

Summaries of Bills Passed by the Scottish Parliament in the First Session

Introduction

This document provides individual summaries of all bills passed by the Scottish Parliament in its first Session, 1999-2003. The summaries contain information on the intentions of each bill and the considerations each underwent during its passage through Parliament.

In total, 62 bills were passed by the Parliament. Of these, 50 were Executive Bills (including 4 Budget Bills), 8 were Member's Bills, 3 were Committee Bills and 1 was a Private Bill.

Mental Health (Public Safety and Appeals)(Scotland) Bill

Introduced: 31 August 1999 [SP Bill 1]

Introduced by: Jim Wallace (Executive Bill)

Passed: 8 September 1999

Royal Assent: 13 Sept 1999

1999 asp 1

The Mental Health (Public Safety and Appeals)(Scotland) Bill was the first bill to be passed by the Scottish Parliament. It was enacted as The Mental Health (Public Safety and Appeals)(Scotland) Act 1999.

Following introduction, a motion (S1M-109 by Jim Wallace) that the Bill be treated as an Emergency Bill was agreed to by the Parliament. Stage 1 of the Bill was agreed on 2 September 1999, following agreement on Motion S1M-115. This was followed in the same session by a motion on procedures for Stages 2 and 3 of the bill. Agreement on this motion (S1M-111) suspended Rules 9.7.8 and 9.7.9 of Standing Orders and directed that any vote to be taken during Stage 2 of the Bill in the Committee of the Whole Parliament would be conducted using the electronic voting system. Stages 2 and 3 were therefore debated on 8 September 1999. The bill was passed without division.

The reason for the invocation of emergency procedure was the Sheriff court decision in Noel Ruddle v The Secretary of State for Scotland on 2 August 1999. The court held that where the 'treatability test' in section 17(1)(a)(i) of the Mental Health Act 1984 is not satisfied, the detainee is entitled to discharge. This was the case even although Noel Ruddle suffered from a personality disorder manifested by abnormally aggressive or seriously irresponsible conduct. Section 17(1) justifies detention only if a person's mental disorder renders medical treatment appropriate and medical treatment is likely to alleviate or prevent a deterioration of the condition. This was not satisfied in Ruddle's case.

The Mental Health (Public Safety and Appeals)(Scotland) Bill was introduced in order to close this gap in the Mental Health (Scotland) Act 1984. It amends the 1984 Act in respect of the grounds for refusing discharge of restricted patients, appeals to decisions of the sheriff in such cases and the definition of mental disorder.

The Act has three main aims, all of which constitute interim measures until the passing of a new Mental Health (Scotland) Act. [Note - the Mental Health (Care and Treatment) (Scotland) Bill will be that new Act, and contains a repeal of the 1999 Act.]

1. To make public safety an independent ground for refusing to discharge restricted patients. One objective of section 1(1) of the Bill is to amend s64 of the 1984 Act to

ensure that a person can be detained in a mental hospital only if it can be proved that their release would threaten public safety. Scottish Ministers bear that burden of proof.

2. To introduce the right of appeal against a sheriff's decision in such cases. Section 2 introduced this right of appeal to the Court of Session.

3. To include personality disorder in the definition of mental disorder, which was achieved by section 3.

Public Finance and Accountability (Scotland) Bill

Introduced: 7 September 1999 [SP Bill 2]

Introduced by: Jack McConnell (Executive Bill)

Passed: 1 December 1999

Royal Assent: 17 January 2000

2000 asp 1

It was thought that the Public Finance and Accountability (Scotland) Bill would be the first piece of primary legislation to be passed by the Scottish Parliament. In the event, however, a piece of emergency legislation, the Mental Health (Public Safety and Appeals)(Scotland) Bill, was given this distinction. In introducing the Scottish Executive's first legislative programme, then First Minister Donald Dewar MSP stated that the Bill

"will go to the heart of the relationship between the Parliament and the Executive, putting in place the framework for the Parliament's scrutiny of the Executive's proposals, particularly on the allocation of public expenditure."

The Bill essentially puts in place the processes for authorising the use of public funds and holding to account those with responsibility for spending decisions. The first part of the Bill sets out the framework for the budget scrutiny and approval process, whilst the second part relates to establishing new audit arrangements for Scotland. This includes the creation of a new audit body for Scotland - Audit Scotland.

Preparation work began in earnest in February 1998, when the Financial Issues Advisory Group (FIAG) was set up. Amongst the Group's 82 recommendations were those on the following:

- Terminology -use plain English, and standard accountancy terms
- Budgetary procedures - involving greater scrutiny by the Parliament
- Accounting Arrangements - e.g. "resource accounting and budgeting" Accountability - clear lines of accountability through a system of "accountable officers", explicit rights of access to financial information
- Audit Arrangements - need for a streamlining of audit functions.

While, the Bill was generally viewed as technical and was widely supported in principle, there were nevertheless a number of issues that were highlighted in debate. These included the potential effectiveness of the Parliament in scrutinising budget proposals, long term versus short term budgeting, the development of performance indicators, and the audit arrangements for various parts of the public sector including local government

Budget (Scotland) Bill

Introduced: 21 January 2000 [SP Bill 7]

Introduced by: Jack McConnell (Executive Bill)

Passed: 10 February 2000

Royal Assent: 20 March 2000

2000 asp 2

The Scottish budget process and the Parliament's involvement with it were determined on the basis of the recommendations of the Financial Issues Advisory Group (FIAG). FIAG was set up in February 1998 to recommend the rules and procedures for the handling of financial issues by the Scottish Parliament. The stated objective of FIAG, in line with the general direction of the Consultative Steering Group, was that the budget process of the Scottish Parliament should be 'open, accessible and accountable to the people of Scotland'. The Public Finance and Accountability (Scotland) Act 2000 enshrined these elements in legislation. FIAG recommended a three-stage process, with the legislation being the final stage. At Stages One and Two, the Parliament's subject Committees will make comments on the budget in relation to their own areas. These responses will then be submitted to the Finance Committee, which will make recommendations to the Executive.

As a result of the timing of the first Scottish Parliament elections, the envisaged three-stage process has of necessity been curtailed this year. The Finance Committee therefore agreed that it was not feasible to attempt to engage the subject committees in consideration of individual departmental expenditure plans this year. Instead, the Committee decided to use this transitional year as an opportunity to consider the format of the data made available at this stage of the process, the manner of its presentation and its content.

In November 1999, the Scottish Executive published a Draft Budget, Spending Plans for Scotland. The Finance Committee took evidence on this from the Finance Minister, Jack McConnell, on 14 December and produced a report. The Parliament debated the report and the Draft Budget on 15 December. The Budget (Scotland) Bill was passed following a division (with 50 votes for, no votes against and 46 abstentions).

The Budget (Scotland) Act 2000 gives parliamentary authority for spending in Scotland for financial year 2000/1. The Act authorised a £16.7 billion budget for Scotland to be spent by the Scottish Executive, and its associated bodies, other organisations whose core funding is centrally provided (e.g. local authorities and health boards), the Scottish Parliament, Audit Scotland and the Scotland Office.

Census Amendment (Scotland) Bill

Introduced: 29 February 2000 [SP Bill 8]

Introduced by: Jim Wallace (Executive Bill)

Passed: 15 March 2000

Royal Assent: 10 April 2000

2000 asp 3

The objective of the Census Amendment (Scotland) Bill was to amend the primary legislation under which the Census is carried out (the Census Act 1920) to enable a question or questions on religion to be asked in the Census in Scotland. The Bill also specifies that the criminal penalties for not answering questions in the Census will not apply in Scotland in relation to questions on religion.

Debate in the Parliament earlier in January/February 2000 on the draft Census (Scotland) Order had covered a number of issues. The draft Order proposed inclusion of new topics on Household structures; General health; Provision of unpaid care; Time since last employment; Supervisor status and size of employing organisation and Travel to place of study. Proposed exclusions from the Census included questions on religion, Scots language, and on income.

Stating that it had listened to the views expressed by the Equal Opportunities Committee, the Commission for Racial Equality and others, the Executive decided to include a voluntary question on religion in the 2001 Census in Scotland.

The 2001 Census of Population was carried out on Sunday 29th April 2001. This was the 18th in a series of censuses undertaken every ten years since 1801 (with the exception of 1941, and an additional census in 1966). The census in Scotland was expected to cost around £23 m over the three years from 1999-2000 to 2001-02, with substantially smaller costs in later years.

Adults with Incapacity (Scotland) Bill

Introduced: 8 October 1999 [SP Bill 5]

Introduced by: Jim Wallace (Executive Bill)

Passed: 29 March 2000

Royal Assent: 9 May 2000

2000 asp 4

The purpose of the Adults with Incapacity (Scotland) Bill is to provide for decisions to be made on behalf of adults who lack legal capacity to do so themselves because of mental disorder or inability to communicate.

The Bill is divided into 7 parts:

- Part 1 defines what is meant by incapacity and gives the general grounds for intervening in an adult's affairs, outlines the jurisdiction of the courts and provides the supervisory framework for the new measures.
- Part 2 provides for the registration, monitoring and supervision of specific types of power of attorney.
- Part 3 sets up a new statutory scheme providing access to funds held on behalf of an adult with incapacity with appropriate safeguards.
- Part 4 provides for hospital and care home managers to manage the finances of patients or residents with incapacity, subject to appropriate safeguards.
- Part 5 confers a statutory authority on medical practitioners and those acting under their instructions to give treatment to adults with incapacity and undertake research in relation to them in certain circumstances.
- Part 6 reforms the law relating to guardians; ie individuals appointed to manage the affairs of adults with incapacity on a long-term basis. It also makes provision for a new type of one-off court order known as an 'intervention order', designed to deal with specific matters that do not require the appointment of a guardian.
- Part 7 includes various other miscellaneous provisions.

Abolition of Feudal Tenure etc. (Scotland) Bill

Introduced: 6 October 1999 [SP Bill 4]

Introduced by: Jim Wallace (Executive Bill)

Passed: 3 May 2000

Royal Assent: 9 June 2000

2000 asp 5

The Abolition of Feudal Tenure etc. (Scotland) Bill is concerned with the feudal system of land ownership that currently exists in Scotland. Under this system, land is owned subject to an interest in land known as the 'feudal superiority' held by the 'feudal superior'.

The Bill makes provision for the following:

- Abolition of feudal superiorities and the replacement of feudal tenure with a system of outright ownership;
- Extinction of the superior's right to collect feu duties and compensation for former superiors in this regard; and
- Extinction of a superior's right to enforce real burdens (ie conditions affecting land) except, in certain limited circumstances, where the superior is given an opportunity to preserve such rights;

The Bill also abolishes related systems of land tenure; enables firms with separate legal personality to own land; and prohibits, with certain exceptions, the granting of leases over land for periods exceeding 175 years.

The main provisions of the Bill will come into force on an 'appointed day' which will be determined by Scottish Ministers by statutory instrument. It is intended that the Bill will have the same appointed day as the Title Conditions (Scotland) Bill, which the Executive intends to introduce in Summer 2002.

Standards in Scotland's Schools etc. Bill

Introduced: 19 January 2000 [SP Bill 6]

Introduced by: Sam Galbraith (Executive Bill)

Passed: 7 June 2000

Royal Assent: 14 July 2000

2000 asp 6

The Standards in Scotland's Schools etc. Bill has the overall aim of raising standards in Scotland's schools and has three main purposes.

Sections 1-14. The first purpose is concerned with establishing an improvement framework. The Bill as passed sets out a statutory right for every child of school age to be provided with school education by a local authority and a duty on local authorities to provide school education to every child including special arrangements for those who are unable to attend school.

Central to the improvement framework are the National Priorities which are to be set by Scottish Ministers and will be used as objectives to be achieved locally and as a way of measuring performance.

Other specifications in the Bill as passed which relate to this purpose are: devolved school management and school development planning are put on a statutory basis; new powers for inspection of local authorities' education functions; and, Scottish Ministers may issue guidance to education authorities on the details of the improvement framework and to parents who wish to educate their children at home.

Sections 45-55. The second purpose is to make changes to the composition, operation and power of the statutory body (the General Teaching Council) which regulates the teaching profession in Scotland.

Sections 15-45 and 55-57. The third set of provisions make a number of changes to Scottish legislation on education. In particular the Bill as passed: abolishes the statutory basis of the Scottish Joint Negotiating Council on teachers' pay and conditions; introduces a new duty on local authorities to provide pre-school education; makes changes to the powers and functions of School Boards; repeals legislation allowing state schools to opt out of local authority control; and puts an end to the use of corporal punishment in education.

Ethical Standards in Public Life etc (Scotland) Bill

Introduced: 1 March 2000 [SP Bill 9]

Introduced by: Wendy Alexander (Executive Bill)

Passed: 21 June 2000

Royal Assent: 24 July 2000

2000 asp 7

The Ethical Standards in Public Life etc. (Scotland) Bill, as passed, introduced a statutory framework for ethical standards within areas, specified in the Bill, of Scottish public life. The main provisions of the Bill as passed are summarised below.

The Bill, as passed, established that Scottish Ministers will issue a code of conduct for councillors, termed the 'councillors code'. The code shall include principles and rules governing the conduct of councillors and provisions regarding the registration and declaration of councillors' interests. Councils and public bodies are placed under a duty to promote the standards contained in the code. The code requires to be approved by a resolution of the Scottish Parliament.

The Bill, as passed, established the role of the Standards Commission for Scotland and outlines the procedure for hearings of the Commission. Where a councillor (or member of a public body) has been found to be in contravention of the code the Commission can impose sanctions. There are four main sanctions the Commission can impose: censure, partial suspension of the councillor / member from particular meetings for a period of up to one year, total suspension for a period of up to one year, and lastly, disqualification from office for a period of up to five years.

The Bill, as passed, also repealed section 2A (commonly referred to as section or clause 28) of the Local Government (Scotland) Act 1986, which banned the promotion of homosexuality in schools, and placed a new duty on local authorities with regard to their provision of services for children. The Bill, as passed, required that councils, in the performance of duties relating particularly to children, have regard to the value of stable family life in a child's development and ensure that the content of instruction is appropriate to a child's age, understanding and stage of development.

Education and Training (Scotland) Bill

Introduced: 28 April 2000 [SP Bill 14]

Introduced by: Henry McLeish (Executive Bill)

Passed: 29 June 2000

Royal Assent: 7 August 2000

2000 asp 8

The Education and Training (Scotland) Bill helped create the framework to allow for the introduction of Individual Learning Accounts (ILAs). It was one of a number of new pieces of legislation required for their introduction. The other key elements were progressed through Westminster in the Finance Bill and the Learning and Skills Bill. The Bill's passage took only two months from introduction. The rapid progress of the Bill was intended to allow the ILA scheme to be launched in September 2000, in time for the start of the academic year.

The three sections of the Bill were as follows:

- Section 1 "Grants" - enables Scottish Ministers to "make regulations to authorise the payment of grants to or in respect of the education or training of certain individuals"
- Section 2 "Qualifying Arrangements" - confers powers on Scottish Ministers to specify in regulations both who is eligible to receive the grants and other conditions regarding the types of education and training in respect of which grants are payable.
- Section 3 "Regulations" - provides for regulations to be subject to the negative resolution procedure

The regulations included details of how the scheme would work, and were one of the key areas of debate surrounding the Bill itself.

The first 100,000 account holders were to each receive up to £150 towards spending on eligible learning if they also contributed £25 themselves. Employers' contributions were voluntary. For individuals who have fully spent their £150 contribution, and for those applying after the first 100,000 accounts have been opened, discounts of 20% were available for some courses, and in a few cases 80%.

The Individual Learning Accounts scheme was subsequently withdrawn as a result of significant defrauding of the system (20 December 2001), though a new scheme of ILAs is due to be launched in 2003/04.

Bail, Judicial Appointments etc. (Scotland) Bill

Introduced: 25 May 2000 [SP Bill 17]

Introduced by: Jim Wallace (Executive Bill)

Passed: 5 July 2000

Royal Assent: 9 August 2000

2000 asp 9

The Bail, Judicial Appointments etc. (Scotland) Bill is mainly aimed at ensuring that various procedures relating to the Scottish courts comply with the European Convention on Human Rights (ECHR).

Bail

The Executive sought to amend various aspects of the Criminal Procedure (Scotland) Act 1995 to ensure that they are compatible with article 5 of the ECHR. The Bill provides for the following changes to the process of seeking and granting bail:

- a judge will be required to consider whether to grant bail at an accused's first appearance in court, without the need for an application by the accused (aimed at satisfying a requirement for the automatic judicial review of detention);
- provisions in the 1995 Act that currently prevent a judge from granting bail in certain cases, including cases where a person has been charged with murder, will be repealed;
- a court will, where an accused is already in custody for another matter, be required to consider bail for the new offence; and
- changes to the rights of an accused to appeal against the refusal of bail in certain types of case.

Judges of the Inner House of the Court of Session

An Executive amendment added new provisions to the Bill, amending the Court of Session Act 1988 so as to allow for variation in numbers of Inner House judges in the Court of Session.

Judicial Appointments (Temporary and Part-time Sheriffs)

In 1999 the High Court (in the case of *Starrs and Chalmers v PF Linlithgow*) ruled that the use of temporary sheriffs (appointed under the Sheriff Courts (Scotland) Act 1971) was incompatible with the ECHR. This was on the basis that temporary sheriffs had no

security of tenure and could be dismissed at will, and that their appointment was at the discretion of the Scottish Ministers. Such use contravened the requirement, under article 6 of the ECHR, that people are entitled to have the determination of their civil rights and obligations, or of any criminal charge against them, carried out by an independent and impartial tribunal.

The Bill provides for the abolition of the office of temporary sheriff. It also includes provision for the creation of a new office of part-time sheriff to assist in dealing with sheriff court business.

Judicial Appointments (Justices of the Peace)

In relation to justices of the peace (JPs), the Bill aims to ensure that the appointment process for JPs carrying out judicial functions in the district courts cannot compromise their impartiality and independence (as required by article 6 of the ECHR). The Bill allows for the continuation of politically nominated JPs, but stipulates that such JPs should no longer perform court duties. This is achieved by creating separate categories of signing justices and full justices. Only the latter will be entitled to perform court duties.

Miscellaneous & General Provision (Prosecutions by Local Authorities)

Currently, a local authority may in some cases prosecute an individual in a court serviced by JPs who receive legal advice from a legal assessor who is an employee of that local authority. The Bill removes from local authorities the power to prosecute cases in the district courts. The reason given for this change was to avoid any argument that such proceedings run contrary to the right to a fair trial enshrined in article 6 of the ECHR.

National Parks (Scotland) Bill

Introduced: 27 March 2000 [SP Bill 12]

Introduced by: Sarah Boyack (Executive Bill)

Passed: 5 July 2000

Royal Assent: 9 August 2000

2000 asp 10

The National Parks (Scotland) Bill defines the four aims of a National Park as:

1. to conserve and enhance the natural and cultural heritage of the area
2. to promote sustainable use of the natural resources of the area
3. to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public
4. to promote sustainable economic and social development of the area's communities

The Bill also sets out the procedure for designating a National Park in Scotland, as summarised below:

- Scottish Ministers publish proposals for a National Park. These must specify the general area of the Park and the mechanisms to be adopted for the administration of planning in the National Park area.
- Scottish Ministers appoint Scottish Natural Heritage, and/or any other public body they consider has relevant expertise, to conduct an inquiry into the proposals.
- The body holding the inquiry reports back to the Scottish Ministers, who are required to publish the report. At this point Scottish Ministers may choose to hold a public inquiry into any issue relating to the National Park proposals.
- Drawing on the report, the Scottish Ministers publish a draft National Park Designation Order for public consultation.
- Following any amendment as a result of the consultation exercise, the Scottish Ministers lay the National Park Designation Order before the Parliament.
- The Parliament can either approve or reject the Order, through the affirmative resolution procedure.

The Bill also sets out the general functions of the National Park Authority, the governing body for each National Park, plus the mechanism to be used for direct elections to that Authority.

The Executive has indicated that Loch Lomond and the Trossachs is likely to be designated as the first National Park in Scotland followed by the Cairngorms. Note both of these areas have now been designated as National parks.

Regulation of Investigatory Powers (Scotland) Bill

Introduced: 25 May 2000 [SP Bill 16]

Introduced by: Jim Wallace (Executive Bill)

Passed: 7 September 2000

Royal Assent: 28 September 2000

2000 asp 11

The Regulation of Investigatory Powers (Scotland) Bill is concerned with covert investigative techniques and covers three categories of activity: the use of directed surveillance; the use of intrusive surveillance and the use of covert human intelligence sources by the police and the National Criminal Intelligence Service (NCIS) operating in Scotland. The Bill places those aspects of the use of covert surveillance, not already covered by legislation, and the use of covert human resources, on a statutory footing. This is to comply with human rights as established by ECHR and decisions of the European Court of Human Rights, that investigative measures used by the police and security services must have a basis in domestic law.

For each of the powers the Bill covers:

- the purposes for which they may be used;
- which authorities can use the powers;
- who should authorise each use of the power;
- the use that can be made of the material gained;
- independent judicial oversight;

Directed Surveillance relates to a specific investigation and aims to obtain information about or identify a particular individual. Directed Surveillance can only be authorised where it is: for the purpose of preventing or detecting crime or of preventing disorder; in the interests of public safety; or for the purpose of protecting public health. The surveillance must also be proportionate to what it seeks to achieve.

Intrusive surveillance is intrusive, for the purposes of the Bill where it is carried out in relation to residential premises or a private vehicle. This kind of surveillance may take place by means of a person or device located inside residential property or a private vehicle, or by means of a device planted outside but which provides a similar quality of output as a device placed inside.

Covert Human Intelligence Sources includes the use of agents, informants and undercover officers. Covert Human Intelligence Sources can only be authorised for the same purposes as described for directed surveillance.

The Bill establishes a Chief Surveillance Commissioner whose duties include keeping under review the exercise and performance of the powers and duties conferred or imposed by the Bill. The Bill provides a complaints procedure through a tribunal established under section 65 of the UK Regulation of Investigatory Powers Act 2000. The Bill also requires the Scottish Ministers to issue codes of practice relating to the exercise and performance of the powers and duties under the Bill and under Part III of the Police Act 1997.

Sea Fisheries (Shellfish) Amendment (Scotland) Bill

Introduced: 8 March 2000 [SP Bill 11]

Introduced by: Tavish Scott (Member's Bill)

Passed: 28 September 2000

Royal Assent: 2 November 2000

2000 asp 12

The Sea Fisheries (Shellfish) Amendment (Scotland) Bill was introduced as a Member's Bill by Tavish Scott MSP shortly after the establishment of the Scottish Parliament. It was the first Member's Bill to be passed by the Scottish Parliament.

Under the Sea Fisheries (Shellfish) Act 1967, Scottish Ministers can make several Orders. These confer sole rights to 'grantees' to sow the seabed with shellfish and then harvest these for a set period. To protect the shellfish they also prohibit fishing in the area covered by the Order, except where the net or lines used do not come into contact with the seabed.

At the time the Bill was introduced, there had been 30 applications for Several Orders from Shellfish farmers, of which only 8 had been granted. Partly, this was because of objections from fishermen who would be prevented from fishing in the area covered by the Several Orders. Many of the fishermen who fish in the inshore waters around Scotland's coast use "creels" and traps to catch lobsters, crabs and Nephrops (aka Norway Lobsters or langoustines). These fishermen would not be allowed to fish in areas covered by a Several Order, although they could actually help shellfish farmers by removing crabs and lobsters which predate on the shellfish. The Sea Fisheries (Shellfish) Amendment Bill changes the law so that when they make a Several Order, Ministers can specify the types of fishing, such as creel-fishing or lobster potting which can still be carried out in the area covered by the Order. It is hoped that this measure will go some way to reducing conflicts between shellfish farmers and inshore fishermen.

Abolition of POUNDINGS and Warrant Sales Bill

Introduced: 24 September 1999 [SP Bill 3]

Introduced by: Tommy Sheridan (Member's Bill)

Passed: 6 December 2000

Royal Assent: 17 January 2001

2001 asp 1

The Abolition of POUNDINGS and Warrant Sales Bill provides that it shall, from commencement of the relevant provisions, no longer be competent to enforce payment of a debt by pouncing and warrant sale.

In relation to the recovery of debt, pouncing and warrant sale is one example of a range of legal procedures that can be used to enforce payment (where the debtor does not pay voluntarily) against the assets of the debtor. These procedures are referred to as forms of 'diligence'.

Under current law, pouncing is the process by which the corporeal moveable property (eg household contents or stock-in-trade) of a debtor, in his or her possession, is valued with a view to the sale of that property at public auction (ie at a warrant sale). Certain types of property which would otherwise be subject to pouncing (including many items which might be categorised as household contents) are covered by specific exemptions from pouncing. Property that has been pounced cannot be disposed of without the court's permission. Following a pouncing, the creditor is entitled to apply to the court for a warrant of sale. This entitles an officer of the court to remove the pounced goods (entering premises by force if necessary) and sell them to realise all or part of the value of the debt.

The commencement provisions set out in the Bill provided that the provisions abolishing pOUNDINGS and warrant sales were to come into force on 31 December 2002 or such earlier date as the Scottish Ministers may, by order made by statutory instrument, appoint. [Note: this Act has been repealed in its entirety by the Debt Arrangement and Attachment (Scotland) Act, and so never came into force.]

Transport (Scotland) Bill

Introduced: 5 June 2000 [SP Bill 18]

Introduced by: Sarah Boyack (Executive Bill)

Passed: 20 December 2000

Royal Assent: 25 January 2001

2001 asp 2

Part 1 of the Transport (Scotland) Bill allows Scottish Ministers to require public bodies (most likely local authorities, but also joint boards with transport responsibility and passenger transport authorities) to work together to find solutions to specific transport problems, drawing up Joint Transport Strategies. An example could be joint working to reduce congestion in major cities.

Part 2 seeks to improve the bus market and service in Scotland. It does this by establishing a framework for Quality Partnerships, under which local authorities and operators agree to provide improved facilities and services. If Quality Partnerships do not deliver, Ministers will be able to approve Quality Contracts that will replace on-the-road competition with a single franchise for an area. Operators must meet the service criteria set out by the local authority in the contract.

Part 2 places a duty on transport authorities to ensure adequate ticketing and information services, allows for the creation of a Bus User Complaints Tribunal, and gives powers to fine bus lane driving offenders.

Part 3 gives local authorities the right, with Ministerial approval, to introduce road user charging (congestion charging). This is only permitted on the roads for which the transport authority is responsible - local authorities may not charge on trunk roads, which are the responsibility of the Scottish Executive. Earlier proposals for trunk road user charging did not make it into the Bill. The Bill as introduced contained provisions to allow for workplace parking levies, but this was removed by amendment during Stage 2.

Part 4 gives Ministers powers to require local authorities to provide a minimum level of travel concessions for pensioners and disabled people. This is likely to initially apply to bus services in geographical areas that already have a concession scheme. Part 4 further gives Ministers powers to dissolve any body other than a roads authority which has responsibility for a bridge and transfer its duties to a Joint Board, which can address the transport, congestion and accessibility issues. The phasing out of orange disabled parking badges to be replaced by the standard European blue badge is also catered for in this part of the Bill, as is the introduction of local authority powers to create 'home zones' [note: 2 words], allowing certain measures to improve the local environment or improve road safety.

Salmon Conservation (Scotland) Bill

Introduced: 28 September 2000 [SP Bill 20]

Introduced by: Ross Finnie (Executive Bill)

Passed: 11 January 2001

Royal Assent: 14 February 2001

2001 asp 3

The Salmon Conservation (Scotland) Bill gives wider powers to Scottish Ministers and District Salmon Fishery Boards (DSFBs) to make regulations in the interests of salmon conservation. Regulations made under the Bill could be used to reduce fishing effort by introducing measures like mandatory catch and release or setting bag limits. The Bill arises out of concerns over falling salmon catches and the need identified by the Scottish Salmon Strategy Task Force to give Scottish Ministers and DSFBs increased powers to act to conserve salmon stocks.

Scotland is divided up into 77 Salmon districts. Salmon fishing in Scotland has been regulated since the 19th century by District Salmon Fishery Boards (DSFBs). There are currently DSFBs in 51 out of the 77 districts. These DSFBs have a range of powers under various statutes to take steps to conserve salmon. Ministers also have powers to make Regulations to conserve Salmon. However, for some types of Regulation, such as those which define the type of fishing tackle, baits and lures which can be used to fish for salmon, Ministers powers are restricted to making Regulations where these have been applied for by a DSFB. There are also other ways in which fishing effort could be controlled which cannot be introduced under the present legislation. For example, catch and release could be made mandatory. Bag, size or gender limits, or daily close times could be set for either rod and line or net fisheries, after which the fishery would close. Ministers do not have explicit powers to act in emergency situations, for example, to close a fishery if stocks are shown to be seriously threatened. These concerns were highlighted in the recommendations of the Scottish Salmon Strategy Task Force in its report in 1997. The Bill responds to these concerns by giving the Scottish Ministers general powers to make Regulations in the interests of conserving salmon.

The Salmon Conservation (Scotland) Act 2001 is being consolidated as part of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill. Consolidation is the re-enactment in one Act of all the provisions on one topic of law scattered throughout various statutes and in common law.

Budget (Scotland) (No.2) Bill

Introduced: 19 January 2001 [SP Bill 26]

Introduced by: Angus MacKay (Executive Bill)

Passed: 8 February 2002

Royal Assent: 15 March 2001

2001 asp 4

The Budget (Scotland) (No 2) Bill was the final stage in the annual three-stage budget process, and gives parliamentary authority for spending in Scotland for financial year 2001/2. The budget process is intended to allow the Parliament's subject committees the opportunity to comment on the Executive's spending plans at several points during the year prior to the annual budget being agreed. The expectation is that the subject committees play an active role in scrutinising and making recommendations on the spending priorities, presented in the budget documents. The 2001/02 budget process was the first occasion subject committees had to scrutinise the expenditure proposals of the Executive. Three recommendations on the Scottish Budget were made (two from the Health and Community Care Committee and one from the Justice and Home Affairs Committee). The Executive accepted these recommendations.

As a result of extensive pre-legislative scrutiny, the time allocated for the passage of the Bill is truncated. It was introduced on 19 January 2001, with its Stage 1 debate on Thursday 25 January. The Finance Committee considered it at Stage 2 on 30 January 2001. The Bill was then passed without division by the Parliament, on 8 February 2001.

The Act authorised a £18.4 billion budget for Scotland to be spent by the Scottish Executive, and its associated bodies, other organisations whose core funding is centrally provided (e.g. local authorities and health boards), the Scottish Parliament, Audit Scotland and the Scotland Office. The baseline budget for 2001/2 rose from £17.7 billion (as initially planned in the Executive's Annual Expenditure Report) to £18.4 billion. This was partly due to the additional funds released to Scotland by UK Spending Review 2000. However, the difference may also be attributed to the introduction of Resource Accounting and Budgeting (RAB) which moves away from a cash-based system to one that takes account of resources and assets. For some budget headings (particularly those with large amounts of capital expenditure), it has the effect of apparently increasing the resources available.

Leasehold Casualties (Scotland) Bill

Introduced: 10 May 2000 [SP Bill 15]

Introduced by: Adam Ingram (Member's Bill)

Passed: 8 March 2001

Royal Assent: 12 April 2001

2001 asp 5

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2001/20010001.htm>

The Leasehold Casualties (Scotland) Bill provides for the abolition of leasehold casualties. The Scottish Law Commission had published a report in 1998 recommending abolition. A leasehold casualty is an amount payable over and above the rent, which the terms of a lease may require a tenant to pay to the landlord. Payment is usually required on the basis of a fixed period or on the occurrence of a particular event.

Leasehold casualties are found in some very long leases (eg those lasting for 999 years) in certain parts of Scotland. The Bill applies to leases granted before 1 September 1974 (on the basis that it has not been possible to insert a valid casualty in a lease since then) for a period of not less than 175 years. The reason given for mentioning 175 years was to prevent the Bill from inadvertently affecting provisions in modern commercial leases.

Under the provisions of the Bill, landlords will no longer be able to demand payment of such casualties. This applies in relation to payments which would have become due on or after 10 May 2000 (the date the Bill was introduced). There is provision for tenants to compensate landlords for the loss of this right.

The Bill also provides that irritancy provisions in certain leases are void. An irritancy provision in a lease is a clause that enables the landlord to terminate the lease, with the leased land reverting back to the landlord (including any buildings situated on such land). Under existing law such clauses could be triggered where a tenant fails to comply with some aspect of the lease (eg failing to meet a casualty payment). As stated, the relevant provisions of the Bill only apply to certain types of lease (eg the lease must be for a period of 175 years or more). The reasons given for having such restrictions are similar to those for other provisions in the Bill, namely that the provisions are intended to apply to the type of very long leases in which casualty provisions may be found and to prevent inadvertent application to modern commercial leases.

Education (Graduate Endowment and Student Support) (Scotland) (No 2) Bill

Introduced: 7 December 2000 [SP Bill 22]

Introduced by: Wendy Alexander (Executive Bill)

Passed: 29 March 2001

Royal Assent: 3 May 2001

2001 asp 6

The Education (Graduate Endowment and Student Support) (Scotland) (No 2) Bill makes the following general provisions:

- provision for the payment of a "graduate endowment" by certain higher education graduates in respect of the educational benefits afforded to a person by his/her higher education degree;
- provision in relation to the use of income arising from the graduate endowment for the purposes of financial support of students;
- provision to amend the Education (Scotland) Act 1980 in terms of clarifying what students are entitled to financial support;
- provision (amending the Local Government Finance Act 1992) exempting students, living with non-students, from liability for council tax.

The amount of the graduate endowment will be set at £2,000 for new (first degree) entrants to higher education in 2001-02, increasing in subsequent years according to inflation. Students will know the amount they are liable to pay at the beginning of their studies. They will be obliged to pay the endowment fee one year after completion of their degree.

Certain people will be exempt from paying the endowment fee - for example, people aged over 25 at the start of their studies; people in receipt of lone parent grants; people in receipt of the disabled students' allowance. Repayment of the endowment can be made through a lump sum payment or by taking out an income contingent student loan.

The Bill imposes a duty on Scottish Ministers to include, in the budget proposals made for each financial year, provision for the income raised by the payment of the graduate endowment in that year to be used for the purposes of student support.

The Bill amends the Education (Scotland) Act 1980, so that regulations governing the payment of student allowances and loans can be extended to allow payments to be made to distance learning students and to former students. It also amends the Local

Government Finance Act 1992, so as to exempt students who share accommodation with non-students from liability for council tax.

Note: this Bill replaced an earlier version - without "(No.2)" in the title - which was withdrawn after the Enterprise and Lifelong Learning Committee had already begun to take evidence on it at Stage 1.

Convention Rights (Compliance) (Scotland) Bill

Introduced: 10 January 2001 [SP Bill 25]

Introduced by: Jim Wallace (Executive Bill)

Passed: 30 May 2001

Royal Assent: 5 July 2001

2001 asp 7

The Convention Rights (Compliance) (Scotland) Bill introduces a range of provisions designed to ensure that certain aspects of Scots civil and criminal law are compatible with the European Convention on Human Rights (ECHR) as incorporated into domestic law by the Scotland Act 1998 and the Human Rights Act 1998. The Human Rights Act came into effect on the 2 October 2000. The Bill is in 7 parts:

Part 1 requires that all categories of life prisoner have a 'punishment part' of their sentence set in open court. It removes from the Scottish Ministers the power to decide how long Adult Mandatory Life Prisoners (AMLPs) should spend in prison. Instead, the decision to release any category of life prisoner will be made by the Parole Board for Scotland sitting as a tribunal, thus bringing the treatment of AMLPs into line with that of prisoners serving discretionary life sentences;

Part 2 seeks to reconstitute the Parole Board for Scotland as an independent tribunal to bring it into compliance with Article 6 (Right to a fair trial) of ECHR. Under the Bill, members of the Parole Board will be appointed by the Scottish Ministers for fixed-term periods of between 6 and 7 years with reappointment possible for a further term but only after an absence of 3 years. The purpose of this is to give members a degree of security of tenure and reduce any possible appearance of bias in favour of the Executive.

Part 3 extends [not appropriate to use future tense here] the availability of Civil Legal Aid and Advice by way of Representation (ABWOR) to any proceedings before any court or tribunal where a person's civil rights are to be determined. The Bill enables Ministers to set 'factors', in addition to existing tests, which the Scottish Legal Aid Board should consider in such cases. It also makes provision for potentially complex cases to be removed from the Criminal Legal Aid fixed payment scheme, under regulations to be made by the Scottish Ministers, and allows instead fees to be paid on a 'time and line' basis.

Part 4 repeals the relevant part of the Criminal Law (Consolidation) (Scotland) Act 1995 so that it is no longer a criminal offence for more than two adult males to take part in consensual homosexual acts in private.

Part 5 reforms the procedure for appointment of the Procurator Fiscal of the Lyon Court so as to transfer the Lord Lyon's powers in this respect to the Scottish Ministers. This provision recognises the potential for an Article 6 challenge on the grounds that the Lord Lyon, as presiding judge in the Lyon Court, should not be able to appoint the Procurator Fiscal of the Court.

Part 6 provides the Scottish Ministers with powers to make remedial orders to remedy established or perceived incompatibilities with ECHR.

Part 7 provides that Parts 1, 2 and 5 of the Bill will be brought into force by subordinate legislation as decided by Scottish Ministers, while the remaining parts of the Bill come into force on the day after the Bill receives Royal Assent.

Regulation of Care (Scotland) Bill

Introduced: 20 December 2000 [SP Bill 24]

Introduced by: Susan Deacon (Executive Bill)

Passed: 31 May 2001

Royal Assent: 5 July 2001

2001 asp 8

The Regulation of Care (Scotland) Bill creates a new system for the regulation and inspection of care and early education services, as well as the workforce who provide these services. It does this primarily by the establishment of two new non-departmental public bodies:

- The Scottish Commission for the Regulation of Care (The Commission), and
- The Scottish Social Services Council (The Council)

The Commission will be responsible for the regulation and inspection of care establishments (functions that were previously carried out by Local Authorities and Health Boards) and any ensuing enforcement action. The Bill defines what services the Commission should regulate and how, and provides for the establishment of a complaints procedure. It also allows Scottish Ministers to produce National Care Standards, compliance with which the Commission should consider when registering a care service. In addition it gives Scottish Ministers powers to set maximum fee levels for services registering with the Commission.

The Council will be responsible for the registration of social service workers as defined by the Bill. The Bill also allows for the transfer of the functions of the Central Council for Education and Training in Social Work (CCETSW) to the Council, who will then become responsible for the regulation and promotion of training and education for social service workers. The Bill also provides a function for the Council to publish codes of practice for registered workers and establish a register of the relevant groups in the workforce.

The Council is expected to commence work in October 2001 and the Commission in April 2002.

Scottish Local Authorities (Tendering) (Scotland) Bill

Introduced: 5 April 2001 [SP Bill 28]

Introduced by: Angus MacKay (Executive Bill)

Passed: 6 June 2001

Royal Assent: 6 July 2001

2001 asp 9

The Scottish Local Authorities (Tendering) (Scotland) Bill, as passed, extends the moratorium on 'Compulsory Competitive Tendering' (CCT) beyond the timescale permitted by the Local Government Act (1988). The 1988 Act did not permit the moratorium to continue beyond the 31st December 2001. The Bill, as passed, repealed this time limit in order that the moratorium on introducing CCT could continue whilst the Executive finalised legislation to replace CCT with a Best Value regime for local authorities. The Local Government in Scotland Act 2003 subsequently replaced CCT with Best Value for local authorities.

Housing (Scotland) Bill

Introduced: 18 December 2000 [SP Bill 23]

Introduced by: Jackie Baillie (Executive Bill)

Passed: 13 June 2001

Royal Assent: 18 July 2001

2001 asp 10

The main provisions of the Housing (Scotland) Bill apply to homelessness, tenancy rights, regulation of the social rented sector and, winding up Scottish Homes, replacing it with an Executive Agency.

Homelessness and Allocation of Housing: Part 1 of the Bill places new responsibilities on local authorities and registered social landlords (RSLs). There is a requirement on local authorities to carry out an assessment of homelessness in their areas and prepare strategies for its prevention and how the council intends to alleviate its effects. Local authorities will have a duty to accommodate people who have priority need and are not intentionally homeless until they have been found permanent housing. They will also be required to provide assistance, advice and temporary accommodation for all those they believe to be homeless whether or not they are intentionally so or in priority need.

Tenants of Social Landlords: Part 2 of the Bill creates the Scottish Secure Tenancy (SST), which replaces secure and assured tenancies, to offer equal rights and responsibilities to all tenants of local authorities and RSLs. The Right to Buy (RTB) scheme is modernised by the Bill, and will be included in the new SST. Those gaining the RTB through the new SST will be subject to several restrictions, and there is also provision to suspend the RTB in pressured areas. In addition, all local authorities and RSLs landlords will have to prepare a strategy for tenant participation and will have a duty to have regard to representations made by individual tenants or tenants groups.

Regulation of social landlords: Part 3 of the Bill introduces a single regulatory framework for all local authority and RSL housing management structures, including registration procedures.

Scottish Homes: Part 4 of the Bill abolishes Scottish Homes to replace it with an Executive agency. This part of the Bill therefore details the transfer arrangements for the functions of Scottish homes to Scottish Ministers, properties and liabilities, and staff.

Other provisions

The Bill also contains provisions regarding strategic housing functions, and improvement and repair grants.

Mortgage Rights (Scotland) Bill

Introduced: 3 July 2000 [SP Bill 19]

Introduced by: Cathie Craigie (Member's Bill)

Passed: 20 June 2001

Royal Assent: 25 July 2001

2001 asp 11

The Mortgage Rights (Scotland) Bill allows the Sheriff Court to consider the personal and financial circumstances of a borrower when deciding whether to grant a creditor an order that may result in the repossession of a property. It also requires creditors to inform borrowers of their rights under the Bill and of the availability of independent advice. It is envisaged that the Bill will assist reducing homelessness, whilst ensuring that lenders receive payment in full on the money that they have loaned.

Erskine Bridge Tolls Bill

Introduced: 4 September 2001 [SP Bill 33]

Introduced by: Sarah Boyack (Executive Bill)

Passed: 6 September 2001

Royal Assent: 13 September 2001

2001 asp 12

On 30 August 2001 the Minister for Transport and Planning, Sarah Boyack, announced the suspension of tolling on the Erskine Bridge. This was as a result of the failure to renew an order extending the Scottish Executive's power under the Erskine Bridge Tolls Act 1968 to toll vehicles crossing the Bridge.

The power to levy tolls on the Erskine Bridge is set out in the 1968 legislation, as a result of which tolling began when the bridge opened in 1971. Tolling was initially to have ceased 20 years after the opening of the bridge, but extension orders made in 1991 and 1996 meant tolling continued. In August 2000 the Scottish Ministers decided tolling should be extended for a further five year period from 2001, but an administrative error meant the necessary order was not laid before the Parliament as was required.

The Erskine Bridge Tolls Bill was subject to emergency legislation procedures to rectify this position, and restores the position to that which would have been in place had this error not occurred.

The law states that tolls cannot be set at a level beyond that required to service costs associated with the bridge, including capital costs, interest on capital costs and operating / maintenance costs.

The emergency nature of the legislation meant all stages of the Bill were considered in a single day, and the Bill was passed without amendment.

International Criminal Court (Scotland) Bill

Introduced: 4 April 2001 [SP Bill 27]

Introduced by: Jim Wallace (Executive Bill)

Passed: 13 September 2001

Royal Assent: 24 September 2001

2001 asp 13

The purpose of the International Criminal Court (Scotland) Bill is to enable the United Kingdom to ratify the Rome Statute of the International Criminal Court. Ratification of this Statute requires changes to the law in the United Kingdom and the Bill, together with the International Criminal Court Bill considered by Westminster, will enable the United Kingdom to comply with its obligations under the Statute.

The Bill makes it an offence under Scots law to commit genocide, war crimes or crimes against humanity. It allows such crimes to be prosecuted in Scotland if they are committed in Scotland or outwith the United Kingdom by United Kingdom nationals or United Kingdom residents. It enables the Scottish Ministers to assist the International Criminal Court (ICC) if it requests help in gathering evidence, in tracking down and identifying individuals suspected of ICC crimes, or in locating and freezing proceeds of crime. It enables the Scottish Ministers to issue warrants so that prisoners sentenced by the ICC or certain UN tribunals can serve their sentences in Scotland. It confers powers on the Scottish Ministers to make provision for the enforcement of fines, forfeitures and reparation awards for victims which are ordered by the ICC.

Protection from Abuse (Scotland) Bill

Introduced: 4 June 2001 [SP Bill 30]

Introduced by: Alasdair Morgan (on behalf of the Justice 1 Committee)

Passed: 4 October 2001

Royal Assent: 6 November 2001

2001 asp 14

The Protection from Abuse (Scotland) Bill was the first ever Committee Bill to be passed by the Parliament. It is a single-issue bill with the purpose of enabling a power of arrest to be attached to interdicts granted to protect individuals from abuse.

Prior to the Bill becoming law, the courts had the power to grant interdicts to protect individuals (regardless of relationship) from abusers. However, only matrimonial interdicts, granted under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, could have the power of arrest attached to them. But matrimonial interdicts can, in general, only be brought by one spouse against another or by one individual against another individual, where both individuals have been cohabiting as if they were man and wife. In the case of a breach of a non-matrimonial interdict, the police could only arrest an abusive person if a criminal offence had been committed.

The intention of the Bill is to entitle anyone who has obtained, or who is applying for, an interdict against an abusive person to apply to the court to have a power of arrest attached to the interdict, regardless of whether the interdict is a matrimonial interdict or not. The Bill also sets out a duty on the person who has obtained the interdict to notify the police when the power of arrest or an extension of the power of arrest is served.

Police and Fire Services (Finance) (Scotland) Bill

Introduced: 31 May 2001 [SP Bill 29]

Introduced by: Angus MacKay (Executive Bill)

Passed: 1 November 2001

Royal Assent: 5 December 2001

2001 asp 15

The Police and Fire Services (Scotland) Bill, as passed, consists of two main sections. The first section of the Bill deals with the carrying forward of unspent funds from one financial year to the next. Prior to the passage of the Bill joint police boards were unable to carry forward monies unspent at the end of the financial year that were not earmarked for a known liability. Unspent monies had to be returned to the appropriate local authorities or to the Scottish Executive depending upon the source of the income. This aspect of police funding had been criticised by the Accounts Commission. The Bill, as passed, enables police boards to carry forward up to 3% of the total money paid to the board by constituent authorities from one financial year to the next. The carrying forward of funds requires the consent of the relevant constituent authorities and Scottish Ministers.

Section 2 of the Bill, as passed, deals with the carrying forward of funds in relation to fire brigade funding. Legislation prior to the Bill governing the funding of joint fire boards did not technically prohibit the carrying forward of working balances as was the case with police funding. However, in order to ensure clarity and flexibility for fire boards the Bill, as passed, acted to enable constituent authorities to make contributions to fire board funds in respect of estimated expenditure. The Bill, as passed, also allows fire boards to carry forward funds from one financial year to the next in line with the provisions made in the Bill, as passed, for police boards.

Scottish Local Government (Elections) Bill

Introduced: 4 October 2001 [SP Bill 38]

Introduced by: Angus MacKay (Executive Bill)

Passed: 20 December 2001

Royal Assent: 22 January 2002

2002 asp 1

The main objectives of the Scottish Local Government (Elections) Bill are to:

- Extend the term of local authorities from 3 to 4 years
- Hold local government and Scottish Parliament elections on the same day
- Allow local authorities to pilot innovative schemes for voting in local government elections

The next local government elections were due to be held in May 2002, but will now be held in May 2003 on the same day as the Scottish Parliament elections.

The Bill is part of the government's local government modernisation agenda, which began after devolution. A four-year term for local government has been widely supported to assist the more effective delivery and planing of policy priorities.

One of the aims of synchronising polls is to increase voter turnout. Average turnout for council elections in the 1990s was 47.3%, however, when local government elections were synchronised with the first Scottish Parliament elections turnout increased to 58.5%. Although some would argue the focus on local government issues is lost in synchronised elections the Scottish Executive argue that the democratic legitimacy of local government is enhanced by the higher turnout.

During the passage of the Bill some councils raised concerns about the potential practical problems that may arise from synchronising polls, for example, lack of available staff and timing counts. A working group has been set up to examine such issues.

The Bill allows councils to pilot innovative schemes for voting in local government elections, with the approval of the Scottish Executive, to help improve voter turnout. This could mean, for example, postal voting or voting in supermarkets. The pilot scheme provisions do not extend to Scottish Parliamentary elections as these are a reserved matter.

School Education (Amendment) (Scotland) Bill

Introduced: 28 September 2001 [SP Bill 37]

Introduced by: Jack McConnell (Executive Bill)

Passed: 20 December 2001

Royal Assent: 22 January 2002

2002 asp 2

The School Education (Amendment) (Scotland) Bill as passed has two main purposes. The first is to clarify the position of placing requests for children to start school who are not of school age. The second deals with changes in the appointments system of teachers to take account of the new career structure which abolishes the post of assistant headteacher.

Section 1 of the Bill as passed amends section 28A of the Education (Scotland) Act 1980 (1980 Act) to enable parents of children aged between 4 years and 6 months to 5 years and 11 months to make placing requests to start primary school. An unintended consequence of the Standards in Scotland's Schools etc Act 2000 was that it restricted the placing of requests to children of 'school age', which the 1980 Act defined as between 5 years and over and 16 years and under. As a result, parents were unable to make placing requests for their children under the school age, even though their child reached school age during the school year. The Bill as passed will ensure that parents have the right to make placing requests for children who are of school age or will start school at the next intake.

Section 2 of the Bill as passed amends the School Boards (Scotland) Act 1988 in connection with the abolition of the post of assistant headteacher. Following the McCrone report into the pay and conditions of the teaching profession, an agreement was reached (A Teaching Profession for the 21st Century) which developed a new simplified career structure for teaching.

As a result, the post of assistant headteacher ceased to exist, being subsumed into the post of deputy headteacher. The Bill as passed enables existing assistant headteachers to be regarded as deputy headteachers without following the advertisement and appointment procedures required by that Act.

Water Industry (Scotland) Bill

Introduced: 26 September 2001 [SP Bill 35]

Introduced by: Ross Finnie (Executive Bill)

Passed: 14 February 2002

Royal Assent: 1 March 2002

2002 asp 3

The Water Industry (Scotland) Bill has three main objectives:

- the replacement of the three existing water authorities - North, West and East of Scotland Water - by a single all Scotland public water authority, Scottish Water
- establishing Water Customer Consultation Panels under an independent convener
- creating the post of Drinking Water Quality Regulator

Public authorities have historically provided water and sewerage services in Scotland. In recent times this has meant provision firstly by local authorities and then more recently by three public water authorities. In England and Wales the situation is different, in that water companies have been in private hands for some years.

Investment in the water industry in Scotland is at its highest ever level. This is necessary to comply with, amongst other things, European legislation. Similar investment was needed in England, but this has taken place over a number of years under private water companies. In addition, the Competition Act 1998 allows for the opening up of the water industry to competition, in a similar way to the way the gas and electricity markets have opened up.

The Water Industry (Scotland) Bill allows for the introduction of a more competitive type of water and sewerage service provider in Scotland. This company, Scottish Water, to have its headquarters in Dunfermline, will remain a public water authority but will have more powers to diversify its operations if they can provide resources to help finance its core functions, that of water and sewerage provision.

In addition the Bill creates Water Customer Consultation Panels under an independent convener. Under the previous system, customers were represented by regional Consultative Committees under the Water Industry Commissioner for Scotland. It was felt that, as Scottish Ministers appoint the Commissioner, this situation did not give an independent enough voice to customers. The Bill allows for a situation where customers have an independent voice.

The third main provision of the Bill is the creation of the Drinking Water Quality Regulator. The functions of this office will take over that previously carried out by a department of the Scottish Executive, and will have control over regulating drinking water quality.

The Bill as introduced had also sought to exempt certain types of charities, churches and local groups from water and sewerage charges, along the lines of a similar scheme in place at the time. The initial income threshold for this was set at £10,000 p.a. per organisation. This was regarded by many as being too low a threshold - ultimately the Executive agreed and the threshold has been increased to £50,000. The Executive expects this to exempt over 90% of local and village halls.

Detail on the Bill as introduced can be found in SPICe Research Paper 01/16 Water Industry (Scotland) Bill.

Criminal Procedure (Amendment) (Scotland) Bill

Introduced: 25 February 2002 [SP Bill 49]

Introduced by: Jim Wallace (Executive Bill)

Passed: 27 February 2002

Royal Assent: 8 March 2002

2002 asp 4

The Criminal Procedure (Amendment) (Scotland) Bill was dealt with under the Parliament's emergency legislation procedures, thus allowing all stages of parliamentary scrutiny to be dealt with on a single day.

The Scottish Executive decided to introduce the Bill following a recent Appeal Court ruling dealing with the law relating to summary criminal procedure in cases where an arrest warrant is granted following the failure of an accused to appear at an intermediate diet (a type of court hearing). The Appeal Court decided that the granting of a warrant, in such circumstances, did not automatically result in the discharge of the trial diet set in the case. The importance of this ruling was that where a trial diet is not explicitly discharged by the court any failure by the prosecution to call the case on the date set for trial would lead to subsequent proceedings in the case being invalid.

The Scottish Executive noted that the ruling was contrary to widespread practice in the courts which was based on the assumption that the trial diet was automatically discharged when an arrest warrant is granted in the circumstances described above. It was, therefore, feared that the Appeal Court ruling could have an impact on a large number of ongoing and concluded cases - affecting the validity of cases involving significant numbers of accused persons who had already been found guilty, or would otherwise have been found guilty.

The Bill addressed this problem by bringing the law into line with what had been common practice prior to the Appeal Court ruling. Thus, the issuing of an arrest warrant at an intermediate diet will (unless the court orders otherwise) lead to the automatic discharge of the trial diet (which can be re-scheduled once the accused has been arrested). Because the Appeal Court ruling affected ongoing and concluded cases, as well as future cases, the Bill changes the law with retrospective effect.

Community Care and Health (Scotland) Bill

Introduced: 24 September 2001 [SP Bill 34]

Introduced by: Susan Deacon (Executive Bill)

Passed: 6 February 2002

Royal Assent: 12 March 2002

2002 asp 5

The current system of community care provision has been a high profile political issue over the last few years. The roots of many of the Community Care and Health (Scotland) Bill proposals lie in the recommendations of the Royal Commission on Long Term Care. The Commission was chaired by Lord Sutherland of Houndwood (then Sir Stewart Sutherland) and reported on 1 March 1999. This report focused attention on the funding of the care of the elderly, placing it further up the political agenda. The other major recommendation of the Sutherland Commission (i.e. the establishment of a Care Standards Commission to regulate care provision) was addressed by the Regulation of Care (Scotland) Act 2001.

The Community Care and Health (Scotland) Bill introduces a range of measures designed to meet the care needs of Scotland's older population. Its main provisions are:

- Free personal and nursing care for older people. The provisions of the Bill are intended to promote and extend choice in the provision of residential and home care services and enable regulation of charging for home care services
- Carers' right to an independent assessment
- A legislative framework to encourage greater joint working between the NHS and local authorities
- Extends the requirement, currently only on Principal GPs, for all GPs to be named on a list held by an NHS Trust or Island Health Boards before they provide services to the NHS.

The legislation is an enabling bill as it sets out the framework for implementing free personal care and changes to the delivery of residential and non-residential care services for older people. Much of the substantive detail for example with regard to charging regimes and joint working across statutory agencies will be determined by ministerial regulation.

Free personal care, originally to be introduced from 1 April, will now be implemented from 1 July 2002.

Protection of Wild Mammals (Scotland) Bill

Introduced: 1 March 2000 [SP Bill 10]

Introduced by: Mike Watson (Member's Bill)

Passed: 13 February 2002

Royal Assent: 15 March 2002

2002 asp 6

When the Protection of Wild Mammals (Scotland) Bill was introduced, it sought to abolish three specific activities:

- Hunts, mounted or otherwise, which employ dogs to pursue, attack and kill wild mammals
- Hare coursing
- The use of terriers to attack wild mammals underground

Much of the Parliamentary debate on the Bill has focused on whether the wording of the Bill was sufficiently tight to prevent just these activities, and that other ways of using dogs would not also be outlawed by the Bill.

Fewer people take part in mounted foxhunting and hare coursing in Scotland than they do in England and Wales, with 10 mounted hunts, 5 of which are in the Borders, and one group of hare coursers. Dogs are widely used to chase and sometimes to kill wild mammals by gamekeepers, stalkers, shooters and falconers.

When it heard evidence at Stage 1 the Rural Development Committee was concerned that the use of terriers underground was often the only way to control foxes, especially in remote parts. The committee was also concerned that the Bill would prohibit the use of hounds by foot packs. Here the main purpose for using dogs is to flush the foxes out of woods to be shot by marksmen. The committee voted to recommend that the Parliament did not agree to the general principles of the Bill. Nonetheless, in the Stage 1 debate in the Parliament the Bill was voted through.

The Rural Development Committee also considered the Bill at Stage 2. The committee aimed to amend the Bill to resolve the ambiguities over the activities that would be affected. The committee agreed to amendments which made it clear that using dogs for falconry and shooting would still be allowed. The use of dogs underground to flush foxes, and the use of dogs by footpacks is also specifically permitted by the Bill. One issue, which was still unresolved, was whether people who lost their jobs because of the Bill should receive some kind of compensation.

At Stage 3 the Bill was considered by the whole Parliament. One hundred and two amendments were debated, many of them minor changes to technicalities, but also on major policy considerations like compensation. After more than 6 hours of debate, the Parliament finally voted to pass the Bill by 83 votes to 36. When it comes into force the Protection of Wild Mammals (Scotland) Act will put an end to mounted foxhunting and hare coursing in Scotland. Supporters of hunting think the Bill is flawed, and say that it has loopholes which could allow mounted foxhunting to continue. They intend to mount a legal challenge to the Bill in the Scottish Courts, which if unsuccessful they might take to the European Courts, under the European Convention on Human Rights (ECHR). Supporters of the Bill say that these claims are unfounded and think that the new law shows the strength of the Member's Bill system in the Scottish Parliament, because the Protection of Wild Mammals (Scotland) Bill has succeeded where several similar Private Members Bills at Westminster have failed.

Note: the Bill was brought into force on 1 August 2002.

Budget (Scotland) (No 3) Bill

Introduced: 18 January 2002 [SP Bill 46]

Introduced by: Andy Kerr (Executive Bill)

Passed: 14 February 2002

Royal Assent: 15 March 2002

2002 asp 7

The Budget (Scotland) (No. 3) Bill is the final stage in the annual three-stage budget process, and gives parliamentary authority for spending in Scotland for financial year 2002/3. The budget process is intended to allow the Parliament's subject committees the opportunity to comment on the Executive's spending plans at several points during the year prior to the annual budget being agreed. The expectation is that the subject committees will have an active role in making recommendations on spending priorities (although in 2001, subject committees made no spending recommendations on the Scottish budget). Because of this extensive pre-legislation scrutiny, the actual Bill is truncated.

At Stage 3, ninety nine members voted in favour of the Bill, with 14 abstentions. There were no votes against. The Bill authorises expenditure of over £20 billion of public money to be spent by the Scottish Executive and its associated bodies, the Scottish Parliament and Audit Scotland.

Marriage (Scotland) Bill

Introduced: 13 November 2001 [SP Bill 41]

Introduced by: Jim Wallace (Executive Bill)

Passed: 27 February 2001

Royal Assent: 4 April 2002

2002 asp 8

The Marriage (Scotland) Bill will enable:

- Civil marriages to be solemnised at locations other than registration offices
- Local authorities to approve locations where civil marriages can take place, taking into account guidance issued by the Registrar General.

The Bill was introduced to widen choice to those available wishing a civil marriage ceremony who are currently restricted to holding the ceremony in a register office. The Bill is similar to legislation introduced in England and Wales in 1994 where couples can arrange to have civil marriages solemnised at an "approved place". A range of places is now available such as hotels and football stadiums.

The cost of the local authority approval process is expected to be self-financing. Local authorities can charge applicants fees for the approval of locations, and can charge couples higher fees for the attendance of registrars at the ceremony.

Sexual Offences (Procedure and Evidence) (Scotland) Bill

Introduced: 28 June 2001 [SP Bill 31]

Introduced by: Jim Wallace (Executive Bill)

Passed: 6 March 2002.

Royal Assent: 11 April 2002

2002 asp 9

The Sexual Offences (Procedure and Evidence) (Scotland) Bill is concerned with the law of criminal procedure as it relates to complainers and accused persons involved in sexual offence cases. The Bill contains provisions aimed at:

- Preventing the accused in rape and other sexual offence cases from personally cross-examining the complainer. An accused, in such a case, will have to be legally represented throughout the trial.
- Strengthening existing provisions restricting the extent to which evidence can be led regarding the character or sexual history of the complainer in sexual offence cases.
- Requiring the court, where an accused in a sexual offence case successfully applies to introduce evidence about the complainer's character or sexual history, to consider the disclosure of any previous convictions that the accused may have for sexual offences. The accused would be able to raise objections to disclosure, although there would be a presumption that disclosure is in the interests of justice.
- Prohibiting, in certain circumstances, an alleged sex offender from personally obtaining a recognition or other statement from the complainer.
- Requiring accused in sexual offence cases to give advance notice of any defence of consent.

Fur Farming (Prohibition) (Scotland) Bill

Introduced: 5 October 2001 [SP Bill 39]

Introduced by: Ross Finnie (Executive Bill)

Passed: 6 March 2002

Royal Assent: 11 April 2002

2002 asp 10

Following the establishment of a ban on fur farming in England and Wales in November 2000, the Fur Farming (Prohibition) (Scotland) Bill was introduced in the Scottish Parliament in October 2001.

There are currently no known fur farms in Scotland. The Bill's main objective is therefore to prevent fur farmers from England and Wales relocating to Scotland by prohibiting the establishment of fur farms north of the border. The Bill is based on an objection on the grounds of "public morality" to the breeding and keeping of animals solely or primarily for the value of their fur requiring their slaughter.

The Bill's key principle is to prohibit the keeping of animals solely or primarily for slaughter for the value of their fur or for breeding progeny for such slaughter. The Bill also enables the creation of a compensation scheme.

SPICe Research Paper 01/15 provides a more detailed analysis of the Bill.

At Stage 1, the Rural Development Committee concluded:

that the Executive has not adequately justified the introduction of the Bill on moral grounds alone, and considers that a moral objection is, in itself, a weak basis for the Bill. However, the Committee considers that the moral justification is inseparable from animal welfare issues. On balance, the Committee is satisfied that animal welfare concerns do give a real and justifiable basis to the moral objection to fur farming.

The Bill was not amended at Stage 2. The Stage 3 debate took place on March 6 2002, it lasted twelve minutes and resulted in the Bill being agreed to by a majority of 77 votes for, 8 votes against, and 6 abstentions.

Scottish Public Services Ombudsman Bill

Introduced: 22 November 2001 [SP Bill 43]

Introduced by: Angus MacKay (Executive Bill)

Passed: 21 March 2002

Royal Assent: 23 April 2002

2002 asp 11

The Scottish Public Services Ombudsman Bill (which had cross-party support) is intended to streamline and improve the public sector complaints system in Scotland. It establishes a 'one-stop shop' that brings together the following Ombudsmen into a single organisation under a new Scottish Public Services Ombudsman:

- Scottish Parliamentary Commissioner for Administration
- Health Service Commissioner for Scotland
- Commissioner for Local Administration in Scotland (Local Government Ombudsman)
- Housing Association Ombudsman for Scotland.

The jurisdiction of the new Ombudsman will also be extended to include dealing with complaints made against Scottish Enterprise and Highlands and Islands Enterprise (whose external complaints adjudicators will be wound up) and the complaints handling function of the Mental Welfare Commission.

Other key changes made by the Bill include:

- removing the need for complaints to go through MSPs
- greater accessibility to the Ombudsman including provision for a person to authorise a representative to complain on their behalf, and to allow oral complaints to be accepted in special circumstances
- publication of all investigation reports
- empowering the Ombudsman to publicise cases where an injustice has not been remedied
- Ombudsman and deputies appointed by the Queen on the nomination of the Parliament

The Parliament passed the Bill (as amended), without a division.

Education (Disability Strategies and Pupils' Records) (Scotland) Bill

Introduced: 18 December 2001 [SP Bill 45]

Introduced by: Cathy Jamieson (Executive Bill)

Passed: 27 March 2002

Royal Assent: 30 April 2002

2002 asp 12

The Education (Disability Strategies and Pupils' Records) (Scotland) Bill covers two distinct topics:

- strategies to improve access to school education for pupils with disabilities
- parents' access to their children's school records

The Bill requires all education authorities, managers of grant-aided schools, management boards of self-governing schools and proprietors of independent schools to produce and implement an accessibility strategy. This brings Scottish law into line with that in England and Wales, as set out in the Special Educational Needs and Disability Act 2001, sections 14 to 16.

An Accessibility Strategy will aim to:

- Increase the accessibility of the school curriculum to disabled pupils
- Improve the physical environment of the school with the aim of allowing disabled pupils to take advantage of education and other services offered
- Improve the communication of information about the school which is provided in writing to pupils and prospective pupils without disability, to disabled pupils, or prospective disabled pupils within a reasonable time and in a form which they can easily access

Education authorities are also required to ensure that their accessibility strategy covers all properties, other than schools, where they provide school education for pupils under school age, or who are of school age and are travelling people.

In drafting an accessibility strategy the responsible body must consult with those children and parents "as they think fit" and have regard to any guidance issued by the Scottish Ministers, it must also allocate "adequate" resources for the implementation of the strategy.

The second topic covered by the Bill relates to parents' access to their children's school records. Parents in Scotland had the right to see paper records held by schools about their children under the School Pupil Records (Scotland) Regulations 1990. The Data Protection Act 1998 removed this right. The Bill allows Scottish Ministers to introduce regulations that will reinstate this right.

Freedom of Information (Scotland) Bill

Introduced: 27 September 2001 [SP Bill 36]

Introduced by: Jim Wallace (Executive Bill)

Passed: 24 April 2002

Royal Assent: 28 May 2002

2002 asp 13

The Freedom of Information (Scotland) Bill makes provision for the disclosure of information held by Scottish public authorities or by persons providing services for them. The Bill contains provisions that seek to:

- provide people, who request information held by a range of Scottish public authorities, with a legal right of access to such information;
- balance this right with provisions protecting sensitive information;
- establish a fully independent Scottish Information Commissioner to promote and enforce the freedom of information regime;
- encourage the proactive disclosure of information by Scottish public authorities through a requirement to maintain a publication scheme.

A public authority is covered by the Bill if it is listed in schedule 1 to the Bill; if it is a publicly-owned company (as defined in the Bill); or if the Scottish Ministers subsequently bring it within the scope of the Bill through the use of subordinate legislation.

It should be noted that there is also freedom of information legislation at a UK level - the Freedom of Information Act 2000. It is intended that any public authority, to which freedom of information legislation applies, should be subject to only one regime. Information held by Scottish public authorities, irrespective of whether that information relates to reserved or devolved matters, will be subject to the Scottish freedom of information regime. Information held by UK public authorities operating in Scotland (e.g. the Ministry of Defence and the Department of Social Security) as well as cross-border authorities (e.g. the Forestry Commission) will be subject to the UK freedom of information regime.

The main provisions of the Bill come into force on a day appointed by the Scottish Ministers. This must, unless the Scottish Information Commissioner recommends a later date that is accepted by the Scottish Ministers, be on or before 31 December 2005.

Different days may be appointed for different provisions, for different persons or categories of person and for different purposes.

Scottish Qualifications Authority Bill

Introduced: 31 January 2002 [SP Bill 47]

Introduced by: Cathy Jamieson (Executive Bill)

Passed: 2 May 2002

Royal Assent: 6 June 2002

2002 asp 14

The Scottish Qualifications Authority Bill was a response to recommendations in reports made by the Education, Culture and Sport Committee, the Enterprise and Lifelong Learning Committee, and Deloitte and Touche into the exams crisis in 2000. The Bill contains a number of provisions, which amend the Education (Scotland) Act 1996, in relation to the management, organisation and structure of the Scottish Qualifications Authority (SQA).

The main provisions of the Bill relate to the membership of the SQA board, the powers of Scottish Ministers to regulate the SQA and, the role of an advisory committee to the SQA. The SQA is to remain a non-departmental public body (NDPB).

The Bill establishes that the membership of the Board of the SQA is to consist of 'not fewer than eight nor more than ten' members including the chairman of the SQA. Scottish Ministers will appoint the board. One member of the board 'shall be a person appearing to the Scottish Ministers to have special knowledge of the interests of employees of the SQA'. Employees of the SQA, or employee representatives, will be consulted with regard to this individual's appointment. Board members are to be paid, receive allowances and expenses and will serve on the Board for a maximum period of four years.

The Bill also provides Scottish Ministers with a power to regulate the procedures and committees of the SQA. Scottish Ministers are also provided with a power to appoint 'a representative of Scottish Ministers, other than a member of the SQA, to participate at meetings of the SQA or of any committee established by it'.

Lastly, the Bill enables Scottish Ministers to establish an advisory committee which will consider the qualifications, functions and procedures of the SQA. The advisory committee members will not receive remuneration for their position on the committee. The SQA is required to respond to any advice issued by the advisory committee with both bodies required to consult each other in the exercise of their functions.

University of St Andrews (Postgraduate Medical Degrees) Bill

Introduced: 17 April 2002 [SP Bill 51]

Introduced by: Iain Smith (Member's Bill)

Passed: 26 June 2002

Royal Assent: 30 July 2002

2002 asp 15

The University of St Andrews (Postgraduate Medical Degrees) Bill is a Member's Bill which seeks to grant the University of St Andrews the right to award the medical postgraduate degree of Medicinae Doctor (MD). The University lost this right at the time of the establishment of the University of Dundee, by the Universities (Scotland) Act 1966.

The Bill gives the University the right to hold examinations, written or oral, and to award postgraduate research degrees in medicine to people who are registered, or are entitled to be registered as medical practitioners.

The University will only be allowed to award postgraduate degrees in medical research and will continue to be prohibited from holding exams or granting undergraduate degrees in medicine.

The Parliament passed the Bill (as amended), without a division.

Scottish Parliamentary Standards Commissioner Bill

Introduced: 4 February 2002 [SP Bill 48]

Introduced by: Mike Rumbles (on behalf of the Standards Committee)

Passed: 27 June 2002

Royal Assent: 30 July 2002

2002 asp 16

The Scottish Parliamentary Standards Commissioner Bill is the result of a Standards Committee inquiry and report published on 3 October 2000, *Models of Investigation of Complaints* (4th Report 2000, SP Paper 186). This Bill (which was a Committee Bill) arose from the Standards Committee's conclusion that the Parliament should have statutory procedures for the independent investigation of complaints made under the Member's Interests Order and the Code of Conduct. The creation of a Scottish Parliamentary Standards Commissioner and the arrangements for investigating complaints are intended to supersede temporary investigation provisions set out in the Code of Conduct. The Bill gives power to an appointed Commissioner to carry out the first two stages of a four-stage investigation of complaints made under the Member's Interests Order and the Code of Conduct.

Appointment of the Scottish Parliamentary Standards Commissioner

Appointment to the post of Commissioner is restricted. Members of the Parliament and the staff of the Parliament are ineligible. In addition to this, a person who has been a member of the Parliament or a member of staff of the Parliament during the two years preceding the date the appointment commences is not eligible for appointment. This second restriction is to reduce the possibility of a Commissioner having to consider a complaint concerning matters that occurred when they were a member of the Parliament or member of the Parliament's staff.

Functions of the Commissioner

The Bill creates the post of Scottish Parliamentary Standards Commissioner with the function of investigating whether a member of the Parliament has breached a provision of:

- the Code of Conduct;
- the Members' Interests Order;
- any provision in an Act of the Scottish Parliament that replaces that Order;
- or, any provision of the standing orders of the Parliament. Standing orders regulate the proceedings of the Parliament and are made under section 22 of the Scotland Act 1998.

The Bill (as amended) was passed by the Parliament without a division.

Debt Arrangement and Attachment (Scotland) Bill

Introduced: 7 May 2002 [SP Bill 52]

Introduced by: Jim Wallace (Executive Bill)

Passed: 13 November 2002

Royal Assent: 17 December 2002

2002 asp 17

The Debt Arrangement and Attachment (Scotland) Bill was introduced by the Scottish Executive with the stated intention of fulfilling its commitment to provide a workable but humane alternative to the enforcement procedure of poinding and warrant sale and to implement the recommendations of the Working Group on a Replacement for Poinding and Warrant Sales.

Part 1 of the Bill sets out some of the main features of a debt arrangement scheme which is intended to allow debtors to repay debts through single regular payments under debt payment programmes. Enforcement procedures are to be suspended whilst debts are being repaid under a debt payment programme. The Bill empowers the Scottish Ministers to make further provision for the scheme by way of regulations.

Part 2 of the Bill introduces a new method of diligence. In relation to the recovery of debt, the term diligence refers to a range of legal procedures which allow a creditor to enforce payment (where the debtor does not pay voluntarily) against the assets of the debtor. The new form of diligence is known as attachment and can be used against the moveable property of a debtor for the recovery of money.

Part 3 of the Bill sets out special procedures to be followed where a creditor is seeking to attach moveable property of a debtor kept in a person's home - through the use of an exceptional attachment order. Various measures designed to assist debtors (e.g. through the provision of money advice and requiring first use of other methods of recovery) are included. The Executive's stated aim is that attachment will only be used as a last resort in such cases.

Part 4 of the Bill provides for the abolition of poindings and warrant sales.

The commencement provisions contained in the Bill provide that the sections dealing with the debt arrangement scheme will come into force on such day as the Scottish Ministers may by order appoint. Most of the other provisions contained in the Bill are due to come into force on 30 December 2002.

Local Government in Scotland Bill

Introduced: 16 May 2002 [SP Bill 53]

Introduced by: Andy Kerr (Executive Bill)

Passed: 8 January 2003

Royal Assent: 11 February 2003

2003 asp 1

The Local Government in Scotland Bill was introduced by the Scottish Executive with the intention of enabling "the delivery of public services which better meet the expectations of those who pay for and use them."

The Bill introduces a new performance management and accountability regime for local authorities. In particular it places a duty of Best Value on local authorities, extends the powers of the Accounts Commission for Scotland and Scottish Ministers to identify and address failures in Best Value, and provides more freedoms and flexibilities for local authorities over commercial trading activity and removes the requirement for compulsory competitive tendering.

The Bill requires local authorities to initiate, facilitate and maintain Community Planning in their areas together with other public bodies including health services, the police and community organisations. Community Planning is described in the Bill's Explanatory Notes as the process "in which the public services in a local authority area must be planned and provided after consultation with community bodies and other public bodies responsible for providing those services, and with the on-going co-operation among those bodies." (p. 8). This part of the Bill instructs local authorities to provide reports on community planning in their area and also to give regard to guidance prepared by Ministers.

The Bill also introduces a power to advance well being. The Explanatory Notes describe this as enabling a local authority "to do anything it considers likely to promote or improve the well-being of its area, persons in that area, or both of these." (p. 10). Until now local authorities have only been able to act where legislation has permitted them to do so. Under this power they will be able to undertake initiatives they believe will benefit all or part of the communities they serve as long as the initiative or activity is not prohibited by statute. Examples are provided of what this may entail such as incurring expenditure, giving financial assistance to any person, and providing staff, goods, materials, facilities, services or property to any person. Local authorities will have to have regard to any guidance from Scottish Ministers regarding the power of well being.

The Bill goes on to deal with enforcement and scrutiny, giving Ministers the power to ensure local authorities act appropriately under the sections on Best Value and Community Planning. The Bill also provides a range of exemptions from rates to services and properties located in rural areas, and gives Ministers the power to review the current provisions whereby second dwellings are subject to council tax rebates.

A further part of the Bill deals with waste management, and, in particular, places a duty on local authorities to prepare integrated waste management plans in line with the National Waste Strategy.

There is also a part devoted to local authority financial issues, including placing a duty on local authorities to determine and subsequently review the maximum amount they can afford to allocate to capital expenditure, allowing Ministers to make grants to local authorities to support their capital expenditure, allowing local authorities to invest money, and allowing Ministers the power to pay off loans made to local authorities.

The Bill also contains a number of miscellaneous provisions including paid time off for councillors not to be classed as political donations - this amends the Political parties, Elections and Referendums Act 2000, to ensure that any paid leave for a councillor granted by their employer is not construed as a political donation to a political party and thus does not need to be registered as such. It also encourages remote participation in and calling of local authority meetings - this allows for mediums such as video-conferencing to be used for meetings of a local authority, as well as the traditional method of members meeting in one place.

The final part of the Bill deals with general provisions such as definitions and repeals and consequential amendments.

It is expected that the substantive parts of the Bill will come into force on 1 April 2003.

Land Reform (Scotland) Bill

Introduced: 27 November 2001 [SP Bill 44]

Introduced by: Jim Wallace (Executive Bill)

Passed: 23 January 2003

Royal Assent: 25 February 2003

2003 asp 2

The Land Reform (Scotland) Bill has three main aims:

1. to create a right of responsible access to land
2. to allow rural communities to buy land when it is put on the market
3. to allow crofting communities to buy land at any time

Access Rights: The Bill establishes a public right of responsible access to land, including inland waterways, for educational and recreational purposes or commercial purposes related to the exercise of these rights by others, e.g. a walking tour guide. It also outlines obligations on landowners to ensure such access rights can be reasonably exercised.

The Bill specifically prevents certain activities from being exercised under the access provisions, e.g. hunting, shooting or fishing. The Bill also requires Scottish Natural Heritage to draft a Scottish Outdoor Access Code, which will set out the rights and responsibilities of landowners and those exercising access rights, particularly in relation to what constitutes "responsible" conduct.

Local authorities have a limited power to exempt particular land from the access provisions of the Bill for a period of up to two years. They are also required to uphold access rights, draw up a plan for a core path network and maintain a list of these core paths.

The Bill also requires each local authority to establish at least one 'local access forum' whose function will be to provide advice on access rights and assistance in the resolution of disputes over the exercise of these rights.

The Community Right to Buy: The Bill provides for 'community bodies' to register an interest in rural land, to which they have a direct connection, with the Scottish Ministers. Land is defined as to include fishing and mineral rights. Registration gives a community group the right of 'first refusal' to purchase the land when the owner puts it on the market or intends to transfer ownership.

The Crofting Community Right to Buy: The Bill allows `crofting community bodies' to purchase crofting land, eligible additional land and associated fishing, mineral and sporting rights at any time, i.e. without the need to wait for the land to come onto the market. This right can only be exercised with the consent of Scottish Ministers and after a ballot of the crofting community produces a simple majority in favour of purchasing the land.

Water Environment and Water Services (Scotland) Bill

Introduced: 18 June 2002 [SP Bill 57]

Introduced by: Ross Finnie (Executive Bill)

Passed: 29 January 2003

Royal Assent: 5 March 2003

2003 asp 3

Generally regarded as the most important piece of environmental law for years, the Water Environment and Water Services (Scotland) Bill was passed by the Parliament on 29 January 2003. The Bill was introduced by the Scottish Executive, with the intention of transposing the European Water Framework Directive in Scotland, and establishing new rules around financing new water and sewerage network connections.

Part 1 of the Bill transposes the Water Framework Directive, designed to promote an integrated approach to the sustainable management and protection of the water environment. The Bill introduces 'River Basin Management Planning', and makes SEPA (Scottish Environment Protection Agency) the lead authority for implementation. The Bill further provides a framework for control and improved monitoring of activities which impact on the water environment, including abstraction, engineering and pollution. The Bill focuses on measuring the ecological quality of surface and groundwater rather than the traditional monitoring of chemical composition.

The Bill covers all inland waters that is rivers, lochs, streams and groundwater (not including structures designed for water or sewage treatment) and extends to 3 nautical miles from the coastline. The Bill mirrors the Water Framework Directive's drive to include members of the public and all interested organisations in the collective management of rivers. Such an approach should improve water management and reduce issues surrounding, for example, flooding or industrial water use.

Amendments as the Bill went through the Parliamentary process saw the addition of duties on Ministers and SEPA to promote improved flood management, act in the interests of sustainable development and take an integrated approach. Amendments also saw the extension of local authority planning powers to include marine fish farms.

Part 2 of the Bill changes the arrangements for funding new connections to the public water and sewerage infrastructure. Previously Scottish Water was required to help fund new developments' connections to the public water and sewerage network, if the costs did not go over a certain 'reasonable cost' threshold. The Bill gives Scottish Water the power to take into account future revenue and costs of the infrastructure when taking such decisions. This part of the Bill further makes clear that the responsibility for maintenance of most Sustainable Urban Drainage Schemes (SUDS), an innovative type

of drainage on urban land should rest with Scottish Water, provided certain criteria are met.

Public Appointments and Public Bodies etc. (Scotland) Bill

Introduced: 17 June 2002 [SP Bill 56]

Introduced by: Andy Kerr (Executive Bill)

Passed: 5 February 2003

Royal Assent: 11 March 2003

2003 asp 4

The Public Appointments and Public Bodies etc. (Scotland) Bill stems from the Executive's intention to modernise the public appointments system and improve the accountability of public bodies. The Bill has four main components which are summarised below.

The Commissioner for Public Appointments in Scotland: The Bill creates a new post, 'the Commissioner for Public Appointments in Scotland'. The Commissioner will prepare a Code of Practice which will regulate the process for making appointments by Scottish Ministers to 'specified authorities' which are listed in the Bill. Any change to the list of bodies detailed in the Bill requires the approval of Parliament via affirmative procedure. The Bill requires that the Commissioner consults with Scottish Ministers and the Parliament and invite other persons to make representations with regard to the code of practice.

The Bill enables the Commissioner to examine the methods and practices employed by Scottish Ministers in making appointments as well as to investigate any complaints arising from the appointments process. Where the code of practice has been breached in a 'material regard', the Bill requires the Commissioner to report the case to Parliament. Where an appointment has not been made, the Commissioner can direct Scottish Ministers to delay making the appointment. Scottish Ministers are required to comply with any such direction from the Commissioner.

MPs, most peers and MSPs, amongst others, are not eligible for appointment as Commissioner. The Commissioner will hold office for a period not exceeding 5 years, with no one person able to hold the post for more than 3 periods of office. In exercising the functions of the post, the Commissioner is independent from direction by any member of the Scottish Parliament or Executive. Following amendment, the Commissioner can be of any working age (previously the post was not to be open to those aged over 65).

Abolition of 5 non-departmental public bodies: The Bill abolishes 5 non-departmental public bodies. These are: the Ancient Monuments Board for Scotland; the Historic Buildings Council for Scotland; the Scottish Hospital Trust; the Scottish Medical Practices Committee; and the Scottish Conveyancing and Executry Services Board.

These bodies required primary legislation to abolish them and were identified for abolition in the Executive's earlier report 'Public Bodies: Proposals for Change' in June 2001. The abolition of the Scottish Hospital Trust results in the Bill making a number of provisions concerning the transfer of property to Health Boards. The Bill also contains provisions relating to the transfer of property between Health Boards and NHS Trusts, and the investment and borrowing powers of Health Boards.

Notarial powers for conveyancing and executry practitioners: The Bill abolishes the Scottish Conveyancing and Executry Services Board. Accordingly, the Bill transfers regulatory responsibility for qualified conveyancers and executry practitioners registered by the SCESB onto the Law Society of Scotland. The Bill provides practitioners with a limited range of notarial powers of direct relevance to their conveyancing duties. The Bill aims to ensure that independent conveyancing practitioners are able to compete with solicitors on a level playing field.

Historic Environment Advisory Council for Scotland: Lastly, the Bill creates a new public body called the 'Historic Environment Advisory Council for Scotland'. The role of the new body will be to provide advice to Scottish Ministers on issues affecting the historic environment and how the functions of Scottish Ministers can be exercised effectively in relation to the historic environment. Scottish Ministers can either make a request to the council for advice or the council can provide advice when it considers it appropriate to do so.

Protection of Children (Scotland) Bill

Introduced: 6 September 2002 [SP Bill 61]

Introduced by: Cathy Jamieson (Executive Bill)

Passed: 12 February 2003

Royal Assent: 20 March 2003

2003 asp 5

The purpose of the Protection of Children (Scotland) Bill is to establish a list, maintained by Scottish Ministers, of adults deemed unsuitable to work with children. People on the list will be banned from working with children and will commit an offence if they try to find employment in a childcare position and organisations will commit an offence if they knowingly employ someone who is on the list.

The Bill deals with:

- Referrals for inclusion on the list
- The procedure for including a person on the list
- The effect of being included on the list
- Removal from the list
- Appeals

Referral

Referrals must be made by an organisation employing an individual in a child care position where they have harmed a child or placed a child at risk of harm. This is irrespective of whether the individual has remained in the child care position. Failure to refer is an offence liable to imprisonment, a fine or both. Referrals may also be made by employment agencies and by other persons including the Scottish Commission for the Regulation of Care; the Scottish Social Services Council and the General Teaching Council for Scotland where they are carrying out relevant duties.

Inclusion on the List

The Scottish Ministers are responsible for deciding to include an individual on the list, following a referral. Individuals might also have been identified as being unsuitable for working with children following an inquiry. At this point, the individual is provisionally listed. Provisional listing is for 6 months, but can be extended by the Sheriff in

exceptional circumstances, for a maximum of another 6 months. If the Scottish Ministers have not taken a decision after the time permitted for provisional listing, the individual is removed from the list.

In considering whether someone should be included on the list, observations are invited from the individual and the referring organisation. If the Scottish Ministers are satisfied from the evidence submitted, and the observations, that the individual is unsuitable for working with children, they will be included in the list.

A court can refer an individual to Scottish Ministers to be placed on the list.

Effect of Inclusion on the List

The Bill makes it an offence for an individual who is disqualified from working with children to work in, or apply for a job in a child care position. It is also an offence for an organisation to employ such an individual. This is subject to imprisonment, a fine or both. Access to the list will be provided through Disclosure Scotland.

Removal from the List

The Bill includes provisions that allow the listed individual to apply to the Sheriff to be removed from the list. The Sheriff may direct the removal of the individual from the list if they are satisfied that the individual is not unsuitable to work with children. An application can only be made with the leave of the Sheriff. In general, an application can only be made after 10 years has elapsed, and subsequent applications can only be made at 10-year intervals. Also, the Sheriff must be satisfied that the individual's circumstances have changed since they were listed.

Appeals

In general, an individual may appeal to the Sheriff against listing (not provisional) for up to 3 months from the date they were included on the list. Any party to such an appeal may appeal to the Sheriff Principal against the decision of the Sheriff. The Individual or the Scottish Ministers may, with the leave of the Sheriff Principal, appeal to the Inner House of the Court of Session against the decision of the Sheriff Principal. There are specific appeal procedures relating to inclusion on the list following conviction of an offence against a child.

Budget (Scotland) (No 4) Bill

Introduced: 20 January 2003 [SP Bill 72]

Introduced by: Andy Kerr (Executive Bill)

Passed: 13 February 2003

Royal Assent: 20 March 2003

2003 asp 6

The Budget (Scotland) (No 4) Bill was the final stage in the annual three-stage budget process, and gives parliamentary authority for spending in Scotland for financial year 2003/4. The budget process is intended to allow the Parliament's subject committees the opportunity to comment on the Executive's spending plans at several points during the year prior to the annual budget being agreed. The expectation is that the subject committees should have an active role in scrutinising and making recommendations on spending priorities. Last year a more consistent approach was adopted across committees and they made a total of 12 recommendations on the Scottish budget.

Because of this extensive pre-legislative scrutiny, the time allocated to the passage of the Bill is truncated. It was introduced on Monday 20 January, with its Stage 1 debate on 30 January. The Finance Committee considered it at Stage 2 on the 11 February where the Executive, for the first time in a Budget Bill, moved 8 amendments, all of which were agreed to by the committee. The Bill was passed without division by the Parliament.

The Bill authorises expenditure of over £23 billion to be spent by the Scottish Executive and its associated bodies, other organisations whose core funding is centrally provided (e.g. local authorities and health boards), the Scottish Parliament, Audit Scotland and the Scotland Office.

At the Stage 2 discussion in the Finance Committee, both the convener and the Deputy Minister for Finance and Public Services, Peter Peacock, raised issues about the nature of the budget process. An undertaking was given that officials of the Parliament and the Scottish Executive would review the process with a view to making recommendations for change if necessary.

Criminal Justice (Scotland) Bill

Introduced: 26 March 2002 [SP Bill 50]

Introduced by: Jim Wallace (Executive Bill)

Passed: 20 February 2003

Royal Assent: Awaiting

2003 asp 7

The Criminal Justice (Scotland) Bill [SP Bill 50] represented the Scottish Executive's legislative response to a wide range of criminal justice issues, many of which have been the subject of considerable public consultation and debate over the past few years. Major provisions of the Bill relate to violent and sexual offenders, the physical punishment of children and victims' rights. The Bill also makes provision in relation to drugs courts, anti-social behaviour orders, non-custodial punishment, evidential, jurisdictional and procedural matters, bribery and corruption, and human trafficking in prostitution or for the purposes of pornography. The Bill also requires the aggravation of an offence by religious prejudice to be taken into account in sentencing and amends the law in relation to penalties for wildlife offences.

The Justice 2 Committee was given lead responsibility for scrutinising the Bill and published its Stage 1 Report on the Criminal Justice (Scotland) Bill [SP Paper 645] on 13 September 2002. During its Stage 1 consideration of the Bill, the Committee spent most time on consideration of three Parts of the Bill. These were Part 1 (Protection of the public at large); Part 2 (Victims' rights) and Part 7 (Children). Perhaps the most controversial element of the Bill concerned the physical chastisement of children and this topic was the source of much debate and discussion throughout the passage of the Bill. The Committee concluded that there was no convincing evidence to justify a blanket ban on the smacking of children under three years of age. However, the Bill now gives clear messages to parents and those in charge or care of children that it is illegal to hit a child on the head, to hit a child with an implement and that it is also illegal to shake a child.

The Bill was passed with the Parliament voting: For 71, Against 0, Abstentions 15.

Building (Scotland) Bill

Introduced: 18 September 2002 [SP Bill 65]

Introduced by: Margaret Curran (Executive Bill)

Passed: 20 February 2003

Royal Assent: Awaiting

2003 asp 8

The Building (Scotland) Bill updates the operation of the building control system, which is currently governed by the Building (Scotland) Act 1959. The main changes introduced are summarised below:

Setting the Technical Standards: Scottish Ministers will continue to set building regulations, which establish minimal functional standards for buildings, by Statutory Instrument. However, detailed technical standards will no longer be established by Statutory Instrument and will, under the new system, take the form of "guidance". This will allow architects greater freedom to use innovative designs while allowing the Executive to meet its commitments under the European Construction Products Directive.

Continuing requirements: The Bill allows the imposition of building regulations that create "continuing requirements" on the owners of a building. Continuing requirements are intended to prevent the purposes of a building regulation from being frustrated once a completion certificate has been issued.

Public Information: The Bill requires all local authorities to maintain a more extensive publicly accessible building standards register, whose contents will include details of all building warrant and completion certificate applications and awards. The Bill also establishes a system of building standards assessments. Local authorities will be required to carry out such an assessment for any owner who wishes to establish whether their property meets current building regulations.

Crown Exemption: Building regulations will apply to crown property. The Crown cannot be held criminally liable for a contravention of the Bill, although the Court of Session may, on the application of the body responsible for enforcing a provision in the Bill, declare the act or omission of the Crown as unlawful.

Powers of Inspection: Proposals in the Bill will extend the power that authorised local authority officers currently have to inspect buildings they have reasonable cause to believe are dangerous. The new power allows such officers to inspect any building to establish whether it is dangerous.

Verifiers: Under the present system local authorities are solely responsible for the verification of building standards. The Bill gives Scottish Ministers the power to designate private companies, organisations and individuals as verifiers.

Certifiers: Approved certifiers of design and approved certifiers of installation are new designations introduced by the Bill, and will extend the current 'self-certification' of building structures, as currently enjoyed by certain qualified engineers.

The Executive has confirmed that the new system will come into operation in April 2005.

Title Conditions (Scotland) Bill

Introduced: 6 June 2002 [SP Bill 54]

Introduced by: Jim Wallace (Executive Bill)

Passed: 26 February 2003

Royal Assent: Awaiting

2003 asp 9

The main purpose of the Title Conditions (Scotland) Bill is to clarify and reform the law relating to real burdens. A real burden is a form of obligation that either restricts an owner's use of his or her land, or obliges him or her to do something in relation to that land, and which benefits another piece of land in both instances.

Most of the Bill will come into force on a day referred to as 'the appointed day' which is to be the same day as the closely related Abolition of Feudal Tenure etc (Scotland) Act 2000 comes into force. The day is to be fixed by order and the current intention is that it will be 28 November 2004.

The Bill is divided into 11 parts:

Part 1 sets out how to create a real burden, what its contents may be, and how it may be terminated.

Part 2 provides that burdens affecting 'communities' should be governed by majority rule. Part 2 defines a 'community' as a group of four or more properties that are subject to the same or similar burdens which are intended to benefit all the properties.

Part 3 provides that various new types of burdens aimed at promoting the public interest can be created.

Part 4 abolishes rights to enforce real burdens implied by the common law after the appointed day. However, it also creates a procedure to preserve one type of implied right and recreates other types of implied rights on a statutory basis.

Part 5 deals with a variety of different issues. They include the power to create a new category of burden called a 'manager burden' which will allow a developer to control aspects of a group of properties while they are being developed.

Part 5A contains provisions relating to the 'development management scheme' which is an optional scheme for the management of properties.

Part 6 re-aligns the boundary between real burdens and servitudes. Servitudes are another type of condition affecting land that are similar to real burdens.

Part 7 modifies rules relating to pre-emptions and reversions arising under various statutory provisions. Pre-emptions are options to buy property and reversions are rights to acquire property.

Part 8 sets out the powers of the Lands Tribunal to vary the terms of, or extinguish conditions affecting land, including real burdens. The existing powers of the Tribunal are re-stated with some modifications.

Part 9 contains miscellaneous provisions, including provisions on the effect of the exercise of compulsory purchase powers on the existence of real burdens.

Part 10 contains the various savings and transitional arrangements pertaining to the Bill, and the interpretation, short title and commencement provisions.

Homelessness (Scotland) Bill

Introduced: 16 September 2002 [SP Bill 63]

Introduced by: Margaret Curran (Executive Bill)

Passed: 5 March 2003

Royal Assent: Awaiting

2003 asp 10

The Homelessness etc (Scotland) Bill is the result of a significant period of policy development by the Scottish Executive's Homelessness Task Force. The Bill is based upon the recommendations of the Task Force which required legislation. The aim of the Bill is to tackle homelessness and ultimately, to ensure that housing and support services are available to all individuals who apply to local authorities as being homeless. The Bill introduces four main changes to homelessness legislation.

Firstly, the Bill expands the existing category of individuals defined as 'priority need' groups when applying for accommodation. Priority need groups will now also include individuals vulnerable as a consequence of chronic illness, having suffered a miscarriage or undergone an abortion, or been discharged from hospital prison or armed forces. Other groups added to priority need include: 16 and 17 year olds; certain groups of young people aged between 18 to 20; individuals who run the risk of violence or harassment due to their race, colour, sexual orientation or ethnic or national origins; and, persons who run the risk of domestic abuse. The Bill also establishes that the priority need test will be abolished no later than 31 December 2012 and establishes a timescale and mechanisms for the abolition of priority need.

Secondly, the Bill retains the intentionality test (i.e. whether an individual has made him or herself intentionally homeless) when determining whether an individual is eligible for accommodation. However, the Bill removes the duty previously placed on local authorities to investigate intentionality in the case of each application and instead provides local authorities with discretion in terms of whether or not to investigate intentionality.

Thirdly the Bill suspends the local connection criteria which required that individuals should receive accommodation in a local authority area with which they have a 'local connection'. A local connection results from having been resident or employed in that area, having family connections in that area or through other 'special circumstances'. The Bill suspends this local connection criteria enabling individuals to receive accommodation in the local authority area of their choice. However the Bill confers on Scottish Ministers the power, via Statutory Instrument, to reactivate the local connection provisions either for individual local authorities or for Scotland as whole should they consider it to be necessary.

Finally, the Bill includes provisions in relation to repossession and eviction. The Bill provides for a court, when deciding whether to grant an eviction order to a private landlord, to take into account that the arrears may be due to a delay or failure in the payment of housing benefit to a tenant. The Bill also requires landlords to notify the relevant local authority of proceedings of possession in order to allow the local authority to intervene in order to prevent homelessness.

Agricultural Holdings (Scotland) Bill

Introduced: 16 September 2002 [SP Bill 62]

Introduced by: Ross Finnie (Executive Bill)

Passed: 12 March 2003

Royal Assent: Awaiting

2003 asp 11

The Agricultural Holdings (Scotland) Bill is part of the Scottish Executive's Land Reform programme.

Part 1 of the Bill creates two new types of farm tenancy: Limited Duration Tenancies (LDTs) which must have a minimum term of 15 years; and Short Limited Duration Tenancies, which cannot be any longer than 5 years. Existing arrangements (under the Agricultural Holdings (Scotland) Act 1991) give the tenant great security of tenure, and it can be difficult for the landlord to regain vacant possession of the land. This has discouraged landowners from letting land, and the proportion of farmland which is rented declined throughout the last century. The new LDTs will not last beyond the term of the lease, and the hope is that landlords will be encouraged to let land, in the knowledge that they will be able to regain control of it in the medium term. Opportunities to rent land are important both for existing farmers who want to expand their businesses, and for young farmers who want to enter the profession.

Part 2 of the Bill introduces a pre-emptive right to buy for secure tenants who have tenancies under the 1991 Act or earlier legislation. This means that tenants will have first refusal on buying their farm when the landlord wants to sell. This formalises a common practice: landlords will often offer their farm to a sitting tenant before putting it on the open market. Land with a sitting tenant is typically worth around half of land with vacant possession, so the incentive for a sitting tenant to buy is obvious.

Part 3 of the Bill gives tenant farmers a right to diversify, subject to consent from the landlord. Existing law constrains land under agricultural leases to a narrow definition of "agricultural use".

Parts 4 and 5 of the Bill strengthen the rights of existing farm tenants, and extend these rights to the new forms of tenancy. They improve tenants right to compensation at the end of their tenancy for improvements they have made, eg by putting up a new farm building.

Part 6 of the Bill deals with tenants who are part of a limited partnership tenancy. These partnerships between landlord and tenant were devised as a way of avoiding the security of tenure of tenancies made under the 1991 Act. The Bill gives tenants who enter into this type of lease in the future the same rights as they would have if they were tenants in their own right. The Bill also gives tenants of existing limited partnership tenancies a pre-emptive right to buy. It also contains a provision to protect limited partnership tenants whose landlords sought to dissolve the partnership prematurely because of their concerns about the prospect of an absolute right to buy.

Part 7 of the Bill deals with resolving disputes between landlord and tenant. The Scottish Land Court has been given new jurisdictions in this area.

Most of the Parliamentary debate on this Bill has centred on the right to buy, and in particular whether it should be extended to give tenant farmers an absolute right to buy their farms, which they could exercise at any time. Amendments were proposed during Stage 2 which would have created an absolute right to buy, but these were unsuccessful.

Dog Fouling (Scotland) Bill

Introduced: 11 June 2002 [SP Bill 55]

Introduced by: Keith Harding (Member's Bill)

Passed: 13 March 2003

Royal Assent: Awaiting

2003 asp 12

The Dog Fouling (Scotland) Bill seeks to amend the previous legislation regarding dog fouling, contained in section 48 of the Civic Government (Scotland) Act 1982, which "makes it an offence for a person to allow a dog to foul on certain specified land, including footpaths, pedestrian precincts and children's play areas maintained by a local authority." (Explanatory Notes, 2002, Pg.2).

The new Bill has two principal aims. The first of these is to amend the offence of dog fouling so that the offence consists of failing to clear up after a dog rather than of allowing a dog to foul. The second principal aim is to establish new enforcement provisions in connection with the offence by enabling local authorities and police constables to issue fixed penalty notices to persons suspected of committing the offence. (Explanatory Notes, 2002, Pg.2).

The Bills provisions:

- Make it an offence for a person in charge of a dog, who, after allowing that dog to foul, fails to clear away and dispose of the excrement appropriately.
- Apply to all public places, including common passages, closes, courts, stairs, back greens and other similar areas subject to specified exceptions.
- Make the offence of dog fouling an offence in respect of which the evidence of only one witness is sufficient.
- Provide local authority officers and police constables with the power to issue fixed penalty notices to anyone who they have reason to believe has committed an offence under the Bill.

- Require local authorities to authorise persons to have the power to issue fixed penalty notices.
- Make it an offence to obstruct a local authority officer in undertaking their duties under the Bill.
- Provide that when a fixed penalty notice is issued it discharges any liability that the suspected offender has for conviction unless the suspected offender requests a hearing within 28 days of the notice being issued.
- Provide that failure either to pay a fixed penalty notice or to request a hearing within the 28 day period will result in the fixed penalty being increased by 50% and being enforceable as if it were a court decree.

The provisions in the Bill come into force six months after the Bill receives Royal Assent.

Mental Health (Care and Treatment) (Scotland) Bill

Introduced: 16 September 2002 [SP Bill 64]

Introduced by: Malcolm Chisholm (Executive Bill)

Passed: 20 March 2003

Royal Assent : Awaiting

2003 asp 13

The Mental Health (Care and Treatment) (Scotland) Bill (as passed) was introduced as the Mental Health (Scotland) Bill following the publication of New Directions, the report of the Millan Commission on the review of the Mental Health (Scotland) Act 1984, and the Scottish Executive Policy Statement Renewing Mental Health Law. The aim of the Bill is "to restate and amend the law relating to mentally disordered persons; and for connected purposes."

The Bill incorporates the Mental Health (Public Safety and Appeals)(Scotland) Act 1999 and makes additions to the Criminal Procedure (Scotland) Act 1995. As such, the definition of mental disorder includes personality disorder, just as it includes learning disabilities. In updating the law on mental health, the Bill incorporates the ten principles set out by the Millan committee, though it does not incorporate all of these expressly.

Other significant reforms to mental health law, introduced by the Mental Health (Care and Treatment)(Scotland) Bill include:

- The Mental Welfare Commission should continue to exist, but with greater responsibilities defined by the new Bill and the Adults with Incapacity (Scotland) Act 2000.
- A Mental Health Tribunal is to be established to hear cases under the new Act. It will replace certain functions hitherto fulfilled by a sheriff.
- Local Authorities and Health Boards are under a duty to co-operate with one another in the provision of services, including patient advocacy services.
- Rights of users and carers have been given legislative force.
- Criminal provisions have been brought into line with civil provisions insofar as the types of compulsory treatment order available (civil) match the provisions for compulsion orders (criminal).

- Functions and duties of mental health officers have been increased, including duties to report on certain matters such as whether certificates and orders have been granted, reviewed or revoked.
- Duties of Scottish Ministers have been increased.
- Types of detention orders include short term, emergency and compulsory orders.
- Types of compulsion order include interim, assessment and treatment orders.
- Certain treatments attract special safeguards: neuro-surgery for mental disorder, electro-convulsive therapy, prescription of medicines above the recommended dosage and certain treatments administered over time.
- Provision is also made for breach of orders, transfer between hospitals, needs assessment, medical treatment, safeguards against excessive security and protection against abuse by carers.

Council of the Law Society of Scotland Bill

Introduced: 6 September 2002 [SP Bill 60]

Introduced by: David McLetchie (Member's Bill)

Passed: 26 March 2003

Royal Assent: Awaiting

2003 asp 14

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2001/20010001.htm>

The Council of the Law Society of Scotland Bill is a Member's Bill which arose from proposals of the Council of the Law Society of Scotland to remove certain doubts about its powers relating to the delegation of its statutory functions and the appointment and membership of committees and sub-committees. It was stated that such doubts have adversely affected the Council's ability to carry out its work.

The Law Society of Scotland is governed by the Solicitors (Scotland) Act 1980. It acts as the statutory regulator of the solicitor profession in Scotland and includes all practising solicitors within its membership.¹ Under the 1980 Act, its role includes the promotion of: (a) the interests of the solicitors' profession in Scotland; and (b) the interests of the public in relation to that profession. The 1980 Act goes on to provide that the business of the Law Society shall be conducted by the members of the Council.

The Bill amends the 1980 Act. Section 1 of the Bill expressly enables the Council to delegate its statutory functions to any committee of the Council, sub-committee of such a committee, or to any individual. Such an individual could include a lay person. It also provides for the sub-delegation of functions. These powers of delegation and sub-delegation are subject to various restrictions.

Section 2 of the Bill requires the Council to prepare a scheme for the appointment and constitution of sub-committees (the Council is currently required to prepare such a scheme in relation to committees). Section 2 also expressly empowers the Council to include, within any scheme for the appointment and constitution of committees and sub-committees, provision for persons other than solicitors to be members and also for such persons to form a majority of members.

The Bill does not generally seek to set out how the above powers should be used (eg it does not state when delegation should occur or when lay persons should be present on a committee).

The Bill provides for commencement one month after the date of Royal Assent.

Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill

Introduced: 27 November 2002 [SP Bill 70]

Introduced by: Colin Boyd (Executive Bill)

Passed: 26 March 2003

Royal Assent: Awaiting

2003 asp 15

The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill is the first Consolidation Bill to be passed by the Scottish Parliament.

Consolidation is the re-enactment in one Act of all the provisions on one topic of law scattered throughout various statutes. The Bill sets out to repeal eight Acts entirely, repeals the Salmon Act 1986, inasmuch as it relates to Scotland, and makes consequential adjustments to several other pieces of legislation. The Bill restates the legislation it repeals without changing it, except insofar as was necessary to implement recommendations made by the Scottish Law Commission (SLC).

Consolidation Bills have a different procedure from other public bills:

- They are considered by a Consolidation Committee, who report to Parliament on whether the laws should be consolidated
- Parliament votes on this question at Stage 1, without debate
- Stage 2 Amendments which would introduce new policy are not admissible
- Stage 3 amendments are similarly constrained. At Stage 3 Parliament votes on whether the Bill should be passed, again without debate.

The Bill was considered at Stages 1 and 2 by the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill Committee.

The Bill follows from a recommendation of the Scottish Salmon Strategy Task Force that the law on fishing for salmon and other freshwater fish should be consolidated. Before the passing of this Bill, Victorian and even Georgian legislation on salmon fishing was still in force. Some of the provisions of this legislation had become outmoded. The SLC made recommendations, on which it consulted, for changes to the law which should be introduced during the consolidation. All 29 of the SLC's recommendations are taken up by the Bill.

National Galleries of Scotland Bill

Introduced: 28 October 2002 [SP Bill 68]

Introduced by: Trustees of the National Gallery of Scotland (Private Bill)

Passed: 26 March 2003

Royal Assent: Awaiting

2003 asp 16

The National Galleries of Scotland Bill was the second private bill to be introduced to the Parliament but the first to be passed.

The promoters of the Bill, the Trustees of the National Galleries of Scotland, are undertaking a major expansion of the National Gallery and the Royal Scottish Academy (RSA) buildings, which are located at the foot of The Mound in central Edinburgh. This project, known as the Playfair Project, includes the restoration of the RSA building, improvements to the National Gallery and the creation of an underground 'link building' between the two galleries. The intention being to create a suite of world-class exhibition galleries and a lecture theatre, education rooms, information technology and orientation area, as well as a restaurant, café, shop and cloakrooms.

The Playfair Project involves construction on an area of land adjacent to the two galleries in East Princes Street Gardens. However, the City of Edinburgh District Council Order Confirmation Act 1991, Section 22 restricts building within Princess Street Gardens to:

Lodges of gardeners and keepers, hothouses and conservatories, monuments, bandstands, public conveniences, police boxes and buildings for

housing apparatus for the supply of electricity or gas

The only way to secure the lawful construction of the extension to the Galleries in East Princes Street Gardens is to remove the land to be developed from the land designated as belonging to Princes Street Gardens, which would remove the restrictions on development which apply under the 1991 Act. The National Galleries of Scotland Bill therefore exempts this plot of land from that defined as being part of Princes Street Gardens.

Commissioner for Children and Young People (Scotland) Bill

Introduced: 4 December 2002 [SP Bill 71]

Introduced by: Karen Gillon (on behalf of the Education, Culture and Sport Committee)

Passed: 20th March 2003

Royal Assent: 26 March 2003

2003 asp 17

The main purpose of the Commissioner for Children and Young People (Scotland) Bill is to create an independent Commissioner for children and young people who is responsible for promoting and safeguarding their rights.

In May 2000 the Education, Culture and Sport Committee were asked by the Executive to consider whether there was a need for a Commissioner for children in Scotland. The Committee agreed to conduct an inquiry and published their report in February 2002. The report recommended that a Commissioner for children and young people should be established by statute. A further report was published in February 2002 which set out proposals for a Bill, and the Bill itself was introduced in December 2002.

As a Committee Bill there was no need for evidence taking at Stage 1 because the initial inquiry had gathered a broad range of evidence. An ad-hoc committee was set up for consideration of the Bill at Stage 2.

Key elements of the Bill

The general function of the Commissioner will be to promote and safeguard the rights of children and young people, this will include those aged between 18-21 who have been 'looked after' by a local authority. To achieve this it is proposed that the Commissioner will: generate widespread awareness and understanding of the rights of children and young people; consider and review the adequacy and effectiveness of any law, policy and practice as it relates to the rights of children and young people; promote best practice by service providers; commission and undertake research on matters relating to the rights of children and young people.

Underpinned by the UN Convention on the Rights of the Child, one of the key principles of the Bill reflects Article 12 and the importance of the views of children and young people. The Bill provides that the Commissioner must encourage the involvement of children and young people in his or her work to ensure that it is informed by them. In particular the Commissioner is to give priority to groups of children and young people that do not have other adequate means to make themselves heard.

The Commissioner will have the power to undertake investigations to consider whether a service provider has been acting with regard to the rights, interests and views of children. Such investigations can only be undertaken if issues are raised which affect children and young people, in general, or a particular group of children and young people. The Commissioner is prevented from carrying out investigations which relate solely to an individual child or young person.

The Commissioner will be independent, appointed by the Queen on the nomination of the Parliament and subject to removal by a resolution of the Parliament. He or she will be accountable through a duty to report, at least annually, on the exercise of his functions, to the Scottish Parliament.

SPICe Research

28 March 2003

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Footnotes

1 The Public Appointments and Public Bodies etc (Scotland) Act 2003 provides for the abolition of the Scottish Conveyancing and Executry Services Board and for Law Society to take over the regulatory functions of the Board in relation to qualified conveyancers and executry practitioners.