



The Scottish Parliament
Pàrlamaid na h-Alba

Non-Government Bills Unit (NGBU) – Members’ Bills

27 October 2022

Reference: SPCB (2022) Paper 67

Executive summary

1. The purpose of this note is to inform the SPCB about the current position in relation to non-Government Bills, and about how the Non-Government Bills Unit (NGBU) is currently allocating its finite resources at a time of high demand.

Non-Government Bills Unit

2. NGBU’s main role is to support MSPs seeking to introduce Members’ Bills, but it also supports committees with Committee Bills, and outside promoters with Private Bills. Annex A details the processes for these three forms of Bills. It also details the roles of NGBU, Legal Services and drafters in the Member’s Bill process where an MSP chooses to use NGBU support in taking forward a Bill. At time of drafting this paper the NGBU is not supporting any Committee Bills or Private Bills.
3. The Unit currently consists of nine members of clerking staff. In all its work, NGBU works closely with a small team of solicitors in the Legal Services Office. The work it does with NGBU currently makes up about half of the workload of this team of four solicitors.

Number of Members’ Bills

4. Detailed below is information on the number of proposals currently being progressed 18 months into the Parliamentary session. Under Standing Orders any Member's Bill needs to be introduced by June the year before the end of the Session, unless the SPCB agrees to make an exception. This Session the deadline for introduction is June 2025.
5. In Session 5 the SPCB was informed in a paper from the NGBU provided towards the end of the Session that "Session 5 has proved to be particularly busy in terms of demand on NGBU". A number of indicators set out below suggest Session 6 is significantly busier than Session 5.
6. As highlighted in previous Chief Executive reports to the SPCB, when compared to the same point in Session 5 there are a higher number of lodged proposals this Session (10 in Session 5 compared to 16 in Session 6). Within this number, there are a higher number of proposals for bills being taken forward which were initiated in the previous session (there were 3 in total in Session 5 compared to 4 so far in Session 6, with a number of other potential proposals being explored by MSPs at present).
7. A list of all Session 6 proposals / bills including the stage they have reached in the process 18 months into the Session is attached at Annexe B. The figures above and the table in Annexe B covers both NGBU supported bills and non-NGBU supported bills.
8. There are a number of new proposals currently being worked on by MSPs and the NGBU where consultations will be launched later in the year or into the New Year. There are also numerous proposals MSPs are currently considering taking forward which NGBU is aware of from initial meetings with these MSPs. Information about these proposals is currently confidential and, therefore, not detailed in the annexes.
9. In total, NGBU has met with 36 MSPs so far this session to discuss ideas for bills (this includes meetings with those taking forward proposals that have already been lodged). It is not anticipated all these MSPs will take forward these proposals. This can be for a number of reasons which are explored by NGBU clerks as standard during initial meetings. For example:
 - Relevant work being undertaken or that could be undertaken by the Scottish Government might be discussed at initial meetings, and some MSPs then hold informal discussions with Ministers to explore this route further;

- Whether the change the MSP wants to make happen requires legislation, or whether it could be pushed for as a policy change;
- Upcoming Scottish Government legislation that an MSP may seek to amend to bring about a policy change;
- Whether there is merit in doing more to ascertain more on the Government's position or on the likely support levels from other MSPs before pursuing a bill (e.g Parliamentary questions, Members' Business debates, SPICe enquiries etc.); and
- Whether the MSP can commit to the often time intensive process of a Bill alongside their many other priorities and responsibilities.

Size of bills

10. The size and complexity of numerous bills being proposed is notable this Session. A number of proposals would become multi-purpose bills if introduced. Typically, with a small number of exceptions, Members' Bills have previously been single purpose bills. The rules and processes that NGBU's work is based upon has been tailored more towards these smaller bills. There are no specific rules governing the size of a bill an MSP can seek to introduce and therefore the resources impact of a multi-purpose bill is a factor the NGBU is required to manage.
11. A comparison of the content of a selection of draft proposals lodged in Session 5 set against the list from Session 6 is provided at Annexe C. This annexe gives a sense of the higher number of larger multi strand proposals being brought forward this Session.

NGBU processes

12. The level of work required to progress a bill, both for NGBU and for MSPs and their teams, has increased this Session in a number of ways and these are set out below.

Additional assessments

13. There are a number of additional processes developed this Session that NGBU, supported by Legal Services, carry out for all NGBU supported proposals. These include:
- a new data protection impact assessment (DPIA) in order to highlight all relevant proposals to the Information Commissioner's Office at each key stage of the policy development process (including draft proposal stage and drafting stage);
 - an assessment of the potential impact of the terms of the UK Internal Markets Act (UKIMA) on an MSP's policy intention; and
 - an islands impact assessment (equalities impact assessments and sustainable development impact assessments have been undertaken as standard for a number of years).
14. The amount of work involved in each of these assessments will vary depending on the nature of the bill. For example where a DPIA highlights a number of impacts on processing of data then policy development could include mapping out the different impacts of each process involved in policy implementation.
15. NGBU is also aware that there may be further processes to be adopted in relation to the impact of the Subsidy Control Act, which requires all public authorities to satisfy themselves that any subsidy is compatible with a set of "subsidy control principles".
16. Assessing proposals in relation to common markets is challenging as UKIMA is a relatively new piece of legislation so advice and rulings on the implementation of the Act in practice is limited.
17. The purpose of UKIMA is to preserve the UK's internal market. The scope for divergence in standards between nations governing the flow of goods and services (and professional qualifications and regulation) is now prescribed by the Act. Consideration needs to be given to the scope of the exceptions to the mutual recognition and non-discrimination principles contained in the 2020 Act. For example, UKIMA considerations might be engaged if a proposal had the effect of in some way preventing the sale of a product or the provision of a service from one part of the UK to Scotland.
18. Early assessments of all Members Bill proposals reflects that there are a number of proposals for bills where there are relevant UKIMA

provisions, including bills that impact on the movement of goods and services.

Consultation responses

19. The consultation process involves MSPs and their teams processing and publishing responses while NGBU clerks analyse and summarise all the responses. The volume of responses received to certain Members Bills consultations can also create a significant amount of work for an MSP and their staff in addition to their other work pressures.
20. The precedent setting levels of responses received to certain consultations, increases the work for those MSPs and their teams in processing responses. It also increases the work for NGBU supporting MSPs and their staff in this process. It also impacts on the speed of the progress of a proposal as consultations with thousands of responses can take months to process. Three consultations completed so far this session have received well over 1,000 responses¹.

Alternative formats

21. It is becoming more common for Members to request alternative formats of consultation documents and of the documents that summarise consultation responses. This includes versions produced in Gaelic, BSL and easy read. These versions improve accessibility of processes and can encourage engagement. The SPCB, including through delegated authority processes, has authorised spend on a number of these versions so far this session.

Non-NGBU bills

22. A common reason for choosing to progress a bill without NGBU support is where an MSP has support from an external stakeholder, for example where an organisation can provide resources to produce a summary of consultation responses and to draft the bill and its accompanying documents. There are 4 proposals / bills currently being progressed which are not using NGBU support.

¹ Members have the ability to seek additional funding for additional staff to process these responses from the SPCB. No member has done so, so far this session.

23. It is worth noting that any MSP, whether or not they use NGBU's full support, receives a degree of support from the NGBU. Examples include that: NGBU ensures consultation documents are in accessible format; draft and final proposal wordings comply with Standing Orders, and consultation processes are highlighted to the public on an equal footing to NGBU supported bills (for example through tweets and videos).
24. There are currently more non-NGBU proposals lodged at this stage of Session 6 than there were throughout Session 5 (3 in total in Session 5 compared to 4 so far this Session, with at least one further non-NGBU supported draft proposal likely to be lodged this year). Therefore, in terms of NGBU resources, it is worth the SPCB being aware that 'non-NGBU proposals' also have resource implications for the NGBU, and of course for other parts of the Parliament later in the process.

Current approach to prioritisation of NGBU resources

25. Each individual Bill proceeds according to its own timetable, and there is no expectation that Members' Bills will be introduced in the same order as the relevant MSPs lodged a draft proposal, or the order in which MSPs obtained the right to introduce a Bill. But, as a general rule, NGBU gives highest priority to those MSPs who have lodged draft proposals earliest in the session, subject to those MSPs being keen to proceed and able to engage with the process (e.g. by making policy decisions raised with them by NGBU clerks).
26. The order of Bill introduction can end up being significantly different from the order in which draft or final proposals were lodged. Proposals and Bills proceed at significantly different speeds due to a range of factors – most significantly, the amount of time and resource the MSP can devote to them and the scale and complexity of what is proposed.

Governance issues

27. The substantial number of proposals for Members' Bills lodged over the course of the first 18 months of this Session, and the additional proposals under development but yet to be lodged, will have implications for Parliamentary business later in the session (with implications for the Chamber, Committees and staff resources).

28. While NGBU, supported by Legal Services and drafters, will make every effort to ensure Members can progress their bills this Session, there are some risks associated with a situation where the number of bills proposed this Session (especially given the size and complexity of some proposals) are supported by finite resources. This may be seen as an inherent risk in a system aimed at maximising opportunities for MSPs to develop legislation.
29. The only criteria applied by NGBU to filter the number of bills progressed by the Unit are:
- a) not supporting proposals where assessments of legislative competence conclude the proposal is out with the competence of the Parliament; and
 - b) not supporting more than one proposal from an MSP at any given time.
30. This of course does not prevent MSPs progressing these proposals without NGBU support.

Next steps

31. This paper can be published.

Decision

32. The SPCB is invited to note this paper.

Roz Thomson

Head of the Non-Government Bills Unit

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Annexe A

Members' Bills

An MSP may only introduce a Member's Bill after completing a two-step proposal process. This involves first lodging a draft proposal, usually accompanied by a consultation document (the consultation must run for a minimum of 12 weeks), then lodging a final proposal, which must attract the support of at least 18 other MSPs from 2 of the Bureau parties. If that threshold is crossed, then (unless the Scottish Government makes a statement that it will legislate to equivalent effect) the MSP gains the right to introduce a Member's Bill.

MSPs are entitled to follow the proposal procedure without relying on NGBU support (e.g. where a campaign group provides that support instead). Where NGBU is involved, the main tasks it carries out are:

- helping develop the consultation document (making the case for the Bill and outlining how it might work);
- summarising responses to the consultation exercise;
- developing the policy in detail as a basis for instructing the drafting of the Bill;
- preparing the main accompanying documents (Explanatory Notes, Policy Memorandum, Financial Memorandum); and
- post-introduction, providing briefing and support during the 3-stage scrutiny process.

Committee Bills

Before a committee may introduce a Committee Bill, it must also develop a proposal, this time in the form of a committee report. If the Chamber debates the report and agrees to the proposal it contains, the convener obtains the right to introduce the Bill (on the committee's behalf). Committee Bills can expect to progress more quickly through the 3-stage scrutiny process, as a Stage 1 report by a lead committee is not required. An ad hoc committee often needs to be established to take Stage 2 of the Bill.

NGBU and Legal services provide support for all Committee Bills, but in conjunction with the committee's own clerking team (so the NGBU resource implications are usually lower).

Private Bills

Private Bills are introduced by external parties (promoters) who need specific powers (not available under the general law) or need to secure changes to

existing private legislation. Such Bills are usually technical and rarely controversial (although there are exceptions).

While NGBU does not help to generate, or instruct the drafting, of Private Bills, they do make resource demands on the Unit – both in terms of advising promoters in advance of introduction, and then in providing clerking support to the Private Bill Committee established to scrutinise each Bill. There are no limits on how many Private Bills are introduced, or when, and the work simply has to be done as and when it is required.

Role of Legal Services

The key roles that Legal Services plays are:

- advising NGBU on whether any significant legislative competence issues arise with a proposal, and keeping such issues under review as a Bill is developed;
- advising generally on other legal matters that arise in relation to the policy;
- instructing the drafter; and
- preparing a note on legislative competence and drafting any Delegated Powers Memorandum.

Drafters

NGBU has access to two sources of Bill-drafting resource: it retains a panel of drafters under a framework contract, and it has access to drafters from Parliamentary Counsel Office (PCO). Under an agreement between the Scottish Government and the SPCB, roughly half of all Session 6 drafting is allocated to the panel, and the other half to PCO.

Annexe B

	Title of Draft Proposal	Member in charge	Date Draft proposal lodged	Date Final Proposal lodged	Bill introduced	Lead committee
1	Right to Food (Scotland) Bill	Rhoda Grant MSP	2 September 2021 lodged with Statement of Reasons ¹ then lodged with a new consultation on 24 November 2021			Equalities, Human Rights and Civil Justice Committee
2	Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill	Pam Duncan-Glancy MSP	20 September 2021 (lodged with Statement of Reasons)	9 November 2021	20 April 2022	Education, Children and Young People Committee
3	Scottish Employment Injuries Advisory Council Bill	Mark Griffin MSP	20 September (lodged with Statement of Reasons)	18 November 2021		Social Justice and Social Security Committee
4	Assisted Dying for Terminally Ill Adults (Scotland) Bill	Liam McArthur MSP	22 September 2021	8 September 2022		Health, Social Care and Sport Committee
5	Right to Addiction Recovery (Scotland) Bill	Douglas Ross MSP	6 October 2021	30 May 2022		Health, Social Care and Sport Committee
6	Victims, Criminal Justice and Fatal Accident Inquiries (Scotland) Bill	Jamie Greene MSP	15 December 2021			Criminal Justice Committee

7	Removal from Office and Recall (Members of the Scottish Parliament)	Graham Simpson MSP	19 January 2022	27 September 2022		Standards, Procedures and Public Appointments Committee
8	Welfare of Dogs (Scotland) Bill	Christine Grahame MSP	10 February 2022 (lodged with Statement of Reasons)	28 April 2022		Rural Affairs, Islands and Environment Committee
9	Fly-Tipping (Scotland) Bill	Murdo Fraser	28 February 2022			Net Zero, Energy and Transport Committee
10	Schools (Residential Outdoor Education) (Scotland) Bill	Liz Smith MSP	28 April 2022			Education, Children and Young People Committee
11	Domestic Buildings (Environmental Standards) (Scotland) Bill	Alex Rowley MSP	3 May 2022			Local Government, Housing and Planning Committee
12	Disability Commissioner (Scotland) Bill	Jeremy Balfour MSP	11 May 2022			Equalities, Human Rights and Civil Justice Committee
13	Abortion Services (Proposed Safe Zones) (Scotland) Bill	Gillian Mackay MSP	18 May 2022			Health, Social Care and Sport Committee
14	Drugs Death Prevention (Scotland) Bill	Paul Sweeney MSP	24 May 2022			Health, Social Care and Sport Committee
15	Witchcraft Convictions (Pardons) (Scotland) Bill	Natalie Don MSP	22 June 2022			Equalities, Human Rights and Civil Justice Committee

16	Domestic Abuse (Prevention) (Scotland) Bill	Pam Gosal MSP	23 August 2022			Criminal Justice Committee
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Annexe C	
Session 5 Draft proposal wordings – May 2016 – Oct 2017	Session 6 Draft proposal wordings – May 2021 – Oct 2022
James Kelly (Labour) - Football Act (repeal) (Scotland) Bill - A proposal for a Bill to repeal the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.	Rhoda Grant (Labour) - Right to Food (Scotland) – Proposal for a Bill to incorporate the right to food into Scots law.
Gillian Martin (SNP) - Seat belts on school transport (Scotland) Bill - Proposal for a Bill to ensure that seat belts become a legal requirement on all dedicated home-to-school transport in Scotland.	Pam Duncan -Glancy (Labour) - Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill - Proposal for a Bill to require the Scottish Ministers to introduce, and to implement, a statutory National Transitions Strategy to improve outcomes for disabled children and young people in the transition to adulthood; to require the Scottish Ministers to assign to a member of the Scottish Government, or to a junior Scottish Minister, special responsibility in relation to the exercise of their functions under the legislation; and to require local authorities to introduce a transitions plan for each disabled child and young person to ensure that each disabled child and young person receives appropriate care and support before, and during, the transition to adulthood
Claudia Beamish (Labour) - Prohibition of Fracking (Scotland) Bill - A proposal for a Bill to ban unconventional oil and gas extraction, including by means of hydraulic fracturing.	Mark Griffin (Labour) - Scottish Employment Injuries Advisory Council Bill - Proposal for a Bill to establish a statutory Scottish Employment Injuries Advisory Council to research, shape and scrutinise the social security available to people injured in the course of their employment and to define the membership requirements of the Council.

<p>James Dornan (SNP – Football (Strict Liability) (Scotland) Bill - A proposal for a Bill to make Scottish professional football clubs strictly liable for their supporters' behaviour.</p>	<p>Liam McArthur (Lib Dem) - Assisted Dying for Terminally Ill Adults (Scotland) Bill – Proposal for a Bill to enable competent adults who are terminally ill to be provided at their request with assistance to end their life</p>
<p>Mark Griffin (Labour) - Transplantation (authorisation of removal of organs etc.) (Scotland) Bill - Proposal for a Bill to amend the law on the removal of parts of the human body for transplantation by providing for decisions to be made on behalf of a deceased adult by a proxy and by authorising removal and use in certain cases where the deceased adult has not recorded an objection.</p>	<p>Douglas Ross (Conservative) - Right to Addiction Recovery (Scotland) Bill- Proposal for a Bill to enable people addicted to drugs and/or alcohol to access the necessary addiction treatment they require</p>
<p>Neil Bibby (Labour) - Tied pubs (code and adjudicator) (Scotland) Bill - Proposal for a Bill to establish a Pubs Code in Scotland to govern the relationship between tenants of tied pubs and their owners, and an Adjudicator to enforce the Code</p>	<p>Jamie Greene (Conservative) - Victims, Criminal Justice and Fatal Accident Inquiries (Scotland) Bill- Proposal for a Bill:</p> <p>(a) To make changes to the criminal justice system and increase the rights of victims, including by:</p> <ul style="list-style-type: none"> i. Increasing measures for victims and their families to make representations and access relevant information; ii. Improving and introducing measures for considerations relevant to: <ul style="list-style-type: none"> · the safety and wellbeing of victims and their families, and

	<ul style="list-style-type: none"> · the offender’s cooperation in the disclosure of information, to be taken into account when decisions are made on, and related to, release of offenders; and iii. Removing the not proven verdict; and (b) To expand the criteria for mandatory fatal accident inquiries, and set maximum timescales for mandatory and discretionary fatal accident inquiries.
<p>John Finnie (Green) - Children (Equal protection from assault) (Scotland) Bill - A proposal for a Bill to give children equal protection from assault by prohibiting the physical punishment of children by parents and others caring for or in charge of children</p>	<p>Graham Simpson (Conservative) - Removal from Office and Recall (Members of the Scottish Parliament) - Proposal for a Bill to: introduce new measures on removing an MSP from office, including additional grounds for removal and new processes for removal, such as recall. Proposed new grounds for removal include where an MSP does not participate in parliamentary proceedings for a given period without valid reason or receives a prison sentence lower than the current threshold for automatic removal.</p>
<p>Mark Ruskell (Green) - Restricted Roads (20mph limit) (Scotland) Bill - A proposal for a bill to replace the current 30mph default speed limit on restricted roads with a 20mph limit.</p>	<p>Christine Grahame (SNP) - Welfare of Dogs (Scotland) Bill - A proposal for a bill to improve the health and wellbeing of dogs throughout their lives, including by establishing a more responsible and informed approach to acquiring and owning a puppy or dog; and to regulate the selling or transferring of puppies from unlicensed litters, including by introducing a power for the Scottish Government to introduce regulations.</p>

<p>Miles Briggs (Conservative) - Free personal care (persons under 65) (Scotland) Bill - A proposal for a Bill to remove the age-limit that currently restricts the right to free personal care to those aged 65 or over.</p>	<p>Murdo Fraser (Conservative) - Fly-Tipping (Scotland) Bill - Proposal for a Bill to reduce the incidence of fly-tipping by introducing new measures and strengthening existing measures to prevent it, including by improving data collection, improving enforcement procedures, increasing penalties for offenders, and by making changes regarding liability for the removal of fly-tipped waste</p>
<p>Monica Lennon (Labour) - Sanitary Products (free provision) (Scotland) Bill - A proposal for a Bill to ensure free access to sanitary products, including in schools, colleges and universities.</p>	<p>Liz Smith (Conservative) - Schools (Residential Outdoor Education) (Scotland) Bill - A proposal for a Bill to ensure that young people have the opportunity to experience residential outdoor education.</p>
	<p>Alex Rowley (Labour) - Domestic Buildings (Environmental Standards) (Scotland) Bill - A proposal for a Bill to introduce new minimum environmental design standards for all new-build housing to meet the Passivhaus standard or a Scottish equivalent in order to improve energy efficiency and thermal performance.</p>
	<p>Jeremy Balfour (Conservative) - Disability Commissioner (Scotland) Bill - A draft proposal for a Bill to establish a Disability Commissioner for Scotland</p>
	<p>Gillian Mackay (Green)- Abortion Services (Proposed Safe Zones) (Scotland) Bill- A proposal for a Bill to introduce safe access zones around healthcare settings that provide abortion services.</p>
	<p>Paul Sweeney MSP (Labour) - Drugs Death Prevention (Scotland) Bill - A proposal for a Bill to enable the establishment of overdose prevention centres, including establishing a licensing framework for centres, in order to prevent death due to drug overdose; - and to</p>

create a new body for the oversight of drug policy development and implementation in order to improve health by preventing and reducing drug use, harm and related death.

Natalie Don (SNP) - **Witchcraft Convictions (Pardons) (Scotland) Bill** - A proposal for a Bill to pardon all those convicted under the Witchcraft Act 1563.

Pam Gosal (Conservative) - **Domestic Abuse (Prevention) (Scotland) Bill** - A proposal for a Bill to make provision for the prevention of domestic abuse and improve support for those affected, including by requiring: those convicted of offences related to domestic abuse to provide information for a register; use of this information to prevent further harm; use of rehabilitation measures in relation to offences related to domestic abuse; collation and reporting of data related to domestic abuse; and domestic abuse education in schools.