

**Commission on
Parliamentary
Reform**

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Pàrlamaideach

Do Phàrlamaid
Do Ghuth

Agenda

6th Meeting

Monday 16 January 2017

The Commission will meet at 12.30 pm in the Robert Burns Room (CR1) at the Scottish Parliament.

1. The Commission will discuss Parliamentary scrutiny, engagement and identity with—

Rt. Hon. Lord Jack McConnell, First Minister of Scotland, 2001-2007;

and then—

Rt. Hon. Henry McLeish, former First Minister of Scotland.

Paper CPR/6/1 – written views of discussion participants

Paper CPR/6/2 – note by the Secretariat (private paper)

2. The Commission will discuss the legislative process with (in private)—

Andy Beattie, Chief Parliamentary Counsel, and Willie Ferrie and Ian Young, Parliamentary Counsel Office, Scottish Government;

and then—

Tracey White, Group Head of Chamber, Reporting and Broadcasting; Susan Duffy, Group Head of Committees and Outreach; and Judith Morrison, Group Head of Legal Services, Procurement and Audit, Scottish Parliament.

Paper CPR/6/1 – written views of discussion participants

Paper CPR/6/3 – note by the Secretariat (private paper)

3. The Commission will discuss the legislative process with—

Michael Clancy, Law Society of Scotland and Laura Dunlop QC, Faculty of Advocates.

Paper CPR/6/3 – note by the Secretariat (private paper)

4. The Commission will consider the discussions held at items 1, 2 and 3 (in private).

Paper CPR/6/4 – note by the Secretariat (private paper)

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Commission on Parliamentary Reform

6th Meeting, Monday 16 January 2017

Written Views

Introduction

1. Written views have been provided by the following individuals and organisations giving evidence at today's Commission meeting—

- Rt Hon. Lord Jack McConnell (Annexe A);
- Rt Hon. Henry McLeish (Annexe B);
- Parliamentary Counsel Office, Scottish Government (Annexe C); and
- Scottish Parliamentary officials (Annexe D).

Written views from Rt. Hon. Lord Jack McConnell

Background

2010 – : Member, UK House of Lords
2001 – 2007: First Minister of Scotland
2000 – 2001: Minister for Education, Europe and External Relations
1999 – 2000: Minister for Finance
1999 – 2011: Member of the Scottish Parliament for Motherwell and Wishaw

I was a member of the Campaign for a Scottish Parliament in the 1980s and 1990s, and a member of the Scottish Constitutional Convention from 1990 and its Executive Committee from 1992-1998.

As Finance Minister, I led the first full Government bill through Parliament, the Public Finance and Accountability Act 2000, and I led on the Memorandum of Understanding with the UK Government. As First Minister, I proposed a number of changes to Parliamentary procedures in 2003/04 to improve the opportunities for Parliament to scrutinise the work of Scottish Ministers, but most were rejected. After 2011, some of those changes were implemented in part by the new Parliament.

Introduction

When the new Scottish Parliament was established in 1999, there was a genuine desire for the new Parliament to adopt a different style from the more traditional UK House of Commons. The initial principles of sharing power, accountability, accessibility and equal opportunities were broadly welcomed. Steps were taken to change the old practices and develop a new approach.

In some areas – notably in the Petitions Committee, the Freedom of Information Act, the budget process and Labour's implementation of a 50/50 approach to male/female representation – the new Parliament did indeed successfully implement these principles. But there has always been room for improvement, and some of the systems adopted in the early days have made the Parliament less effective rather than more.

The addition of significant new financial and taxation powers must surely lead to change and this review of Parliamentary procedures is therefore very welcome. It is important to hold to the founding principles, but also to learn from the experience of both coalition and majority Government, 17 years of a mixed-member electoral system, and the many debates and Acts of Parliament.

Issues

There are three areas that I would like to highlight and my contribution will be driven by the importance of transparency, the need to revitalise the link between MSPs and their constituents rather than their parties, and the role of the Scottish Parliament in providing a forum for national debate in these important times.

1. I believe that the balance between MSPs representing their constituents and being part of a collective party organisation has shifted too far in the direction of the party and is not strong enough in the connection with the constituents. I believe this is partly an outcome of the mixed-member electoral system, but also partly an outcome of the way in which the parties have operated internally, and how the committees function.
2. I believe there is a need to improve the opportunities for the Scottish Parliament to scrutinise Ministers, and to be a location for national debate. The reforms introduced to include time in the full Parliamentary Chamber earlier in the week are welcome but I believe that the hours of the Parliament should be more flexible and that the Ministerial Question Times need to change.
3. The Committees of the Parliament have involved a lot of hard work and have been a positive force for engagement with those outside the Parliament. But, with a few notable exceptions, they have neither significantly influenced legislation nor the direction of national policy. The Public Petitions Committee, the Education Committee in 2000 during the crisis facing the Scottish Qualifications Agency, and occasionally the Finance Committee have shown that it is possible to have a significant impact on events. However, committees are more partisan and reactive than was expected. There seems to be a need to change the system of appointments and to revisit the combination of roles between legislative scrutiny and longer term inquiries and reports.

Further information provided by Lord McConnell

1. In relation to the point about “whether Parliament should have a role in improving the quality of responses, policy and legislation”, the simple answer is, yes it should. In particular, I think that Parliament should take a much stronger line on unsatisfactory and late answers and there should be a specific responsibility somewhere for tackling this problem, and those responsible must be independent of the Government.

Written views from Rt. Hon. Henry McLeish

Brief resume of discussion points

The Scottish Parliament is a remarkable success story, 20 years on from the publication of the Scotland White Paper in 1997 and the endorsement by the people of Scotland in the September Referendum.

There are outstanding examples of innovation, ground breaking legislation, consistent and effective scrutiny of Government and excellent committee work. The Parliament has quickly become an integral part of the life of Scotland and has won respect from the many and even grudging respect from the few!

The Parliament- the staff and the MSPs- should be proud of its achievements which have far exceeded our expectations way back in 1998 when the Scotland Bill was going through the House of Commons.

Nearly 20 years on this is an appropriate time to reconsider and reappraise the institution and identify where we can improve and reform the work and procedures of the Parliament, ensuring it remains fit for purpose in what is a time of dramatic, challenging and often bewildering social, technological, political, constitutional and economic change.

The Parliament now represents, for the majority of Scots, especially the younger generation, the most important political and parliamentary focus for their aspirations and concerns. This is likely to be reinforced in the next few years. One thing is certain, the future of Scotland, regardless of its final constitutional destination, will see a Parliament obtaining more powers in the short term. And may, whether it is called Home Rule, Federalism, a new four nation solution or independence in the medium term, become unrecognisable in relation to the Scotland Bill of 1998 and the more limited powers devolved to Holyrood.

This requires a Parliament: able to effect reforms in relation to current weaknesses and challenges; adapt in the immediate future to the impact of the powers currently coming Scotland's way; and then ensure there is capacity and long term thinking to cope with changes that will transform the importance of the Parliament and the role it will have to play in relation to the Governance of Scotland and a much more onerous legislative programme.

Against this changing backdrop the following issues need to be addressed:

Parliament

1. Strengthening the role of the Parliament in relation to the Scottish Government
2. Creating and maintaining a greater sense of identity for the Parliament distinct from the work of Government
3. Raising the profile of the Parliament in terms of public engagement, accessibility and importance to the nation.

4. Giving the Presiding Officer (sorry I nearly said Speaker) a more significant role in the wider context of constitutional matters in Scotland and a more visible presence in promoting political awareness and civic literacy

Committee System and Chamber

5. Improving the effectiveness and importance of the committee system: creating a less partisan political atmosphere and less tribal forums for debate and decisions

6. Consideration should be given to electing the Chairs of Committees as part of giving more credibility to committee business, developing a higher profile for Parliamentary business as against Government business and allowing a different career path to be established for those MSPs who do not wish to be Ministers. There should be more opportunities for Chairs to be involved in media work.

7. Making the “select committee” function of committees stronger and exercising far more scrutiny of Scotland’s economic, social and institutional structures. There is a widely held view that the “Bill” committee function is so important and substantial and as a result there is not enough regard given to other work (there are clearly constraints in that the numbers of MSPs are limited, the size of the Parliament is smaller and Government business has to be prioritised)

8. Does the size of the Parliament and the length of the working week act as a constraint on more work in both committees and the chamber?

9. More thought should be given to the plenary sessions in the chamber. Can we create time for bigger debates and create a forum in which MSPs can develop debating skills, gain more confidence and experience and help establish a more powerful back bench presence in the Parliament: votes are invariably partisan in nature but debates do not have to be!

Looking to the Future

10. Many of the points made above are very much influenced by two things. First the amount of time available to the Parliament in the current working week. Second the number of MSPs which is incredibly limiting in the amount of work that can be processed in the current working week. There is no doubt that these factors will influence to a large extent the amount and quality of the work done and the ability of the Parliament to respond to new pressures and more powers. This is clearly an issue at the present time but in this turbulent political world thing could get a whole lot worse as Holyrood assumes more importance in the continuing redistribution of powers and responsibilities within the United Kingdom. This is not a partisan or political issue, it is of vital practical importance and significance if Holyrood is to be fit for purpose in this rapidly changing political landscape.

11. Responding to the challenges of 10 above requires us to look into the future and focus on the continuing capacity of the Parliament to be able to respond and plan ahead. New and original thinking is required and sometimes that can be difficult and unsettling. For this to work we need to have the widest possible dialogue with Scotland to help both understand the changing context we are facing and the tough decisions that will have to be made for Holyrood to be successful over the next 25 years. Some of the big issues are sketched below.

12. The size of the Parliament: some work may be underway to look at the Nordic countries especially those with a similar population to Scotland but if not this would be a useful exercise. There, Parliaments are bigger and have more elected representatives, per head of population, and are able to undertake a bigger workload consistent with their status of being sovereign nation states. Scotland's future is unknown but even anticipating some modest future increases in the number of powers and discounting anything more dramatic the work of Holyrood may be under significant pressure.

13. There are compelling reasons for Scotland to have a codified written and accessible Constitution. The UK is one of only one of a handful of countries in the world without one. Regardless of our future constitutional status a constitution would serve to define and protect the relationships: between institutions in Scotland; between the Scottish Government and the Parliament; between the Scottish Government and other public institutions, such as Local Government which has no real official status; and the rights, freedoms and responsibilities of the individual and their relationships with all of the above. This is where the sovereignty of the people would decide on their constitution after it was set in motion by the Scottish Parliament. This would make sense in terms of good government as well as ensuring people feel they have a greater say in determining their rights and freedoms. This is a legitimate role for the Parliament.

14. Have we reached a point where we can have a serious look at our electoral system and the way we elect our MSPs? Again experience of continental Europe might be of help. How forward looking is our system now? Certainly better and more democratic than the "first past the post" system still used by Westminster. More than half of our MSPs are elected by the old method. Is there a case to be made for some form of proportionality or alternative voting? Could Scotland create a fairer system based on multi member constituencies while abandoning the list system? Would it work? Does it enhance our democracy and our Parliament? These ideas are linked to the question of parliamentary size and the number of MSPs and in turn the issue of capacity that will start to dominate the workings of Holyrood in the years ahead.

Building on success makes the future much easier to cope with. With this in mind there is no reason why the Parliament and the Presiding Officer should not consider setting up a Standing Commission on the Parliament, involving Scotland but responsible to Holyrood. This would represent a progressive relationship between Parliament and people.

Written views from the Parliamentary Counsel Office, Scottish Government

PCO is the Scottish Government's legislative drafting office. Chief Parliamentary Counsel leads a team of lawyers, called "parliamentary counsel", who specialise in legislative drafting.

PCO drafts clear, effective and accessible legislation which delivers the Scottish Government's policy and secures its reputation, and that of the Scottish Parliament, for making high quality law which serves the people of Scotland well.

PCO's key responsibilities is to—

- draft all Scottish Government Bills, draft amendments and related motions and advise on legislative matters and parliamentary procedure
- help plan and deliver the Scottish Government's legislative programme
- draft or review significant subordinate legislation (including Scotland Act orders, public service reform orders, ECHR compliance orders and any regulations which amend primary legislation)

Scotland's centre of legislative excellence

PCO's experience and expertise means that it is uniquely positioned to help ensure that the overall quality of all Scottish primary legislation is of a high standard. As Scotland's Centre of Legislative Excellence, PCO is committed to—

- improving the overall quality of Scotland's law
- continuously improving and sharing our legislative skills and knowledge
- providing leadership, within government and beyond, to others who use or participate in making Scotland's law

PCO's internal guidance on drafting legislation, [Drafting Matters!](#), was published last year in line with the First Minister's commitment to leading the most open and accessible government ever. Publication gives some insight into how PCO goes about drafting Bills and will help PCO to engage with others involved in making law, and with end-users, and continue to develop a modern drafting style which is easy to use and understand.

PCO is leading a multi-party project to create digital tools to improve how Scottish and UK legislation is prepared and made publically available which has potential to enhance transparency and ease of participating in the legislative process.

PCO provides an independent drafting service to the UK Government, to the Scottish Law Commission and to the Parliament's Non-Government Bills Unit with a view to ensuring that the overall statute book is robust, cohesive, principled and drafted to the high standard required to maintain a civilised, well-governed society.

How we work

1. Chief Parliamentary Counsel, in collaboration with legal and policy colleagues, is involved in work to plan the Scottish Government's annual legislative programmes.
2. Drafters usually work in teams. Chief Parliamentary Counsel allocates Bills to drafting teams according to their workload and the expected demands of the Bill.

Each team is responsible for a number of Bills and no drafter specialises in any particular area of law.

3. Bills are drafted from written instructions prepared by the Scottish Government Legal Directorate following on from policy instructions prepared by policy officials. The drafter's main role is to find the right words and the best legislative structure to deliver the policy intention in the clearest possible way.

4. The way in which Bills are prepared has evolved and, in practice, now tends to be much more collaborative than the somewhat linear instruction process might suggest with drafters increasingly engaging more directly with policy colleagues and end-users as part of the process. There is no "one size fits all" method that would work perfectly for every Bill, but close collaboration and clear communication among all involved and interested helps ensure that provisions are clear, effective and accessible.

5. Legislative drafting is a highly specialist and scarce skill which is nearly always fully committed. PCO invests significantly in training and developing legislative drafters to ensure it has sufficient capacity to continue to provide the high quality, sustainable and efficient drafting service it needs to continue to produce legislation to the high standards required.

Relationships

6. As well as working collaboratively with Ministers and policy and legal colleagues across all Scottish Government portfolios, PCO works closely with the Parliament's legislation, clerking and legal teams, both as a conduit on individual Bills and in relation to development of the Parliament's processes and procedures. A legislation team clerk is currently on secondment in PCO to help implement some of the Standards, Procedures and Public Appointments Committee's recommendations for improving the legislative process.

7. Key external partners also include the Scottish Law Commission, the Judiciary, drafters in the Lord President's private office, the Crown Office, legal academics and, ultimately, everyone who uses or participates in making Scotland's law. We have a series of events planned to engage with some of these key partners and to obtain feedback from them on the drafting of Scottish legislation.

8. Chief Parliamentary Counsel has regular meetings with the Heads of the London, Belfast and Cardiff drafting offices and the Queen's Printer for Scotland, recurring topics of mutual interest being the accessibility of up to date legislation and the effect of devolution on the overall UK statute book.

9. We are currently engaged in a one year exchange programme with the New Zealand Parliamentary Counsel Office and have previously seconded PCO counsel to drafting offices in Australia, Cardiff, Belfast and Dublin. By sharing expertise and experience with drafting specialists elsewhere, PCO aims to ensure that the Scottish Parliament produces Acts which are at least a match with international best practice and, hopefully, set a standard against which other legislatures will wish to benchmark.

Written submission from Scottish Parliament officials

The legislative process

Consideration of legislation is the core of a Parliament's role and the creation of good quality, effective accessible legislation features among the Scottish Parliament's strategic goals. One of our aims is to improve parliamentary scrutiny through examination of legislative proposals (in the form of bills).

Bills are either:

- Public Bills - seeking to change the law as it affects the general population, or
- Private Bills - seeking powers or rights for a particular individual or organisation that are in excess of or in conflict with the general law

Most of the Bills considered by the Parliament are Public Bills. Public Bills can be introduced in the Parliament by:

- a member of the Scottish Government (a "Government Bill")
- an individual member of the Parliament (a "Member's Bill"), or
- a parliamentary committee (a "Committee Bill"),

All Public Bills are accompanied on or around the time of introduction by a suite of other documents. The accompanying documents are:

- a statement by the member-in-charge of the Bill that in the Member's view the provisions of the Bill would be within the legislative competence of the Parliament. The member introducing the Bill therefore has to confirm to the Parliament that he or she considers the Bill to be within the Parliament's competence.
- a statement by the Presiding Officer indicating whether or not in the Presiding Officer's view the provisions of the Bill would be within the legislative competence of the Parliament. This second statement offers important guidance about the competence of the Parliament and allows the Presiding Officer to express his or concerns if any.
- A Financial Memorandum setting out best estimates of the administrative, compliance and other costs associated with the provisions of the Bill and the timescales over which these costs are expected to arise.
- Explanatory Notes summarising objectively what each provision of the Bill does.
- A Policy Memorandum setting out the policy objectives of the bill, whether alternative ways of meeting those objectives were considered, what consultation was undertaken and a summary of the outcome of that consultation, and an assessment of the effects of the Bill on equal opportunities, human rights, island communities, local government,

sustainable development and other matters the member-in-charge of the Bill considers relevant.

- A delegated powers memorandum detailing the person or body to which a power is being delegated, the reasons why the delegation is considered appropriate and the parliamentary procedure (if any) to which the use of the power is subject.

Before they can become law, all Public Bills go through the same stages of scrutiny in the Parliament. The Parliament normally agrees a completion date for stages one and two and a date(s) for stage three, in each case on a motion of the Parliamentary Bureau. Committees are consulted informally in advance on the timings for stages one and two. Business managers and others are consulted on the timing of stage three. In addition, the Standing Orders set out minimum gaps between each of the stages.

The stages are explained briefly below.

Stage 1

The purpose of Stage 1 is for the Parliament to consider the general principles of a Bill. This is a broad consideration in the round of whether legislation on the issue is required and, if so, whether this Bill is the right approach.

After a Bill is introduced it is referred to the relevant policy committee. That committee is required to consider and report on the general principles of the Bill, and will usually make a recommendation to the Parliament as to whether those general principles should be agreed to and whether, therefore, the Bill should proceed beyond Stage 1.

To inform that decision, the committee will hear from interested stakeholders and will also take on board the views of other parliamentary committees with an interest. Usually the Finance Committee and the Delegated Powers and Law Reform Committee will have such an interest. On the basis of these inquiries, the committee makes a report to the Parliament.

The Parliament as a whole then debates the general principles, informed by the committee's report. Following that debate, the Parliament decides whether to agree to the general principles of the Bill. If it does not agree, the Bill falls. If it does agree, the Bill progresses to Stage 2.

Stage 2

Stage 2 is an opportunity for detailed scrutiny of the Bill.

The Bill is usually referred back to the committee which considered it at Stage 1 to undertake Stage 2 scrutiny.

At Stage 2 there is an opportunity for any member of the Parliament to propose changes to the Bill by way of amendments to the text. Members wishing to lodge amendments should speak to the clerks in the Parliament's legislation team, who will help in drafting amendments.

Although any member of the Parliament may lodge amendments, the amendments are considered and voted on only by the committee to which the Bill has been referred.

At Stage 2 all admissible amendments lodged are considered by the committee.

Stage 2 consideration of the Bill is concluded once every amendment has been considered and the committee has been through each of the Bill's provisions.

Stage 3

Stage 3 is the second and final opportunity for the Parliament to amend the Bill.

As at Stage 2, any member can lodge amendments and, again, support to do so is provided by the Parliament's legislation team.

Stage 3 consideration is undertaken by the Parliament as a whole and so all members can vote on the amendments.

At Stage 3, unlike at Stage 2, only amendments selected by the Presiding Officer are debated by the Parliament. The criteria which inform decisions on selection by the Presiding Officer are published in the Guidance on Public Bills.

After the consideration of amendments, the Parliament then debates whether to pass the Bill in its final form. That is the end of parliamentary consideration of the Bill. If it is not passed, the Bill falls. If the Bill is passed, the process for securing Royal Assent is triggered.

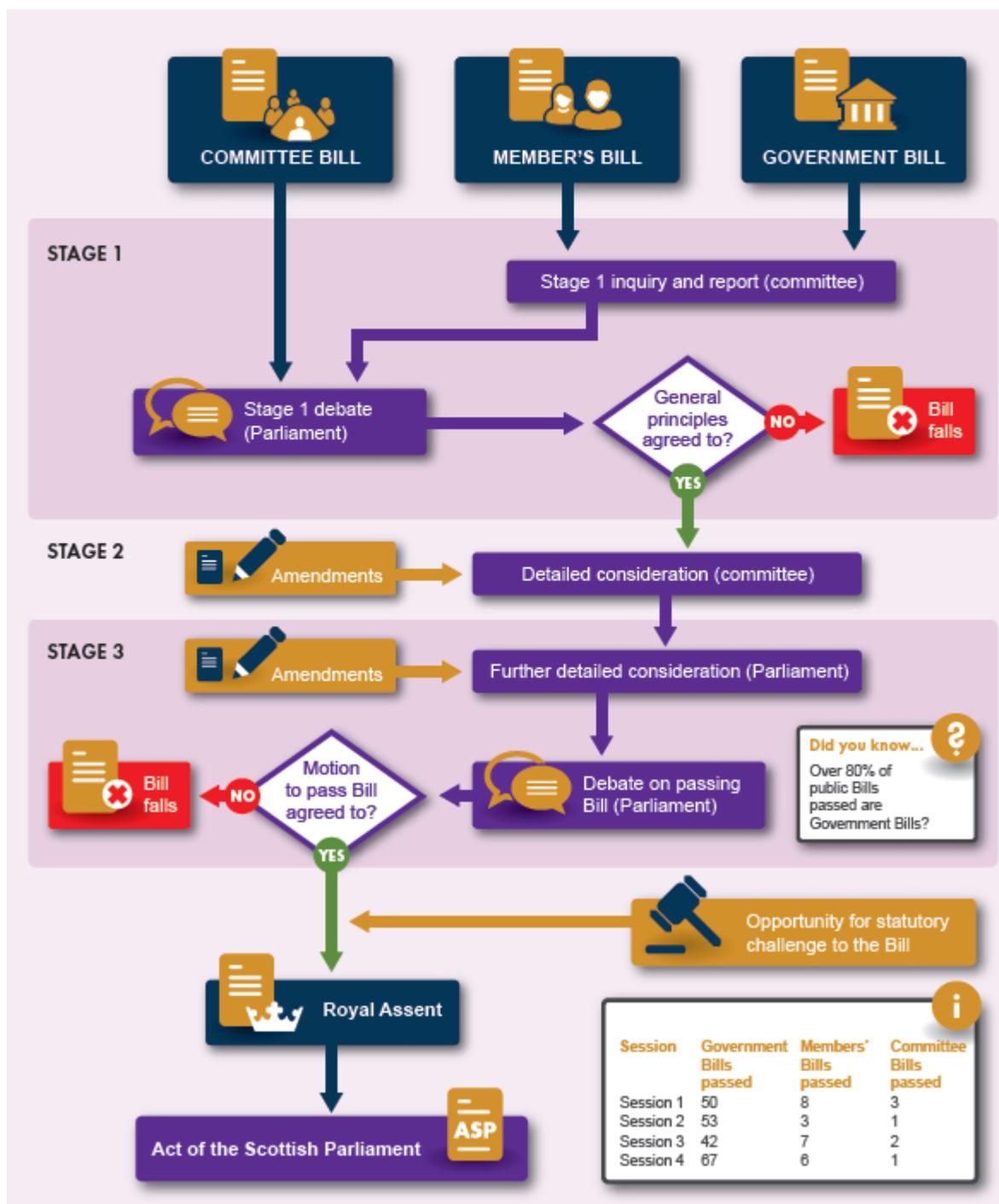
Royal Assent

Before the Presiding Officer can submit the Bill to Her Majesty the Queen for Royal Assent there is a four-week period during which the Bill can be referred to the Supreme Court by any of the Law Officers of the UK or Scottish Governments to determine whether it is within the competence of the Scottish Parliament.

If the period expires without a referral (or the opportunity to refer is waived by all interested parties) the Bill is submitted by the Presiding Officer to Her Majesty for Royal Assent. When Royal Assent is given the Bill becomes an Act of the Scottish Parliament.



Stages in the passage of a Public Bill



Implementation

Often much of the Act's provisions will not come into force until they have been commenced by and/or set out more fully in secondary legislation.

Secondary legislation (or "delegated legislation") is law made under powers delegated by and from an Act. The power to make delegated legislation is defined and limited by the primary legislation that delegated those powers.

The term secondary legislation encompasses a variety of different matters, but of most relevance are regulations, which are normally in the form of Scottish Statutory instruments (SSIs).

SSIs are a form of law made by the Scottish Ministers (or other responsible authority such as the Lord President of the Court of Session) exercising powers granted by the Scottish Parliament in an Act.

SSIs generally set out technical details or administrative matters necessary for Acts to operate, but can include any subject matter and in much more detail than is usually provided for in Acts ("primary legislation") – for example, setting-up licensing schemes, prescribing application forms, and providing procedural processes, rules or codes of practice.

Most of the law considered by the Parliament is in the form of secondary legislation. The Scottish Ministers present upwards of 300 SSIs in the Parliament each year. The extent of the powers delegated in Acts varies and accordingly the SSIs made under these powers also vary.

It is important that care is taken over decisions to make provisions to delegate powers in legislation and to ensure that the appropriate level of parliamentary control is applied to the exercise of those powers.

The [Interpretation and Legislative Reform \(Scotland\) Act 2010](#) provides for 3 levels of procedure (affirmative, negative and simply laying).

- Instruments which are laid before the Parliament for technical scrutiny after they are made but which the Parliament cannot reject are known as **laid only** SSIs;
- those which can be made and brought into force but which the Parliament can annul by a vote in the Chamber (the most frequent type) are known as **negative** SSIs;
- those which must be approved by a vote in the Chamber before they can be made are known as **affirmative** SSIs.

While these are the standard types of SSIs, since the level of scrutiny is determined by the Parliament during the Bill's passage, the Parliament can choose to apply a different type of procedure or other pre-conditions such as consultation or the preparation of supporting reports.

The Standards, Procedures and Public Appointments Committee's legislation inquiry, 2015-16

1. The Standards, Procedures and Public Appointments Committee (SPPA Committee) conducted an inquiry into the legislation process during 2015.
2. Some of the recommendations in the [Committee's report](#) related primarily to the availability and accessibility of information about the process. These did not require any changes to Standing Orders to be taken forward. The SPPA Committee has been provided with regular updates on the progress made in meeting these recommendations and will continue to monitor progress. Table 1 sets out the current position with these recommendations.
3. Other recommendations did require changes to Standing Order rules to implement. These changes related primarily to the time at which amendments and documents would have to be lodged in order to maximise the opportunity for effective scrutiny, for Members to consider issues before having to vote on them and for external stakeholders to consider amendments and documents.
4. Following the Committee's report, there was a process of discussing and agreeing the form of proposed changes. This involved the Parliament's legislation team, Non-Government Bills Unit, Solicitors Office and clerks to the Delegated Powers and Law Reform and Finance Committees, along with Scottish Government officials from the Parliamentary Counsel Office, Parliament and Legislation Unit and Office of the Minister for Parliamentary Business.
5. The recommendations which led to Standing Orders rule changes are included [in the Committee's 4th Report, 2016](#). Those changes were agreed by the Parliament on 15 March 2016 and came into effect at the start of Session 5. There has not yet, therefore, been any experience of operating these changes in practice. The recommendations and the resulting changes are described briefly in Table 2.

Table 1: Recommendations not requiring changes to Standing Orders

| Recommendation | Notes |
|--|---|
| <p>Explanatory Notes could be more helpful.</p> <p>The Scottish Government should concentrate on improving the quality of the current information in accompanying documents.</p> | <p>In its report the Committee noted that the explanatory notes often repeat much of the text of the bill. Sometimes there is no information on how the sections relate to each other. The Committee thought a fuller explanation of the sections of the bill would be more helpful.</p> <p>The legislation clerks continue to discuss potential improvements to the accompanying documents with the Scottish Government on a regular basis, and have specifically raised the Committee's comments with a view to making changes. Some suggestions have included: further explanation of the actual effect of a provision where it inserts text into an existing Act; the use of a more discursive approach, and the use of illustrative examples</p> |

| Recommendation | Notes |
|--|--|
| | <p>where appropriate (e.g. in tax Bills).</p> <p>The legislation clerks are also using other opportunities (such as changing guidance, contributing to training of Scottish Government officials, etc.) to encourage improvements.</p> <p>A member of the Parliament's legislation team is currently on secondment with the Scottish Government's bill drafting team. One of the objectives for her secondment is to undertake further work with Scottish Government staff on improving accompanying documents.</p> |
| <p>Packages of amendments which are linked should be clearly marked. Sometimes more than one amendment is needed to make a single policy change to a bill</p> | <p>The issues that are raised by identifying packages of amendments can be complex. As a first step the legislation clerks have agreed with the Scottish Government to identify a simple level of information about linked amendments, and to pilot an approach.</p> <p>This was piloted in a 'shadow' way with a bill in the last weeks of session 4, with discussions between legislation clerks and Scottish Government bill drafters but with the additional information not published with amendments. Further work needs to be done to evaluate the usefulness of the information and options for making progress, and this is also an objective for the member of staff currently on secondment with the Scottish Government's bill drafting team. Following this, the legislation team may seek to pilot publishing additional information for Daily Lists for some bills.</p> |
| <p>The Parliament should review the style and format of the information it produces to inform people about legislation</p> <p>The Parliament should produce improved guidance on how the public can engage with the legislative process at Stage 2 and 3</p> | <p>In June 2016, the legislation clerks published a fully updated and revised version of the <i>Guidance on Public Bills</i>. This brings the Guidance up to date, including coverage of rule changes made as a result of the SPPA Committee's inquiry (see Table 2 below).</p> <p>The Guidance is, however, a technical guide for the fairly expert user. The legislation clerks (in conjunction with colleagues in broadcasting, public information and Webteam) have also developed a new series of webpages explaining the legislation process through a package of graphics, videos and other text. This is aimed specifically at those (whether MSP staff, other officials, external stakeholder groups or individual members of the public) who are interested in following, getting involved with or influencing, the amending stages of bills.</p> <p>This package of information material is available at:</p> |

| Recommendation | Notes |
|---|--|
| | http://www.parliament.scot/visitandlearn/100529.aspx |
| Financial Memorandums should be separate documents | The legislation clerks have discussed and agreed with the Scottish Government that each accompanying document will now be produced as a separate document. This has been implemented from the start of Session 5, allowing the documents to be more visible and accessible on the web. |
| The Parliament should improve the way it presents information on bill timetables | <p>The legislation clerks are developing options for improving this information, including presenting all the timetabling information for all bills on one page on the website.</p> <p>The Committee also suggested it would be helpful for more explanatory information to be included about timetables, and not simply end dates agreed by the Parliament for stages. The legislation clerks are developing proposals to make sure that timetable information for stage 1 consideration is clearly and consistently available between committee pages and bill pages.</p> |
| All Scottish Government bills should be produced in draft | This recommendation was not supported by the Scottish Government in its response to the report . However, the Government intends to seek to increase the number of consultations on draft bills. The Committee's successor committee may wish to monitor the number of draft bills being published to see if progress is being made. |
| The Parliamentary Bureau should take account of a range of views before proposing bill timetables | The Bureau takes informal soundings from the relevant committees and others before proposing bill timetables. It may be too early to assess the impact of this recommendation. |
| Clearer information should be included in the motion which sets the gap between stages 2 and 3 about what the gap will be. Currently the motion does not mention the proposed gap between stages 2 and 3, just the date of stage 3. | The Committee recommended that the business motion should include clearer information about the proposed gap between stages 2 and 3. The Committee noted that one option would be for the motion to mention the date of the final stage 2 meeting. The Committee believed this might prompt MSPs to consider whether they are content with the proposed gap between stages 2 and 3. The Scottish Government indicated it supported this recommendation. There has been no requirement yet in session 5 for a business motion that proposes a date for stage 3 proceedings (and thus the gap between the end of stage 2 and that stage 3 date). |

| Recommendation | Notes |
|---|---|
| Pilot of stage 2 convener speaking at the start of stage 3. | During evidence on the inquiry, the Minister suggested at the start of stage 3, the convener of the committee which considered the bill at stage 2 could update the Chamber on what happened at stage 2. This might help people follow the progress of the bill from stage 2 to stage 3. The Committee recommended that this idea was piloted. This requires further discussion with the Scottish Government. |
| More scheduling of stage 3 over more than one day | In its report the Committee commented that there should be a flexible approach to the scheduling of amendments at stage 3. The Committee noted that the Standing Orders allow for amendments to be scheduled over more than one day. The Committee recommended that the Minister and the Parliamentary Bureau should identify suitable bills to schedule in this way. The Scottish Government was supportive of this recommendation, however as yet no stage 3 proceedings have since been scheduled to take place over more than one day. |
| Pilot – splitting amendments and debate at stage 3 | The Committee concluded in its report that for certain bills there may be merit in splitting the amendments from the debate at stage 3, as the Standing Orders already allow. The Committee noted that this would allow time to pause and review the amended bill before the debate. The bill could be checked for typographical mistakes or other technical problems. The Committee recommended holding a pilot involving several bills in which the amendments and the debate are split. This would not require any changes to Standing Orders. The Scottish Government was supportive of this recommendation. A pilot is yet to take place. |
| Minimum gap between stages 2 and 3 should be increased from 10 to 14 days | In its report the Committee recommended that the minimum gap between stages 2 and 3 should be increased from 10 to 14 days. The Scottish Government did not support this recommendation, but put forward an alternative proposal that the minimum gap should remain at 10 days in Standing Orders, but the Government should adopt a convention to voluntarily timetable its bills with a minimum gap of 14 days. The Committee supported this proposal. After a suitable period of time has elapsed, the Committee's successor committee may wish to conduct an exercise to assess the extent to which this voluntary convention is being met. |

Table 2: Recommendations requiring changes to Standing Orders

| Recommendation | Notes |
|--|---|
| <p>The deadline for lodging amendments at Stage 2 and 3 should be increased by one sitting day.</p> <p>The Scottish Government should consider changing its convention so that it lodges its amendments a day earlier at stages 2 and 3.</p> | <p>Changes to Rules 9.10.2 and 9.10.2A were agreed that extend the deadlines to the fourth day before stage 2 proceedings and the fifth day before stage 3 proceedings, with the deadline on the final day being 12 noon in each case. As a consequence, the marshalled lists and groupings of amendments will be available one day earlier in advance of proceedings than previously, giving Members and external stakeholders more time to consider amendments before they are decided on.</p> <p>The Scottish Government committed to bring its convention into line with this change by lodging its amendments a day earlier at Stages 2 and 3.</p> <p>Where a stage 2 is expected to take place over more than one day, the revised deadline for lodging amendments will normally mean that the deadline for lodging amendments for day 2 will be on the day after day 1. The Government's lodging deadline for amendments for day 2 would then be the day before the committee considers amendments on day 1. To avoid a risk that this will create potential for public confusion as new amendments lodged might be appearing at the same time as the marshalled list of amendments for day 1 is published, a consequential change has also been made to Rule 9.10.8, to make it clear that each marshalled list will include only those amendments which are lodged prior to the deadline for that week's proceedings (together with any manuscript amendments to provisions expected to be considered in that week).</p> <p>Budget Bills are considered on a shorter timetable than other Bills. The changes to the deadlines make it almost inevitable that the rules will have to be suspended for every Budget Bill. The SPPA Committee considered that examination of the Budget Bill procedures was a distinct issue that should be considered separately on a future occasion.</p> |
| <p>The lodging deadline on the final day at Stage 3 be brought forward from 4:30pm to noon.</p> | <p>See note above. Rule 9.10.2A has been amended to this effect.</p> |
| <p>All delegated powers to be explained in the delegated powers</p> | <p>Various rules have been changed to ensure that the document covers not only powers currently expressed as powers for the Scottish Ministers to make subordinate</p> |

| Recommendation | Notes |
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| memorandum. | legislation, but also to cover the main categories of delegated powers which may not be expressed as powers to make subordinate legislation but which the Parliament might consider ought to be. The rules now require the memorandum also to explain any provisions conferring powers on the Scottish Ministers to issue any directions, guidance or code of practice. |
| The deadline for producing the revised/supplementary delegated powers memorandum and a revised/supplementary financial memorandum “should be calculated by referring to the date of Stage 2 rather than a certain length of time before Stage 3. | <p>Previously the rules could result in very limited time being available for committees to scrutinise the revised/supplementary documents. The Rule has been amended in a way that seeks to give the best balance between time for the member-in-charge to prepare the documents and time for the Parliament to scrutinise them, regardless of how long the gap between stages 2 and 3 is in each particular case.</p> <p>The rules have been changed so that the documents must now be provided by whichever is the earlier of-</p> <ul style="list-style-type: none"> (a) the tenth sitting day after the day on which Stage 2 ends; (b) the end of the second week before the week in which Stage 3 is due to start. |
| Require all public bills containing delegated powers to be accompanied by a delegated powers memorandum, not just Scottish Government bills. | Rule changes have given effect to this, which means that a memorandum must now be provided for a Member’s Bill and a Committee Bill, where they contain such powers. |