

Protocol between the Scottish Parliament and the Scottish Government in relation to the handling of Committee business

Scope

1. This protocol sets out a shared understanding of the working relationships between the committees of the Scottish Parliament and the Scottish Government, including their respective staff. It is based on the principles of mutual respect and a general commitment to sharing relevant information, where appropriate.
2. Except where special reference is made to named committees, this protocol applies equally to the mandatory committees, subject committees (whether sessional or ad hoc) and Bill committees, and to any sub-committees that may be established. It does not apply to any inquiries or investigations that may be carried out by the Standards, Procedures and Public Appointments Committee into the conduct of MSPs.
3. The protocol applies to all directorates of the Scottish Government, including agencies, under the direct control of Ministers, but does not apply to non-departmental public bodies (NDPBs), quangos or other arm's length or autonomous public sector bodies.

Officials

4. The Scottish Government will appoint a Committee Liaison Officer (CLO) for each portfolio area with responsibility for liaising on its behalf with the clerks to each committee established by the Parliament. The CLO will ensure that the relevant committee clerk is kept updated of any changes in the names and responsibilities of CLOs.
5. The Head of Committee and Chamber Offices will ensure that relevant private offices and CLOs are kept updated of any changes in the names and responsibilities of staff in committee clerking teams.

Bills

6. Under a separate agreement described in paras 2.2 to 2.6 of the Guidance on Public Bills, the formal channel of communication between Scottish Government officials and clerks prior to the introduction of an Executive Bill is between the Office of Scottish Parliamentary Counsel (OSPC) and the Head of Chamber Office and/or the Legislation Team. In addition, committee clerks should discuss timetabling issues with the Minister for Parliamentary Business's office, and Bill team officials, in particular agreeing the stage 3 timetabling motion.
7. During the amending stages of a Bill, Scottish Government amendments should be lodged by OSPC with the lead committee clerks. Procedural matters relating to amendments (including admissibility, grouping and

order of consideration) should be discussed between OSPC and those clerks and/or the Legislation Team. However, if the committee taking the Bill at Stage 2 wishes to take evidence on amendments at that Stage, the normal liaison arrangements for evidence under this protocol apply.

Legislative consent memoranda

8. Scottish Government officials (MfPB) will alert the lead committee clerk (and others with a potential interest) once an in-principle agreement on a LCM has been reached with the UK Government.
9. Legislative consent memorandums should be checked by the relevant subject committee clerk and the clerk to the Subordinate Legislation Committee to ensure they comply with the relevant standing orders. The memorandum should be lodged with the Chamber Desk on behalf of the relevant Cabinet Secretary by the Minister for Parliamentary Business office.
10. Wherever possible, Scottish Government officials proposing to lodge a legislative consent memorandum should alert the relevant committee clerk that an LCM is to be lodged at least 5 working days before the anticipated date of lodging and provide the clerk with an early draft. A final draft for checking should be provided to the relevant committee clerks at least 24 hours in advance of the anticipated date of lodging.
11. The clerks will treat any such drafts as confidential. They will alert Scottish Government officials of any concerns they have over compliance with Standing Orders or drafting points within the 24 hour deadline and will advise Scottish Government officials as soon as possible if this timescale cannot be met.

Subordinate legislation

12. The Scottish Government's Constitutional and Parliamentary Secretariat officials will offer the SLC Clerks indicative statistical information each month on SSIs that Ministers propose to lay in a forthcoming 6 week period. The SLC Clerks then disseminate that information amongst other clerking teams. Should a clerk wish to discuss the information received on instruments falling to be scrutinised by their committee they should contact the relevant CLO or policy official. The Scottish Government will aim to avoid, so far as possible, laying within a short space of time a large volume of subordinate legislation for consideration by a particular committee.
13. The clerks will notify Scottish Government officials of the date on which a Minister and officials are expected to attend a committee meeting for the purpose of participating in taking evidence on and debating instruments
 - a. in the case of an affirmative instrument, as soon as possible after the instrument is referred to the committee;

- b. in the case of a negative instrument, as soon as possible after a motion recommending annulment of the instrument is lodged or as soon as possible after the instrument is referred to the committee if the committee wish to debate the topic.

Requests for written evidence

14. Where a committee requests written evidence from the Scottish Government, the period that should be allowed for that evidence to be provided (from the date the request is made to the date by which the evidence is requested) is
 - a. in relation to an inquiry (or other item of scrutiny) initiated by the committee, normally at least three weeks and four weeks when circumstances permit
 - b. in relation to an Government Bill, a legislative consent memorandum lodged by a Minister and subordinate legislation, normally at least one week, and at least two weeks where circumstances permit.
15. However, where a committee is considering business initiated by the Scottish Government, it may request written evidence to be provided more quickly than indicated by paragraph 14 if that is necessary in order to enable the committee to meet any timescale imposed by Standing Orders or requested by the Scottish Government.
16. In any event, a committee should request written evidence as far in advance as is reasonably possible; and the Scottish Government should make all reasonable efforts to provide the evidence requested no later than the date specified in the request. The CLO (or other relevant SG official) will advise the clerks immediately if there is a problem in meeting the deadline.
17. Requests for written evidence should indicate clearly the context within which, or purpose for which, the evidence is requested; the information sought; and the timescale for receipt.
18. When conveners and clerks request written information or oral evidence Scottish Ministers will consider whether such requests are within the boundaries of what they can divulge, taking into consideration concordats with the UK Government in terms of sharing confidential information or any other information received by the Scottish Government on a confidential basis.

Invitations to give oral evidence

19. A committee may invite a Minister or Ministers to attend a meeting for the purpose of giving oral evidence on any matter for which the Scottish Government has general responsibility. Such invitations may express a preference for the attendance of a particular Minister or Ministers, but it

is for the Scottish Government to decide which Minister (or Ministers) is best placed to attend (according to responsibilities, experience and availability) and to decide whether officials should accompany the Minister(s) also for the purpose of giving oral evidence. In exceptional circumstances (for example where an individual Minister is particularly associated with a matter being considered by a committee) a committee may request the attendance of specific Ministers.

20. A committee may invite officials alone (i.e. not accompanying a Minister) to attend a meeting for the purpose of giving oral evidence on any relevant matter which is within the official's area of expertise and for which the Scottish Government has general responsibility.
21. In either case a committee should not normally express a preference for the attendance of named officials but may do so in exceptional circumstances where, for example, a specific official is closely associated with the policy area under scrutiny. Normally it is for the Scottish Government to decide which officials are best placed to give oral evidence on any occasion (according to responsibilities, experience and availability) and whether or not it would be suitable for a Minister to attend also. The Public Audit Committee, however, is entitled to invite named officials in their capacity as accountable officers.
22. Where a committee takes oral evidence from officials, particularly when they are not accompanying a Minister, committee members should take into account in questioning the limits imposed on officials by the nature of their role. Committee conveners in particular have a responsibility to ensure that questioning of officials is within the boundaries of their particular area of expertise and relates to the details they have been asked to give evidence on in their letter of invitation and does not stray into political questions, which are for Ministers to answer.
23. Requests for Ministers or officials to attend a committee meeting to give oral evidence should normally be made
 - a. in relation to an inquiry (or other item of scrutiny) initiated by the committee, normally at least four weeks before the date of the meeting;
 - b. in relation to an Government Bill, a legislative consent memorandum lodged by a Minister, subordinate legislation or any other matter that the committee is considering at the request of the Scottish Government, where possible at least two weeks before the date of the meeting.
24. When issuing an invitation for a Minister to provide oral evidence the clerk should liaise with the Minister's private office in the first instance to determine a suitable date and time and should take into account the timing of Cabinet and other major Ministerial commitments already scheduled in the diary. Committees should try to avoid inviting a Minister to attend more than one committee on the same day. When reasonable

notice has been given the Minister should give priority to attending the committee meeting. Committees should avoid inviting Ministers to provide oral evidence at short notice.

25. In advance of a meeting where oral evidence is to be given the clerk will inform the CLO of any other witnesses who will be appearing at the same session as the Minister or Scottish Government officials, and of the order in which those witnesses will be invited to appear. Where it appears that a Minister or official may be invited at the same session to give further evidence after other witnesses have given evidence, they will be forewarned that this will happen. Committees reserve the right exceptionally to invite witnesses to give further evidence without advance notice should the need arise during a committee meeting.
26. The expected start time and duration of the Minister's evidence taking session should be discussed and agreed by the Clerk and the Private Secretary and should be confirmed in the written request for oral evidence. Committees should make all reasonable efforts to ensure that evidence-taking from Ministers and/or officials begins at or near the time indicated in advance, and does not exceed the duration indicated. If committee meetings are not running to time and the Minister's or official's evidence session is to be delayed the clerk should inform them as soon as possible of the new expected time. If, in exceptional circumstances, a Minister's evidence giving session is taking longer than expected the convener will consider whether the current session should continue or a further session be scheduled having regard to both the committee's work programme and the Minister's schedule.
27. Where it is not already clear from the context of the invitation, or on request, the clerks will give Scottish Government officials a reasonable general indication of the anticipated areas of questioning. Committee members retain the right to ask questions as they see fit within the parameters of the subject-matter indicated on the committee's agenda or accompanying papers. However, committee conveners have a responsibility to ensure that questioning of both Ministers and officials is kept within appropriate boundaries.
28. The CLO, or other relevant Scottish Government official, will ensure that the clerks have the full names and titles of all officials who will be attending to give evidence by noon on the third working day before the committee meeting (e.g. normally Friday for a Wednesday meeting).
29. Scottish Government officials should send any correspondence electronically to the clerks.

Requests for oral or written evidence: form of notification

30. Clerks should notify requests for oral and/or written evidence to both the CLO and the Ministerial Private Office.

31. Requests may initially be made by telephone but this should always be confirmed as soon as possible in writing (e-mail and/or letter). Written confirmation from the clerk should include the estimated duration of the session, guidance on the format of the evidence session and the expectations on Ministers and officials e.g. if an opening statement is required, and when officials and Ministers are allowed to speak.

Supplementary written evidence

32. Where during oral evidence a committee requests, or a Minister or official offers to provide, supplementary written evidence, this should normally be provided as soon as possible after the meeting, or according to whatever timescale is agreed after the meeting between the clerks and the CLO or other relevant Scottish Government official.

Correspondence and other documents

33. This section of the protocol applies to letters and other documents relating to committee business sent either in hard copy or electronically by either Minister/Government officials or committee conveners/clerks. It does not apply to e-mails or to correspondence on purely administrative or practical matters.
34. Letters sent to a Minister in the name of the Committee Convener should make clear whether the letter is sent on behalf of the committee or in a personal or other capacity. Letters from a Minister to a Committee Convener (in his or her capacity as convener) are deemed to be a letter to the whole committee and should therefore be shared with the committee members.
35. Any such document should be understood by both sides to be a public document from the time of issue, unless restrictions on its distribution or publication have been agreed in advance or are clearly marked on the document.
36. Letters to committee conveners on committee business should be addressed c/o the relevant committee clerk. Letters to Ministers on committee business should be addressed c/o the relevant private office, copied to the CLO. E-mails to committee clerks should normally be sent to committee mailboxes (rather than to the personal in-boxes of clerking staff).
E-mails to Ministers or their private secretaries should normally be sent to ministerial mailboxes (rather than to the personal in-boxes of private office staff).
37. All such documents should be conveyed by e-mail (whether or not also sent in hard copy) with the full text (including, where possible, any attachments) provided in a form that allows re-formatting by the recipient (for example, by setting out the text in the body of the e-mail or as a Word attachment).

38. Recipients of correspondence may re-format the contents for publication and may correct minor errors, but should not make any substantive changes. If further clarification is required a written request from either party should be sent.

Committee reports

39. When a committee agrees a report for publication, the clerk will provide the CLO/Minister and the Minister for Parliamentary Business] with an advance copy normally at least half a working day before publication (for example, by lunchtime on the previous day where publication is scheduled for 00:01 hours). Such advance copies are embargoed until publication of the report. Where a committee report is made available in advance to the media and Ministers under embargo, as the reports themselves will not be public when received, committee reports are treated on a 'no approach basis' for reporting purposes. This means that there should be no questions from the media to MSPs and Ministers or any media interviews given until the stated embargoed time. A copy in the same format will be provided to the CLO at the same time and on the same conditions.

Responses to the Public Petitions Committee

40. The Scottish Government should normally respond to the Public Petitions Committee within 6 weeks of receiving a petition or within the deadline set by the committee clerks.

Responses to committee reports

41. The Scottish Government should normally respond to any committee report not later than:
 - a. two months after publication of the report; or
 - b. where exceptionally the debate is to be within the 2 months of publication, a week before the Chamber debate the report.

Where the timescale for debating a report make it impractical to provide a written response in advance of the debate, a Government response should still be provided within two months of publication. Written responses to Stage 1 reports on Bills, if not provided in advance of the Stage 1 debate, should be provided no later than 5 working days before the first committee meeting at Stage 2 of the Bill.

42. The Scottish Government should provide a written response to every committee report published more than a month before the expected date of dissolution of the Parliament, except where the report itself (or any covering letter) makes clear that no response is required.
43. If a response is not to be provided within the timescales indicated above the relevant Minister should write to the committee convener in advance outlining the reasons and indicating when the response can be expected.

44. The response should address each recommendation in the report that is directed at the Scottish Government, or that deals with any matter within the general responsibilities of the Scottish Government, in each case identifying the relevant passages in the report (for example, by paragraph number).

General liaison

45. Committee Liaison Officers and/or other relevant Scottish Government officials have a general responsibility to ensure that committee clerks are kept updated with significant developments in Scottish Government policy within the committee's remit. This includes, for example, providing clerks with copies of relevant policy announcements, consultations and publications at the time that are made or issued. It also includes giving (where appropriate, or on request) reasonable advance notice of forthcoming events (making clear, where necessary, any restrictions on the extent to which this information can be made public or shared with committee members).
46. Committee clerks have a general responsibility to ensure that Committee Liaison Officers and/or other relevant Scottish Government officials are kept updated in relation to the committee's work programme and other business. This includes, for example, alerting CLOs to significant committee decisions, calls for evidence and reports at the time they are made or issued. It also includes giving (where appropriate, or on request) reasonable advance notice of forthcoming committee business (making clear, where necessary, any restrictions on the extent to which this information can be made public or shared with Ministers).

Definitions

47. References in this protocol to Ministers apply (as appropriate) to the First Minister, Cabinet Secretaries (i.e. persons appointed as Ministers under section 47 of the Scotland Act 1998), Ministers (i.e. persons appointed as junior Scottish Ministers under section 49 of the Act) and Law Officers (i.e. the Lord Advocate and the Solicitor General for Scotland).
48. References in this protocol to committee conveners apply (as appropriate) to deputy conveners or temporary conveners when they are acting in the capacity of conveners under Rule 12.1 of the Parliament's standing orders.
49. References in this protocol to periods of time include periods when the Parliament is in recess.
50. The terms of this protocol will be kept under review, and if necessary, revised, in light of experience.

**Minister for Parliamentary Business, Scottish Government
Conveners Group, Scottish Parliament
October 2009**