

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.

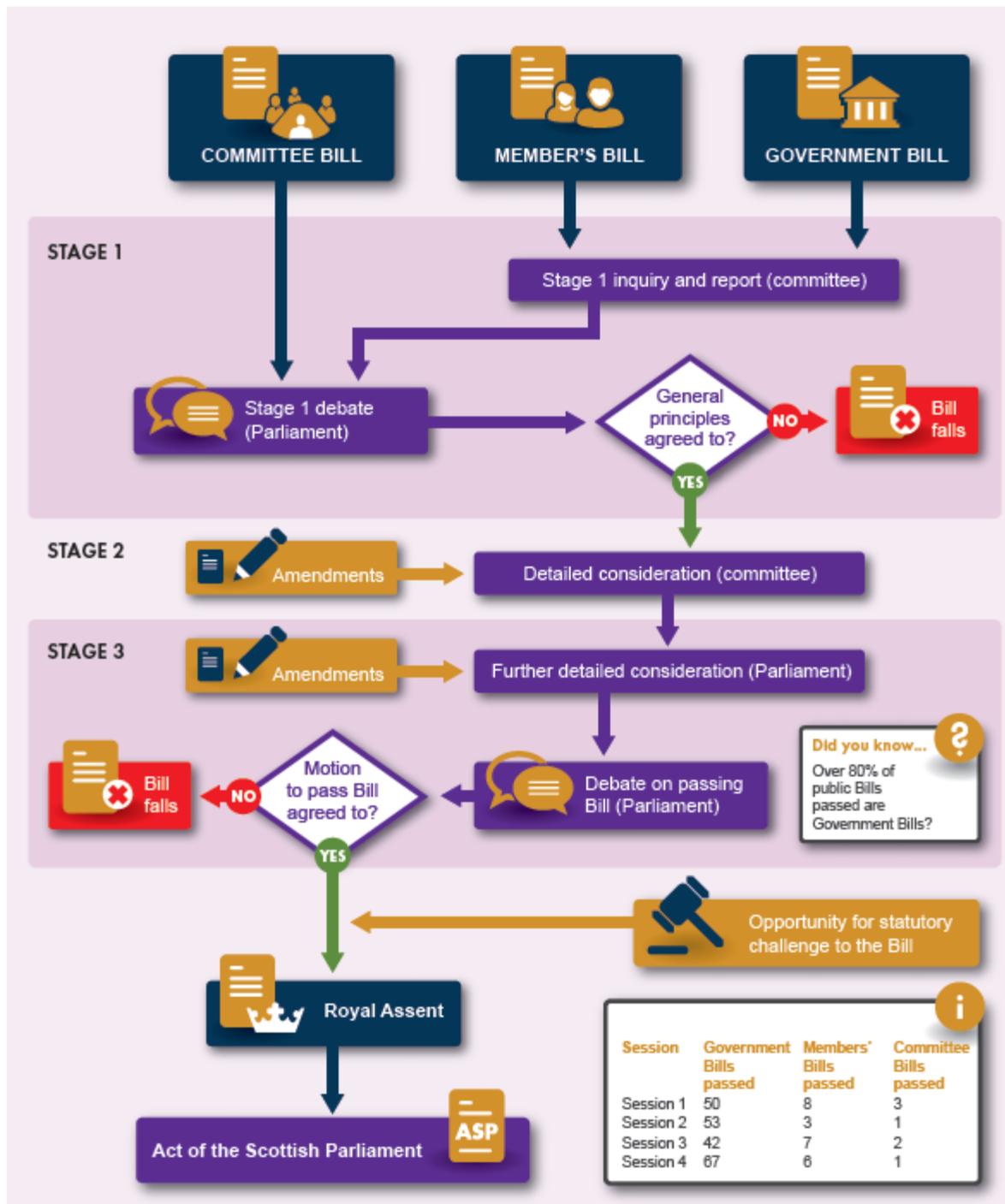
Royal Assent

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
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.