees to scrutinise Bills ensures that the burden of analysing delegated powers and financial impacts is shared with the relevant expert committee. The lead committee's Stage 1 report ensures that there is a detailed analysis of the general principles of the Bill in advance of the full parliament considering the Bill. The Stage 1 debate itself ensures that the whole Parliament has an opportunity to have an informed debate about the purposes of the Bill and to set out its views about how it could potentially be improved. I think this is a process which works well and I do not believe any fundamental reforms are required.

However, an issue which the Committee may wish to give some consideration to is the scope for the Stage 1 scrutiny process to better engage civic Scotland. While I do not underestimate the challenges involved, and would wish to recognise the efforts which the Parliament has already made in this area, I believe there is a perception that engagement with the Stage 1 process is easier for organised stakeholders than it is for members of the public. The Committee may therefore wish
to give consideration to how the Stage 1 process could be made more accessible to a wider audience than at present.

Are changes needed to the timescales for Stage 1 and how they are set?

There is currently no minimum time period for the Stage 1 process, with the deadline for the completion of Stage 1 set by the Parliamentary Bureau. The setting of this deadline takes into account a range of views, including the lead committee and members of the Bureau. I do not see a need to change the existing practice in this area and believe it provides an appropriate level of flexibility to set the duration of Stage 1 according to the circumstances of individual Bills.

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?

Although the Parliament's Standing Orders provide that amendments must be lodged no later than 3 days before Stage 2 sessions and 4 days before Stage 3, the Committee will be aware that Scottish Government abides by the convention that it will submit its amendments no later than 5 days before each stage.

I accept that there can be situations where it is difficult for the Government, MSPs, stakeholders and members of the public to have sufficient time to consider and digest the purpose and effect of amendments before they are debated at the relevant session. The Committee may therefore wish to consider whether the minimum periods should be extended. One option would be to make the current 5 day convention which the Scottish Government abides by the new Standing Orders default position. The Committee may also wish to consider whether there would be merit in extending the current minimum time periods between stages to better facilitate secondary committee scrutiny of Bills. Were the existing minimum periods for lodging amendments, and the existing minimum periods between stages, to be extended I consider it essential that those changes should be accompanied by a more flexible process in the Parliament’s Standing Orders to allow for those minimums to be shortened in appropriate circumstances (rather than the present requirement for the Parliament to agree to the suspension of the relevant section of Standing Orders).

I also accept that the amendment process at Stage 2 and Stage 3 can often be the part of the Bill process which stakeholders and members of the public find most difficult to engage with. The system of marshalled lists and groupings is logical and well understood by parliamentary practitioners but, particularly where large numbers of amendments are involved, it can be sometimes be inaccessible and difficult to follow for those people who do not have an intimate knowledge of parliamentary procedures. While emphasising again the need to ensure the Parliament’s procedures remain flexible and proportionate, I would support attempts to make the
amendments process more accessible and the Scottish Government would be happy to work with the Committee in developing options.

Committees considering primary legislation receive reports from the Delegated Powers and Law Reform (DPLR) and Finance Committees 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 DPLR and Finance Committees have an opportunity to scrutinise changes made to Bills at Stage 2?

I believe that the Delegated Powers and Law Reform Committee and the Finance Committee both play valuable roles in scrutinising Bills for their respective interests and I do not believe that any significant reforms are required in the functions they perform. I recognise that there can, on occasion, be challenges for the committees in scrutinising Bills between stages and, as already noted above, there may be a case to make for extending the minimum periods between stages (subject to an appropriate level of flexibility being built into Standing Orders).

I hope that the Committee will find this submission helpful and I would be happy to discuss further the issues set out in it.

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