



# The Scottish Parliament

## Scottish Parliamentary Corporate Body

### 2<sup>nd</sup> Report, 2005 (Session 2)

#### Report on the Prioritisation of the Non-Executive Bills Unit's Workload

The Scottish Parliamentary Corporate Body (SPCB) reports to the Parliament as follows—

#### Background

1. The SPCB is responsible for ensuring that the Parliament is provided with the property, staff and services it requires to operate effectively and all members are able to carry out their duties. The SPCB also considers and makes decisions on a wide range of issues to do with the running of the Parliament including the financing of the Parliament and allocation of the budget. One such decision is the prioritisation of the workload of the Non-Executive Bills Unit (NEBU). This Report sets out our recommendations on the prioritisation of proposals for Members' Bills for the remainder of this Session.
2. The Non-Executive Bills Unit was established in August 2000 in response to a gap that had been identified in the level of support available for committees and members wishing to introduce Bills. NEBU's aims are to:
  - assist committees' and members' formulation of policy objectives;
  - support members in developing Bill proposals;
  - support committees and members in Bill drafting and the Parliamentary process; and
  - assist committee clerks with preparation of papers for committee scrutiny of Non-Executive Bills
3. The Unit has five full-time staff and has the support of the Parliament's Legal Office which provides solicitors dedicated to the work of the Unit. In addition, the Unit has access to a drafting panel of six individuals or organisations that are contracted by the Parliament to draft Bills on its behalf. Further Parliamentary resources, including legal staff, are also involved in Non-Executive legislation.

### **Prioritisation system for Member's Bills**

4. A key issue for the SPCB is how the Unit's resources are prioritised when demand for support exceeds available resources. Resources are finite and decisions have to be taken in a manner that is fair, balanced and transparent. This situation was addressed in Session 1 when the SPCB agreed a set of criteria (see below) to inform consideration of requests made to NEBU for drafting assistance in respect of Members' Bills.

#### *Procedures Committee*

3. In this Session SPCB again considered prioritisation and the Procedures Committee conducted an inquiry into new procedures for Members' Bills.

4. They concentrated on developing a "more rigorous and structured procedure" in the hope that that would address excess demand.

5. The Procedures Committee concluded in their report "A New Procedure for Members' Bills"<sup>1</sup> that they,

"were unable to agree on how a system of prioritisation could be made to work in a way that would achieve its main aim of improving the management of the Members' Bill process while still protecting the rights of backbench members to initiate legislation ideas and have them considered on their merits."<sup>2</sup>

6. The Procedures Committee suggested that making choices over competing proposals for NEBU support when resources were stretched was a matter for the SPCB. They acknowledged that, in the event that choices as to the allocation of resources need to be made: "NEBU officials cannot make such choices alone, so it falls to the SPCB at least to establish clear criteria to be applied."<sup>3</sup>

#### *Prioritisation criteria*

7. On 31 May 2005, the SPCB adopted the following prioritisation system which was almost identical to that agreed in Session 1. The system recognises that Committee Bills should be given priority over Members' Bills (given their cross-party status); provides that all members should continue to be supported up until the lodging of the final proposal; and that in relation to the further development and drafting work on proposals the following criteria should be met for assistance continuing to be available:

- only proposals appearing to be broadly within the competence of the Scottish Parliament should have drafting assistance provided;<sup>4</sup>

---

<sup>1</sup> Procedures Committee, 6th Report, 2004 (Session 2), "A New Procedure for Members' Bills", SP Paper 193

<sup>2</sup> Procedures Committee, 6th Report, 2004 (Session 2), "A New Procedure for Members' Bills", SP Paper 193, Paragraph 64

<sup>3</sup> Procedures Committee, 6th Report, 2004 (Session 2), "A New Procedure for Members' Bills", SP Paper 193, Paragraph 114

<sup>4</sup> SO 9.14.18 applies once the Bill has been introduced

- there should be no likelihood of legislative action on a similar subject matter (which would afford the member/party an opportunity to lodge/propose an amendment) within the current session in the Scottish Parliament or at Westminster or Europe in the same area of law.<sup>5</sup>
8. We also agreed that other factors which need to be taken into account where demand exceeds capacity are:
- the potential size, scope and complexity of a Bill; and
  - the breadth of support that a proposal has attracted.
9. NEBU advise the SPCB on these factors in relation to proposals having completed consultation and seeking drafting assistance. The Unit estimates potential size of a Member's Bill, by reference to other legislation on comparable issues. Scope is estimated by reference to the extent of the policy being pursued as discussed during consultation. Complexity is assessed by reference to the desired policy, other legislation and work in other jurisdictions. In each case assessment is made by the NEBU staff with input from their legal advisers.

#### **NEBU Current Workload**

10. NEBU is currently providing support for four Members' bills which have completed consultation, and two Committee Bills:
- Interests of Members of the Scottish Parliament Bill – Committee Bill
  - Abolition of NHS Prescription Charges (Scotland) Bill – Colin Fox
  - Environmental Levy on Plastic Bags (Scotland) Bill – Mike Pringle
  - St Andrew's Day Bank Holiday (Scotland) Bill – Denis Canavan
  - Christmas Day and New Year's Day Trading (Scotland) Bill – Karen Whitefield
  - Subordinate Legislation (Scotland) Bill – Committee Bill

Support to the Members' Bills was given on the basis that they met the prioritisation criteria and that policy was sufficiently developed before NEBU demand began to exceed available capacity.

11. For this Parliamentary Session, under Standing Orders Rule 9.14.15, members have until the end of September 2006 to introduce a Bill. It can take approximately 12 months to develop the policy and work with the drafter to produce a bill which is fit for introduction and meets the member's intentions.

---

<sup>5</sup> SO 9.14.13 applies when the Executive/UK Parliament intends to give effect to the proposal during the current session

## **Short listed Members' Bills**

12. On 21 June 2005, the Corporate Body determined the relative prioritisation to be given by NEBU to Members' Bills as it was clear that demand would shortly exceed the Unit's capacity to deliver. We took account only of those 8 proposals which had completed consultation. A list of the Members' Bills considered can be seen at Annexe A.

### *Final proposals for Members' Bills*

13. We consider that two proposals, the Civil Appeals (Scotland) Bill and the Commissioner for Older People (Scotland) Bill should receive NEBU's drafting assistance. Both are broadly within the competence of the Scottish Parliament and there is no likelihood of legislative action on a similar subject matter within the current session of the Scottish Parliament, or at Westminster or in Europe in the same area of law which would afford the member opportunity to amend to give effect to their proposal. Both received support from 5 different political parties or groups.

14. Liability for Release of Genetically Modified Organisms (GMOs) (Scotland) Bill was assessed to be within competence but a great deal of care would be needed given the existing regulatory framework at European level. The proposal is extremely complex. The proposed Bill seeks to amend the law of damages by making the holder of the consent to release, strictly liable for economic damages resulting from GM contamination. The proposal encompasses areas such as jurisdiction, contamination threshold, testing, traceability and the interpretation and concept of strict liability in Scots Law. It raises difficult issues around proportionality within the European regulatory framework. Additionally there is legislative action elsewhere; the Executive consultation this year and forthcoming European Commission regulations. The combination of these factors led us to conclude that this proposal would be difficult and extremely time consuming to produce, taking up a disproportionate amount of available resources and should not be supported by NEBU.

15. The proposal for Direct Elections to Health Boards (Scotland) Bill was in the process of gathering support for the final proposal at the time of our deliberations. As the proposal stands it requires the creation of a complete election regime. Provisions would need to be included to cover notice of elections, nomination of candidates, appointment of counting agents, lost ballot papers, expenses of returning officer and audit mechanisms. The magnitude of these provisions would almost certainly result in a bill that would be in the region of 70 sections. We therefore deemed the proposal not to be a suitable candidate for NEBU's drafting assistance when resources are in demand.

16. It is worthy of note that if drafting assistance had been recommended for either of these Bills the impact would be such that NEBU would have had no scope to provide assistance for any other bills for the remainder of this Session.

### *Draft Proposals for Members' Bills*

17. Four proposals: Right to Die for the Terminally ill (Scotland) Bill; Greener Transport (Scotland) Bill; Local Government Elections (Scotland) Bill; and Tartan Register (Scotland) Bill had not lodged a final proposal and therefore

had not yet secured the necessary support. The Local Government Elections (Scotland) Bill proposal fell as a consequence of the member's resignation. The remaining 3 proposals met the criteria but a decision was deferred on these until they had attained a successful final proposal. However it was agreed that subject to successful final proposals being lodged these would be looked on favourably albeit dependent on the amount of resources available at the time when they become successful.

18. Decisions on prioritisation do not prevent NEBU supporting members with proposal and consultation development including analysis. Nor do they inhibit members in seeking external support in drafting and handling (subject to paid advocacy rules).

### **Recommendation**

19. Having given careful consideration to the information presented to us and for the reasons set out above, we recommend to the Parliament that in addition to the bills listed in paragraph 10 the following proposals for Members' Bills should be prioritised for drafting assistance from NEBU:

- the Civil Appeals (Scotland) Bill - Adam Ingram;
- the Commissioner for Older People (Scotland) Bill – Alex Neil.

and in addition, once a consultation analysis is completed and if a successful proposal is lodged that SPCB prioritise for drafting assistance from NEBU as resources become available:

- the Tartan Register (Scotland) Bill – Jamie McGrigor;
- Right to Die for the Terminally ill (Scotland) Bill - Jeremy Purvis;
- Greener Transport (Scotland) Bill – Chris Ballance.

Scottish Parliamentary Corporate Body, 2nd Report, 2005 (Session 2)

Scottish Parliamentary Corporate Body, 2nd Report, 2005 (Session2) – ANNEXE A

Summary of List of Proposals Completed Consultation

MSP & PROPOSAL	SUPPORT	POLICY DEVELOPED	POTENTIAL SIZE	COMPLEXITY	STAFF TIME	LEGISLATIVE ACTION ELSEWHERE	COMPETENCE
<b>Mark Ruskell:</b> Liability for Release of Genetically Modified Organisms (S) Bill	✓ 24 (5 parties)	Partially	Medium 18 sections	Highly complex & technical	2 staff, 12 months	✓	EC issues
<b>Adam Ingram:</b> Civil Appeals (S) Bill	✓ 22 (5 parties)	Largely	Small 8 sections	Straightforward	1 staff, 4 months	X	✓
<b>Bill Butler:</b> Direct Elections to Health Boards (S) Bill	No final proposal	Partially	Large 70 sections	Complex	2 staff, 15 months	X	✓
<b>Alex Neil:</b> Commissioner for Older People (S) Bill	✓ 19 (5 parties)	Partially	Medium 17 sections	Medium	1 staff, 12 months	X	✓
<b>Jeremy Purvis:</b> Right to Die for the Terminally ill (S) Bill	No final proposal	Largely	Medium 20 sections	Medium	1 staff, 9 months	X	✓
<b>Chris Ballance:</b> Greener Transport (S) Bill	No final proposal	Partially	Small 6 sections	Straightforward	1 staff, 6 months	X	✓
<b>David Mundell:</b> Local Government Elections (S) Bill	No final proposal	Partially	Small 3 sections	Straightforward	1 staff, 4 months	X	✓
<b>Jamie McGrigor:</b> Tartan Register (S) Bill	No final proposal	Partially	Small 6 sections	Straightforward	1 staff, 4 months	X	✓