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SUMMARIES OF BILLS
INTRODUCED IN THE SCOTTISH PARLIAMENT IN THE SECOND SESSION
(2003-2007)
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Introduction
This paper provides individual summaries of all bills introduced in the Scottish Parliament in its second Session, 2003-2007. The summaries contain information on the policy intentions of each bill and give details of the consideration each received during its passage through Parliament.

A bill is a draft Act that will, if passed and enacted, become part of statute law. Most bills are "public bills", that is, they deal with matters of public policy and the general law. Public bills are introduced by Members of the Scottish Parliament (MSPs). There are three main types of public bill: Executive bills, which are introduced by members of the Scottish Executive; Member’s bills, which are introduced by individual MSPs who are not members of the Scottish Executive; and Committee bills, which are introduced by conveners of Scottish Parliament Committees. Private bills are bills introduced by a private individual or body (known as the “promoter” of the bill) seeking powers or benefits not currently allowed by the general law. Private bills are subject to a different set of rules and a different parliamentary process than public bills.

Stages of Public Bills
In general, public bills undergo three parliamentary stages. Stage 1 involves consideration of the bill’s general principles by the Scottish Parliament Committee which has been designated as “the lead committee” for that bill. The lead committee submits a Stage 1 report to the Parliament which then debates and decides, on a motion, whether or not to agree to the general principles of the bill (Scottish Parliament Standing Orders (SO) rule 9.6).

Stage 2, also known as the “Committee Stage”, involves detailed consideration of the bill by the lead committee (and by other committees such as the Finance Committee and the Subordinate Legislation Committee). In certain circumstances the bill may be considered at Stage 2 in a Committee of the Whole Parliament (SO rule 9.7).

Stage 3 is the final consideration stage and the last opportunity to amend a bill. Following the Stage 3 plenary debate, the Parliament takes a decision on a motion lodged by the Member in charge as to whether the bill should be passed or rejected. (SO rule 9.8).

In certain circumstances a bill may be referred back to the lead committee for further Stage 2 consideration (SO rule 9.8.8).

A public bill is passed when the Parliament, at the end of Stage 3, agrees to a motion by the Member in charge that the bill be passed.

If the Parliament does not agree to the general principles of a public bill at Stage 1, the bill falls. A bill will also fall if the Parliament has not decided on it when the Parliament is dissolved prior to a Scottish Parliament election.
A public bill may be withdrawn at any time by the Member in charge until completion of Stage 1, except with the agreement of Parliament (SO rule 9.13).

One specific category of public bill is a budget bill. By virtue of rule 9.16 of the Standing Orders, budget bills are subject to slightly different parliamentary procedures from other public bills. For example, they can be introduced only by a member of the Scottish Executive.

**Stages of Private Bills**

Private bills also undergo three stages but these are different to the stages of public bills (SO rules 9A.7-9A.10).

The Preliminary Stage involves consideration of the general principles of a private bill and whether it should proceed as a private bill. This stage also requires preliminary consideration of any objections to the bill and a decision on whether to agree to the general principles. The Preliminary Stage is taken by a Private Bill Committee established by the Parliament under SO rule 9A.5. (SO rule 9A.8).

The next stage is the Consideration Stage. This involves consideration of the details of the bill by the Private Bill Committee (SO rule 9A.9).

The last stage is termed the Final Stage and this includes a decision as to whether the bill should be passed or rejected. Final Stage proceedings take place at a meeting of the Parliament (SO rule 9A.10).

A private bill may be referred back to the Private Bill Committee for further Consideration Stage consideration (SO rule 9A.10.6).

A private bill is passed when the Parliament, on a motion that the bill be passed, approves it at the end of Final Stage consideration.

If the Parliament does not agree to the general principles of a private bill after debate at the Preliminary Stage, or does not consider that the bill should proceed as a private bill, then the bill falls. A private bill will also fall if the Parliament has not decided on it when the Parliament dissolves prior to a Scottish Parliament election.

A private bill may be withdrawn at any time by the promoter. Where a private bill is withdrawn, another private bill in the same or similar terms may not be introduced by the same promoter within a period of 6 months from the date on which the private bill was withdrawn (rule 9A.15).

After a bill is passed by the Scottish Parliament there is a period of 4 weeks, prior to the Presiding Officer submitting it for Royal Assent, when the bill, or any of its provisions, may be referred to the Judicial Committee of the Privy Council by the Advocate General for Scotland, the Lord Advocate or the Attorney General on the grounds of legislative competence. (Scotland Act 1998 s.33). This could lead to a Reconsideration of the bill (SO rule 9.9).
Royal Assent
The final stage in the legislative process is Royal Assent. This is when the approval of the Sovereign turns a bill that has been passed by the Parliament into an Act of the Scottish Parliament (asp).

Scottish Parliament bills are very similar, in terms of layout, structure and the conventions of legislative drafting, to Westminster bills. This is primarily because Acts of the Scottish Parliament, to which bills are intended to give rise, form part of the UK "statute book" alongside existing statute law, most of which consists of Acts passed by the UK Parliament before devolution.

Bills introduced in Session 2
Table 1 below summarises the outcome of all bills introduced in the Parliament in Session 2, by type of bill, up to 23 March 2007.

<table>
<thead>
<tr>
<th>Type of bill</th>
<th>Introduced</th>
<th>Passed</th>
<th>Total passed</th>
<th>Withdrawn</th>
<th>Fallen</th>
<th>In progress at 23 March</th>
</tr>
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<tr>
<td></td>
<td></td>
<td>Received Royal Assent</td>
<td>Awaiting Royal Assent</td>
<td></td>
<td></td>
<td></td>
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<td>Executive</td>
<td>53</td>
<td>46</td>
<td>7</td>
<td>53</td>
<td>Nil</td>
<td>Nil</td>
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<tr>
<td>Committee</td>
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<td>1</td>
<td>Nil</td>
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<td>Member’s</td>
<td>18</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Private</td>
<td>9</td>
<td>7</td>
<td>1</td>
<td>8</td>
<td>Nil</td>
<td>1</td>
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<tr>
<td>Totals</td>
<td>81</td>
<td>56</td>
<td>9</td>
<td>65</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>

In total, 81 bills were introduced in Session 2. By 23 March 2007, when this paper went to print, 65 of these bills had been passed by the Parliament, 9 of which were still awaiting Royal Assent. Six bills had fallen, 5 had been withdrawn and 5 were still in progress. Of the 65 Bills which had been passed, 53 were Executive Bills (including 4 Budget Bills), 3 were Member's Bills, 1 was a Committee Bill and 8 were Private Bills. All of the 11 bills which fell or were withdrawn up to 23 March 2007 were Member's Bills. It is expected that of the remaining 5 bills only 1, the Airdrie-Bathgate Railway and Linked Improvements Bill (a private bill) will be passed. The others (all Member's bills) are likely to fall at dissolution at midnight on 2 April 2007.

Table 2 provides comparative information for Session 1.

<table>
<thead>
<tr>
<th>Type of bill</th>
<th>Introduced</th>
<th>Passed</th>
<th>Withdrawn</th>
<th>Fallen</th>
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</thead>
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<td>Executive</td>
<td>51</td>
<td>50</td>
<td>1</td>
<td>Nil</td>
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<tr>
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<td>Nil</td>
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<td>Member’s</td>
<td>16</td>
<td>8</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Private</td>
<td>3</td>
<td>1</td>
<td>Nil</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>73</td>
<td>62</td>
<td>3</td>
<td>8</td>
</tr>
</tbody>
</table>
In Session 1 (1999-2003) 8 fewer bills were introduced than for Session 2, though a similar number of Executive bills were passed (50 in Session 1 and 53 in Session 2). While more Member’s bills were introduced in Session 2 (18 compared to 16 in Session 1) only 2 of the 18 (11%) were passed compared to 8 of the 16 (50%) introduced in Session 1. The number of Private bills introduced increased from 3 in Session 1 to 9 in Session 2 and the number passed increased from 1 in Session 1 to 8 in Session 2 (as at 23 March 2007) though it is expected that the final private bill will also be passed.

Bill summaries

Most bill summaries follow a standard format and contain four sections as follows:

- **Passage of the Bill**
  This section contains a standard statement which covers the dates of the main stages of the bill’s progress through Parliament

- **Purpose and objectives of the Bill**
  This section contains a succinct statement of why the bill is necessary and what objectives it seeks to achieve.

- **Provisions of the Bill**
  This section summarises what provisions are made in the bill and how it changes existing law.

- **Parliamentary consideration**
  This section provides brief information on the main issues raised by the bill through, for example committee consultation and evidence sessions and indicates the main changes to the bill in its passage through Parliament.

Presentation of bill summaries

For ease of reference, the Bill Summaries are presented in bill number order. There are indexes provided at the end of the paper, one in year and asp number order for the bills which received Royal Assent, and another in alphabetical order for all bills introduced in the 2003-07 parliamentary session.

The printed version of this paper went to press prior to the dissolution of the Parliament at midnight on 2 April 2007. At this point some bills were still in progress. Bills which have not completed their final parliamentary stage automatically fall at dissolution. For a more up to date version of this Bill Summaries paper please go the Scottish Parliament website.
Abbreviations used in this paper

asp  Act of the Scottish Parliament
B    Budget
C    Committee
E    Enacted
Ex   Scottish Executive
F    Fell
M    Member
No.  Number
P    Private
RA   Royal Assent
W    Withdrawn
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<th>Outcome</th>
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<td>2</td>
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<td>Stirling-Alloa-Kincardine Railway and Linked Improvements Bill</td>
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<td>2003</td>
<td>Education (School Meals) (Scotland) Bill</td>
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<td>2003</td>
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Passage of the Bill

Originally introduced on 27 June 2002, the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill was the first private bill to be introduced in the first session of the Scottish Parliament (as SP Bill 59). SPICe Briefing 02/88 summarises the main elements of the private bill procedure and the main elements of the Bill.

The Bill was considered by the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill Committee, which was formed on 3 October 2002. The Preliminary Stage debate was held on the 9 January 2003. The Bill subsequently fell, as a consequence of the May 2003 general election, but was re-introduced as SP Bill 1 on 15 May 2003.

Standing Orders allow a private bill, which has completed its Consideration Stage, to be reintroduced at the start of the next session in the same form as it was agreed prior to dissolution. The Bill does not have to go through repeat Preliminary or Consideration Stages. The Bill was passed following the Final Stage debate on the 26 June 2003.

Purpose and objectives of the Bill

Private bills are different to public bills, and are subject to different parliamentary procedures. Public bills involve only changes to the general law and matters of public policy. Private bills are different in that they involve measures sought in the private interests of the promoter of the bill, a private individual or company. The promoters of this Bill are Offshore Energy Resources Limited and Solway Offshore Limited. They hold adjacent leases of parts of the seabed on the Robin Rigg sand banks in the Solway Firth. They plan to install 30 turbines each which will be up to 80m in height, with blade diameter of 100m. The right of peaceful navigation and the right to fish are public rights in Scotland. Constructing and operating the turbines would interfere with the public rights of navigation and fishing, therefore the Bill provides for local restrictions on these rights in the vicinity of the wind farm site. The Bill establishes three levels of exclusion zone around the turbines for “construction” “trawling and anchoring” and a permanent “general” zone.
The promoters will seek additional consents under the Electricity Act 1989 for the licensing of the turbines and the right to generate electricity, and under the Coastal Protection Act and the Food and Environmental Protection Act to allow them to install equipment in the sea. These licenses can be issued under existing legislation, and so are not included in the Bill.

Once construction is complete, the site will supply enough electricity for 160,000 homes. Offshore wind energy is one of the sources of renewable energy which is being developed in Scotland to help meet the Scottish Executive’s targets of 18% of electricity coming from renewable sources by 2010, and 40% by 2020.

Provisions of the Bill

The Bill as introduced had 8 sections and 3 schedules. The key provision of the Bill is section 1 which allows the public rights of navigation and fishing to be restricted in the vicinity of the wind farm site. The schedules contained detailed provisions on the construction and location of the turbines and on the exclusion zones around them.

Parliamentary consideration

Third parties may object to private bills. These objections are considered by the private bill committee, which may take evidence from the promoters of the bill and the objectors. There were four objectors to the Bill, two from sailing interests, one from a fishermen’s organisation and one from a private individual. The Committee reported on these objections on the 14 March 2003, and suggested some amendments to the Bill as a result - that there should be provisions in the Bill providing for decommissioning of the site, and introducing a requirement to consult with local interests on the lighting and marking of the site while in construction. These amendments were made during the Consideration Stage of the Bill.

The main amendments agreed during the Final Stage consideration of the Bill removed section 5, schedule 2 and schedule 3 of the Bill, which established the different exclusion zones around the site. This followed discussions between the promoters of the Bill, the Scottish Executive and the UK Department for Transport, which concluded that instead of making special statutory provision for an exclusion zone in the Bill, it would be preferable to use existing powers under the Merchant Shipping Act 1995 to enforce the exclusion zones. These amendments mean that the Bill as passed has 10 sections and one schedule.
Stirling-Alloa-Kincardine Railway and Linked Improvements Bill

Bill Number: SP Bill 2
Introduced on: 15 May 2003
Introduced by: Clackmannanshire Council (Private Bill)
Passed: 1 July 2004
Royal Assent: 10 August 2004
2004 asp 10

Passage of the Bill

The Stirling-Alloa-Kincardine Railway and Linked Improvements Bill [SP Bill 2] was introduced in the Parliament on 15 May 2003. The 60 day period for objections ended on 7 July 2003, resulting in 55 admissible objections. A Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee was established and met for the first time on 25 September 2003. The Committee published its Preliminary Stage Report on 5 December 2003, which was debated by the Parliament on 11 December 2003. On 17 December 2003 the Parliament passed a financial resolution on the Bill. The Committee then commenced the Consideration Stage of the Bill, which resulted in the publication of its Consideration Stage Report on 27 May 2004. The Bill was passed following the Final Phase debate held on 1 July 2004. The Bill received Royal Assent on 10 August 2004.

Purpose and objectives of the Bill

The Bill is required to authorise the reconstruction of a railway between Stirling and Kincardine, as well as other works associated with the reopening of the railway.

Provisions of the Bill

The Bill grants the promoter, and their successors, the powers to rebuild the railway between Stirling and Kincardine as well as authorising the construction of other works associated with the reopening of the railway. To this end the promoter is granted a power of compulsory purchase and the power to stop-up roads and footpaths where necessary.

Parliamentary consideration

Although raising some minor concerns, particularly regarding the potential lifespan of Longannet power station, the Committee and Parliament agreed the general principles of the Bill at the Preliminary Stage. The Committee did not uphold any of the remaining 52 objections at the Consideration Stage, although they did request additional information on compensation and mitigation measures. Several minor amendments were agreed without contest during the second phase of the Consideration Stage. No amendments were moved at the Final Stage.
Passage of the Bill

The Education (School Meals) (Scotland) Bill [SP Bill 3] was introduced on 28 May 2003, together with a Policy Memorandum and Explanatory Notes. There was no evidence taking in committee at Stage 1. The Stage 1 debate was held on 4 June 2003. Stage 2 was held as a Committee of the whole parliament on the same day as Stage 3 on 11 June 2003.

Purpose and objectives of the Bill

The Bill has one purpose – to make an amendment to section 53 of the Education (Scotland) Act 1980 to add an additional criterion by which pupils qualify for free school meals.

Provisions of the Bill

Under section 53 of the 1980 Act pupils who are, or whose parents are, in receipt of certain benefits qualify for free school meals. Due to changes in the benefits system under the Tax Credits Act 2002, around 6500 school children would lose their entitlement. The Bill therefore contains an order making power to cover this and other potential changes in the benefits system.

Parliamentary consideration

A number of Standing Orders were suspended in order that this Bill could make rapid progress. There was no committee stage, and Stages 2 and 3 were taken on the same day a week after the Stage 1 debate.

In debate, although the Minister stressed that this was a ‘technical’ measure there was much discussion of wider issues, in particular universal free school meals in relation to a member’s bill by Tommy Sheridan in the first session. A number of amendments were put forward to extend entitlement to those receiving a wider range of benefits. None of these amendments were successful.
Primary Medical Services (Scotland) Bill 2004

Bill Number: SP Bill 4  
Introduced: 23 June 2003  
 Introduced by: Malcolm Chisholm (Executive Bill)  
Passed: 18 December 2003  
Royal Assent: 27 January 2004  
2004 asp 1

Passage of the Bill

The Primary Medical Services (Scotland) Bill 2004 [SP Bill 4] was introduced on 23 June 2003 and the Health Committee designated lead committee. The Committee took evidence at stage 1 on 2 September 2003. The Committee reported on the general principles on 6 October 2003, Stage 1 Report and the Stage 1 debate was held on 29 October 2003. Stage 2 amendments were considered on 25 November and 2 December. The Stage 3 debate was held on 18 December 2003 following which the Bill was passed.

Purpose and objectives of the Bill

The Bill as passed underpins the new contract for General Practitioners (GPs), which was approved in a ballot of GPs. The Bill amends the National Health Service (Scotland) Act 1978 and the National Health Service (Primary Care) Act 1997, in light of the white paper Partnership for Care.

Provisions of the Bill

The Bill makes provision for primary care services and covers the duties of Health Boards and the contract terms of general practitioners. It covers both general medical services (GMS) and personal medical services (section 17C services). It places duties on Health Boards to secure the provision of these services.

The Bill defines general medical services as 'essential', 'additional' and 'enhanced', to be provided according to defined rules. Contracts are intended to be sufficiently flexible in duration to be locally responsive. The Bill allows Ministers to introduce regulations defining, among other matters, who may enter into PMS contracts, what services are to be regarded as primary medical services, the circumstances in which a performer can or must accept a patient as part of the provider’s responsibility and the circumstances under which contractors may unilaterally vary the terms of the contract. Some of the draft regulations were provided prior to Stage 3, at the request of the Health Committee.

The Bill replaces the existing GMS legislation and makes provision for NHS Boards to contract with GP practices rather than individual GPs. It also provides the mechanism for allocating PMS resources to practices, and places on NHS Boards the duty to provide primary medical services, or the commissioning of care from other providers.
A National Reference Group - including stakeholders from NHSScotland, the relevant professions and the Health Department of the Scottish Executive - will develop project plans to address the following issues:

- out of hours service provision
- maintenance and monitoring of the Quality and Outcomes Framework
- organisational development work required to identify and support new Stakeholder functions and relationships
- service redesign to model arrangements for opting-in and opting-out of service provision
- modelling the financial flows in the new contract
- development and funding of practice premises

**Parliamentary consideration**

During Stage 1 (consideration of the general principles) the Committee took oral evidence at one meeting, 9 September 2003, from representatives of health councils and patients.

The Committee agreed with the general principles in its report although it expressed concerns about the provisions for regulations.

> The Committee considers that the lack of Regulations is a most unsatisfactory state of affairs and a cause of great concern. It is the Committee's role to scrutinise legislation and the probable impact of such legislation. Without sight of the Regulations this Committee's role has been severely compromised and we are unable to fulfil our scrutiny function (para 104)

In response to Committee concerns the Minister agreed to provide draft regulations prior to Stage 2.

**Vulnerable Witnesses (Scotland) Bill**

- Bill Number: SP Bill 5
- Introduced on: 23 June 2003
- Introduced by: Cathy Jamieson (Executive Bill)
- Passed: 4 March 2004
- Royal Assent: 14 April 2004

2004 asp 3

**Passage of the Bill**

The Vulnerable Witnesses (Scotland) Bill [SP Bill 5] was introduced in the Scottish Parliament on 23 June 2003. The Justice 2 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its
meeting on 2 September 2003. The Stage 1 (general principles) debate took place on 19 November 2003 and the Bill was passed following the Stage 3 debate on 4 March 2004.

**Purpose and objectives of the Bill**

The main policy objectives of the Bill are:

- To widen the categories of witnesses who may be considered ‘vulnerable’ and in consequence eligible to benefit from the use of special measures when giving evidence
- To improve the quality of evidence given by vulnerable witnesses, in particular children
- To enable and encourage greater use of special measures for these witnesses in all types of court proceedings

The Executive’s programme of work on this part of the law of evidence began in November 1998 with the launch of the consultation document ‘Towards a Just Conclusion’ (Scottish Executive 1998), on vulnerable and intimidated witnesses in criminal and civil cases. The consultation was followed by the ‘Towards a Just Conclusion Action Plan’ (Scottish Executive 2000), which made various commitments in relation to vulnerable witnesses more generally. The Sexual Offences (Procedure and Evidence) Scotland Act 2002 fulfilled the first commitment of the Action Plan which was to improve the way in which victims in sex offence cases give evidence.

**Provisions of the Bill**

The Vulnerable Witnesses (Scotland) Bill follows on from the commitment in paragraph 2.12 of the Action plan which sought to improve the law of evidence as it relates to vulnerable and intimidated witnesses. The Bill is in 3 parts; Part 1 – Criminal Proceedings; Part 2 – Civil Proceedings; and Part 3 – Miscellaneous and General.

Part 1 of the Bill deals with evidential and procedural matters for vulnerable witnesses giving evidence in criminal proceedings. The Criminal Procedure (Scotland) Act 1995 will be amended to define the categories of vulnerable witnesses and the special measures which are available to allow witnesses to give their evidence. This part of the Bill also provides that an accused in a trial will be prevented from conducting his own defence and cross-examining child witnesses in cases of violent assault, culpable homicide and murder, where the child is less than 12 years of age.

Under Part 2 of the Bill, vulnerable witnesses in civil cases will also be able to use special measures i.e. television link, screens, the use of a supporter and evidence on commission.

Part 3 of the Bill abolishes the competence test for witnesses in criminal and civil proceedings and provides that the evidence of any person called as a witness in criminal or civil proceedings is not inadmissible solely because the witness does not understand either the nature of the duty of a witness to give truthful evidence, or the difference between truth and lies. The intention is that all witnesses, particularly the
most vulnerable, should be given the opportunity to be heard and that the court should be able to consider all the relevant evidence in a case.

Parliamentary consideration

In its Stage 1 Report, the Justice 2 Committee stated that, subject to comments in the Report, the Committee agreed that the Executive had struck the right balance between the protection of vulnerable witnesses and the rights of the accused to a fair trial and that the Committee therefore recommended that the Parliament agreed to the general principles of the Vulnerable Witnesses (Scotland) Bill. However, a number of amendments were brought forward at Stage 2 which reflected some of the concerns and comments made by the Committee in the Stage 1 Report.

An amendment brought forward by Karen Whitefield MSP sought to introduce a rule prohibiting the accused from conducting his or her defence in person in violent crime cases that involve child witnesses under the age of 12. Despite a concern raised by Nicola Sturgeon MSP that such a blanket prohibition would tip the balance too far in the wrong direction, the Executive agreed that even if special measures are used, a young child witness might be distressed if they could see or identify the accused conducting his or her defence and therefore accepted the amendment.

Also, in its Stage 1 report, the Justice 2 Committee was of the view that a witness who has given evidence should be able to act as a supporter. The Executive was persuaded by the committee's arguments that a general rule excluding a witness from acting as a supporter was not appropriate. Accordingly, amendments brought forward at Stage 2 would allow a person who is nominated by the vulnerable witness and who is to give evidence at the trial to act as a supporter once he or she has given evidence.

National Health Service Reform (Scotland) Bill

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<tr>
<td>Introduced by:</td>
<td>Malcolm Chisholm (Executive Bill)</td>
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<td>11 June 2004</td>
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2004 asp 7

Passage of the Bill

The National Health Service Reform (Scotland) Bill [SP Bill 6] was introduced in the Parliament on 26 June 2003. Stage 1 began on 2 December 2003, with the Health Committee as the lead committee. The Stage 1 debate took place on 3 March 2004, and the Bill was passed following the Stage 3 parliamentary debate on 6 May 2004.
Purpose and objectives of the Bill

The primary aim of the Bill is to reform the organisation and management of the NHS in Scotland in a bid to achieve a decentralised, integrated health care service. The Bill seeks to do this through changes to the system’s structure and organisation, devolving decision-making and resources to front-line staff, increasing public involvement in NHS decision-making and developing regional planning and services. These reforms were announced in the white paper Partnership for Care.

Provisions of the Bill

The Bill makes the following provisions:

- it removes the statutory powers of NHS Trusts;
- it requires NHS Boards to establish Community Health Partnerships;
- it places a duty on NHS Boards to co-operate with other NHS bodies in the planning and delivery of services;
- it gives Ministers greater powers to intervene where a health body is deemed to be failing;
- it places a duty on Ministers and NHS Boards to promote health improvement;
- it places a duty on NHS Boards to involve the public more closely in planning, developing and operating the NHS;
- it places a requirement on NHS Boards to ensure staff are well informed, appropriately trained, fairly treated and involved in the decisions that affect them; and
- it requires NHS Boards to encourage equal opportunities when discharging their duties.

Parliamentary consideration

The Health Committee’s deliberations centred on whether the structural changes proposed would achieve the policy objectives of the Bill. The committee felt that these changes would need to be accompanied by a cultural change in the NHS. Much debate also centred on the need to dissolve local health councils and the perceived independence of the new national health council within NHS Quality Improvement Scotland.

The Health Committee also shared the concerns of the Finance Committee over some aspects of the Financial Memorandum, especially the cost estimates resulting from any interventions in failing services and who would foot the bill, the duty to involve the public, the reorganisation of existing structures, and the creation of the Scottish Health Council following the dissolution of the local health councils.

The main changes to the Bill in its passage through Parliament came from the inclusion of two Executive amendments, which place a duty on NHS Boards in relation to staff governance and also require them to consider equal opportunities when carrying out their functions.
Prostitution Tolerance Zones (Scotland) Bill

Passage of the Bill

The Prostitution Tolerance Zones (Scotland) Bill [SP Bill 7] was introduced in the Parliament by Margo Macdonald MSP on 8 September 2003. Stage 1 commenced on 2 March 2004 with the Local Government and Transport Committee as the lead committee. There was no Stage 1 debate on the general principles of the Bill. The Bill was withdrawn on 30 November 2005.

Purpose and objectives of the Bill

The Bill proposed to give local authorities the power to designate ‘tolerance zones’ within which soliciting, loitering or importuning by prostitutes for the purposes of prostitution would not be an offence under the Civic Government (Scotland) Act 1982.

Other stated objectives of the Bill were:

- to enable the police, health boards and local authorities to ensure that prostitution is practised in as orderly, secure and tolerable a manner as possible
- to minimise the opportunities for associated criminal behaviour
- to maximise the practice of safer sex and to promote public health policies

The objectives of the Bill were the same as those for the Prostitution Tolerance Zones (Scotland) Bill [SP Bill 67], introduced by Margo Macdonald on 28 October 2002, in Session 1.

Provisions of the Bill

The main provision of the Bill was to allocate power to local authorities to designate areas as tolerance zones. In order to do this a local authority would have to go through the specified consultation process.

Provisions were made to allow for appeals to be made by anyone aggrieved by the making of a tolerance zone designation, and for the police working within an area where the tolerance zone is located to apply to the local authority to have the zone suspended or modified.

The Bill also specified that nothing done in a public place lying within a prostitution tolerance zone, during such times as that zone is in operation, would lead to an offence being committed under Section 46 of the Civic Government (Scotland) Act 1982.
Parliamentary consideration

An expert group on prostitution was set up by the Scottish Executive in 2003 as a result of the earlier Bill introduced by Margo MacDonald in 2002. Margo MacDonald was a member of the expert group. Evidence at Stage 1 began in March 2004. A key issue for consideration of the Bill was when the expert group would report and what the Scottish Executive response to the group’s findings would be. The Local Government and Transport Committee resolved to consider all information before agreeing to the general principles of the Bill at stage 1.

The expert group published its report, fully supported by Margo MacDonald, for consultation in March 2005. It recommended that criminalisation of soliciting should be replaced by a legal focus on offensive behaviour arising from a prostitution-related sexual transaction. In response to the expert group, on 1 November 2005 the Scottish Executive undertook to create a new offence focusing on the nuisance or harm arising from street prostitution-related activities, whether caused by seller or purchaser. This offence was to replace the existing soliciting offence.

As a consequence, the Member’s Bill was withdrawn on 30 November 2005.

Waverley Railway (Scotland) Bill

Bill Number: SP Bill 8
Introduced on: 11 September 2003
Introduced by: Scottish Borders Council (Private Bill)
Passed: 14 June 2006
Royal Assent: 24 July 2006

2006 asp 13

Passage of the Bill

The Waverley Railway (Scotland) Bill [SP Bill 8] was introduced in the Parliament on 11 September 2003. The initial 60 day period for objections ended on 10 November 2003, resulting in 118 admissible objections. The Waverley Railway (Scotland) Bill Committee was established and met for the first time on 10 February 2004. The Committee published its Preliminary Stage Report on 22 July 2005, which was debated by the Parliament on 28 September 2005. The general principles of the Bill were agreed by a vote in which 104 members voted for the Bill and one abstained. The Committee then commenced the Consideration Stage of the Bill, which resulted in the publication of its Consideration Stage Report on 9 May 2006. The Bill was passed following the Final Phase debate held on 14 June 2006 in which 114 members voted for the Bill, one abstained and one voted against. The Bill received Royal Assent on 24 July 2006.
Purpose and objectives of the Bill

The Bill authorises the construction and operation of a single track railway line, with dynamic passing loops, which will run from the end of the current Edinburgh Crossrail line at Newcraighall to Tweedbank in the Scottish Borders. The proposed line runs through Midlothian and the Scottish Borders closely following the route of the A7 road. Stations are to be built at:

- Shawfair (Midlothian)
- Eskbank (Midlothian)
- Newtongrange (Midlothian)
- Gorebridge (Midlothian)
- Stow (Scottish Borders)
- Galashiels (Scottish Borders)
- Tweedbank (Scottish Borders)

Provisions of the Bill

The Bill grants the promoter, and their successors, the powers to build the railway line as well as authorising the construction of other works associated with it. To this end the promoter is granted a power of compulsory purchase and the power to stop-up roads and footpaths where necessary.

Parliamentary consideration

The Preliminary Stage of the Bill took 21 months to complete. The main reason for this delay was a series of land referencing errors by the promoter. The promoter failed to notify a number of landowners, lessors or tenants of land that could be affected by the railway about their proposals at the start of the process. The Committee had to allow the same length of time for those people to lodge objections to the proposals as others, notified at the beginning of the process, had been given. This resulted in the Committee having to delay their work by several months. The Committee also raised concerns about inadequate consultation between the promoter and key stakeholders and the robustness of housing projections on which passenger forecasts were partly based.

The Preliminary Stage Report of the Waverley Railway (Scotland) Committee was not unanimously agreed. Christine May MSP published a minority Preliminary Stage Report which questioned the economic assessment of the railway, the likely cost of construction and why a phased construction of the line to Gorebridge, with the possibility of extension to Tweedbank, had not been considered.

The Waverley Railway (Scotland) Bill Committee rejected all objections to the Bill during Consideration Stage. The Committee recommended in the Consideration Stage Report that a station be built at Stow, a move opposed by the Scottish Executive and promoters, and that the railway be built in its entirety to Tweedbank.

The Waverley Railway (Scotland) Bill Committee revisited some of the issues it raised during its Preliminary Stage consideration. The Committee were satisfied that
improvements in communication and further work had taken place to ensure that housing forecasts could be met.

The Bill was passed with all the Committee’s amendments accepted by Parliament.

Nature Conservation (Scotland) Bill

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<td>Ross Finnie (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>5 May 2004</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>11 June 2004</td>
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</tbody>
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2004 asp 6

Passage of the Bill

The Nature Conservation (Scotland) Bill [SP Bill 9] was introduced in the Parliament on 29 September 2003. Stage 1 began on 29 October 2003 with the Environment and Rural Development Committee as the lead committee. The Stage 1 (general principles) debate took place on 7 January 2004, and the Bill was passed following the Stage 3 parliamentary debate on 5 May 2004.

Purpose and objectives of the Bill

The Bill builds on an existing legislative framework, most notably the Wildlife and Countryside Act 1981, and also Part 12 of the Criminal Justice (Scotland) Act 2003. It deals with specific aspects of nature conservation, in three parts:

- the conservation of biodiversity: the intention is to emphasise biodiversity as both an essential resource for sustainable development and as a measure of success in delivering sustainability;
- the conservation and enhancement of natural heritage through an improved system for notifying and protecting Sites of Special Scientific Interest (SSSIs); and
- the protection of wildlife through enhancements to species protection measures.

Provisions of the Bill

Part 1 of the Bill will apply a new general biodiversity duty to all Scottish public bodies and office holders. It obliges public authorities to “further the conservation of biodiversity” in the course of exercising their functions. It also provides a statutory basis for a Scottish Biodiversity Strategy.

Part 2 of the Bill introduces a number of new proposals to improve the protection of SSSIs. These include:
a requirement for Scottish Natural Heritage (SNH) to specify operations on SSSI sites for which their consent is required;

enhanced powers for Ministers to make Nature Conservation Orders (NCOs) to protect SSIs;

payments to land managers for positive management of SSIs;

new powers to make Land Management Orders to enforce management of an SSSI;

enhanced compulsory purchase powers;

power to make restoration orders to repair damage to an SSSI, and the power to impose increased penalties for damaging SSIs; and

a full right of appeal to the Scottish Land Court for land managers.

Part 3 of the Bill amends Part I (Wildlife) of the Wildlife and Countryside (1981) Act (c. 69). In doing so, it builds upon a variety of existing amendments to the 1981 Act, including, most recently, changes implemented by the Criminal Justice (Scotland) Act 2003 (asp 7). Schedule 6 of the Bill sets out amendments and repeals covering:

- offences involving recklessness;
- new controls on possession of wildlife specimens obtained illegally outside Britain;
- protection for capercaillie during the breeding season;
- enhanced protection for cetaceans and basking sharks;
- employers who “cause or permit” wildlife offences;
- extended controls on the use of snares;
- an offence of possession of specified pesticides without reasonable excuse; and
- new provisions setting out the powers of government Wildlife Inspectors.

Parliamentary consideration

The Environment and Rural Development Committee took evidence on the Bill between January and March 2004. Based on the evidence taken, the committee raised concerns regarding the following issues:

- development of clear and accessible guidance on existing nature conservation law, and making this publicly available;
- reconsideration of the definition of “natural heritage” to avoid confusion with definitions used in other Acts;
- inclusion of provisions relating to the control of non-native species;
- inclusion of enhanced references to geodiversity, and a specific offence provision relating to geodiversity crime; and
- due consideration for the practicalities of implementing a system of identification for snares.

The main changes in the Bill as passed are:

- replacement of the term “natural heritage” with the term “natural feature”;
- the prohibition of hybrid non-native plants and animals from being grown, released or allowed to escape;
- provision for SNH to produce a Scottish Fossil Code;
- inclusion of a statutory underpinning for Ramsar (wetland) sites; and
• inclusion of land owned by Her Majesty in her private capacity (e.g. Balmoral Estate).

Criminal Procedure (Amendment) (Scotland) Bill

Bill Number: SP Bill 10
Introduced on: 7 October 2003
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 28 April 2004
Royal Assent: 4 June 2004
2004 asp 5

Passage of the Bill

The Criminal Procedure (Amendment) (Scotland) Bill [SP Bill 10] was introduced in the Parliament on 7 October 2003. The Justice 1 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 26 November 2003. The Stage 1 debate took place on 25 February 2004 and the Bill was passed following the Stage 3 parliamentary debate on 28 April 2004.

Purpose and objectives of the Bill

The Scottish Executive initiated a review of the practices and procedures of the High Court in late 2001. The report of this review, 'Improving Practice: 2002 Review of the Practices and Procedure of the High Court of Justiciary' (also referred to as 'the Bonomy Report'), was published in December 2002. It set out various recommendations, some - but not all - of which would require legislation.

The Executive consulted on the recommendations produced by the review and, in June 2003, published a White Paper ('Modernising Justice in Scotland') setting out its proposals for reform. This was followed by the introduction of the Bill, to amend the Criminal Procedure (Scotland) Act 1995.

The Executive stated that the Bill is a key part of the overall package of reform to High Court procedures set out in the White Paper and is intended to introduce greater certainty into High Court proceedings, helping to develop a more managed system with emphasis on better communication between prosecution and defence and earlier preparation by both parties.

Provisions of the Bill

Part 1 of the Bill provides for changes to court procedures in the High Court, including a new mandatory pre-trial procedural hearing (to be known as a 'preliminary hearing') and changes to how trial dates are set.
Part 2 of the Bill includes provisions for changes to statutory time limits applying to the prosecution of cases, for the extension of existing provisions allowing trials in the absence of the accused, and to add new measures in relation to obstructive witnesses. It includes provisions applying to High Court cases and to cases prosecuted in the sheriff courts under solemn procedure.

Part 3 of the Bill provides courts, in relation to both solemn and summary procedure cases, with the power to require as a condition of bail, electronic monitoring (‘tagging’) restricting a person’s movements. It also contains provision for prosecutors to have a right to be heard on certain applications relating to bail.

Part 4 of the Bill includes provisions relating to matters which should be dealt with during ‘first diets’ (an existing pre-trial procedural hearing held in sheriff court cases under solemn procedure); sentencing following a guilty plea; and the sentencing powers of a sheriff under solemn procedure.

Parliamentary consideration

The Justice 1 Committee noted in its Stage 1 Report that, almost without exception, the aims of the Bill were welcomed in evidence to the Committee. However, various aspects of the Bill did give rise to substantial debate. These included the proposal to extend the ‘110-day rule’. This is the rule that, where an accused has been remanded in custody to await trial, the trial must start within 110 days of full committal. Although the Justice 1 Committee noted in its Stage 1 Report that it had reservations about the proposed change, a majority of its members concluded that the advantages of the new system being introduced justified the extension of the time limit. The proposed change to the 110-day rule was included in the Bill as passed.

The Bill as passed does, however, include a number of significant changes from the Bill as introduced. These include changes to the provisions on trial in absence of the accused. The Bill as introduced made provision for a solemn trial to proceed or be concluded in the absence of the accused, in circumstances where the accused has been properly cited to appear and the court considers that it is in the interests of justice to proceed. The Justice 1 Committee acknowledged, in its Stage 1 Report, the problems experienced by victims and witnesses where an accused fails to appear for trial. It stated that it saw some merit in allowing a trial to continue in the absence of the accused where all the evidence has been led, but rejected the proposal that an accused should be tried in absence from the outset. The Deputy Minister for Justice noted during the Stage 3 parliamentary debate, that the Executive had accepted that the provision should be changed to restrict it to cases where evidence against the accused has already been led. The Bill as passed restricts the provision to cases where evidence has already been led which ‘substantially implicates the accused’ in respect of an offence charged in the indictment.
Passage of the Bill

The Education (Additional Support for Learning) (Scotland) Bill [SP Bill 11] was introduced in the Parliament on 28 October 2003. Stage 1 commenced on 5 November 2003 with the Education Committee as the lead committee. The Stage 1 debate took place on 28 January 2004 and the Bill was passed following the Stage 3 parliamentary debate on 1 April 2004.

Purpose and objectives of the Bill

The Bill sets out a new framework for supporting children and young people with additional support needs. It is based on the changing policies and practices which have evolved since the current framework was set up under the Education (Scotland) Act 1980 as amended.

The Bill replaces the concept of Special Educational Needs with Additional Support Needs, which will include children and young people, who, for whatever reason require support to access and benefit from education.

The Bill promotes the integrated working of education, health and social work to combine support for children and young people. It also aims to increase the involvement of parents in decisions affecting their child’s education and to support the involvement of children and young people in their own learning. Furthermore the Bill aims to safeguard the rights of those with the most significant and enduring needs.

Provisions of the Bill

The Bill replaces the Record of Needs process with a new Co-ordinated Support Plan (CSP) for children and young people who have enduring needs arising from complex or multiple factors and require support from more than one agency. It places duties on education authorities to identify and assess whether children and young people have additional support needs or require a Co-ordinated Support Plan. Education authorities will also have a duty to seek and take account of advice and information from other agencies as appropriate.
Further provisions include:

- A duty on education authorities to establish independent mediation services for the purpose of avoiding or resolving disputes.
- The establishment of Additional Support Needs Tribunals for Scotland which will hear cases on decisions to prepare or not to prepare a CSP, review or discontinue a CSP and against a CSP’s contents.
- The publication of a Code of Practice, which will provide guidance for education authorities and other agencies of their functions.

Parliamentary consideration

The Education Committee took evidence on the Bill between November and December 2003. Based on the evidence taken, the committee raised concern regarding the following issues:

- that there should be no lessening of the rights of children to have their additional support needs met
- the criteria of eligibility for a Co-ordinated Support Plan
- the number of pupils who currently have a Record of Needs but would not be eligible for a CSP
- the provision of support for children under the age of three
- the need to ensure that other agencies, as well as education authorities, comply with their duties under the Bill
- a need to tighten the provisions for assessment of eligibility for a CSP
- powers and issues that can be referred to the tribunals
- provision for advocacy
- the clarity, consultation and legal status of the proposed code of practice
- planning arrangements for post-school transitions.

The main changes in the Bill as passed are:

- a new section which gives Scottish Ministers the power to extend the jurisdiction of the tribunal.
- that Scottish Ministers must consult widely before publishing the code of practice, and that education authorities must comply with the code of practice.
- the provision of support for children under the age of three.
- advocacy on the face of the Bill - any child, young person or parent will be able to have an advocate present during any discussions with the education authority.
Bill Number:          SP Bill 12
Introduced on:       29 October 2003
Introduced by:       Margaret Curran (Executive Bill)
Passed:              17 June 2004
Royal Assent:        26 July 2004

2004 asp 8

Passage of the Bill

The Antisocial Behaviour etc. (Scotland) Bill [SP Bill 12] was introduced in the Parliament on 29 October 2003. Stage 1 commenced on 19 November 2003 with the Communities Committee designated as the lead committee and the Justice 2 Committee and the Local Government and Transport Committee being designated as secondary committees. The Stage 1 debate took place on 10 March 2004 and the Bill was passed following the Stage 3 parliamentary debate on 17 June 2004.

Purpose and objectives of the Bill

The primary objective of the Bill was to make provision for measures to tackle antisocial behaviour (ASB). The Bill followed the Scottish Executive’s consultation document ‘Putting Our Communities First: A Strategy for Tackling Anti-social behaviour’, in which the Scottish Executive stated its concern about the effect ASB was having on communities and set out a number of proposals to tackle the issue.

Provisions of the Bill

The Bill makes provision for a number of measures, including: the development of Antisocial Behaviour Strategies; extending the provision of Antisocial Behaviour Orders (ASBO) to those aged 12 to 15; provisions to allow an area to be designated for the dispersal of groups where there is a serious and persistent problem of ASB; provisions to close premises that have become a focus for ASB; provisions to tackle noise nuisance; provisions to tackle graffiti and other environmental issues; in relation to housing, provisions to introduce Antisocial Behaviour Notices and a compulsory registration scheme for private landlords; provisions for the introduction of Parenting Orders; and, the introduction of Fixed Penalty Notices for various forms of ASB.

Parliamentary consideration

Prior to its Stage 1 inquiry into the Bill, the Communities Committee undertook a pre-legislative inquiry into how antisocial behaviour was affecting communities. Members of the committee met with groups and individuals from communities in each of the eight electoral list regions. Members also went on fact-finding visits to a Shelter Scotland’s Families Project in Edinburgh and Polmont Young Offenders Institute. In addition it sought the views of communities and individuals regarding ASB and the Scottish Executive’s consultation, through a questionnaire.
The Communities Committee received evidence from a number of community organisations and interest groups as part of its Stage 1 inquiry. Whilst there was general agreement that there was a problem with ASB in some communities, there was debate concerning some aspects of the Bill, in particular the use of ASBOs for 12 to 15 year olds, dispersal of groups, the provisions to register private landlords and the use of Restriction of Liberty Orders (RLOs) utilising electronic monitoring for those under 16. An outline of views regarding all the proposals in the Bill can be obtained from the SPICe briefing 03/91 ‘Antisocial Behaviour (Scotland) Bill’.

There were several significant amendments to the Bill as it underwent its passage through Parliament, in the following areas:

**Antisocial Behaviour Strategies**

Further to the Bill as introduced, when local authorities and the corresponding Chief Constable are developing Antisocial Behaviour Strategies, they will be required to take note of a variety of issues including: the need to assess the types and extent of ASB occurring in the area; specify arrangements for consulting with community bodies and individuals (particularly young people) regarding what is happening in their area; specify the range of services available to young people to support efforts in tackling ASB; and specify the availability of services for victims and witnesses of ASB.

**Dispersal of groups**

The section giving Scottish Ministers the powers to direct those exercising powers on the use of those powers was removed at Stage 2. In addition, in order to assess the effectiveness of the provisions in the Bill concerning the dispersal of groups, Scottish Ministers are required to arrange for research to be undertaken with a report being laid before Parliament within three years of when the provisions come into force.

**Registration of Private Landlords**

The Bill as introduced proposed a discretionary registration scheme for private landlords. It was envisaged that a local authority would have the power to introduce such a scheme where there was a problem with ASB associated with the private rented sector. At Stage 2, Cathie Craigie MSP introduced amendments, subsequently agreed to, though amended further at Stage 3, which proposed a national compulsory scheme, operated by each local authority. This scheme will compel all private landlords to register themselves and each of their properties that they let out. Letting agents will also be required to register. Although not linked to property conditions or the wider tenant / landlord, a landlord or agent will be required to pass a ‘fit and proper person’ test to register. Failure to register will be an offence liable on summary conviction to a fine not exceeding level five on the standard scale (£5,000). In addition the Bill allows for no rent to be payable by tenants in a situation where a landlord is not registered.
Fire Sprinklers in Residential Premises (Scotland) Bill

Bill Number: SP Bill 13
Introduced on: 17 November 2003
Introduced by: Michael Matheson (Member’s Bill)
Withdrawn: 29 September 2004

Passage of the Bill

The Fire Sprinklers in Residential Premises (Scotland) Bill [SP Bill 13] was introduced in the Parliament by Michael Matheson MSP on 17 November 2003. The proposal for the Bill was lodged in the Parliament on 12 September 2003 and had received 15 supporters by 13 October 2003, sufficient to allow the Bill to proceed. The Bill was referred to the Communities Committee as the lead committee on 17 December 2003. The Committee considered its approach to the Bill at its meeting of 17 December 2003 and took Stage 1 evidence at its meeting of 10 March 2004. The Committee formally ‘parked’ its consideration of the Bill at its meeting of 24 March 2004. Michael Matheson MSP withdrew the Bill on 29 September 2004.

Purpose and objectives of the Bill

The Bill would have required fire sprinkler systems to be fitted in all new sheltered housing complexes and existing buildings that were converted to sheltered housing as well as certain Houses in Multiple Occupation (HMOs). The purpose of these proposals was to prevent fire deaths and injuries in types of property at a high risk from fire.

Provisions of the Bill

The Bill required that a fire sprinkler system be fitted into certain HMOs and in all new build sheltered housing, as well as homes converted into sheltered housing. The Bill would also have given Scottish Ministers the power to alter, by order, the categories of housing to which the provisions of the Bill applied.

The Bill would have required a building standards verifier to ensure that all new build or converted sheltered housing was fitted with a sprinkler system prior to issuing a completion certificate. It is an offence to occupy a building which does not have a completion certificate.

The Bill would have made it an offence for the owner of a house, or their agent, to knowingly give their permission for it to be used as an HMO without a fire sprinkler having been installed. This included houses that were intended to be used as an HMO but which were not yet occupied. Failure to abide by these requirements would have been an offence which, on summary conviction, would be punishable by a fine not exceeding £5000. Where both an agent and owner permitted a house without a sprinkler to be used as an HMO both would have been liable to prosecution.
Parliamentary consideration

The Bill was withdrawn by Michael Matheson prior to completion of Stage 1 consideration as he had secured a commitment from the Executive to amend Building Regulations to achieve much of what he was aiming to do through the Bill.

On 18 March 2004 the Deputy Communities Minister announced a consultation on changes to Building Regulations, requiring the installation of fire sprinklers in all new or converted residential care buildings, sheltered housing and high rise flats. The consultation closed on 26 July 2004 and was supported by the great majority of the 42 respondents, although some did not think it went far enough. The new requirements were included in the Building (Scotland) Regulations 2004 (SSI 2004/406), which came into force on 1 May 2005.

Local Governance (Scotland) Bill

Bill Number: SP Bill 14
Introduced on: 21 November 2003
Introduced by: Andy Kerr (Executive Bill)
Passed: 23 June 2004
Royal Assent: 29 July 2004

Passage of the Bill

The Local Governance (Scotland) Bill [SP Bill 14] was introduced in the Parliament on the 21 November 2003. Stage 1 commenced on 2 December 2003 with the Local Government and Transport Committee acting as the lead committee and the Equal Opportunities, Finance and Subordinate Legislation Committees acting as secondary committees. The Stage 1 debate took place on 24 March 2004 and following the Stage 3 parliamentary debate on 23 June 2004 the Bill was passed.

Purpose and objectives of the Bill

The policy intention of the Bill is to augment the Scottish Executive’s wider local government modernisation agenda. The Bill makes changes to the way in which councillors are elected, reduces the age qualification for candidates standing for election, changes the way councillors are remunerated and introduces a one-off severance scheme. The Bill follows on from the McIntosh Commission report and the report of the Kerley working group. The Executive has established three working groups to assist in the process of implementing the provisions of the Bill covering: the single transferable vote; councillor’s remuneration; and widening access to council membership.
Provisions of the Bill

The Bill contains a wide range of provisions including the following:

- The introduction of the Single Transferable Vote (STV) for council elections based on wards consisting of either three or four members.
- Changing the minimum age for standing as a councillor from 21 to 18.
- The repeal of legislation establishing a salary threshold for politically restricted posts within local authorities.
- The amendment of legislation so that council employees have to resign on election as a councillor to their employing council, rather than on nomination as a candidate.
- The reduction to three months of the period during which most former councillors are unable to take up employment with the council after their period of service as a councillor comes to an end.
- The introduction of a new system of remuneration.
- Provisions to allow for the creation of a Scottish Local Authorities Remuneration Committee which will recommend to Ministers on the details of the future remuneration scheme for councillors.
- A one-off severance payment to councillors who decide not to stand at the next local government election.
- Powers to introduce a pension scheme for councillors to allow future service to count for pension purposes.

Parliamentary consideration

A wide range of issues was raised during the Stage 1 scrutiny of the Bill, notably concerning the introduction of the single transferable vote for local government elections. In particular, the issue of whether the district magnitude of three to four members per ward should be increased to at least three to five members per ward (with two in exceptional cases) in order to provide a greater degree of proportionality whilst also taking account of specific conditions in some rural areas. Some witnesses argued that the introduction of STV would lead to a diminution of the councillor-ward link.

The de-coupling of local government elections from Scottish Parliament elections was considered, although subsequent amendments at Stages 2 and 3 to decouple the elections were ruled outwith the scope of the Bill. The Committee recommended that e-counting be adopted at the earliest possible opportunity and recommended the use of the ‘weighted inclusive Gregory’ method of counting once e-counting had been introduced. The Scottish Executive amended the Bill during its passage, on the Committee’s recommendation, in order to place the detail of the STV counting process into secondary legislation so that any future changes in the counting method could be introduced without the need for further primary legislation.

The Committee also considered that severance payments should vary according to councillors’ length of service, that the severance payments should include councillors who stand for election but are defeated and that an on-going resettlement scheme should be established for councillors. However amendments aiming to achieve these changes were not agreed during the passage of the Bill.
Breastfeeding etc. (Scotland) Bill

Bill Number: SP Bill 15
Introduced on: 16 December 2003
Introduced by: Elaine Smith (Members Bill)
Passed: 18 November 2004
Royal Assent: 18 January 2005

2005 asp 1

Passage of the Bill

The Breastfeeding etc. (Scotland) Bill [SP Bill 15] was introduced in the Parliament by Elaine Smith MSP on 16 December 2003 with the Health Committee designated as the lead committee. The Stage 1 debate took place on 23 September 2004 and following the Stage 3 parliamentary debate on 18 November 2004 the Bill was passed.

Purpose and objectives of the Bill

The aim of the bill was to make it an offence to prevent or stop a child under the age of 2 being fed milk in a public place or licensed premises, where the child is otherwise lawfully permitted to be. The bill also contained provisions for the support and promotion of breastfeeding.

Provision of the Bill

The Bill introduces a fine of up to £2,500 for a person who deliberately prevents or stops a person from bottle-feeding or breastfeeding a child in a public place. The Bill also amends the National Health Service (Scotland) Act 1978 to impose duties on Ministers to support and encourage mothers to breastfeed their children.

Parliamentary Consideration

The Health Committee received evidence as part of its Stage 1 enquiry from a number of organisations including breastfeeding groups, local authorities, the Crown Office and organisations representing the Scottish Police Force.

Amendments were proposed by Carolyn Leckie MSP both at Stage 2 and Stage 3 regarding the age limit of the child being fed milk. Proposals included removing the age limit completely or raising the age limit from 2 years to either 3, 4, or 5 years of age. Carolyn Leckie believed that having an upper age limit sent a negative message to mothers breastfeeding older children and as many children as possible being breastfeed should be included in the legislation. Arguments against the amendments included the possibility of the legislation being open to ridicule if no upper age limit was set. In terms of setting an age limit above two years, Elaine Smith MSP pointed out that the steering group she set up to develop the proposals for the Bill, had discussed this issue at great length and had eventually decided that age two was an
appropriate upper age limit. Elaine Smith also maintained that an upper age limit of two in the Bill would not make it illegal for a woman to breast feed beyond two. The amendments were not agreed to.

No major changes to the bill were made on its progression through Parliament.

Budget (Scotland) Bill

Bill Number: SP Bill 16
Introduced: 20 January 2004
Introduced by: Andy Kerr (Budget Bill)
Passed: 12 February 2004
Royal Assent: 23 March 2004

2004 asp 2

Passage of the Bill

The Scottish Budget process is designed to allow the Parliament's subject committee the opportunity to comment on the Executive's spending plans at several points during the year prior to the annual budget being agreed. The process is divided into three distinct stages. Stage one (between March and June) allows subject committees the chance to look strategically at a high level overview of the Executive's spending plans. Stage two of the process (September to December) allows committees to comment on firmer Executive spending plans and at this stage the Finance Committee can propose an alternative budget. Stage 3 (January to February) provides Parliamentary authority for spending in Scotland for the following financial year via passage of the Budget Bill. Given the pre-legislative scrutiny, the time allocated to the passage of the Budget (Scotland) Bill is truncated. The Bill was introduced on 20 January 2004, with the Stage 1 debate on 29 January 2004. The Finance Committee considered it at Stage 2 on 10 February 2004 and the Bill was passed without division by the Parliament on 12 February 2004.

Purpose and objectives of the Bill

The passage of the Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2004/5. 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. Because of the Scottish General Election in May 2003, Stage 1 of the budget process was foregone and consideration of the budget began at Stage 2.
Provisions of the Bill

The Bill will authorise over £21.7 billion of cash expenditure by the Scottish Executive and its associated bodies, other organisations whose core funding is centrally provided (e.g. local authorities and health boards), the Forestry Commissioners, the Scottish Parliament Corporate Body and Audit Scotland.

Parliamentary consideration

At the Stage 2 discussion in the Finance Committee the need for consistent multi-year data was emphasised so that valid long term comparisons could be made.

Edinburgh Tram (Line One) Bill

Bill Number: SP Bill 17
Introduced on: 29 January 2005
Introduced by: The City of Edinburgh Council (Private Bill)
Passed: 29 March 2006
Royal Assent: 8 May 2006

2006 asp 7

Passage of the Bill

The Edinburgh Tram (Line One) Bill [SP Bill 17] was introduced in the Parliament on 29 January 2004. The 60 day period for objections ended on 29 March 2004, resulting in 206 admissible objections. The Edinburgh Tram (Line One) Bill Committee was established and met for the first time on 30 June 2004. The Committee published its Preliminary Stage Report on 16 February 2005, which was debated by the Parliament on 2 March 2005. On 3 March 2005 the Parliament passed a financial resolution on the Bill. The Committee then commenced the Consideration Stage of the Bill, which resulted in the publication of its Consideration Stage Report on 1 March 2006. The Bill was passed following the Final Stage debate held on 29 March 2006.

Purpose and objectives of the Bill

The Bill authorises the construction and operation of a circular tram line which will loop around an area of central and northern Edinburgh. The line will run from St Andrews Square, along Leith Walk, west to Granton, south to Haymarket and west along Shandwick Place and Princes Street back to St Andrews Square.

Provisions of the Bill

The Bill grants the promoter, and their successors, the powers to build the tram line as well as authorising the construction of other works associated with the tramway.
To this end the promoter is granted a power of compulsory purchase and the power to stop-up roads and footpaths where necessary. The Bill also grants Scottish ministers new powers to require buildings near the tram line to be specially insulated and allowing them to establish a penalty fares regime.

**Parliamentary consideration**

Although raising some minor concerns, particularly regarding the funding for the construction of the tramline, projected patronage and the scale of the benefits that the tram would bring, the Committee and Parliament agreed the general principles of the Bill at the Preliminary Stage. The Committee did not uphold any of the remaining objections at the Consideration Stage, although they did express concern about the amalgamation of the two proposed tram lines into one line running from Edinburgh Airport to Ocean Terminal, due to a lack of funding to develop the full tram network.

**Edinburgh Tram (Line Two) Bill**

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<tr>
<th>Bill Number:</th>
<th>SP Bill 18</th>
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<td>Introduced on:</td>
<td>29 January 2004</td>
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<tr>
<td>Introduced by:</td>
<td>The City of Edinburgh Council (Private Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>22 March 2006</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>27 April 2006</td>
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2006 asp 6

**Passage of the Bill**

The Edinburgh Tram (Line Two) Bill [SP Bill 18] was introduced in the Parliament on 29 January 2004. The 60 day period for objections ended on 29 March 2004, resulting in 206 admissible objections. The Edinburgh Tram (Line Two) Bill Committee was established and met for the first time on 29 June 2004. The Committee published its Preliminary Stage Report on 9 February 2005, which was debated by the Parliament on 23 February 2005. On 3 March 2005 the Parliament passed a financial resolution on the Bill. The Committee then commenced the Consideration Stage of the Bill, which resulted in the publication of its Consideration Stage Report on 21 December 2005. The Bill was passed following the Final Stage debate held on 22 March 2006. The Bill received Royal Assent on 27 April 2006.

**Purpose and objectives of the Bill**

The Bill authorises the construction and operation of a tram line which will run from central Edinburgh to the western outskirts of the city. The line will run in a westerly direction from St Andrews Square, along Princes Street, past Haymarket railway station to South Gyle, north to the Gogar roundabout and then northwest to Edinburgh Airport. A stand alone shuttle service would run between the Airport and Newbridge.
Provisions of the Bill

The Bill grants the promoter, and their successors, the powers to build the tram line as well as authorising the construction of other works associated with the tramway. To this end the promoter is granted a power of compulsory purchase and the power to stop-up roads and footpaths where necessary. The Bill also grants Scottish ministers new powers to require buildings near the tram line to be specially insulated and allowing them to establish a penalty fares regime.

Parliamentary consideration

Although raising some minor concerns, particularly regarding a possible lack of funding for the scheme and the predicted level of patronage, the Committee recommended that the Parliament agree the general principles of the Bill at the Preliminary Stage. The Committee did not uphold any of the remaining objections at the Consideration Stage, although they did express concern about the amalgamation of the two proposed tram lines into one line running from Edinburgh Airport to Ocean Terminal, due to a lack of funding to develop the full tram network.

Tenements (Scotland) Bill

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 19</th>
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<tr>
<td>Introduced on:</td>
<td>30 January 2004</td>
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<tr>
<td>Introduced by:</td>
<td>Margaret Curran (Executive Bill)</td>
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<tr>
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<td>16 September 2004</td>
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<td>22 October 2004</td>
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2004 asp 11

Passage of the Bill

The Tenements (Scotland) Bill [SP Bill 19] was introduced in the Parliament on 30 January 2004. The Justice 2 Committee, as the lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 24 February 2004. The Stage 1 debate took place on 3 June 2004 and the Bill was passed following the Stage 3 parliamentary debate on 16 September 2004.

Purpose and objectives of the Bill

The Bill is the final item in the Scottish Executive’s legislative programme of property law reform based on recommendations of the Scottish Law Commission. Earlier bills led to the Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003. All three pieces of legislation are expected to be fully commenced on 28 November 2004.

The Bill has two main aims:
• to clarify and re-state the common law rules which demarcate ownership of the various parts of the tenement, removing a number of anomalies and uncertainties in the existing law
• to provide a statutory system of management for tenements (referred to in the Bill as the ‘Tenement Management Scheme’) ensuring that the owners of every tenement will have a mechanism to reach decisions on important matters such as repairs

The Bill’s overall policy objective is to facilitate the carrying out of outstanding necessary repairs to tenements.

Provisions of the Bill

Sections 1–3 of the Bill clarify the rules which demarcate ownership of the different parts of a tenement.

Section 4 of the Bill determines the circumstances when the Tenement Management Scheme applies and the Schedule to the Bill lays out the rules of the Scheme.

The Bill also covers a range of other matters relating to tenements including duties of ‘support’ and ‘shelter’ owed by flat owners to one another (ss 7–10), the obligation on an owner to insure his or her flat (s 15), the continuing liability of outgoing owners for repairs to a tenement building (ss 11–13), access to flats by other flat owners for maintenance purposes (s 14), and demolition and abandonment of tenement buildings (ss 16 – 20).

Parliamentary consideration

The Justice 2 Committee noted in its Stage 1 Report that evidence given to it was consistent with the Executive’s evidence that there is widespread support for the aims of the Bill. The issues debated in their evidence were points of detail.

The most contentious part of the Bill was section 11 which, in the Bill as introduced, provided that where there are unpaid debts when a tenement is sold, the buyer should become severally liable with the previous owner. In its Stage 1 Report the Committee concluded this provision was “very unfair to the purchaser”, (Justice 2 Committee ‘Stage 1 Report on Tenements (Scotland) Bill’, para 43) as he or she might be exposed to large and unexpected bills for repair work if a seller did not disclose the existence of such a liability and then disappeared without trace.

In response to the Committee’s concerns, the Executive moved amendments at Stage 3 to allow any owner in a tenement to register a notice in the property registers to make it public that works have been or may be carried out to the tenement. Under the new provisions, if there is no notice, the incoming purchaser will not be liable for the costs of any work carried out before he or she became an owner.
Prohibition of Smoking in Regulated Areas (Scotland) Bill

Bill Number: SP Bill 20
Introduced on: 3 February 2004
Introduced by: Stewart Maxwell (Member’s Bill)
Withdrawn: 21 July 2005

Passage of the Bill
The Prohibition of Smoking in Regulated Areas (Scotland) Bill [SP Bill 20] was introduced in the Parliament on 3 February 2004. Stage 1 commenced on 8 June 2004 with the Health Committee as the lead committee. The stage 1 debate did not take place and the Bill was withdrawn by the Member in charge of the Bill, Stewart Maxwell on 21 July 2005.

Purpose and objectives of the Bill
This Member’s Bill was intended to ban smoking in public places where food is served. It followed and refined a proposal for a bill made by Kenneth Gibson MSP, in Session 1, to “regulate smoking in enclosed premises open to the public where food is sold and consumed.”

Provisions of the Bill
The Bill defined a ‘regulated area’ as one in which food is served, or will be served within the following 5 days. It would be an offence to smoke in a regulated area, to permit smoking in a regulated area and to fail to display signs inside and outside regulated areas. These offences would have carried a penalty of a fine of up to £1,000 and offences relating to the Bill, except the offence of smoking in a regulated area, would apply to bodies corporate and partnerships as well as to individuals.

Parliamentary consideration
In its Stage 1 Report on the Bill, published on 11 January 2005, a majority of Committee members were of the view that the ban would have a positive impact on public health and that a voluntary approach to tobacco control would not ensure the same outcome. A majority of members supported the general principles of the Bill.

However, on 16 December 2004, prior to the Committee’s Stage 1 report, the Executive introduced the Smoking, Health and Social Care Bill [SP Bill 33]. This Bill completed Stage 1 by 29 April 2005 and was passed on 30 June 2005 (2005 asp 13).

The Prohibition of Smoking in Regulated Areas Bill was withdrawn on 21 July 2005.
Emergency Workers (Scotland) Bill

Bill Number: SP Bill 21
Introduced on: 22 March 2004
Introduced by: Andy Kerr (Executive Bill)
Passed: 22 December 2004
Royal Assent: 1 February 2005

2005 asp 2

Passage of the Bill

The Emergency Workers (Scotland) Bill [SP Bill 21] was introduced in the Parliament on 22 March 2004. The Justice 1 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 5 May 2004. The Stage 1 debate took place on 30 September 2004 and following the Stage 3 parliamentary debate on 22 December 2004 the Bill was passed.

Objective of the Bill

The Policy Memorandum stated that the “Bill's policy objective is to create a specific offence of attacking an emergency worker, or someone assisting an emergency worker, who is responding to emergency circumstances” (para 2). It went on to state that the Bill is part of a wider drive against antisocial behaviour, as well as being part of a wider package of measures aimed at protecting public service workers.

Provisions of the Bill as introduced

The Bill as introduced made provision for a statutory offence where someone assaults, obstructs or hinders an emergency worker, or any other person assisting such a worker, whilst the emergency worker is responding to emergency circumstances. Definitions of ‘emergency worker’ and ‘emergency circumstances’ were included in the Bill. The protection proposed in the Bill was in addition to existing common law and statutory offences.

In addition, the Bill as introduced made provision for a further statutory offence applying within certain parts of a hospital. Under this, it would be an offence to assault, obstruct or hinder particular types of emergency worker, or any person assisting such a worker, within hospital accident and emergency premises. It would not require any evidence that the worker was responding to emergency circumstances. The Explanatory Notes stated that there is “no provision requiring that emergency circumstances exist since emergency circumstances may be assumed to exist or be imminent in accident and emergency premises at all times” (para 15). For the purposes of this offence, the definition of emergency worker was restricted to doctors, nurses, midwives and ambulance staff.
Parliamentary consideration

There was a great deal of support for the view that more should be done to provide emergency and other workers with better protection from being attacked or impeded. However, there was also considerable debate about: (a) whether or not legislation creating new criminal offences is required given the coverage of existing offences; and (b) who should be protected by any new offences and in what circumstances.

The Justice 1 Committee’s Stage 1 Report, whilst indicating the committee’s majority support for the general principles of the Bill, also noted that the committee would expect significant changes to be made to the Bill at Stage 2. Areas in need of amendment were stated to include: (a) the definition of emergency circumstances and how this restricts coverage of the Bill; (b) the categories of worker covered by the Bill; and (c) the restriction of the additional offence to accident and emergency premises. Similar points were raised during the Stage 1 plenary debate at which the Parliament agreed the general principles of the Bill.

Following Stage 1, a Scottish Executive news release (18 November 2004) stated that it had taken account of the views expressed by the Justice 1 Committee and had, therefore, lodged amendments with the aim of:

“(...) extending the protection offered by the Bill to ensure that the police, fire and ambulance workers as well as medical staff in hospitals are covered whenever they are on duty, as well as when they are actually dealing with emergencies”.

As a result of Executive amendments agreed at Stage 2, the circumstances in relation to which a person may be prosecuted for an offence under the Bill, without the need to show that an emergency worker was responding to emergency circumstances, were substantially expanded. A new section, applying to police, fire and ambulance workers, provides that it is an offence to assault, obstruct or hinder a worker acting in such a capacity. There is no requirement that the worker is responding to emergency circumstances. In addition, the offence applying to hospital accident and emergency premises was expanded to all parts of a hospital.

Other significant amendments agreed at Stage 2 included some extension to the categories of worker covered by the Bill (e.g. including social workers whilst involved in certain types of work).

The Bill was passed on 22 December 2004 following some more modest amendment at Stage 3.
The School Education (Ministerial Powers and Independent Schools) (Scotland) Bill [SP Bill 22] was introduced on 29 March 2004 and the Education Committee designated lead Committee. The Committee considered its approach on 24 March 2004. It took evidence at Stage 1 on 5 and 12 May 2004. The Committee reported on the general principles on 15 June 2004 7th Report 2004 SP Paper 177 and the Stage 1 debate was held on 24 June 2004. Stage 2 amendments were considered on 15 September 2004. The Stage 3 debate was held on 6 October 2004 following which the Bill was passed.

Purpose and objectives of the Bill

The objective of the Bill is to give Scottish Ministers proportionate powers that will assist them to meet their statutory duty, as established by the Standards in Scotland’s Schools Act 2000, to endeavour to secure improvement in the quality of school education in Scotland.

Provisions of the Bill

The Bill as passed gives new powers of ministerial intervention where schools or education authorities fail to implement the recommendations of a report by Her Majesty’s Inspectorate of Education (HMIE). HMIE can refer the education authority or managers of grant-aided schools to Ministers, if it feels satisfactory action has not been taken to secure improvement either at school or education authority level.

A two stage intervention process allows those concerned to respond to a preliminary notice. If Ministers are not satisfied with this response then an enforcement direction will be issued which sets out various actions that an education authority or manager of grant aided school should comply with. It is expected that this power will be used relatively rarely.

In addition, the Bill also updates the registration and monitoring system for independent schools. This is to ensure the provisions, some of which date from the 1950s, are consistent with recent developments and allow for quick action to be taken by Ministers, where necessary, to address child welfare. All independent schools must register with Scottish Ministers through the Registrar of Independent Schools. The Bill tightens up the registration procedures and extends reasons for denying
registration. The notice of complaint procedure is also strengthened giving Ministers three new options to act in this area including acting without serving a notice of complaint where urgent action is required.

Parliamentary consideration

During Stage 1 the Committee took oral evidence over two meetings from five panels of witnesses, including representatives of head teachers, local government and independent schools.

One issue arising at Stage 1 was whether the suggested intervention powers were necessary. However, in its Stage 1 report, the Committee considered that: “the Bill provides a legal endpoint to the HMIE process and therefore could make a contribution to the Scottish Executive's educational improvement agenda.” The Committee agreed to the general principles of the Bill in its report.

At stage 2 the Bill was amended to include a requirement to consider the seriousness of the failure before using the proposed ministerial powers of intervention. In relation to independent schools, amendments were made concerning those who were to be informed of decisions relating to registration decisions. A few minor amendments were agreed to at Stage 3.

Water Services etc. (Scotland) Bill

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<tr>
<th>Bill Number:</th>
<th>SP Bill 23</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>11 June 2004</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Ross Finnie (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>9 February 2005</td>
</tr>
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<td>Royal Assent:</td>
<td>17 March 2005</td>
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2005 asp 3

Passage of the Bill

The Water Services etc. (Scotland) Bill [SP Bill 23] was introduced in the Parliament on 11 June 2004. Stage 1 commenced on 16 June with the Environment and Rural Development Committee as the lead committee. The Stage 1 debate took place on 17 November 2004 and the Bill was passed following the Stage 3 parliamentary debate on 9 February 2005.

Purpose and objectives of the Bill

The main elements of the Bill focus on restructuring the economic water regulator in Scotland, introducing a series of provisions relating to competition in the water industry in Scotland, and establishing a statutory basis for remediation of coal mine water pollution.
Provisions of the Bill

The Bill seeks to establish a new corporate body, the Water Industry Commission, comprising 3-5 ordinary members and a Chief Executive to take on the functions of the Water Industry Commissioner. These functions include promoting the best interests of the customers of Scottish Water and customers of any other companies which may be licensed to sell water to non-domestic customers. The Bill will amend and strengthen the role of the Water Customer Consultation Panels.

The Bill will prohibit companies other than Scottish Water from using the public water and sewerage systems (which would be known as “common carriage”). The Bill will prohibit water and sewerage retail competition to the domestic sector, but will allow for such competition in the non-domestic sector, subject to a licensing regime overseen by the new Water Industry Commission. In addition Ministers will have powers under the Bill to issue Codes of Practice on sewerage nuisance. This is particularly to help deal with the problem of sewage odour.

Finally, the Bill will give the Coal Authority powers to prevent or mitigate pollution relating to water from coal mines, and further gives the Authority the power to access property to deal with such issues, where agreement on access cannot be reached.

Parliamentary consideration

During Parliamentary consideration, the Bill was amended to give new powers and duties to Water Customer Consultation Panels, including a new power for the Convenor of the panels to investigate customer complaints. Another amendment to the Bill gives Scottish Ministers the power to make a code of practice on nuisance caused by odours emanating from sewerage works. The code would contain best practice for tackling sewerage odours and would apply to Scottish Water (or anyone acting on their behalf). Monitoring compliance with the code would be the responsibility of Local Authorities, who would also have powers to ensure compliance where it could be proved that the code had been breached.

Fire (Scotland) Bill

Bill Number: SP Bill 24
Introduced on: 28 June 2004
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 23 February 2005
Royal Assent: 1 April 2005

2005 asp 5

Passage of the Bill

The Fire (Scotland) Bill [SP Bill 24] was introduced in the Scottish Parliament on 28 June 2004. The lead committee for the Bill was the Justice 2 Committee which held a
preliminary discussion on the provisions contained within the Bill on 29 June 2004. The Stage 1 Report produced by the Committee was published on 11 November 2004 and the Stage 1 debate took place in the Parliament on 18 November 2004.

At its meetings on 8 February 2005 and 22 February 2005, the Subordinate Legislation Committee considered changes to the delegated powers provisions in the Fire (Scotland) Bill as amended at stage 2. The Committee is required to report to the Parliament on these provisions under Rule 9.7.9 of Standing Orders. As a result of recommendations by the Subordinate Legislation Committee the order-making powers of Scottish Ministers in relation to creating further categories of persons who may cause temporary suspension of fire safety duties (S55) and to make regulations to modify the application of Part 3 (Fire Safety) to premises that become ‘relevant premises’ (S72) were changed from negative to affirmative resolution procedure. In addition, the power of Scottish Ministers to make regulations specifying cases where the due diligence defence would not apply (S67) was removed and added instead to the face of the Bill. A Report was published by the Subordinate Legislation Committee on 23 February 2005. The Stage 3 debate took place in the Parliament on the same day. The Bill was passed on 23 February 2005.

Purpose and objectives of the Bill

The main policy objectives of the Bill are as follows:

- to define the role of a modern fire and rescue service
- to ensure that fire and rescue authorities have clear national and local priorities and objectives
- to improve the protection offered to communities
- to revise fire safety legislation

Provisions of the Bill

The Bill covers various aspects of the fire and rescue services and is in 5 parts:

Part 1 – Fire and Rescue Authorities:
Part 2 – Fire and Rescue Services:
Part 3 – Fire Safety
Part 4 – Miscellaneous
Part 5 - General

The Bill repeals and re-enacts many of the provisions of the Fire Services Act 1947 (c.41) as they currently apply in Scotland.

Parliamentary consideration

Consultation on the modernisation of Fire and Rescue Services in Scotland commenced in April 2002 with the launch of the first comprehensive policy proposals for the Service in many years. In October 2003, the Scottish Ministers launched a consultation paper on their legislative proposals for the Scottish Fire and Rescue Service – *The Scottish Fire and Rescue Services: Proposals for Legislation*. Following the launch of the consultation paper on 1 October 2003, the proposals were
debated in the Scottish Parliament on 8 October 2003. In general, the responses received to the policy paper welcomed the proposals.

The Justice 2 Committee did raise certain concerns in their scrutiny of the Bill at Stage 1 and the main concerns and the Executive’s response are noted below.

The Justice 1 Committee sought clarification on the line of reporting responsibility from the Firemaster to the Fire Authority. Having considered this matter, the Executive lodged an amendment at Stage 2 to clarify the role of the Chief Officer and accountability arrangements. With regard to amalgamation schemes in Part 1 of the Bill, the Executive was happy to provide assurances that any requirement for consultation would be comprehensive and transparent and would include all interested parties.

After consideration, the Executive brought forward other amendments at stage 2 which covered issues such as Firefighting at Sea; changing the procedure for making Amalgamation Orders from negative to affirmative; and making the Chief Fire Officer responsible to his Fire and Rescue Authority for the discharge of his functions.
Gaelic Language (Scotland) Bill

Bill Number: SP Bill 25
Introduced on: 27 September 2004
Introduced by: Peter Peacock (Executive Bill)
Passed: 21 April 2005
Royal Assent: 1 June 2005

2005 asp 7

Passage of the Bill

The Gaelic Language (Scotland) Bill was introduced on 27 September 2004. At Stage 1, Members of the Education Committee attended a public meeting at the Royal National Mòd on 14 October 2004, and held five oral evidence sessions during November and December 2004, hearing evidence from Clì Gàidhlig, Comann nam Pàrant, Sabhal Mòr Ostaig, Comunn na Gàidhlig, Comhairle nan Eilean Siar, Bòrd na Gàidhlig, Highland Council, Glasgow City Council, the Welsh Language Board and the Minister for Education and Young People. The evidence given by the first 6 organisations was given in Gaelic and interpreted simultaneously. In addition, the Committee visited Portree Primary School and Portree High School on 29 November 2004. The Committee received 140 responses from individuals, 102 individual responses in three standard forms and 42 from organisations.

The Committee’s Stage 1 report was published on 26 January 2005 in Gaelic and English. Stage 2 was held on 2 March 2005 and Stage 3 on 21 April 2005 and the Bill was passed.

Purpose and objectives of the Bill

The Bill provides for the establishment of Bòrd na Gàidhlig to develop the use of Gaelic with the aim of securing it as an official language of Scotland which commands equal respect with English. The aim is to increase the number of people able to use and speak Gaelic, to encourage the use of the language and make the language and culture more accessible.

Provisions of the Bill

The Bòrd’s Committee of between five and eleven members will, within a year of commencement of the Act, produce a national plan for Gaelic and can, on at least six months notice, require any Scottish or cross border public authority to produce a plan with regard to its devolved functions.

The national plan must be consulted on and approved by Scottish Ministers. Public authority plans must also be consulted on and approved by Bòrd na Gàidhlig. Plans must include deadlines for the measures set out in them, be reviewed every five years, and the Bòrd can report on implementation. Where a plan is not implemented,
Scottish Ministers can, after consultation with the authority, direct the authority to implement the plan.

Where there is a dispute between public authorities and the Bòrd there is an appeal to Ministers – both on the fact of being asked to produce a plan and on the content of the plan. Where Ministers decide that a notice ought not to have been issued the Bòrd must wait two years before issuing another notice for a plan.

The Bòrd must also produce guidance on developing Gaelic and can produce guidance on Gaelic education. Where it does so, education authorities must have regard to it.

The Bòrd will advise on Gaelic issues generally, and report to Ministers on the implementation with regard to Gaelic of the European Charter for Regional and Minority Languages 1992.

The bill provides for the following documents to be laid before Parliament.

- National Gaelic Plan – to be produced in the first year, and every five years thereafter.
- a report by the Bòrd on a public authority’s failure to implement a plan
- Bòrd’s annual report

The Bord must also consult the Parliament on the National Gaelic Plan.

**Parliamentary consideration**

Two key themes throughout the consideration were the importance of Gaelic education and the difference between a ‘rights based’ approach and a ‘planning’ approach. The Bill takes a planning approach. Related to this was a call for the Bill to state that Gaelic had ‘equal validity’ with English and an amendment to this effect was proposed by Alex Neil MSP at Stage 2 and 3. This was opposed by the Executive on the ground that: ‘there would be a real danger that certain constructions could give rise to unintended and undeliverable consequences on a Scotland-wide basis’ (SP E OR 2 March 2005 col 2235). The bill was amended to include reference to Gaelic having ‘equal respect’ to English.

Other amendments during the passage of the bill included:

- that the national plan is updated every five years, that the Parliament is consulted on it and the final plan laid before parliament.
- that in preparing guidance or advice, the Bòrd will seek to give effect to the principle that Gaelic and English should be accorded equal respect.
- that public authority plans take account of the potential to develop the use of Gaelic.
- inclusion of an education strategy in the national Gaelic plan
- that the Bòrd reports on the Charter for Regional and Minority Languages
- that the Bòrd can vary or revoke guidance it has published in relation to public authority Gaelic plans
that the Bòrd must submit its guidance on Gaelic education to Scottish Ministers. The process involved mirrors that for guidance on public authority Gaelic plans.

• In setting its annual statement of improvement objectives, an Education Authority must have regard to its own Gaelic language plan.

• that specific reference is made to the Food Standards Agency as a cross border public authority.

Further and Higher Education (Scotland) Bill

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<tr>
<td>Introduced on:</td>
<td>30 September 2004</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Jim Wallace (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>20 April 2005</td>
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<td>Royal Assent:</td>
<td>1 June 2005</td>
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2005 asp 6

Passage of the Bill

The Further and Higher Education (Scotland) Bill [SP Bill 26] was introduced in the Parliament on 30 September 2004. The Enterprise and Culture Committee, as lead committee, published its Stage 1 Report on 20 December 2004. The Stage 1 debate on the general principles of the Bill took place on 20 January 2005 and the Bill was passed following the Stage 3 parliamentary debate on 20 April 2005.

Purpose and objectives of the Bill

The Bill’s purpose is to dissolve the Scottish Further Education Council and the Scottish Higher Education Council and create a new body to be called the Scottish Further and Higher Education Council.

Provisions of the Bill

The Bill makes provision as to the functions and duties of the new body, as well as the duties on Ministers. It also makes provisions for support for further and higher education, provisions relating to bodies which provide further and higher education and provisions for connected purposes. The Bill also makes provisions to bring colleges and higher education institutions (the fundable bodies) within the remit of the Scottish Public Services Ombudsman. The Bill amends the Further and Higher Education (Scotland) Act 1992 and also contains new provisions to do this, following 2 rounds of consultation. The first consisted of a discussion paper and discussions with key stakeholders, followed by a full public consultation paper entitled A Changing Landscape for Tertiary Education and Research in Scotland.
Parliamentary consideration

The most contentious issue was section 8 of the Bill, which makes provisions for allowing variable fees by type of course. An amendment lodged and agreed at Stage 3 created a statutory duty to consult in advance of using the power to vary fees.

Baird Trust Reorganisation Bill

Bill Number: SP Bill 27
Introduced on: 27 October 2004
Introduced by: The Trustees of the Baird Trust (Private Bill)
Passed: 15 June 2005
Royal Assent: 19 July 2005

2005 asp 11

Passage of the Bill

The Baird Trust Reorganisation Bill [SP Bill 27] was introduced in the Parliament on 27 October 2004. The 60-day Objection Period ended on 7 January 2005 without any objections having been lodged. A private bill committee, the Baird Trust Reorganisation Bill Committee, was set up to consider and report to the Parliament on the Bill. It first met on 26 April 2005 and went on to publish its Preliminary Stage Report on 3 May 2005.

The Preliminary Stage debate took place on 2 June 2005. It was agreed that the Consideration Stage should be omitted (see below). Thus, parliamentary scrutiny of the Bill moved directly to the Final Stage where it was passed without amendment following the Final Stage parliamentary debate on 15 June 2005.

Objective of the Bill

James Baird established a charitable trust by a deed of trust in 1873. The trust became a body corporate, under the name of ‘The Baird Trust’, by virtue of the Baird Trust Order Confirmation Act 1939. The 1939 Act was amended in 1957 and again in 1971. Currently, the trust supports the building and repairing of Church of Scotland churches and halls, endows parishes and generally helps the work of the Church of Scotland.

The Promoter’s Memorandum, published with the Bill, reports that the trustees believe that there is currently a need to update some of the objectives of the trust (e.g. allowing trust funds to be used to support churches other than the Church of Scotland) and powers of the trustees. The current statutory basis of the trust means that private legislation is required to make such changes. The trustees also predict that similar changes may be required in the future. In order to facilitate these changes, without the continuing need to resort to private legislation, the Bill seeks to
transfer the whole property, rights, interests and liabilities of The Baird Trust to a new charitable company limited by guarantee.

Provisions of the Bill

As noted above, the Bill provides for the transfer of the property, rights, interests and liabilities of The Baird Trust to a new company limited by guarantee. When the transfer has been completed, the current trust will be dissolved and the Acts of Parliament under which it was established and its constitution amended will be repealed.

Parliamentary consideration

The Preliminary Stage Report stated that:

“The Committee is satisfied that the transfer of the Current Trust to a company limited by guarantee is based on a reasonable expectation that this will simplify the operation of the Trust and improve its operation in terms of widening the scope for funding and support it offers. The Committee is also satisfied that the choice of legal structure is in keeping with modern public trust administration and charity law and is sensible for the future operation of the Trust. The Committee approved the removal of the need to promote further Bills to effect change.” (para 27)

In light of this, the Committee recommended that the general principles of the Bill be agreed to. It also recommended that the Bill should proceed as a private bill. Both these points were agreed by the Parliament following the Preliminary Stage debate.

The Committee's Preliminary Stage Report also included a recommendation relating to the remaining parliamentary stages of the Bill:

“Given that no member of the Committee wishes to lodge an amendment to the Bill, and that no objections have been submitted, the Committee recommends that the Parliamentary Bureau consider suspending the relevant Standing Orders to omit Consideration Stage of the Bill process.” (para 41)

The Parliamentary Bureau decided to follow the Committee’s recommendation and the Parliament agreed this course of action on 8 June 2005.

The Bill was generally considered to be a worthwhile and uncontroversial piece of legislation and was passed, following the Final Stage debate on 15 June 2005, without amendment.
Passage of the Bill

The Transport (Scotland) Bill [SP Bill 28] was introduced in the Parliament on 27 October 2004. The Local Government and Transport Committee was appointed lead committee while the Enterprise and Culture Committee, Finance Committee and Subordinate Legislation Committee as secondary committees also considered the Bill at Stage 1. Stage 1 consideration ran from 2 November 2004 until 8 February 2005. The Local Government and Transport Committee published its Stage 1 report on 22 February 2004. The general principles of the Bill were agreed at the meeting of the Parliament on 2 March 2005. The Local Government and Transport Committee’s Stage 2 consideration of the Bill ran across three meetings 19 April 2005, 26 April 2005 and 10 May 2005. The Bill was passed following the Stage 3 debate held on 29 June 2005.

Purpose and objectives of the Bill

The Bill allows Scottish Ministers to set up a network of regional transport partnerships, covering the whole of Scotland, which will co-ordinate certain local authority transport functions across authority boundaries. The boundaries and functions of each authority will be established by secondary legislation. The Bill also defines certain transport functions of Scottish Ministers, allowing for the establishment of a national transport agency and the wind up of Strathclyde Passenger Transport. The Bill allows for the creation of a Scottish road-works commissioner, alongside the introduction of additional local authority controls over road works. It also paves the way for the introduction of national concessionary fares schemes and makes several other miscellaneous modifications to transport law.

Parliamentary consideration

The Local Government and Transport Committee, while approving the general principles of the Bill, raised a series of concerns in its Stage 1 report including issues around the proposed boundaries of the regional transport partnerships, relative voting rights of councillors and other members of on partnership boards, the role and resourcing of the proposed road-works commissioner, the impact of restrictions on road works on utility provision and the financing of the proposed national concessionary fares scheme.
The Bill was subject to a series of amendments during Stage 2 consideration, the
major changes included; the creation of a Public Transport Users Committee for
Scotland, an increase the maximum number of councillors from each authority
represented on a regional transport partnership board to four, giving only councillor
board members a vote, allowing a partnership to consist of a single council and
imposing a series of additional functions on a regional transport partnership.

The Bill was again subject to amendment at Stage 3, the major changes including a
cap of 20 councillor members on each regional transport partnership board, with a
maximum of five councillor members from each authority plus the reintroduction of
limited voting rights for non-councillor members. In addition the development and
content of regional transport plans was further spelled out on the face of the Bill.
Local authorities will also be required to ensure that they enter details of road works
they carry out in the Scottish Roadworks Register.

Prohibition of Female Genital Mutilation (Scotland) Bill

Bill Number: SP Bill 29
Introduced on: 29 October 2004
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 26 May 2005
Royal Assent: 1 July 2005
2005 asp 8

Passage of the Bill

The Prohibition of Female Genital Mutilation (Scotland) Bill [SP Bill 29] was
introduced in the Parliament on 29 October 2004. Stage 1 commenced on 30
November 2004 and the Equal Opportunities Committee was designated as lead
committee. The Stage 1 debate took place on 3 March 2005 and the Bill was passed
following the Stage 3 parliamentary debate on 26 May 2005.

Purpose and objectives of the Bill

Female Genital Mutilation (FGM) has been unlawful in Scotland since 1985 by virtue
of the Prohibition of Female Circumcision Act 1985. Following the re-enactment of
this Act in the UK, with new provisions (see below), the intention of the Bill was to
ensure that equal legal protection be afforded in Scotland as in the rest of the UK.

Provisions of the Bill

The provisions of the Bill were based on the Female Genital Mutilation Act 2003,
which re-enacted and extended the provisions in the Prohibition of Female
Circumcision Act 1985 in England and Wales, but not in Scotland.
The Bill proposed to extend protection by giving the offence of FGM extra-territorial effect in order to protect those being sent abroad to have FGM carried out. The Bill also proposed an increase in the penalty on conviction from indictment from 5 to 14 years imprisonment.

**Parliamentary consideration**

The Committee received evidence from a range of witnesses at Stage 1 including representatives from the fields of midwifery, obstetrics and gynaecology; international organisations and charities; and women with direct experience of FGM.

The Equal Opportunities Committee had concerns that the definition of FGM did not capture the offence accurately and suggested that a definition closer to the World Health Organisation classification would be more appropriate. At Stage 2 the Minister proposed an amendment to extend the definition to other parts of the female genitalia which was agreed by the Committee along with a similar amendment proposed by the Committee.

In addition, at Stage 3 the Minister proposed an amendment to allow the revision of the offence of FGM by statutory instrument to update the definition in the future.

The Committee was also concerned that certain elective cosmetic surgical procedures, as well as procedures such as genital piercing or genital tattooing may be covered by the provisions of the Bill. In response to amendments lodged at Stage 2, the Minister explained that the Bill covered any procedure which had some mutilating effect, i.e. where it would permanently damage or disfigure the genitalia and that this was not the intention of cosmetic surgery, piercing or tattooing. The Committee accepted this.

A major concern for the Committee was the extra-territorial provisions of the Bill. The provisions are there to ensure that it would be an offence to take a girl abroad for the purpose of FGM, but an offence would only be committed if the person who carries out FGM or the victim is a UK national or a permanent UK resident. The Committee heard strong evidence that asylum seeker children and students from overseas should also be covered by the law. Elaine Smith MSP lodged an amendment at Stage 2 to ensure coverage for this group where the offence was committed by a UK national or permanent UK resident, which was accepted by the Minister.

Another amendment agreed to at Stage 2 came from the Minister. This related to concerns the Committee had about the protection of young girls who would be most at risk from FGM, and how different agencies respond to cases of FGM. The amendment adds offences under the Bill committed against children under the age of 17 to the list of offences in Schedule 1 to the Criminal Procedure (Scotland) Act 1995. This allows a convicting court to refer a child to the children’s panel. The reporter could then refer the child to a children’s hearing which is then able to impose measures to protect the child.

The major amendments to the Bill as passed therefore relate to the protection of non-UK national abroad when offences are committee by UK nationals; the increased
protection for children under the age of 17; and the provision to allow revision of the definition of FGM in the future.

Protection of Children and Prevention of Sexual Offences (Scotland) Bill

Bill Number: SP Bill 30
Introduced on: 29 October 2004
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 2 June 2005
Royal Assent: 12 July 2005

2005 asp 9

Passage of the Bill

The Protection of Children and Prevention of Sexual Offences (Scotland) Bill [SP Bill 30] was introduced in the Parliament on 29 October 2004. The Justice 1 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 8 December 2004. The Stage 1 debate took place on 17 March 2005 and the Bill was passed following the Stage 3 parliamentary debate on 2 June 2005.

Objectives of the Bill

The Policy Memorandum stated that the “primary objective of this Bill is to better protect children from sex offenders” (para 2). Although the main provisions of the Bill reflect this primary objective, it also contains provisions with the objective of better protecting both children and adults from sex offenders.

Provisions of the Bill as introduced

Two elements of the Bill as introduced focused on the primary objective of better protecting children from sex offenders:

1. ‘Meeting a child following certain preliminary contact’ – a new criminal offence aimed at preventing an adult sexually abusing a child, following some earlier communication between the two (e.g. via the internet or through telephone conversations), during which the adult seeks to gain the child’s trust. The offence is concerned with the problem of sexual abuse following what is sometimes described as ‘grooming’. Although the offence is structured in a way which seeks to catch an offender before sexual abuse takes place, it does not criminalise communications amounting to grooming without some further action.

2. Risk of Sexual Harm Orders (RSHOs) – a new type of civil preventative order which the police could seek from a court to restrict the activities of an adult who is believed to present a risk of sexual harm to children. The RSHO, and the specific
restrictions which it imposes, must be necessary to protect a specific child or children generally from harm. There does not have to be evidence of behaviour amounting to a criminal offence, although an RSHO might be used where there has been behaviour which might be criminal but where there is insufficient evidence for criminal proceedings.

A third element of the Bill as introduced sought to further protect both children and adults from convicted sex offenders by extending the availability of existing measures:

3. Sexual Offences Prevention Orders (SOPOs) – a type of civil preventative order which the courts are already able to impose to restrict the movements of sex offenders. Currently, SOPOs may be imposed where there is evidence of threatening behaviour post conviction (e.g. after release from a custodial sentence) leading to an application by the police. The Bill extends the availability of SOPOs by allowing the courts to impose an order on conviction.

Parliamentary consideration

The Justice 1 Committee’s Stage 1 Report stated that, overall, the Committee considered that the Bill “has the potential to be a useful addition to the current law to protect children and to prevent sexual offences” (para 213). It did, however, highlight a number of areas where the Committee had reservations.

A number of amendments agreed at Stage 2 reflected concerns or recommendations expressed in the Stage 1 Report. For example, in relation to the new criminal offence of ‘meeting a child following certain preliminary contact’, the Stage 1 Report recommended that, in order to ensure the widest possible application of the offence, no minimum age should be specified for the offender. Instead, it should be left to the Crown Office, social work and other agencies to determine the correct intervention in the case of a young person accused of committing an offence. As a result of amendments agreed at Stage 2, the need for the offender to be an adult (aged 18 or over) was removed. A similar change was made in relation to the application of RSHOs.

In addition to amending existing provisions of the Bill, a number of significant new provisions (contained in Executive amendments) were added at Stage 2 and further amended at Stage 3. In particular: (a) new offences aimed at people who buy sexual services from those under the age of 18, or who encourage, control and arrange such services; and (b) provisions extending existing laws relating to the making and distribution of indecent images of children and young people.

The new provisions, by extending protection to young people under the age of 18, are intended to bring Scots law into line with: (a) the Optional Protocol to the UN Convention on the Rights of the Child dealing with the sale of children, child prostitution and child pornography; and (b) the EU Council Framework Decision on combating the sexual exploitation of children and child pornography. The definition of a ‘child’ in both documents includes persons under the age of 18. Generally speaking, Scots law allows young people aged 16 or over to engage in consensual
sexual activity without the threat of criminal sanctions. Thus, the fact that the new provisions apply to those under the age of 18 extends the scope of the criminal law.

Council Tax Abolition and Service Tax Introduction (Scotland) Bill

Bill Number: SP Bill 31
Introduced on: 11 November 2004
Introduced by: Tommy Sheridan (Member’s Bill)
Fell: 1 February 2006

Passage of the Bill

The Council Tax Abolition and Service Tax Introduction (Scotland) Bill [SP Bill 31] was introduced in the Parliament on 11 November 2004. Stage One commenced on 25 January 2005 with the lead committee, the Local Government and Transport Committee, agreeing its approach on the Bill. The Bill was also considered by the Finance and Subordinate Legislation committees. The Stage One report of the Local Government and Transport Committee was published on 23 January 2006 and the Bill fell on 1 February 2006 with 12 MSPs voting ‘For’ the Bill, 94 ‘Against’ and 6 ‘Abstentions’.

Purpose and objectives of the Bill

The Bill sought to abolish the council tax and to replace the existing system of local taxation with a form of income tax which would be collected either by the Inland Revenue or local authorities with funds accruing being pooled nationally and then redistributed to local authorities by the Scottish Executive. The overall policy objective of the Bill was to:

“effect a significant redistribution of income in favour of low income citizens and families across Scotland thus reducing poverty through the replacement of the current council tax with a personal income based alternative applied in a progressive fashion to various levels of income” (Policy Memorandum to the Bill, p.1)

The Bill proposed the following rates of taxation:

- Band A – Below £10,000 – 0%
- Band B - £10,000 to £29,999.99 – 4.5%
- Band C - £30,000 to £49,999.99 – 15%
- Band D - £50,000 to £89,999.99 – 18%
- Band E - £90,000 and over – 20%
Local Government and Transport Committee Stage One Report

The Local Government and Transport Committee report reached the following conclusion:

“The Committee concluded that as a result of the previous detailed conclusions and recommendations reached, that the Council Tax Abolition and Service Tax Introduction (Scotland) Bill is a flawed proposal, which would not have the impact on poverty that is claimed, would damage the Scottish economy and undermine local democracy, and as a result recommends that the Bill should be rejected by Parliament at Stage 1” (Local Government and Transport Committee, Stage One report on the Bill, Paragraph 10).

It is important to note that Tommy Sheridan MSP dissented from this conclusion and that Bruce Crawford MSP and Fergus Ewing MSP proposed an alternative paragraph which was not agreed to by the Committee.

The Stage 1 report expressed a number of concerns regarding the provisions in the Bill including that the Bill would not have the effect on poverty intended, no overall economic impact had been conducted, that no significant research had been undertaken on the potential impact of fiscal flight on public services and the economy. In addition the Committee noted that the Bill would result in local authorities losing financial autonomy over council tax setting. The report also concluded that the Parliament should await the report of the Independent Local Government Finance Review Committee before embarking on a fundamental change to the system of local taxation.

Charities and Trustee Investment (Scotland) Bill

Bill Number: SP Bill 32
Introduced on: 15 November 2004
Introduced by: Malcolm Chisholm (Executive Bill)
Passed: 9 June 2005
Royal Assent: 14 July 2005

2005 asp 10

Passage of the Bill

The Charities and Trustee Investment (Scotland) Bill [SP Bill 32] was introduced in the Parliament by Malcolm Chisholm on 15 November 2004 with the Communities Committee designated the lead committee. The Stage 1 debate took place on 9 March 2005 and the Bill was passed following the Stage 3 parliamentary debate on 9 June 2005.
Purpose and objectives of the Bill

The primary objective of the Bill was to establish a new regulatory framework for the charitable sector in Scotland, which would help promote public confidence in charities and meet the needs of the Scottish charity sector.

Provisions of the Bill

The Bill makes provision for a new regulatory regime for charities in Scotland. It establishes the Office of Scottish Charity Regulator (OSCR) as a statutory body corporate. The general functions of the OSCR are to:

- determine charitable status
- keep a public register of charities
- encourage facilitate and monitor compliance with charity legislation
- investigate misconduct
- take remedial or protective action if necessary
- advise or make proposals to the Scottish Ministers on matters relating to its functions

The Bill removes the presumption of public benefit for all charities and introduces the two-part ‘charity-test’ where an organisation must prove that it:

- has one or more of the sixteen charitable purposes, including the advancement of religion and the prevention or relief of poverty.
- is able to demonstrate that it provides public benefit.

The Bill also includes provisions for a new legal form for charities to take on corporate status and limit liability for their members.

Parliamentary consideration

Prior to the introduction of the Bill the Communities Committee consulted with a number of voluntary and charitable organisations in Aberdeen, Perth and Glasgow on the Scottish Executive’s draft Charities and Trustee Investment (Scotland) Bill. They also met with several independent schools. In June 2004 the Committee held an informal video-conference with the Joint Committee at Westminster which was considering the draft Charities Bill for England and Wales. The Communities Committee received evidence from a wide range of organisations including a number of charities, independent schools, Universities Scotland and the National Galleries, Museum and Library as part of its Stage 1 inquiry.

There were several amendments to the Bill as it underwent its passage through Parliament.

There was debate concerning whether private schools would or should retain their charitable status under the requirement that all charities have to demonstrate that they provide public benefit. At Stage 2, John Home Robertson MSP introduced an amendment, subsequently agreed to, which inserted specific reference to charges and fees being considered in relation to whether any condition on obtaining a benefit...
is unduly restrictive. Ultimately provisions in the Bill mean that it will be OSCR that will
decide if organisations can be recognised as charities on a case by case basis. There
was debate surrounding whether private schools would lose tax relief if they lost their
charitable status. This is because tax relief is a matter for HM Revenue & Customs,
which makes decisions on relief, based on the definition of what is charitable for tax
purposes in UK legislation.

There were also changes to the definition of charitable purposes including the
addition of the advancement of health, the provision of recreational facilities or the
organisation of recreational activities, the promotion of religious or racial harmony and
the promotion of equality and diversity.

The Bill as introduced sought to prevent bodies whose constitution allows control by a
third party from passing the charity test. Concerns were identified during committee
Stage 1 evidence, especially in relation to the status of national collection non-
departmental public bodies, e.g. National Galleries of Scotland, as charities. The
Minister for Communities introduced an amendment at Stage 2, subsequently agreed
to, which meant that any body that has a ministerial power of direction in its
constitution will not be eligible for charitable status, unless Ministers seek specific
exemptions from that requirement and that other bodies that are under some form of
control will continue to be eligible.

**Smoking, Health, and Social Care (Scotland) Bill**

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<tr>
<th>Bill Number:</th>
<th>SP Bill 33</th>
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<td>Introduced on:</td>
<td>16 December 2004</td>
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<tr>
<td>Introduced by:</td>
<td>Andy Kerr (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>30 June 2005</td>
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<td>Royal Assent:</td>
<td>5 August 2005</td>
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2005 asp 13

**Passage of the Bill**

The Smoking, Health and Social Care (Scotland) Bill [SP Bill 33] was introduced in
the Parliament on 16 December 2004. Stage 1 commenced on 11 January 2005,
with the Health Committee as the lead committee. The Stage 1 debate took place on
28 April 2005 and the Bill was passed following the Stage 3 parliamentary debate on
30 June 2005.

**Purpose and objectives of the Bill**

The Bill is required to:

- prohibit smoking in certain wholly or substantially enclosed places; to enable the
  Scottish Ministers by order to vary the minimum age limit of those to whom
tobacco may be sold, following the consultation ‘Smoking in Public Places: A Consultation’

- make provision in relation to general dental services, general ophthalmic services, personal dental services, pharmaceutical care services and detection of vision problems in children. This follows the consultations ‘Modernising NHS Dental Services in Scotland’ and ‘Modernising NHS Community Pharmacy in Scotland: Consultation Paper’, together with the commitments made in ‘A Partnership for a Better Scotland: Partnership Agreement’
- make provision in relation to disqualification by the NHS Tribunal, following the consultation ‘Further Measures to Improve the Provision of Primary Care Services: A Consultation’
- make provision for payments to certain persons infected with hepatitis C
- make provision for amendment of the Regulation of Care (Scotland) Act 2001
- make provision for registration of child care agencies and housing support services
- amend the Adults with Incapacity (Scotland) Act 2000
- make provision for appeals against certain orders under the Public Health (Scotland) Act 1897
- make provision for the ability of Scottish Ministers and health bodies to enter into joint ventures
- make provision for the Scottish Hospital Endowments Research Trust

Provisions of the Bill

The main provisions in the Bill are contained in several parts:

**Part 1 - Smoking: Prohibition and Control**

This makes provision for a ban on smoking in certain wholly or substantially enclosed places:

- creating an offence of permitting others to smoke in and on no-smoking premises
- creating an offence of smoking in no-smoking premises
- creating an offence of failing to display warning notices in no-smoking premises
- setting out the powers of enforcement officers to enter no-smoking premises
- creating an offence of failing without reasonable excuse to give one’s name and address on request by an authorised officer
- enabling Scottish Ministers to vary the age for the purchase of tobacco

**Part 2 - General Dental Services, General Ophthalmic Services, Personal Dental Services etc**

This provides for various matters concerning general dental services, personal dental services and general ophthalmic services:

- free oral health assessments and dental examinations
- free eye examinations and sight tests
- assistance and support in the provision of general dental services
• NHS provision of certain dental services
• listing of those persons undertaking to provide or approved to assist in the provision of general ophthalmic services
• listing of those persons undertaking to provide or approved to assist in the provision of general dental services and those persons performing personal dental services

Part 3 - Pharmaceutical Care services etc.

This makes a series of provisions regarding pharmaceutical care services:

• requirements on Health Boards to plan provision of pharmaceutical care services
• contracts for provision of pharmaceutical care services
• listing of persons performing pharmaceutical care services
• provision of assistance and support for pharmaceutical care services

Part 4 - Discipline

Amends the disciplinary powers and duties of the NHS Tribunal and NHS Boards, concerning family health service practitioners (ie general medical practitioners, general dental practitioners, pharmacists, optometrists and general ophthalmic practitioners).

Part 5 – Miscellaneous

This makes provisions on a number of issues:

• enables Scottish Ministers to establish a scheme for the making of payments to certain persons infected with hepatitis C as a result of NHS treatment and to certain persons infected with the virus by transmission of it from a person infected with it as a result of such treatment
• amends the Regulation of Care (Scotland) Act 2001 as regards: what constitutes an independent health care service; implementation of certain decisions by the Scottish Commission for the Regulation of Care or the Scottish Social Services Council; the provision of information to the Council; and the minimum frequency of inspection of care services by the Commission
• provides further time for applications to be made for registration of child care agencies and housing support services under the Regulation of Care (Scotland) Act 2001 and provides authorisation for the payment of certain grants to such services while not registered under that Act
• amends the Adults with Incapacity (Scotland) Act 2000 as respects authorisation of medical treatment
• amends the Public Health (Scotland) Act 1897 to introduce a right of appeal in certain cases under that Act
• enables Scottish Ministers to form, participate in and provide assistance to companies for the purpose of providing facilities or services for persons exercising functions under the National Health Service (Scotland) Act 1978 or of making money available to the health service in Scotland (joint ventures)
amends the rules as to membership of and other matters relating to the Scottish Hospital Endowments Research Trust

Parliamentary consideration

In its Stage 1 Report the Health Committee noted that it had some concerns that the diverse nature of the Bill made it more difficult to carry out effective scrutiny. It recommended that the Executive bring forward bills that are more discrete in nature to avoid the difficulty of having to deal with very different subject matter.

In general terms the Committee was satisfied with the provisions in the Bill, though this was by majority decision when considering the smoking provisions. There was some concern with the proposals for joint ventures, though this mainly concerned that the legislation was based on the use of one model of joint venture, the performance of which could not be properly assessed due to the short period it had been in operation.

During Stages 2 and 3, the most significant amendments were:

- an Executive amendment which sought to give Ministers the power to amend section 25(5) of the Regulation of Care (Scotland) Act 2001, and, after consultation, bring forward regulations that could lengthen the time within which the Care Commission inspections take place (though not shorten it). The Health Committee took evidence on this amendment from the Care Commission, the care sector and service user groups, and following assurances from the Executive agreed to the amendment.
- An amendment proposed by Duncan McNeil MSP at Stage 2, which sought to give Ministers the power to introduce regulations, following consultation, to vary the age for the purchase of tobacco. This received support from the Health Committee at Stage 2, and was further amended by the Executive at Stage 3 to ensure that any regulations would be dealt with by affirmative procedure in Parliament.
- An amendment at Stage 3 proposed by Duncan McNeil MSP, which placed a duty on Scottish Ministers to ensure that they take all reasonable steps to provide for the detection of vision problems in children. This was agreed to by Parliament.
Budget (Scotland) (No 2) Bill

Bill Number: SP Bill 34
Introduced on: 19 January 2005
Introduced by: Tom McCabe (Budget Bill)
Passed: 9 February 2005
Royal Assent: 17 March 2005

2005 asp 4

Passage of the Bill

The Budget (Scotland) (No 2) Bill [SP Bill 34] was introduced on 19 January 2005. The Stage 1 debate took place on 27 January 2005. The Finance Committee considered the Bill at Stage 2 on 1 February 2005 and it was passed on 9 February 2005.

Purpose and objectives of the Bill

The passage of the Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2005/6. 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.

Provisions of the Bill

The Bill will authorise over £23.45 billion of cash expenditure by the Scottish Executive and its associated bodies, other organisations whose core funding is centrally provided (e.g. local authorities and health boards), the Forestry Commissioners, the Food Standards Agency the Scottish Parliament Corporate Body and Audit Scotland.

For more details of the Scottish Budget process see the summary for the Budget (Scotland) Bill [SP Bill 16].
Abolition of NHS Prescription Charges (Scotland) Bill

Bill Number: SP Bill 35
Introduced on: 19 January 2005
Introduced by: Colin Fox (Member’s Bill)
Fell: 25 January 2006

Passage of the Bill

The Abolition of NHS Prescription Charges (Scotland) Bill (SP Bill 35) was introduced by Colin Fox MSP on 19 January 2005. Stage 1 commenced on 1 February 2005 with the Health Committee as the lead committee. In its Stage 1 report the Health Committee, by a narrow majority, recommended that Parliament support the general principles of the Bill. The stage 1 debate took place on 25 January 2006 when the Bill fell with 40 votes in favour, 77 against and 1 abstention.

Purpose and objectives of the Bill

The Bill sought to abolish all charges for Scottish NHS prescriptions and so, by removing this barrier, improve access to prescription medicines and improve public health. The existing system of prescription charges is perceived to be anomalous and is not based on either need or ability to pay.

Provisions of the Bill

The Bill sought to amend section 69 of the National Health Service (Scotland) Act 1978. This amendment would remove the power of Scottish Ministers to set charges for Scottish prescriptions and would revoke the regulations which set out the current level of charge (National Health Service (Charges for Drugs and Appliances) Amendment Regulations 2005 (SSI 2005/124)).

Parliamentary consideration

The Health Committee’s consideration of the Bill centred on the public health and economic impact of abolishing prescription charges.

The Health Committee sought evidence that prescription charges act as a barrier to accessing medicines and as a consequence have a detrimental impact on health. Some evidence received by the Committee suggested that this was the case. However the Committee also felt that removing charges would financially benefit those who can afford to pay and remove revenue from the NHS. In relation to the assertion that removing charges would reduce hospital admissions, neither the Health Committee nor the Finance Committee were convinced that these savings would be at a level sufficient to offset the total cost of the Bill.

Both the Health Committee and the Finance Committee were of the opinion that the cost of the Bill could be significantly higher than estimated in the financial memorandum. Both Committees believed that abolishing charges would lead to an
increase in demand for health services and prescription medicines. This increase was not quantified in the memorandum.

Nevertheless, when considering the Bill, the Health Committee was aware that as part of the Partnership Agreement, the Scottish Executive was committed to reviewing the prescription charging system. Some Members of the Committee expressed their disquiet that two and a half years later the Scottish Executive had not issued a consultation on proposed changes. Having heard evidence of the anomalies in the system, all Members of the Committee were of the opinion that the status quo was not an option and in the absence of alternative proposals from the Scottish Executive, the Committee narrowly voted in favour of the Bill.

Despite the Health Committee’s support, the Bill fell at the Stage 1 debate. Much of the opposition in the debate centred on the cost of the Bill as it was felt that it would not only remove revenue from the NHS but would increase demand for services.

**Family Law (Scotland) Bill**

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<td>Introduced on:</td>
<td>7 February 2005</td>
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<td>Introduced by:</td>
<td>Cathy Jamieson (Executive Bill)</td>
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<td>Passed:</td>
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<td>20 January 2006</td>
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2006 asp 2

**Passage of the Bill**

The Family Law (Scotland) Bill [SP Bill 36] was introduced in the Parliament on 7 February 2005. Stage 1 commenced on 15 March 2005 with the Justice 1 Committee as the lead committee. The Stage 1 debate took place on 15 September 2005 and the Bill was passed following the Stage 3 parliamentary debate on 15 December 2005.

**Purpose and objectives of the Bill**

The Bill makes a number of significant changes to Scottish family law including changes to the periods of separation prior to divorce, new legal rights for cohabiting couples and new parental rights and responsibilities for unmarried fathers.

At the time of the Bill’s introduction, the Scottish Executive also announced a range of non-legislative measures designed to complement the legislation. These included the Grandparent’s Charter (which was ultimately renamed the Grandchildren’s Charter), intended to improve the relationships of children with their grandparents, and the
Parenting Agreement, a tool that parents could use to resolve conflicts over time spent with children after separation.

Provisions of the Bill

There are currently two grounds of divorce in Scots law based on periods of separation by the parties concerned. The Bill reduces the relevant separation periods. Specifically, in relation to the ground of divorce where both parties consent to the divorce, the change to the relevant period provided for by the Bill is from two years to one year. In relation to the ground of divorce where one party does not consent to the divorce the change to the relevant period is from five years to two years.

In relation to cohabiting couples, the Bill creates a range of new legal rights and responsibilities applicable to them. Most notably it provides that where one party dies intestate (i.e. without having a will) it will be possible for his or her cohabitant to apply to the court for financial provision out of his or her deceased partner’s estate. Furthermore, where the relationship ends other than by death it will be possible for a cohabitant to apply to the court for financial provision to be made by his or her partner. In deciding whether to grant such applications on death and separation the court takes a range of factors into account. The provisions in the Bill on cohabitants also apply to same sex couples.

The Bill also makes it easier for unmarried fathers to acquire a range of parental rights and responsibilities (PRRs) in respect of their children. At present, unmarried fathers do not have PRRs automatically (contrasting with the position for mothers and fathers who are, or have been, married to the child’s mother). Unmarried fathers can acquire PRRs by court application or by entering into a formal agreement with the child’s mother. The Bill provides that joint registration of the birth with the child’s mother will in future result in the acquisition of PRRs by an unmarried father.

In addition to the major changes described above, the Bill also makes a series of minor changes to Scottish family law in relation to areas such as matrimonial homes, court orders intended to protect individuals from domestic abuse and private international law (the law covering situations between private individuals with an international element).

Parliamentary consideration

In relation to the divorce proposals the majority view of the Justice 1 Committee at Stage 1 was that insufficient social research evidence had been received by the Committee to justify the Executive’s specific proposals to reduce the separation periods. At Stage 2 a non-executive amendment was passed by the Committee to shorten the relevant periods to three years (where one party did not consent to the divorce) and eighteen months (where both parties consented to the divorce). At Stage 3 the Executive’s original proposals were reinstated by a parliamentary majority.

Another concern of the Justice 1 Committee at Stage 1 was that there were problems relating to the enforceability of ‘contact orders’ (court orders permitting the parent that does not live with the child to see him or her) and that these problems were not dealt with by the Bill. Various amendments were tabled at Stages 2 and 3 aimed at
addressing this issue. Notably, at Stage 2 an amendment was passed which required courts to warn parties of the consequences of a breach of a contact order at the time when it was imposed. At Stage 3 this requirement was removed. However, the Executive did give various non-legislative commitments relating to contact orders, including that it would undertake further research in this area.

In relation to the non-legislative measures which accompanied the legislation the Justice 1 Committee concluded at Stage 1 that the structure of family support services should be reviewed and that the Scottish Court Service should consider creating specialist family courts across Scotland. At Stage 3 the Executive announced extra funding for family support services in 2006–2007.

### Licensing (Scotland) Bill

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<td>28 February 2005</td>
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<tr>
<td>Introduced by:</td>
<td>Tom McCabe (Executive Bill)</td>
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<tr>
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<td>16 November 2005</td>
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<td>21 December 2005</td>
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### Passage of the Bill

The Licensing (Scotland) Bill [SP Bill 37] was introduced in the Parliament on 28 February 2005. Stage 1 commenced on 1 March 2005 with the Local Government and Transport Committee as the lead committee and the Justice 2 Committee and Subordinate Legislation Committee acting as secondary committees on the Bill. The Stage 1 debate took place on 22 June 2005 and the Bill was passed following the Stage 3 debate on 16 November 2005.

### Purpose and objectives of the Bill

The policy intention of the Bill is to modernise the existing legislation in relation to licensing in order to introduce a simpler and more flexible licensing system. This allows for the interests of key stakeholders to be articulated within the licensing process as well as introducing a range of monitoring and enforcement mechanisms. Specifically the Bill seeks to reduce underage drinking, reduce binge drinking, provide a voice for communities in relation to licensing, and modernise the licensing regime.

The Bill is the product of an extensive process of policy development and consultation. In particular, the Bill follows on from the report of the Nicholson Committee (‘Review of Liquor Licensing in Scotland’) and of the Daniels Working Group (‘Off Sales in the Community’). In addition the Scottish Executive established
an ‘Expert Reference Group’ which assisted in the development of the Bill and provided a framework for the development of regulations associated with the Bill.

Provisions of the Bill

The Bill:

- Establishes a national framework for licensing based around 5 ‘licensing objectives’. These are: preventing crime and disorder, securing public safety, preventing public nuisance, protecting and improving public health, and protecting children from harm.
- Contains a range of provisions in relation to the remit, functions and membership of Licensing Boards
- Establishes Local Licensing Forums on a statutory basis
- Establishes the roles and functions of Licensing Standards Officers
- Replaces the current system of licenses with two main forms of licence: premises licences and personal licences
- Allows for the granting of occasional licences
- Allows licensing boards to agree opening hours of premises with the holders of premises licences, albeit that opening for a continuous period of 24 hours will only be allowed in exceptional circumstances.
- Provides, in relation to off-sales hours, that alcohol may not be sold for consumption off the premises on any day before 10 am or after 10 pm.
- Establishes mandatory training requirements for staff employed in the licensed trade
- Contains provisions to outlaw ‘irresponsible drinking promotions’ including what are commonly termed ‘happy hours’
- Contains measures to address under age drinking including requiring all licence holders to operate on a ‘no proof, no sale’ basis and the introduction of test purchasing
Passage of the Bill

The Environmental Assessment (Scotland) Bill [SP Bill 38] was introduced in the Parliament on 2 March 2005. Stage 1 began on 20 April 2005 with the Environment and Rural Development Committee as the lead committee. The Stage 1 debate took place on 16 June 2005, and the Bill was passed following the Stage 3 parliamentary debate on 9 November 2005.

Purpose and objectives of the Bill

The Bill makes provision for the assessment of the environmental effects of certain plans and programmes. EU Directive 2001/42/EC (the SEA Directive) was initially transposed into Scots law by the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258) (SEA Regulations) which require an environmental assessment of certain plans and programmes to be undertaken. The Bill is the new transposition vehicle for the SEA Directive.

The Bill aims to improve protection of the environment and to improve decision making. It extends on the provisions of the SEA Regulations by specifically stating that plans and programmes include “strategies” and by requiring certain authorities and bodies to carry out an SEA on all their plans and programmes, as opposed to just certain plans and programmes as required by the Regulations.

Provisions of the Bill

Part 1 of the Bill establishes a requirement for environmental assessment of plans and programmes by Responsible Authorities. A Responsible Authority is any person, body or office holder that exercises functions of a public character. It also:

- describes the plans and programmes which qualify for SEA, and includes provisions for exemptions for certain plans and programmes
- defines the Scottish Ministers (Historic Scotland), Scottish Environment Protection Agency, and Scottish Natural Heritage as Consultation Authorities for environmental assessment
- allows for a pre-screening process to exempt plans or programmes that have no or minimal environmental effects
allows for a screening process to ensure that SEA is only targeted at plans or programmes that are likely to have significant environmental effects

Part 1 establishes that the Bill applies to plans and programmes subject to preparation and/or adoption by a Responsible Authority at a national, regional or local level (or prepared by a Responsible Authority for adoption through a legislative procedure). The Bill only applies to plans and programmes that relate solely to the whole or any part of Scotland. There are plans and programmes to which the Bill does not apply. It does not apply to those solely concerned with national defence or civil emergency, finance or budget proposals. The Bill does apply to plans and programmes in areas such as agriculture, forestry, fisheries, water management and telecommunications.

Part 2 of the Bill introduces four Sections concerning the process of carrying out an SEA; preparation of environmental reports, scoping, and consultation procedures. Importantly, there is also a requirement for Responsible Authorities to take account of the environmental report during the decision-making process.

Parliamentary consideration

The Environment and Rural Development Committee took evidence on the Bill between April and May 2005. Based on the evidence taken, the committee raised concerns regarding the following issues:

- the applicability of the Bill to private companies carrying out public functions
- the relationship between environmental impact assessment of projects, and strategic environmental assessment of plans and programmes
- the provision of adequate training for Responsible Authorities to successfully implement the Bill
- the exclusion of financial plans
- the use of the term ‘minimal effect’, and a lack of clarity over the term ‘significant effect’
- the lack of a public register to effectively monitor plans and programmes that have been exempted under pre-screening
- a lack of monitoring provisions to ensure the effectiveness and quality of SEAs

The main changes made to the Bill during its progress through Parliament are:

- the inclusion of a pre-screening register
- provision for an annual report to be laid before Parliament up to and including 2010
Passage of the Bill

The Management of Offenders etc. (Scotland) Bill [SP Bill 39] was introduced in the Scottish Parliament on 4 March 2005 by the Minister for Justice. The Justice 2 committee was designated as lead committee for the Bill. Stage 1 consideration of the Bill commenced on 12 April 2005 and the Justice 2 Committee report on Stage 1 was published on 8 June 2005. The Stage 1 debate took place on 16 June 2005. The Stage 3 debate took place on 3 November 2005. Following the Stage 3 debate the Bill was passed.

Purpose and objectives of the Bill

The Bill takes forward a number of policy commitments from the Scottish Executive’s, Supporting Safer, Stronger Communities: Scotland’s Criminal Justice Plan, which was launched in December 2004. The Bill aims to reduce levels of re-offending in Scotland by improving the management of offenders through greater integration of the work undertaken by the various criminal justice agencies in Scotland. In 2004, the Scottish Executive issued its consultation on re-offending, Reduce, Rehabilitate, Reform. From responses received, there appeared to the Executive to be weaknesses in the way that offenders were being managed which in themselves were contributing to the levels of re-offending in Scotland. In December 2004, by way of response, the Scottish Executive published its Criminal Justice Plan Supporting Safer, Stronger, Communities setting out its proposals for addressing those weaknesses.

Provisions of the Bill

Among the key provisions are plans to:

- establish new Community Justice Authorities which will co-ordinate and improve the delivery of services for offenders;
- require the police, local authorities and the Scottish Prison Service to establish joint arrangements for assessing and managing the risk posed by sexual and violent offenders;
- end unconditional early release for sex offenders sentenced to between six months and four years in prison, who will instead be released on licence and may be subject to additional conditions, relating to their offending behaviour;
• enable the Criminal Injuries Compensation Authority to recover sums paid to victims from the perpetrators of crime; and
• establish a Home Detention Curfew scheme that will enable selected low risk prisoners nearing the end of their sentences to serve the remainder of their term in the community, subject to an electronically monitored curfew.

Parliamentary consideration

A number of changes were made to the Bill on its passage through Parliament and the following section outlines the major changes which took place. An Executive amendment at Stage 3 sought to provide courts with the necessary statutory powers to conduct progress review hearings of offenders who are subject to a probation order. This enabling power would allow courts to hold review hearings in instances in which they are felt likely to be of positive benefit to the offender’s progress on the order. The amendment was agreed to and a new section, 10ZA was added to the Bill.

At Stage 2 of the Bill, the Executive also took action to end the unconditional release of short-term sex offenders. Such offenders will now be supervised and subject to licence conditions until the end of their sentences. Bill Butler MSP asked whether the Executive could extend the classes of offender to whom the new measures would apply to include not only those who were convicted on or after the new provisions come into force but also those who were already serving their sentence at the time. After considering this proposal, the Executive brought forward amendments at Stage 3 which extend the new measures to include those in custody at the time of commencement. These amendments amend Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Section 11ZA was added to the Bill at Stage 3 and was a result of an Executive amendment which sought to add flexibility to the Scottish Prison Service’s (SPS) drug-testing regime. This provision will allow the SPS to obtain and test saliva samples from prisoners for the purpose of detecting drugs in their system. The Deputy Justice Minister, Hugh Henry argued that Amendment 21 would allow the Scottish Prison Service to develop simplified and more cost-effective processes that take advantage of scientific advances in drug testing. A consequential amendment added this provision to the long title of the Bill.
Housing (Scotland) Bill

Bill Number: SP Bill 40
Introduced on: 7 March 2005
Introduced by: Malcolm Chisholm (Executive Bill)
Passed: 24 November 2005
Royal Assent: 5 January 2006

2006 asp 1

Passage of the Bill

The Housing (Scotland) Bill [SP Bill 40] was introduced in the Parliament on 7 March 2005. The Communities Committee, as the lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 16 March 2005. The Stage 1 debate took place on 29 June 2005 and the Bill was passed following the Stage 3 parliamentary debate on 24 November 2005.

Purpose and Objectives of the Bill

The primary objective of the Bill is to improve the condition and quality of private sector housing. It does this by a variety of methods:

- Local authority powers to deal with disrepair and lack of maintenance in privately owned housing are modernised and extended.
- The provisions for local authority advice and assistance to home owners are also amended.
- The Bill introduces measures to allow potential buyers of houses to receive more information about the condition of houses for sale.
- In the private rented sector, the Repairing Standard that landlords are required to meet is set out and tenants are given the power to enforce this standard through a new Private Rented Housing Panel.
- Tenants of private rented sector property will also have a right to adapt the property to meet the needs of their disabilities.

Provisions of the Bill

The Bill is in 10 Parts. Part 1 relates to housing standards. It cover housing renewal areas, which replace existing housing action areas, amends the Tolerable Standard, and gives local authorities the power to serve maintenance orders. Tenants of private rented accommodation are given the right to adapt properties to meet any needs arising from a disability. The Bill sets out the private rented repairing standard and sets up the Private Rented Housing Panel to allow tenants to enforce the standard.

Part 2 sets out the details of the scheme of assistance for housing purposes. The assistance can take the form of grants, loans, subsidised loans, practical assistance,
information or advice. In certain circumstances local authorities must provide assistance.

Part 3 gives the Scottish Ministers powers to require sellers of houses or their agents to provide specified information to potential buyers. Part 3A gives the Scottish Ministers powers to establish and to approve a scheme a tenancy deposits in the private rented sector. In Part 4 the system of licensing of houses in multiple occupation, which is presently founded in secondary legislation under the Civic Government (Scotland) Act 1982, is re-enacted in primary legislation, with some changes to its details.

Part 5 amends legislation relating to occupiers of mobile homes who let stances. Part 5 A contains provisions relating to the repayment of charges incurred by local authority expenditure

Part 6 contains a number of miscellaneous provisions and introduces a duty on ministers to prepare a strategy for the improvement and energy efficiency of living accommodation. Part 7 deals with rights of local authorities, Private Rented Housing Committees, house owners, landlords and the police to enter houses for specified purposes, such as carrying out work. Part 8 deals with various technical matters.

**Parliamentary Consideration**

Given the proposals largely stemmed from the work of the Housing Improvement Task force there was general consensus of the broad aims of the bill. The most contentious parts related to the single seller survey and disabled adaptations. On the issue of the single seller survey a number of witnesses claimed that it would prove to be too expensive and would lead to some owners not putting their property on the market. The Committee’s Stage 1 report recommended that further consideration should be given to some issues in order to inform the preparation of regulations.

Groups representing disabled persons claimed that the proposals for advice and assistance were not sufficient. Stage 2 amendments introduced by the Executive allow Ministers to extend the arrangements for assistance for disabled adaptations following assessment of the level of need that disabled people have for various types of adaptations in various circumstances. In relation to the right to adapt private rented properties to meet the needs of disabled occupants another Stage 2 amendment provides for landlords or the court to have regard to codes of practice and guidance issued by the Disability Rights Commission when considering whether it is reasonable to refuse, or apply conditions to, a tenant’s application for consent to make such adaptations.

At Stage 2 the Executive also introduced amendments allowing the establishment of a tenancy deposit scheme.

At Stage 3 amendments were introduced to raise the penalties for non-compliance with HMO regulations from £5,000 to £20,000. In addition another amendment requires Scottish Ministers to produce a domestic energy efficiency strategy.
St Andrew’s Day Bank Holiday (Scotland) Bill

Bill Number: SP Bill 41
Introduced on: 19 May 2005
Introduced by: Dennis Canavan (Member’s Bill)
Passed: 29 November 2006
Royal Assent: 15 January 2007

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Passage of the Bill

The St Andrew’s Day Bank Holiday (Scotland) Bill [SP Bill 41] was introduced in the Parliament by Dennis Canavan MSP on 19 May 2005. Stage 1 commenced on 8 September with the Enterprise and Culture Committee designated as the lead committee. The first of two Stage 1 debates was held on 6 October 2005, after which the Bill was referred back to the Committee for further consideration of the general principles. The Committee took further evidence and recommended a second time that the Parliament agree to the general principles of the Bill. A second Stage 1 parliamentary debate was held on 28 September 2006. Following approval of the general principles the Bill was passed without amendment following the Stage 3 parliamentary debate on 29 November 2006. The Bill received Royal Assent on 15 January 2007.

Purpose and objectives of the Bill

The Bill aims to facilitate the creation of a “national day” on St Andrew’s Day (or the following Monday if St Andrew’s Day falls at a weekend) in order to celebrate Scotland and its people in terms of culture, diversity, history, tradition, contemporary society, arts, sport, enterprise and international standing. An underlying aim of the Bill is to bring Scotland closer into line with Northern Ireland and other European countries that enjoy more public holidays.

Provisions of the Bill

The Bill amends the Banking and Financial Dealings Act 1971 which identifies designated days on which banking transactions can be suspended without penalty. Although these provisions do not actually require banks or any other organisations to close on these days, the intention of the Bill is that inclusion of St Andrew’s Day in the 1971 Act will help ensure the day becomes widely recognised as one of national celebration.

Parliamentary consideration

Dennis Canavan launched a consultation on the proposal in July 2004. A summary of the consultation responses indicated that 75% of the 142 responses were supportive, with another 10% partially or conditionally supportive. Nine per cent were unsure or made no comment whilst 6% disagreed fully with the proposals. Responses
from individuals tended to be supportive, whilst the business community was more divided.

Two Member’s debates were held on the subject of St Andrew’s Day in 2004. One followed a motion from Donald Gorrie MSP, debated on 17 March 2004 another on a motion lodged by Dennis Canavan, debated on 1 December 2004.

The Bill was introduced in the Parliament on 19 May 2005. The lead committee (Enterprise and Culture) began its Stage 1 consideration on 8 September 2005. Representatives of Scottish retailers, visitor attractions and trade unions were supportive whilst the Confederation of British Industry, the Federation of Small Businesses and the Committee of Scottish Clearing Bankers expressed opposition or reservations. A key issue for the business community was whether the holiday would be seen as a replacement or as an additional holiday.

The Committee recommended support of the general principles of the Bill. The Committee also stated its view that whether the Bill was passed or not, the Scottish Executive should bring forward a comprehensive set of proposals to enhance the celebration of St Andrew’s Day both domestically and internationally.

The Executive however was not persuaded of the case for the proposed legislation to achieve the aims of celebrating St Andrew’s Day. The Bill did not fall at Stage 1 however but was referred back to the Enterprise and Culture Committee for further consideration of the general principles and to consider options for improving the way in which St Andrew’s day is celebrated. The Committee took further evidence which included commissioning research into the economic, social and cultural costs and benefits of a St Andrew’s Day holiday. In the second Stage 1 debate on 28 September 2006 the Executive supported the Bill. A joint statement by the First Minister and the Member in charge indicated that the intention was to encourage employers and employees to substitute an existing holiday in favour of a national St Andrew’s Day holiday.

Stage 2 of the Bill took place on 7 November 2006, though there were no amendments. The Stage 3 debate took place on 29 November 2006. The motion to pass the Bill was agreed to without division.
Human Tissue (Scotland) Bill

Bill Number: SP Bill 42
Introduced on: 3 June 2005
Introduced by: Andy Kerr MSP (Executive Bill)
Passed: 2 February 2006
Royal Assent: 16 March 2006
2006 asp 4

Passage of the Bill

The Human Tissue (Scotland) Bill [SP Bill 42] was introduced in the Parliament on 3 June 2005. Stage 1 commenced on 8 September 2005 with the Health Committee as the lead committee. The Stage 1 debate took place on 30 November 2005 and the Bill was passed following the Stage 3 parliamentary debate on 2 February 2006.

Purpose and objectives of the Bill

The Bill provides a new framework for organ donation and transplantation, hospital post-mortems, the removal, retention and use of body parts, anatomical examination and the public display of bodies.

The Bill follows on from the work of the Independent Review Group on Retention of Organs at Post-Mortem, which was announced following the interim report of the Bristol Royal Infirmary Inquiry into the retention of organs following post-mortem examinations. The Bill also takes forward a number of the recommendations in the report of the Scottish Transplant Group, ‘An Organ Donation Strategy for Scotland’.

Provisions of the Bill

The Bill repeals and replaces the Human Tissue Act 1961, which governs organ and tissue donation and transplantation from deceased donors, hospital post-mortem examinations, and the removal of organs and tissue for the purposes of audit, research, education and training.

The Bill introduces a new concept of ‘authorisation’ for obtaining permission for organ donation, hospital post-mortem examinations and the removal and retention of body parts at post-mortem for the purposes of audit, research, education and training. This allows an individual adult or mature child (aged 12 and over) to give authorisation for the use of parts of their body after their death. However, if a person’s wishes are not made clear before death the Bill allows the person highest on the nearest relative hierarchy (if an adult) or the person with parental rights and responsibilities (if a mature child) to give authorisation. In the event of the death of a child under 12 only the person with parental rights and responsibilities can give authorisation. In the case of a hospital post-mortem an adult or mature child can also nominate a person to act on their behalf following their death. The Bill also makes provision for the use of organs following a procurator fiscal post-mortem, which again is based on the concept of authorisation.
The authorisation process in the Bill for organ donation and transplantation can be referred to as one of ‘opting in’, where an individual takes a positive decision in favour of donating organs and tissue after death for the purposes of transplantation. This is in contrast to an ‘opting out’ or ‘presumed consent’ system where the onus is on the individual to make it known that they are not in favour of organ donation whilst they are alive.

The Bill makes it a criminal offence for medical professionals not to have appropriate authorisation before proceeding with organ donation, hospital post-mortem or the removal of organs and tissue for the purposes of audit, research, education and training. It is important to note that there are different schemes of authorisation for organ donation and transplantation, hospital post-mortem and other parts of the Bill.

The Bill also clarifies the purposes of a post-mortem examination and what parts of the body can be removed and retained at post-mortem for the use of audit, research, education and training. In addition, it repeals the Human Organ Transplants Act 1989, which deals with the transplantation of whole organs from living people and the trafficking of organs for transplantation, replacing it with a new framework for living donation. This carries forward the existing arrangements governing donation of organs and tissue from living donors, but also extend them to cover cases where the donor and recipient are related as well as unrelated. Finally, it amends the Anatomy Act 1984, as respects Scotland, to broaden the definition of ‘anatomical examinations’ and address public concerns about the use of bodies and body parts in public displays.

Parliamentary consideration

Much of the parliamentary consideration of the Bill centred round the concept of authorisation and how the different schemes would work in practice. The Committee made a number of legislative and non-legislative recommendations in this regard, many of which were accepted by the Executive, with some leading to successful amendments at Stages 2 and 3.

The Health Committee supported the new concept of ‘authorisation’, though was concerned that the different schemes for the various parts of the Bill could lead to confusion. It found merit in the use of specific authorisation forms but also called for a public awareness campaign and appropriate training for professionals. This was accepted by the Executive.

The Committee was particularly concerned that there was an absence of fail-safe mechanisms which would allow individuals to record their wishes, whether positive or negative, across the range of circumstances dealt with in the Bill. The Executive said this would be covered in guidance and that it was looking at the potential of the electronic health record as a vehicle for recording people’s wishes. There were a number of proposed amendments from individual Committee Members at Stage 2, which sought to clarify this, but they were defeated. As part of this debate the Committee sought to have the NHS Organ Donation Register referred to on the face of the Bill to ensure it was clear that it was a suitable method for authorisation as regards organ donation and transplantation, not only for those who were already registered but also for those registering in the future. Whilst the Executive brought
forward an amendment, which was subsequently passed, to make it clear that those already registered would be taken to have given authorisation under the terms of the Bill, it did not agree that the Register should be referred to specifically in the Bill as it could potentially be too restrictive and run the risk of implying that other methods of authorisation would be invalid.

The Bill allows for the withdrawal of authorisation. When the Bill was introduced it proposed that should the nearest relative or person with parental rights and responsibilities authorise the use of organs for transplantation then it could be subsequently be withdrawn. The Committee received evidence that there could be serious consequences for the recipient if authorisation was withdrawn at a certain stage in the proceedings. The Committee recommended that this issue be clarified. This led the Executive to lodge amendments at Stage 2, which removed the possibility of withdrawing authorisation once given in such circumstances.

The Committee did receive some evidence in favour of the concept of presumed consent for organ donation and transplantation, though was unconvinced of the merits of such a change. Amendments were lodged at Stage 2 to introduce such a system but were withdrawn. Amendments were then lodged again at Stage 3 but were defeated, though the Executive did note it was not averse to considering a system of presumed consent in the future once the new system had time to become established and evaluated.

As discussed above the Bill creates a new framework for live organ donation. It prohibits living donation from children under 16 years in relation to regenerative tissue. Whilst the Committee accepted this approach it was concerned this could prevent the use of organs involved in a domino transplant. The Executive accepted this and brought forward amendments at Stage 2 to ensure that domino transplants (This tends to refer to domino heart and lung transplants where the donor heart and lungs are taken from a patient receiving a complete heart-lung transplant, but because either the heart or lungs are still viable they are used for transplant in another patient) should be possible subject to independent scrutiny.

During the passage of the Bill it became clear that amendments were required to cater for adults with incapacity and live donation. This led to a brief consultation being launched by the Executive, the Committee taking specific evidence on the issue and amendments being lodged at Stage 2, all of which were passed by the Committee.

Finally, during Stage 1 consideration of the Bill, the Committee received evidence from museum representatives that the new licensing regime proposed for the public display of human remains could put at risk the longstanding arrangements for public access to historical displays in museums. The Executive noted that it had not intended that museums should be covered by the new licensing regime and lodged amendments at Stage 2 to make specific provisions for bone fide museums. These amendments were agreed by the Committee.
Environmental Levy on Plastic Bags (Scotland) Bill

Passage of the Bill


Purpose and objectives of the Bill

The Environmental Levy on Plastic Bags (Scotland) Bill aimed to reduce the number of plastic bags in circulation, to reuse them wherever possible and to recycle them after use. The policy intention behind the Bill was not to eradicate plastic bags or to promote any particular alternatives, and plastic bags would still have been available for those customers who wished to pay the levy for them.

The Bill had three key objectives:

- protecting the environment both by the reduction in the number of plastic bags and by investing the money raised by the levy in local environmental projects;
- assisting local authorities towards meeting their Scottish National Waste Plan targets by encouraging the reduction and reuse of plastic bags that are in circulation; and
- raising awareness of environmental issues such as recycling and litter.

Provisions of the Bill

Sections 1 and 2 of the Bill set the proposed levy at ten pence per bag, and defined what types of bag would be included in the scheme. Sections 3 to 6 set out what would be required of suppliers of plastic bags including rules around charging and registering with local authorities. Sections 7 to 10 set out what local authorities would be required to do, including collecting the levy and appointing at least one member of staff to administer the scheme.

Sections 11 to 14 set out what offences could be prosecuted under the legislation, and what penalties may be applied. Sections 15 to 16 allow for local authorities to estimate how many bags had been supplied if a retailer had not submitted the relevant information and enable a right of appeal against penalties and estimates.
The intention behind the Bill was to use the monies raised by the levy to fund local environmental projects.

**Parliamentary consideration**

The Bill was considered at Stage 1 by the Environment and Rural Development Committee. Evidence was taken in late 2005, with the Committee, unusually, recommending to Parliament that both Mike Pringle and the Scottish Executive be given the opportunity to clarify their respective views on what they proposed to do about some specific issues highlighted by the Committee.

Further written evidence was forthcoming and further oral evidence was taken in September 2006. While remaining supportive of the stated aims of the Bill, the Committee could not agree to the proposals as stated in the Bill:

> “...the Committee urges the Executive to include ambitious measures to address plastic bag use in its waste prevention strategy. The Committee is not persuaded that the levy as currently proposed in this Bill is an effective means to achieve these objectives. The Committee, therefore, recommends that the Parliament does not agree to the general principles of the Bill”.

Mike Pringle MSP subsequently withdrew the Bill on 25 October 2006.

**Interests of Members of the Scottish Parliament Bill**

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<tr>
<th>Bill Number:</th>
<th>SP Bill 44</th>
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<tr>
<td>Introduced on:</td>
<td>12 September 2005</td>
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<tr>
<td>Introduced by:</td>
<td>Brian Adam on behalf of the Standards and Public Appointments Committee (Committee Bill)</td>
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<tr>
<td>Passed:</td>
<td>8 June 2006</td>
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<td>Royal Assent:</td>
<td>13 July 2006</td>
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<td>2006 asp 12</td>
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**Passage of the Bill**

The Interests of Members of the Scottish Parliament Bill [SP Bill 44] was introduced in the Parliament on 12 September 2005. As it was a Committee Bill, Stage 1 Committee consideration was effectively completed by the work which the Standards and Public Appointments Committee did prior to introduction of the Bill. The Stage 1 debate took place on 14 December 2005. Stage 2 consideration was undertaken by the specially convened Interests of Members of the Scottish Parliament Bill Committee. The Bill was passed on 8 June 2006 following the Stage 3 parliamentary debate.
Purpose and objectives of the Bill

The Bill replaces the transitional Members Interests Order (SI 1999/1350). Provision is made for the creation, maintenance and amendment of a public register of Members’ interests. The Bill sets out the definition of both registrable and declarable interests and existing provisions prohibiting paid advocacy are clarified. Certain offences and sanctions are set out in the Bill.

The Bill makes use of a ‘prejudice test’ to determine whether particular interests require to be registered. In certain parts of the Bill, use is made of tests expressed as a percentage of Members’ salaries in order to protect its provisions from inflation.

Provisions of the Bill

The Bill provides for the existence of a public register of Interests of Members of the Scottish Parliament, to be maintained and kept by the Clerk of the Parliament. The Register must contain information on those financial interests deemed registrable by virtue of the Schedule to the Bill, that are held by a Member on the date he or she became a Member of the Scottish Parliament - and prior to that date where certain interests meet the prejudice test. This test applies to some interests, such as gifts and overseas visits, discussed below.

“An interest meets the prejudice test if, after taking into account of the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.” (s3(2)) The Schedule requires Members to register the following interests (it is possible for the Parliament to amend the Schedule by resolution):

- Remuneration and related undertakings
- Donations to election expenses in excess of 25% of total expenses
- Sponsorship comprising more than 1% of a member’s salary
- Gifts of a value in excess of 1% of a Member’s salary and overseas visits that also meet the prejudice test
- Heritable property with a market value of more than 50% of a Member’s salary
- Interests in shares with a nominal value greater than 1% of the total nominal value of the issued share capital of the company or where the market value of the shares exceeds 50% of a Member’s salary.

An interest in a matter is declarable if it is a registrable interest. Members must declare that they hold such an interest before taking part in proceedings in a matter to which that interest applies.

The provision on paid advocacy prohibits members from advocating or initiating any matter or urging another to do so in consideration of any payment or benefit in kind.

Two forms of sanction are set out in the Bill: parliamentary and criminal. A Member may be prevented or restricted from participating in parliamentary proceedings or excluded from parliament in certain circumstances. Breach of some provisions (such as s14 on paid advocacy) may attract criminal charges.
Parliamentary consideration

The Bill was initially drafted by the Standards Committee of the first parliamentary session, and redrafted in similar terms by that of the second session. Stages 2 and 3 of the passage of the Bill were undertaken by the Interests of Members of the Scottish Parliament Bill Committee, although many of the amendments were proposed by the conveners of the Standards committees in both sessions. Several amendments which were disagreed to, not moved or withdrawn at Stage 2, were brought again at Stage 3, for example the requirement to register election expenses and a raised threshold for registration of sponsorship and gifts. In relation to the latter, this was initially set at 0.5% of a Member’s salary, and while an amendment to raise the threshold to 1% was defeated at Stage 2, it was carried at Stage 3.

A Stage 2 amendment to remove the prejudice test from the requirement to register overseas visits was withdrawn and an amendment to extend the requirement to include hospitality was not moved. The prejudice test applied to heritable property and to interest in shares in the Bill as Introduced, and in the Bill as amended at Stage 2. This provision was removed from the Bill as amended at Stage 3 and is not contained in the Bill as passed.

The most substantive and debated amendment agreed to at Stage 2 was the successful deletion of Schedule 2 to the Bill as introduced, so removing the requirement to register non-financial interests. An amendment to reintroduce Schedule 2 was brought at Stage 3, but was defeated, meaning that there is no requirement to register non-financial interests.

Further substantive amendments brought at Stage 3 include the power of the Parliament to amend the Schedule. This amendment was successful following redrafting and further clarification in the Chamber on the meaning of ‘determination’ and ‘resolution’ (see Official Report for 26 April 2006 and 8 June 2006).
Scottish Schools (Parental Involvement) Bill

Bill Number: SP Bill 45
Introduced on: 28 September 2005
Introduced by: Peter Peacock (Executive Bill)
Passed: 10 May 2006
Royal Assent: 14 June 2006

2006 asp 8

Passage of the Bill

The Scottish Schools (Parental Involvement) Bill [SP Bill 45] was introduced in the Parliament on 28 September 2005. Stage 1 commenced on 30 November 2005 with the Education Committee as the lead committee. The Stage 1 debate took place on 22 February 2006 and the Bill was passed following the Stage 3 parliamentary debate on 10 May 2006.

Purpose and objectives of the Bill

The main policy objectives of the Bill are:

- to support parents’ involvement in the education provided in public schools and in their own children’s education
- to achieve a more flexible and inclusive statutory system for parental representation in schools to replace the ‘one size fits all’ approach of the School Boards system
- to strengthen parents’ rights both collectively and individually
- to enable education authorities to modernise their procedures for appointing headteachers and deputy headteachers while retaining the principle of parental involvement in any new systems.

Provisions of the Bill

The Bill repeals the provisions of the School Boards (Scotland) Act 1988, which provide the framework for the current system of school boards.

The Bill provides for a system of parent forums, whereby every parent/guardian of a child at a school will be a member of the forum, and parent councils who may represent the parent forum. The membership and functions of parent councils will be decided locally by parent forums within the framework of the legislation and associated guidance.

The Bill gives Scottish Ministers and education authorities new duties to promote the involvement of parents in their child’s education and in school education provided in public schools under the management of education authorities. Local authorities will also be under a new duty to prepare a strategy for parental involvement.
Parliamentary consideration

There were relatively few areas of contention with the Bill’s proposals. The Committee received evidence from some, particularly existing school boards, that the current system was working well and that only minor changes were required. On the other hand the majority of evidence suggested that the current system required to be modernised.

At Stage 2 an amendment was made that added school pupils as a specific group whose views the local authority must have regard to when devising a strategy for parental involvement. A further amendment specified that meetings of a parent council should be open to the public, except where confidential matters are being dealt. In such cases only the headteacher and members of parent council may attend.

The Bill gives parent councils a role in promoting contact with certain groups of people. Another Stage 2 amendment added pupils as a specific group to this list.

An SNP lodged amendment was passed at Stage 2 that gave Ministers and education authorities a duty to promote parental involvement in nurseries. However, this requirement was removed at Stage 3. Instead the Executive proposed a new amendment, which was passed, that specified that one of the functions of a parent council is to promote contact between the parent forum of the school and nursery education providers for prospective pupils of the schools in question.

Another Executive amendment at Stage 3 means that in preparing their strategy for parental involvement an education authority is to have regard to how that strategy will promote equal opportunities.
The Police, Public Order and Criminal Justice (Scotland) Bill [SP Bill 46] was introduced in the Parliament on 30 September 2005. The Justice 2 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 25 October 2005. The Stage 1 debate took place on 2 February 2006 and the Bill was passed following the Stage 3 parliamentary debate on 25 May 2006.

Purpose and objectives of the Bill

The Policy Memorandum stated that the “Bill provides for a range of measures to improve police effectiveness, strengthen their hand in the fight against crime, including serious organised crime, and enhance the safety of communities right across Scotland” (para 3).

Most of the measures set out in the Bill as introduced were consulted upon in the Scottish Executive consultation paper ‘Supporting Police, Protecting Communities: Proposals for Legislation’ (closed 3 May 2005).

Provisions of the Bill

The Bill as introduced contained a range of provisions relating to the police, public order and criminal justice. These included:

Part 1 of the Bill – Police:

- Scottish Police Services Authority – creation of a single organisation to provide oversight of all of the Common Police Services, including the Scottish Crime and Drug Enforcement Agency
- Police complaints and misconduct – creation of an independent Police Complaints Commissioner for Scotland to oversee non-criminal complaints against the police

Part 2 of the Bill – Public order:

- Football Banning Orders – the introduction of such orders as a means of preventing football-related violence and disorder
• Public processions (marches and parades) – including provisions relating to the notification which march organisers must provide to local authorities and the police, and also the consideration of notification
• Offensive weapons – including provisions to double the maximum sentence for possession of a knife in a public place and to increase the minimum age for purchasing a non-domestic knife from 16 to 18

Part 3 of the Bill – Criminal justice:

• Mandatory drug testing and assessment – police powers to require suspects arrested for drug or drug-related offences to take a drug test and to require those who test positive for certain Class A drugs to attend a drugs assessment
• Incentives for providing information or evidence – provision for a statutory system under which a person may receive a reduced sentence or immunity from prosecution in return for co-operation

Parliamentary consideration

The Justice 2 Committee’s Stage 1 Report noted that the Committee, by majority, recommended that the Parliament agrees to the general principles of the Bill. However, a number of amendments agreed at Stage 2 reflected concerns or recommendations expressed in the Stage 1 Report. For example, the Report noted concerns that the breach of requirements imposed under a Football Banning Order appeared to be an absolute offence (e.g. leading to the possibility of liability for a breach where a person is unable to meet reporting requirements due to ill health). The Report welcomed the Scottish Executive’s undertaking to introduce, at Stage 2, a defence of reasonable excuse for the breach of an Order. The relevant amendment was agreed at Stage 2 and the defence appears as section 64(1A) of the Bill as passed.

In addition to amending existing provisions of the Bill, a number of significant new provisions (contained in Scottish Executive amendments) were added at Stage 2. These included four new sections dealing with the control of sex offenders. A review of the operation and effectiveness of the sex offender notification regime in Scotland found that there was a need for more efficient risk assessment and risk management within the system. The resulting report ‘Registering the Risk’ (2005) made various recommendations, some of which were taken forward by amendments to the Bill at Stage 2 (see sections 72A to 72D of the Bill as passed).

Another issue considered during Stage 2 related to the retention of DNA samples taken by the police from suspects, in cases where a suspect is not subsequently convicted of the offence. Paul Martin MSP lodged, but later withdrew, an amendment during Stage 2 to allow retention in such circumstances. Information on this topic is set out in the SPICe briefing ‘Police Retention of Prints and Samples – Updated’ (2006). The topic was reconsidered during the Stage 3 debate. Amendments agreed to included a compromise amendment lodged by Paul Martin (63 votes in favour and 44 against) – see section 74A of the Bill as passed and the Official Report for the debate at columns 26009-26017 and 26055-26072.
Animal Health and Welfare (Scotland) Bill

Bill Number: SP Bill 47
Introduced on: 5 October 2005
Introduced by: Ross Finnie (Executive Bill)
Passed: 31 May 2006
Royal Assent: 11 July 2006

2006 asp 11

Passage of the Bill

The Animal Health and Welfare (Scotland) Bill [SP Bill 47] was introduced in the Parliament on 5 October 2005. Stage 1 commenced on 23 November 2005 with the Environment and Rural Development Committee as the lead committee. The Stage 1 debate took place on 23 February 2006 and the Bill was passed following the Stage 3 parliamentary debate on 31 May 2006.

Purpose and objectives of the Bill

The Bill is in two main parts. Part 1 of the Bill on animal health gives Ministers new powers to tackle outbreaks of highly infectious animal diseases. It also provides a statutory element to plans to control Transmissible Spongiform Encephalopathies (diseases like scrapie and BSE). Part 2 of the Bill on animal welfare consolidates and modernises existing laws on the subject, some of which date back to 1912. It also introduces new protections for animals, the main one being for animal keepers to ensure an animal’s basic welfare needs are met.

Provisions of the Bill

Part 1 of the Bill enhances Scottish Ministers’ powers to prevent the spread of infectious animal diseases. The 2001 Foot and Mouth disease outbreak was controlled by slaughtering infected animals, and animals thought to be at risk of the disease.

Ministers’ powers to slaughter animals they suspect of being infected are subjective. The key provisions of Part 1 of the Bill give Ministers wider powers to slaughter animals in Scotland in the event of an outbreak of five types of disease, including Foot and Mouth disease. The new powers would allow Ministers to slaughter any animal they thought fit, rather than their current powers which are limited to animals they have reasonable grounds to suspect might be infected.

Part 1 of the Bill also gives Ministers an extended power to vaccinate animals against disease, and other powers to improve biosecurity and control the spread of disease.
The current law on animal welfare is contained in several statutes, principally the Protection of Animals Act 1912 (c.14). The Bill amends and extends the existing statutory framework. It will repeal 19 Acts entirely, and repeals the 1912 Act, apart from 4 sections. The Bill defines “animals” for its purposes as vertebrates (creatures with a backbone) i.e. mammals, birds, fish, amphibians and reptiles. The Bill also defines “protected animals” on which additional protections will be conferred.

The Bill makes it clear that only persons over 16 can be responsible for animals. The Bill will create an offence of causing an animal to suffer unnecessarily. The Bill will provide a new basis for regulating “mutilations” – procedures which involve interfering with the bones or sensitive tissue of an animal. The Bill will also create separate offences related to animal fights and abandoning animals.

A major change made by the Bill is that animal keepers would have to ensure the basic welfare needs of their animals are met. The Scottish Executive plan to make further improvements to animal welfare law in regulations once the Bill is enacted. The Bill contains enabling powers allowing Ministers to regulate, licence and make statutory codes to improve animal welfare. The Bill will prohibit the giving of an animal as a prize, and will make it illegal to sell an animal to a person under 16.

Parliamentary consideration

The Environment and Rural Development Committee’s main conclusion in its Stage 1 report was that the Executive should speed up its timetable for making animal welfare regulations. The Committee also sought clarification on a number of points of interpretation of the Bill. On Part 1 of the Bill, the Committee recommended that the need for Ministers to take scientific and veterinary advice before exercising the enhanced slaughter powers should be spelled out on the face of the Bill. On Part 2, the Committee questioned whether it was workable to have an exemption to a ban on tail docking for working dogs; it called for the recording of animal fights to be made an offence; suggested a system of care notices for enforcing the requirement of the Bill to ensure an animal’s welfare; and questioned how the Bill would apply to performing animals.

During Stage 2 the Executive brought forward an amendment to introduce care notices. If someone is found to not be ensuring the welfare of an animal, they could be served with a care notice, which would say exactly what they would have to do to meet its needs. It would be an offence not to comply with a care notice. The Bill was also amended to make it an offence to supply, publish, show or possess a recording of an animal fight. Having considered the Committee’s reservations on the feasibility of an exemption for working dogs, the Executive stated that that it would impose a complete ban on tail docking of dogs once the Bill was enacted. It also said it would regulate the welfare of performing animals, including banning the use of wild animals in circuses.

The main amendment to the Bill made during Stage 3 requires Ministers to make a statement explaining why they think slaughter powers in Part 1 of the
Bill need to be used, before they would be allowed to use them. There will be a public consultation on tail docking of dogs, and Ministers will consider evidence on the need to exempt working dogs before they introduce a ban, which will not be until March 2007 at the earliest.

Scottish Commissioner for Human Rights Bill

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 48</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>7 October 2005</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Cathy Jamieson (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>2 November 2006</td>
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<td>Royal Assent:</td>
<td>8 December 2006</td>
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2006 asp 16

Passage of the Bill

The Scottish Commissioner for Human Rights Bill [SP Bill 48] was introduced in the Parliament on 7 October 2005. Stage 1 began on 30 November 2005 with the Justice 1 Committee as lead committee. The Justice 1 Committee Stage 1 Report was published on 23 February 2006. The Stage 1 debate took place in Parliament on 3 May 2006 and the Bill was passed following the Stage 3 parliamentary debate on 2 November 2006.

Purpose and objectives of the Bill

The Bill establishes a body corporate known as the Scottish Commission for Human Rights (SCHR) to promote and encourage best practice in relation to human rights relating to matters devolved to the Scottish Parliament. The Commission may cooperate with other public sector organisations in fulfilling this role. It is expected the SCHR will enter into a memorandum of understanding with the Commission for Equality and Human Rights (CEHR). The CEHR is a UK body established by the Equality Act 2006 that will have the role of considering human rights issues in Scotland in relation to issues reserved to Westminster (the Equality Bill was the subject of a successful legislative consent motion in the Scottish Parliament, S2M-3440 in October 2005).

The SCHR will comprise a chair appointed by the Crown on the nomination of the Parliament, and up to four additional members appointed by the Scottish Parliamentary Corporate Body (SPCB). Office holders may be appointed for up to five years and are eligible for reappointment. Further provision was made for the disqualification, eligibility, pensions, terms and remuneration of officers and for the location of the office of the Commission, sharing of premises and financing. Although funded by the SPCB, the Commission is to be independent of the Parliament, Corporate Body and Scottish Executive.
The SCHR is required to publish a strategic plan covering each 4-year parliamentary term setting out policies, projects and objectives for the period and a timetable for each. The SPCB must be provided with a pre-publication draft of the strategic plan for comment. The Commission is to lay an annual report before Parliament, summarising inquiries and activities undertaken.

Provisions of the Bill

The SCHR will have the general function of promoting human rights through advice, research, guidance and education programmes. For this general purpose, the Commission may review any area of the law of Scotland, having first consulted with the Scottish Law Commission. It may also review the policies and practices of any Scottish public authority.

Unlike the CEHR, the Commission will not have the power to bring legal proceedings in its own name (e.g. test cases). This is because section 7 of the Human Rights Act 1998 requires a person bringing an action to be a victim or potential victim. To allow the SCHR to bring test cases would require amendment to the 1998 Act, which is a matter reserved to Westminster.

Instead, the SCHR will have the power to intervene in certain legal proceedings as a friend of the court, with the purpose of informing the court as part of its deliberations. This may be done only with the leave of the court or at the invitation of the court and applies to civil proceedings, excluding children’s hearings. It may be done only where the intervention is relevant to the Commission’s general duty and where it raises a matter of public interest.

The Commission will have the power to conduct public inquiries into the policies and practices of Scottish public authorities or public authorities generally. There are certain restrictions on the conduct of inquiries, such as not being able to question the findings of any court or tribunal. In undertaking an inquiry, the Commission may take evidence from staff of the authority in question and may take into account evidence gained otherwise than by virtue of having required its production. Information gained by the Commission as part of an inquiry is to be treated as confidential. The Commission may enter places of detention for the purpose of conducting an inquiry and may do so without notice. It must lay before Parliament a report of the inquiry undertaken, including its findings and recommendations.

Parliamentary consideration

There was no majority view within the Justice 1 Committee on the general principles of the Bill at Stage 1, but these were agreed to in plenary. The Bill as introduced, and the Bill as amended at Stage 2, sought to establish a Commissioner for human rights. At Stage 2 the Executive brought forward amendments to change the Commissioner to a Commission but these were unsuccessful. However, similar amendments were laid at Stage 3, this time successfully.

Non-executive amendments at Stage 2, which would have brought the Commissioner within the remit of the Scottish Public Services Ombudsman, were defeated. Similar amendments lodged at Stage 3 were overtaken by the Parliament agreement to establishing a Commission rather than a Commissioner.
Provisions relating to the accountability of the SCHR (through strategic plans and annual reports, for example) were amended through in response to the Justice 1 Committee’s Stage 1 Report, as was the provision allowing access to places of detention without giving (14 days) notice first. The duty to monitor Scots law and the practices of public authorities was amended to become an authority to do so; the requirement to first consult the Scottish Law Commission was added at Stage 2.

Amendments were proposed at Stage 2 that would have added ‘protection’ of human rights to the Commissioner’s general promotion duty. These were not successful. Similarly, amendments that sought to remove restrictions on the scope of inquiries undertaken, to grant the Commissioner locus in criminal proceedings and to grant the Commission the power to institute legal proceedings in its own name, were also unsuccessful at Stage 2.

Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 49</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>28 October 2005</td>
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<tr>
<td>Introduced by:</td>
<td>Peter Peacock (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>19 January 2006</td>
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<td>Royal Assent:</td>
<td>22 February 2006</td>
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2006 asp 3

Passage of the Bill

The Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill [SP Bill 49] was introduced in the Parliament on 28 October 2005. The bill was subject to an accelerated timescale. Stage 1 evidence was taken on 9, 16 and 23 November 2005 with the Education Committee as the lead committee. The Stage 1 report was published on 1 December 2005 and the Stage 1 debate took place on 7 December 2005. The Bill was passed, as amended at Stage 2, following the Stage 3 parliamentary debate on 19 January 2006.

Purpose and objectives of the bill

The Bill provides for certain agencies to conduct joint inspections of children’s services and access and share information while doing so. The Bill also provides for Ministers to appoint social work inspectors.

The need for the legislative change arose during pilot inspections of child protection services when it became apparent that inspectors could not access individual medical records. The methodology that had been developed required access to individual records. Once the Bill comes into force, the pilot programme of child protection inspections will be able to continue.
Provisions of the Bill

Part 1 of the Bill will allow certain agencies to conduct joint inspections of children’s services. Inspection teams will be able to share confidential health information without the need for explicit consent from the patient. However, inspectors must have regard to a Code of Practice to be issued by Ministers, which will cover such issues as dealing with confidential information and, for the children’s services inspections, when to ask for explicit consent. There will be separate Codes of Practice for child protection and children’s services inspections.

Part 2 of the Bill replaces s.6 of the Social Work (Scotland) Act 1968.

Parliamentary consideration

Parliamentary discussion focused on the issue of access to medical records. The British Medical Association in particular were concerned about patient confidentiality. An Executive amendment at Stage 2 provided that regard was to be had to a code of practice which could include matters such as access to, sharing and destruction of confidential information. During the Stage 3 debate the Minister noted that the draft code of practice for joint child protection inspections would be published by the end of January 2006.

Also at Stage 2, and following the Stage 1 report from the Subordinate Legislation Committee, a number of issues that were to have been provided for in subordinate legislation were placed on the face of the Bill. These included that the Bill now specified, by reference to the relevant legislation, the definition of social work functions which could be inspected, and the level of fine resulting from any offences created by subordinate legislation.

In addition, an Executive amendment was introduced to clarify the existing duties in relation to use or disclosure of confidential information. It made clear that confidential information could not be disclosed unless this fell within certain exceptions such as being necessary to protect the welfare of a child or for the prevention of crime. An amendment to introduce an offence linked to this duty was not successful.

The Minister stated at Stage 3 that the legislation and code of practice would be reviewed before the start of the pilot joint inspections of children’s services in 2007.
Bankruptcy and Diligence etc (Scotland) Bill

Bill Number: SP Bill 50
Introduced on: 21 November 2005
Introduced by: Alan Wilson (Executive Bill)
Passed: 30 November 2006
Royal Assent: 15 January 2007

2007 asp 3

Passage of the Bill

The Bankruptcy and Diligence etc. (Scotland) Bill was introduced on 21 November 2005. The Enterprise and Culture Committee, as the lead committee, began taking Stage 1 oral evidence on 6 December 2005. The Committee published its Stage 1 report on 17 May 2006 with the Stage 1 debate taking place on 24 May 2006. The Committee considered amendments to the Bill at Stage 2 meetings between 13 June and 7 November 2006. The Bill was passed following the Stage 3 debate on 30 November 2006.

Purpose and objectives of the Bill

The Bill aims to:

• modernise the laws of personal bankruptcy and diligence to strike a better balance between the rights of creditors and debtors
• support business risk, thereby helping to promote an entrepreneurial culture and grow the economy
• modernise the law of floating charges to remove existing uncertainties and make arrangements more transparent.

Provisions of the Bill

The Bill changes the law on bankruptcy by:

• reducing the period of bankruptcy from three years to one year
• introducing Bankruptcy Restrictions Orders and Undertakings on potentially fraudulent or culpable debtors
• requiring debtors to contribute towards their sequestration, where possible, by introducing income payment orders and agreements
• reforming the requirements for "apparent insolvency"
• reforming restrictions and disqualifications on debtors
• increasing transparency in and monitoring of Protected Trust Deeds
• streamlining the bankruptcy process and reducing court involvement
• taking bankruptcy proceedings out of the Court of Session and consolidating them in the sheriff courts
The Bill makes provision for a new Register of Floating Charges to be maintained by the Keeper of the Registers of Scotland and establishes a Scottish Civil Enforcement Commission to operate as the sole regulatory body where all matters relating to enforcement are determined and overseen. The Bill also reforms the main types of diligence, the legal term for the procedures by which orders of the civil courts are enforced.

Parliamentary consideration

The Finance Committee welcomed the reduction in the period of bankruptcy but despite calls for the period of repayment to be similarly reduced the Committee supported the Bill proposals that debtors be subject to a longer period for the repayment of debts.

The Finance Committee was concerned that bankruptcy proceedings should not cause homelessness and recommended that the debtor’s main home should be excluded from the scope of proposals for land attachment. This was not accepted but the Bill was amended at Stage 3 to raise the minimum debt from £1,500 to £3,000 before a creditor can institute bankruptcy proceedings. A proposal to set the minimum at £5,000 was defeated.

Amendments were lodged at Stage 2 to give a prior claim to credit unions when distributing the assets of debtors who have entered into a protected trust deed. These were withdrawn or not moved on assurances from the Minister that he would consider the concerns expressed. The Bill was amended to allow Scottish Ministers to make regulations on the extent to which a debtor may be discharged, by virtue of a protected trust deed, from his liabilities or from such liabilities or class of liabilities as may be prescribed in the regulations.

Concerns were raised by witnesses during Stage 1 that a debtor may be subject to an earnings arrestment and an arrestment of their bank account at the same time. There was also concern at the lack of protection from arrestment of tax credits and social security benefits paid into bank accounts. Amendments were lodged by the Minister at Stage 2 to allow a debtor to apply for an order to stop an arrestment in respect of all or some of the funds attached if the arrestment is ‘unduly harsh’. If a debtor applies for such an order, automatic release of funds is stopped. The new sections grant the sheriff the power to make an order for the release of those funds attached, where they consider the arrestment to be unduly harsh. The amendments were agreed to at Stage 2. The Minister also stated in evidence at Stage 2 that he would be happy to have further discussions with the banking sector about whether technology could simplify the process of protecting funds.

The Minister lodged an amendment at Stage 2 to introduce a new section to the Debtors (Scotland) Act 1987 to prevent debtors who receive holiday pay in advance having larger proportions of their earnings deducted. The amendment changes the
Bill to treat holiday pay as a separate payment or payments made for the pay period or periods during which the debtor is on holiday and not as if it were an increase added to the normal pay. The amendment was agreed to at Stage 2.

The Debt Arrangement and Attachment (Scotland) Act 2002 introduced the debt advice and information package. The Bill as introduced made provision for debtors to be provided with information about enforcement as well as contact details of free local money advisers before diligences for land attachment or residual attachment are competent. However there was concern at the time lapse which can occur between issuing the package and implementing a charge to pay. Amendments were lodged which provide that the package must be served within 12 weeks of either the registration of a notice of land attachment or an application to the court for a residual attachment order. The amendments were agreed to at Stage 3.

Planning etc. (Scotland) Bill

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<td>Introduced on:</td>
<td>19 December 2005</td>
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<tr>
<td>Introduced by:</td>
<td>Malcolm Chisholm (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>16 November 2006</td>
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<td>Royal Assent:</td>
<td>20 December 2006</td>
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2006 asp 17

Passage of the Bill

The Planning etc. (Scotland) Bill [SP Bill 51] was introduced in the Parliament on 19 December 2005. The Communities Committee was appointed as lead Committee with the Local Government and Transport Committee as a secondary committee. The Communities Committee published its Stage 1 Report on 10 May 2006. This was debated by Parliament on 17 May 2006. The general principles of the Bill were agreed by a vote in which 98 members voted for the Bill, 11 against and two abstained. The Committee then commenced Stage 2 of the Bill, which ran from 14 June 2006 until 4 October 2006. The Bill was passed following the Stage 3 debate which was held on 15 and 16 November 2006. The vote was: 104 for the Bill, 13 against and one abstention. The Bill received Royal Assent on 20 December 2006.

Purpose and objectives of the Bill

The main aim of the Bill was to streamline the operation of the Scottish planning system. It aimed to do this by creating a ‘hierarchy of developments’, allowing planning authority resources to be targeted where they were needed to ensure planning applications were dealt with as quickly as possible. The Bill also aimed to increase the involvement of local communities in the drafting of development plans and in decisions on planning applications. The Bill also intended to ensure that
development plans were kept up to date and that compliance with planning legislation was improved through amendments to the enforcement system.

Key Provisions of the Bill

National Planning Framework: The National Planning Framework (NPF) is currently a non-statutory, Scotland-wide planning policy document first published by the Executive in 2004. The Bill would put the NPF on a statutory footing and subject it to a process of parliamentary scrutiny prior to its adoption. The next National Planning Framework (NPF2) is to be published in 2008. The Bill requires NPF2 to identify “…developments of national significance”, decisions on which would normally be made by Scottish Ministers. No objections to developments of national significance would be allowed, on the basis that a development is not needed, once it was included in the NPF.

Strategic Development Plans: The Bill removed the requirement on planning authorities to produce structure plans and replaced this with a new requirement on authorities in the four main city regions, formed into Strategic Development Planning Authorities (SDPA), to produce strategic development plans. The Bill places each SDPA under a statutory duty to update its strategic development plan at least once every five years. SDPAs are required to publish, and update, a development plan scheme which outlines its programme for preparing and reviewing the strategic development plan. Each strategic development plan must be accompanied by an action programme, which must be updated at least once every two years

Local Development Plans: The Bill also removed the requirement on planning authorities to produce local plans and replaced this with a requirement to produce local development plans. The Bill placed each planning authority under a statutory duty to update its local development plan(s) at least once every five years. In addition, planning authorities are required to publish, and update, a development plan scheme which outlines its programme for preparing and reviewing local development plans. Each local development plan must be accompanied by an action programme that must be updated at least once every two years.

Development Management: The Bill introduced a three tier ‘hierarchy of development’, i.e. national, major and local developments. Responsibility for notifying neighbours about proposed developments is passed from applicants to planning authorities.

The Bill established a formal system of pre-determination hearings, allowing applicants, objectors and supporters of certain types of development to appear in person before a planning authority prior to it making decisions on whether to grant planning permission. The Bill also required each planning authority to set up a formal scheme of delegated decision making, giving planning officers formal authority to make decisions on local developments. Decisions made under such a scheme would be open to review, under a scheme to be established by secondary legislation, as opposed to an appeal to Scottish Ministers.
The Bill reduced the normal duration of planning permission from five to three years and replaced the system of outline planning permission with a new category of 'planning permission in principle'. The Bill also replaced planning agreements with an expanded system of ‘planning obligations’, allowed developers to register unilateral planning obligations and allowed for the creation of ‘good neighbour agreements’ between developers and certain community organisations.

Enforcement: The Bill introduced a new temporary stop notice. It also required all planning authorities to publish, and keep under review, ‘Enforcement Charters’. In addition developers are required to notify the planning authority when they start and finish a development.

The Bill also updated the system for the designation and management of Tree Preservation Orders, allowed for the formation of Business Improvement Districts and established a statutory basis for National Scenic Areas.

**Parliamentary consideration**

Throughout the parliamentary consideration of the Bill there were two major issues, although not included in the Bill as introduced, that were the focus of much debate. These were the introduction of a ‘third party right of appeal’ against planning decisions and a requirement to hold a full public inquiry into the National Planning Framework prior to its adoption. These issues were strongly supported by some opposition members and environmental/community NGOs but opposed by the Executive, some opposition members and business NGOs. Amendments to introduce these measures were lodged at Stage 2 and Stage 3 but were rejected by the Communities Committee and the Parliament as a whole.

Amendments, which had not formed part of the original Bill proposals, were agreed at Stage 2. The principal being those amendments allowing the issue of a fixed penalty notice where an enforcement notice or breach of condition notice had been issued and not complied with, and those amendments related to the designation and management of National Scenic Areas.
Passage of the Bill

The Local Electoral Administration and Registration Services (Scotland) Bill [SP Bill 52] was introduced in the Parliament on 19 December 2005. Stage 1 Oral Evidence commenced on 17 January 2006, with the Local Government and Transport Committee as the lead committee. The Stage 1 debate took place on 4 May 2006 and the Bill was passed following the Stage 3 debate on 22 June 2006.

Purpose and objectives of the Bill

The objectives of the Bill are: to make provision in relation to the administration and conduct of local government elections; to reorganise local registration services; to amend the law in relation to the registration of births and deaths and the procedure in relation to marriages and civil partnerships; to provide for the recording of certain events occurring outwith Scotland in relation to persons who have a Scottish connection; to make available certain information and records held by the Registrar General; and for connected purposes.

There are 2 parts to the Bill. The first part includes provisions for electoral administration relating solely to local government elections in Scotland. The administration of Scottish Parliamentary elections is reserved to the UK Parliament but the administration of local government elections in Scotland is a devolved matter.

The UK Electoral Administration Act 2006 will implement changes in respect of all statutory elections, including local government elections across the UK, in certain reserved areas, such as voter registration and the regulation of political parties, as a result of a number of Electoral Commission reviews and recommendations. The UK Act also contains provisions for local government elections in England and Wales. The Bill largely follows the approach taken by the UK Electoral Administration Act in order to ensure uniformity in electoral procedures, such as measures to improve access to the electoral process and to improve the security of postal voting.

The second part of the Bill provides for registration services of “vital events”, i.e. births, marriages and deaths, in Scotland. These provisions are the result of two consultation exercises carried out by the General Register Office for Scotland. The Bill provides for a number of reforms to registration services, including allowing the registration of births and deaths anywhere in Scotland, bringing registration district
boundaries into line with local authority boundaries, allowing more flexible registration office opening times, allowing for e-registration and establishing a “Book of Scottish Connections”.

Provisions of the Bill

Part 1 of the Bill deals with local electoral administration in relation to the following issues. The Bill enables Scottish Ministers to set and publish performance standards for returning officers at local government elections, and to direct reporting officers to submit reports on their performance against these standards. It provides electoral administrators with a power to correct errors or admissions that may arise during the preparation for and conduct of local government elections. Sections 4 to 6 of the Bill provide for issues relating to access to election documents. It also details provisions in relation to observers. Sections 10 to 13 deal with offences related to voting and false information. Sections 14 to 17 aim to clarify legislation on election expenses and to bring procedures on election expenses for local government elections into line with those used for other elections. Part 1 also contains provisions for piloting the collection and use of personal identifiers to offer safeguards against postal voting abuse. Miscellaneous provisions are dealt with in sections 20 to 26.

Part 2 of the Bill deals with registration services, which refers to the process via which births, deaths and marriages are registered in Scotland. The General Register Office of Scotland administers registration services in partnership with local authorities. This part of the Bill provides for the re-organisation of local registration services districts to be made coterminous with local authority boundaries. It also provides for the registration of births, re-registration of births, still births and deaths to be carried out at any registration office in Scotland, or on-line. The Bill also provides for the establishment of a new public record termed the ‘Book of Scottish Connections’, which will be used to record events relating to persons outwith Scotland.

Parliamentary consideration

Throughout the Parliamentary process, the Bill has been largely uncontroversial, with overall agreement on its general principles. At Stage 1, the Local Government and Transport Committee supported the proposals in the Bill, stating that it contained appropriate measures for improving electoral administration and modernising registration services. Some recommendations for further improvements to the Bill and requests for additional information or clarification were put forward. One of the main points raised by the Committee was whether the setting of performance standards should be subject to Parliamentary scrutiny and the Stage 1 report suggested this issue could be returned to at Stage 2. Amendments were put forward in this regard, but were not moved, leaving responsibility for setting performance standards with Ministers. An amendment was agreed to which gave ministers powers to direct returning officers to provide information on expenditure at local government elections. Amendments were also agreed at Stage 2 to replicate changes to the UK Bill to allow the collection and use of personal identifiers for absent voting at local government elections in Scotland without the requirement to carry out a pilot. The Bill, as amended, was generally welcomed at Stage 3 and was passed on 22 June 2006.
Budget (Scotland) (No 3) Bill

Bill Number: SP Bill 53
Introduced on: 19 January 2006
Introduced by: Tom McCabe (Budget Bill)
Passed: 9 February 2006
Royal Assent: 21 March 2006

2006 asp 5

Passage of the Bill

The Budget (Scotland) (No 3) Bill [SP Bill 53] was introduced on 19 January 2006. The Stage 1 debate took place on 26 January 2006. The Finance Committee considered the Bill at Stage 2 on 31 January 2006 and the Bill was passed by the Parliament on 9 February 2006.

Purpose and objectives of the Bill

The passage of the Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2006-07. 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.

Provisions of the Bill

The Bill will authorise over £25.46bn of cash expenditure by the Scottish Executive and its associated bodies, other organisations whose core funding is centrally provided (e.g. local authorities and health boards), the Forestry Commissioners, the Food Standards Agency, the Scottish Parliamentary Corporate Body and Audit Scotland.

For more details of the Scottish Budget process see the summary for the Budget (Scotland) Bill [SP Bill 16].
Glasgow Airport Rail Link Bill

Bill Number: SP Bill 54
Introduced on: 31 January 2006
Introduced by: Strathclyde Passenger Transport Executive (Strathclyde Partnership for Transport) (Private Bill)
Passed: 29 November 2006
Royal Assent: 15 January 2007

2007 asp 1

Passage of the Bill

The Glasgow Airport Rail Link Bill [SP Bill 54] was introduced in the Parliament on 31 January 2006. The 60 day period for objections ended on 3 April 2006, with 47 admissible objections lodged. The Glasgow Airport Rail Link Bill Committee was established and met for the first time on 14 March 2006. The Committee published its Preliminary Stage Report on 8 June 2006, which was debated by the Parliament on 21 June 2006. The general principles of the Bill were agreed by a vote in which 110 members voted for the Bill and one voted against. The Committee then commenced the Consideration Stage of the Bill which resulted in the publication of its Consideration Stage Report on 30 October 2006. The Bill was passed following the Final Stage debate held on 29 November 2006 in which 118 members voted for the Bill and 8 voted against.

Purpose and objectives of the Bill

The Bill authorises the construction of a double track electrified railway, approximately two kilometres long, from a point east of Paisley St James Station to a new station at Glasgow Airport. The Bill also authorises the upgrade and expansion of approximately nine miles of existing railway between Paisley St James Station and Glasgow Central Station. It also allows for works related to the construction and operation of the railway.

Provisions of the Bill

The Bill grants the promoter, and their successors, the powers to build the railway line as well as authorising the construction of other works associated with it. To this end the promoter is granted a power of compulsory purchase and the power to stop-up roads and footpaths where necessary.

Parliamentary consideration

While the Glasgow Airport Rail Link Bill Committee supported the progress of the Bill from the Preliminary to Consideration stage they concluded that the business case for the scheme would be substantially improved if the Glasgow Crossrail scheme, which
would link rail services from the north and east of Scotland with those from the south-west, were also constructed. In addition Brian Monteith MSP, a member of the Committee, dissented from those parts of the Report which stated that the “The Committee supports the general principles of the Bill” and that “the Committee recommends to the Parliament that the general principles of the Bill be agreed to”.

Much of the evidence during the Consideration Stage of the Bill was heard by an independent assessor, Professor Hugh Begg. This was the first time an assessor had been used during the consideration of a Private Bill. No major amendments were made to the Bill at this Stage, although minor amendments were agreed and commitments given by the promoters to secure the upgrade of St James’ football pitches in Paisley and to reduce the hours during which construction of the line could be undertaken. The Committee also asked that the promoter investigate whether the hours of operation of the line could be extended to meet early/late flights.

Concerns were also raised during the Consideration Stage about the possible impact the proposed Edinburgh Airport Rail Link might have on passenger numbers, and therefore the economic viability, of the Glasgow scheme. The Transport Minister made several statements in oral and written evidence to emphasise that the impact of the Edinburgh project on the Glasgow scheme would be minimal.

**Criminal Proceedings etc (Reform) (Scotland) Bill**

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 55</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>27 February 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Cathy Jamieson (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>18 January 2007</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>22 February 2007</td>
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**Passage of the Bill**

The Criminal Proceedings etc (Reform) (Scotland) Bill [SP Bill 55] was introduced in the Parliament on 27 February 2006. The Justice 1 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 19 April 2006. The Stage 1 debate took place on 14 September 2006 and the Bill was passed following the Stage 3 debate on 18 January 2007.

**Purpose and objectives of the Bill**

The Scottish Executive established an independent Summary Justice Review Committee, under the chairmanship of Sheriff Principal McInnes, in 2001. The Committee was asked to review the provision of summary justice in Scotland and to make recommendations aimed at more efficient and effective summary justice. Its

In addition, the Bill was intended to take forward Scottish Executive commitments to reform the law on bail set out in ‘Bail and Remand: The Scottish Executive Action Plan’ (2005). The proposals in the Action Plan were informed by the work of the independent Sentencing Commission for Scotland, which published its ‘Report on the Use of Bail and Remand’ earlier in 2005.

**Provisions of the Bill**

The Bill as introduced included provisions:

- changing the system of bail and remand
- changing the law on criminal proceedings (mainly in relation to summary court procedure)
- increasing the sentencing powers of summary criminal courts
- expanding the range of alternatives to prosecution
- changing the way in which fines can be collected and enforced
- establishing justice of the peace courts in place of district courts
- changing the way in which justices of the peace (JPs) are appointed and trained
- placing the Inspectorate of Prosecution in Scotland on a statutory footing

**Parliamentary consideration**

The general principles of the Bill were broadly supported by the Justice 1 Committee, and by most witnesses, as necessary and proportionate to achieve the goal of improving the effectiveness and efficiency of the summary justice system and the system of bail and remand. Accordingly, the committee recommended to the Parliament, in its Stage 1 Report, that the general principles of the Bill be agreed to. The Parliament went on to agree those principles following the Stage 1 debate.

However, a number of amendments agreed at Stage 2 reflected concerns or recommendations expressed by the Justice 1 Committee in its Stage 1 Report. These included:

- changes to the provisions on bail, in response to the committee’s suggestion that there should be explicit reference to ‘public safety’ as one of the factors to be taken into account by a court considering bail
- changes to the provisions dealing with fiscal fines, introducing a further ground for recall where acceptance of a fiscal fine has been deemed under the ‘opt-out approach’ introduced in the Bill
- in response to concerns about the appointment of JPs with limited court experience, changes to the provisions dealing with the appointment of JPs so that only those placed on the court rota during the 12 months prior to the new
appointments system coming into force will be eligible for automatic appointment to deal with cases under the new system

Further information on the Parliament’s consideration of the Bill during Stages 1 and 2 of its passage is set out in the SPICe briefing 07/01 ‘Criminal Proceedings etc (Reform) (Scotland) Bill: Parliamentary Consideration Prior to Stage 3’ (2007).

Amendments agreed to during Stage 3 also included a number in response to issues raised by Members during earlier consideration. These included:

- changes to provisions on the liberation of an accused on an undertaking, so as to provide that the imposition of any special conditions must be authorised by a police officer of the rank of inspector or above
- changes to provisions on fiscal fines, to limit the maximum to £300 rather than the £500 set out in the Bill as introduced

Proposed amendments not agreed to at Stage 3 included a number of non-Executive amendments aimed at bringing the Bill’s provisions on trial in absence for summary criminal cases more into line with those currently applying in relation to solemn cases. Although some Members still had concerns about various aspects of the Bill, it was passed without the need for a division following the Stage 3 debate.

Legal Profession and Legal Aid (Scotland) Bill

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 56</th>
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<tr>
<td>Introduced by:</td>
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</tr>
<tr>
<td>Royal Assent:</td>
<td>19 January 2007</td>
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</table>

Purpose and objectives of the Bill

The Bill has two main purposes: first, it seeks to reform the system for handling complaints against lawyers by the creation of a new statutory body called the Scottish Legal Complaints Commission and, secondly, it seeks to improve the delivery of all forms of publicly funded legal assistance.
Provisions of the Bill

The key provisions of the Bill are as follows:

- a new Scottish Legal Complaints Commission will be established. This will be led by a Board with a non-lawyer majority and a non-lawyer chair, to receive complaints about lawyers which cannot be resolved at source (but with an emphasis on complaints being resolved at source where possible)
- responsibility for dealing with complaints about lawyers will be split between the new Commission and the professional bodies of the legal profession (i.e. the Law Society of Scotland and the Faculty of Advocates) as follows:
  - responsibility for handling complaints about ‘inadequate professional services’ will rest with the new Commission, taking over from the aforementioned professional bodies, the Scottish Legal Services Ombudsman and the Scottish Solicitors Discipline Tribunal
  - responsibility for professional discipline will remain with the professional bodies and the relevant discipline tribunals (i.e. the Scottish Solicitors Discipline Tribunal and the internal discipline tribunal of the Faculty of Advocates)
- the office of the Scottish Legal Services Ombudsman will be abolished as a result of the creation of the Commission
- the maximum amount of compensation that can be awarded will be raised from the current level of £5,000 to £20,000 where a complaint about ‘inadequate professional services’ is upheld, in order that the Commission will be able to handle moderate-value negligence claims
- first steps will be taken towards giving rights of audience and rights to conduct litigation to member of professional bodies other than the Law Society of Scotland or the Faculty of Advocates
- responsibility will be transferred from the courts to the Scottish Legal Aid Board for granting and determining legal aid in serious criminal cases
- the Scottish Legal Aid Board will be able to fund certain advisors other than solicitors to provide ‘Advice and Assistance’ (a type of public funding available in relation to both criminal and civil matters which makes it possible to obtain initial advice on any matter of Scots law)

Parliamentary consideration

A key issue throughout the parliamentary passage of the Bill was whether it was compliant with the European Convention on Human Rights. In this regard, concerns were focused on two aspects of the Bill: first, the composition of the new Commission and the extent of its independence from the Scottish Executive and secondly, the absence of an external right of appeal from a decision of the Commission. To address the first area of concern, a range of Executive amendments were agreed to at Stage 2 covering matters including the process for removing members of the Commission and their security of tenure.

In relation to the second area of concern, non-Executive amendments, supported by the Executive, were agreed to at Stage 3 which created a limited right of appeal to the Court of Session against decisions of the Commission.
Another important issue which arose during the passage of the Bill was whether it was appropriate that only complaints about services provided by practitioners should be considered by the new Commission, whilst responsibility for complaints about professional conduct remains with the professional bodies. Non-Executive amendments were moved at both Stages 2 and 3 which would have abolished this distinction making the new Commission responsible for dealing with all complaints against practitioners but these were not agreed to.

Another area of concern during the Bill’s passage was the increase in the maximum compensation level from £5,000 to £20,000. Non-Executive amendments were lodged at Stages 2 and 3 which would have resulted in a lower maximum being set but these were not agreed to.

Finally, the circumstances in which the two levies (the annual levy and the complaints levy), which will fund the new Commission, will be payable were given careful consideration during the Bill’s passage.

In the Bill as introduced the complaints levy was payable by all practitioners against whom an eligible complaint had been made. However, at Stage 2 an Executive amendment was agreed to so that the Bill as passed provides that the complaints levy will be paid by a practitioner only where: 1) the outcome of mediation is accepted by the parties; 2) an informal settlement is accepted by parties; or 3) a complaint is upheld on a formal determination by the Commission. This change substantially reflects a key recommendation of the Justice 2 Committee in its Stage 1 report.
Crofting Reform etc. Bill

Bill Number: SP Bill 57
Introduced on: 2 March 2006
Introduced by: Ross Finnie (Executive Bill)
Passed: 25 January 2007
Royal Assent: 1 March 2007

2007 asp 7

Passage of the Bill

The Crofting Reform etc. Bill [SP Bill 57] was introduced in the Parliament on 2 March 2006. Stage 1 commenced on 19 April 2006 with the Environment and Rural Development Committee as the lead committee. The Stage 1 debate took place on 27 September 2006 and the Bill was passed following the Stage 3 parliamentary debate on 25 January 2007.

Purpose and objectives of the Bill

The Bill is the final piece of legislation in the Scottish Executive’s land reform programme intended to modernise and reform Scottish land law. Large parts of crofting law remain as it was when introduced at the end of the nineteenth century. The objectives of the Bill are to simplify crofting legislation and the administration of crofting, to allow new crofts to be created, to allow crofters to undertake a wider range of activities on their crofts, and to modernise crofting legislation to take account of changes such as the increasing interest in renewable energy development in crofting areas.

Provisions of the Bill

The Bill will allow new crofts to be created within the crofting counties, and in other parts of Scotland in areas designated in an order made by Ministers. Statutory small landholders in these areas will be able to turn their holdings into crofts. Crofters will be able to use their crofts for “purposeful uses” other than grazing livestock or forestry. Crofters will also be able to use common grazing land for wider purposes. The role of the Crofters Commission in deciding on regulatory applications from crofters will change. It will only decide on assignations, divisions, and sublets of crofts where there is an objection to the proposal or where certain conditions apply. Landowners will be able to resume land from crofting tenure temporarily, instead of permanently as at present. Resumed land which is not used will revert to crofting tenure. Landowners or developers will be able to apply to the Land Court for a development scheme, e.g. for a wind farm development. The Land Court will decide if crofters would be fairly compensated before approving a scheme.

Since the enactment of the Land Reform (Scotland) Act 2003, part 3 of which gives crofting communities an absolute right to buy their croft land, there has been evidence that landowners have been leasing certain rights e.g. rights to develop
renewable energy, to intermediary companies, and so exclude these rights from the right to buy. To prevent this, the Bill will allow crofting communities to buy any leases which exist over crofting land, as well as the land itself.

Parliamentary consideration

Certain aspects of the Bill proved to be controversial during Parliamentary consideration. The main concern among crofters was that the buoyant housing market in the Highlands and Islands has led to the growth of a market in crofts, which in some communities is pricing local crofters out of the market and is allowing the best crofting land to be developed for housing. There was a feeling that the Crofters Commission was not using its powers to dampen down the market in crofts. This was felt by many to be threatening the future of crofting as a protected system of agricultural land tenure. The Executive brought forward proposals to regulate owner-occupied crofts, but these were rejected by the Environment Committee in its Stage 1 report. The Stage 1 report was critical of many aspects of the Bill, suggesting that some proposals should be dropped altogether, and ultimately the Committee was not able to make a recommendation on the general principles of the Bill to Parliament. In its response, the Executive agreed to remove sections of the Bill during stage 2, and also to establish a Committee of Inquiry on crofting to undertake a wide ranging review of the regulation of crofting tenure and the future of the Crofters Commission.

During stage 2 the Executive tabled amendments to remove the sections of the Bill which would have changed the status of the Crofters Commission, and those which referred to the market value of a croft. The proposals on owner occupiers were never tabled. A small number of technical amendments were made to the Bill during stage 3.
In December 2006 the Executive appointed Professor Mark Shucksmith to chair the Committee of Inquiry, and the Committee is expected to conclude its work by the end of 2007.

Edinburgh Airport Rail Link Bill

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<th>Bill Number:</th>
<th>SP Bill 58</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>16 March 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>TIE Limited (Private Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>14 March 2007</td>
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<tr>
<td>Royal Assent:</td>
<td>Awaiting Royal Assent</td>
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2007 asp

Passage of the Bill

The Edinburgh Airport Rail Link Bill [SP Bill 58] is a Private Bill and, as such, is subject to different Parliamentary procedures. The Bill was introduced in the Parliament on 16 March 2006. The Edinburgh Airport Rail Link Bill Committee first
met on Tuesday 18 April 2006. The Edinburgh Airport Rail Link is sometimes known as ‘EARL’. The Bill was passed following the Final Stage debate on 14 March 2007.

**Purpose and objectives of the Bill**

The Bill would grant TIE Limited a number of powers required for the construction of a railway which would link Edinburgh Airport with the current through running Edinburgh-Glasgow and Edinburgh-North East railway lines, as well as the power to undertake other works related to the route.

The policy objectives of the Bill are to:

- stimulate economic growth of the Edinburgh city region and Scotland as a whole by enhancing Scotland’s global, national, and regional competitiveness, connectivity and encouraging inward investment;
- assist in the delivery of social inclusion to Scottish towns and cities (including Aberdeen, Dunfermline, Kirkcaldy, Glenrothes, Dunblane, Dundee, Glasgow, Inverness, Perth, Falkirk and Stirling, as well as Edinburgh itself) by providing direct access to Edinburgh Airport;
- assist in the further growth of Scottish tourism and in making Scotland a thriving and year round tourist destination by providing direct rail access to the above towns and cities;
- offer a sustainable public transport alternative to accessing Edinburgh Airport that will be attractive to car and other vehicle users and thus reduce road congestion and environmental impacts;
- assist towards a sustainable basis for future growth at Edinburgh Airport as an integral part of Scotland’s transport infrastructure and economy and;
- facilitate a public transport interchange hub at Edinburgh Airport by providing interchange opportunities between air, rail, tram, bus and bicycle for both employment, leisure and other journeys.

A summary of the proposals is given below (Source: Promoter’s Memorandum).

![Edinburgh Airport Rail Link (showing existing and new railway lines)]
Provisions of the Bill

Part 1 of the Bill gives powers relating to the works required to build the rail link. There are two types of works, those that are specifically described in the Bill, and those carried out under general powers. Part 2 of the Bill gives compulsory purchase powers. Part 3 covers a number of miscellaneous subjects, whilst Part 4 gives some definitions and sets out the powers of Scottish Ministers.

Parliamentary consideration

Preliminary discussions by the Edinburgh Airport Rail Link Bill Committee were held on 18 April 2006 and 23 May 2006. The Preliminary Stage in the Edinburgh Airport Rail Link Bill Committee commenced on 6 June 2006, ending on 5 September 2006. The Preliminary Stage Report was published on 15 September 2007.


Christmas Day and New Year’s Day (Trading) (Scotland) Bill

Bill Number: SP Bill 59
Introduced on: 20 March 2006
Introduced by: Karen Whitefield (Member’s Bill)
Passed: 7 March 2007
Royal Assent: Awaiting Royal Assent

2007 asp

Passage of the Bill

The Christmas Day and New Year’s Day (Trading) (Scotland) Bill was introduced in the Parliament by Karen Whitefield MSP on 20 March 2006. Stage 1 began on 5 September 2006 with the Justice 2 Committee as the lead committee. The Committee’s Stage 1 report, published on 14 November 2006, recommended by majority, support of the general principles of the Bill. The Stage 1 debate took place on 22 November 2006 and the Parliament agreed to the general principles of the Bill. Stage 2 was completed on 16 January 2007. The Stage 3 debate took place on 7 March 2007 and the Bill was passed.
Purpose and objectives of the Bill

The objective of the Bill is to prohibit large retail shops from opening in order to engage in retail trading on Christmas Day and New Year’s Day. This is in response to what is considered could become a trend of larger shops trading on these days.

Provisions of the Bill

With the exception of a number of exempted categories the Bill would prohibit large shops (those with 280 square metres or more of relevant floorspace) from opening on both Christmas Day and New Year’s Day for the purpose of making retail sales. Exemptions include cafes, pubs, takeaways, registered pharmacies, transport related shops (in ports, railways stations, airports, and motorway service stations) and petrol stations. The penalty for allowing a shop to trade would be a fine not exceeding £50,000.

Parliamentary consideration

The Public Petitions Committee discussed a petition on the same topic on 21 January 2004 and agreed by division to support its general principles and to write to the Executive seeking its views. The Executive reserved its position on the proposal.

Karen Whitefield, the Member in charge of the Bill, carried out a consultation on the draft Bill between November 2004 and February 2005.

The Bill was introduced in the Parliament on 20 March 2006. The Justice 2 Committee was nominated as the lead Committee and Stage 1 began on 5 September 2006.

The general principles of the Bill were supported by some witnesses such as the Union of Shop, Distributive and Allied Workers (USDAW), the Scottish Churches Parliamentary Office, the Humanist Society, and some retailers. A number of witnesses expressed concerns about the Bill, including the Scottish Retail Consortium, some retailers, VisitScotland and the interest group Deregulate. Most concerns were expressed in relation to the impact of the ban on New Year’s Day. However the Committee heard fewer objections to the proposals to prevent large shops from trading on Christmas Day.

The Scottish Executive took no formal position and stated it was still weighing up the merits of the arguments.

In its Stage 1 report the Committee noted the general lack of robust evidence in relation to the economic impact of the Bill. This included a lack of evidence on the impact of the Bill on the retail and tourism sectors and a lack of reliable data to estimate the numbers of employees that would be ‘caught’ by the Bill.

Although a number of those responding to the consultation and appearing as witnesses argued the case for treating the two days separately, the Committee acknowledged that an attempt to remove one of the days from the Bill could be viewed as a wrecking amendment.

By majority the Committee recommended that the general principles of the Bill be agreed to. Three Members dissented (Stewart Maxwell MSP, Jeremy Purvis MSP...
and David Davidson MSP). The Stage 1 parliamentary debate was held on 22 November 2006 and the general principles of the Bill were agreed to.

At Stage 2, on 16 January 2007, the Deputy Minister for Justice explained that the Executive had not reached a position on the Bill but lodged a number of amendments in order to allow a debate to take place. The amendments offered the Committee the opportunity to remove New Year’s Day from the Bill, or alternatively to give ministers the power to lay an order introducing a ban on trading on New Year's Day (subject to the affirmative resolution procedure) at a later date, potentially with the requirement that a social and economic impact report be carried out. These amendments were all rejected by the Committee.

In the Stage 3 debate on 7 March 2007 the Parliament accepted a group of Executive amendments concerning the application of the bill to New Year’s Day. The Bill still banned Christmas Day trading, but conferred an order making power on Scottish Ministers to ban New Year’s Day trading at a later date. Such an order would only follow a consultation, a report on the economic impact and impact on family life and a statement of the Executive’s reasons for introducing the order. The Parliament agreed that the Bill be passed with 100 voting for, 17 against, and with two abstentions.

Tourist Boards (Scotland) Bill

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<th>Bill Number:</th>
<th>SP Bill 60</th>
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<td>Introduced on:</td>
<td>20 March 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Patricia Ferguson (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>25 October 2006</td>
</tr>
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<td>Royal Assent:</td>
<td>30 November 2006</td>
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Passage of the Bill

The Tourist Boards (Scotland) Bill (SP Bill 60) was introduced in the Parliament on 20 March 2006 by the Minister for Tourism, Culture and Sport. Stage 1 began on 28 March 2006 with the Enterprise and Culture Committee as the lead committee. The Stage 1 debate took place on 29 June 2006 and the Bill was passed, as introduced (without amendment), following the Stage 3 debate on 25 October 2006.

Purpose and objectives of the Bill

The Scottish Tourist Board was established by the Development of Tourism Act 1969. The Local Government (Scotland) Act 1994 required the establishment of area tourist boards. Fourteen such boards were created but these have been wound up and two new network area tourist boards created in their place. The Scottish Tourist Board and the network area tourist boards operate under the banner of VisitScotland. The
Bill is intended to abolish the network area tourist boards, to rename the Scottish Tourist Board “VisitScotland” and increase the number of Board members.

Provisions of the Bill

The Bill

- Changes the name of the Scottish Tourist Board
- Increases the limit on the number of appointed board members from six to eleven
- Removes the requirement that there be area tourist boards
- Makes consequential amendments to existing legislation

Parliamentary consideration

The Enterprise and Culture Committee recommended that Parliament agree the general principles of the Bill. At Stage 2 an amendment was lodged to retain the name “The Scottish Tourist Board” but this was disagreed to in Committee.

The Bill was passed without amendment with 96 for, 2 against and 15 abstentions.

Adoption and Children (Scotland) Bill

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<th>Bill Number:</th>
<th>SP Bill 61</th>
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<tr>
<td>Introduced on:</td>
<td>27 March 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Peter Peacock (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>7 December 2006</td>
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<td>15 January 2007</td>
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2007 asp 4

Passage of the Bill

The Adoption and Children (Scotland) Bill [SP Bill 61] was introduced on 27 March 2006. Stage 1 commenced on 10 May with the Education Committee as the lead committee. The Stage 1 debate took place on 13 September 2006 and the Bill was passed following the Stage 3 Parliamentary debate on 7 December 2006.

Purpose and objectives of the Bill

According to the Policy Memorandum the objective of the Bill is “to improve, modernise and extend adoption in Scotland and to provide greater stability for children who cannot live with their original families”.

The Bill restates, with some amendments, many of the provisions contained in the Adoption (Scotland) Act 1978 (c 38) and introduces a number of new provisions. In particular the Bill:
• replaces existing freeing orders and parental responsibilities orders with a single court order called a permanence order. The aim of this order is to increase stability for children who cannot live with their original families but to be flexible enough to cater for the needs of individual children. A permanence order can be sought with or without a measure granting authority for the child to be adopted, dependent on the needs of a particular child. The latter case may be similar to long term fostering.
• allows joint adoption by unmarried couples (including same-sex couples). Currently, one person in an unmarried couple can adopt, while their partner may apply separately for an order under section 11 of the Children (Scotland) Act 1995 to gain parental responsibilities and parental rights.
• extends the adoption support services framework for people affected by adoption.
• includes a regulation-making power allowing the Scottish Ministers to set a national system of care allowances

Parliamentary Consideration

The Education Committee’s Stage 1 report was supportive of the general principles of the Bill. One issue where concerns were raised by some witnesses related to the proposal to extend joint adoption to unmarried couples. However, the Committee agreed in principle with the Executive’s proposals as outlined in the Bill. Many of the matters that were raised during Stage 1 were technical issues relating to the drafting of the Bill. Therefore, the Committee’s report included, in an annex, a list of drafting comments.

Some of the evidence received by the Committee was concerned about the lack of provisions in the Bill in relation to fostering issues. In evidence the Executive had argued that many issues relating to fostering could be dealt with through regulations and would be considered further in light of the forthcoming consultation on the national fostering strategy.

SPICe briefing 06/101 provides an overview of the main amendments made at Stage 2 and the key areas of debate. Many of the amendments passed were of a technical nature or related to the operation of permanence orders.

The Bill as introduced would have allowed Ministers to make regulations about fostering allowances. At Stage 2 an Executive amendment changed the reference in the Bill to “care allowances” and widened the range of circumstances in which carers would be eligible for an allowance. At Stage 3 eligibility for care allowances was widened to include to those carers who care for a child before the child has become formally looked after by the local authority and relieved the local authority of a duty that it would otherwise have had towards the child.

During Stage 2 an amendment was lodged by Michael McMahon MSP, which was later withdrawn, to the effect that faith based adoption agencies would be provided with a right to uphold their values when considering applications from prospective adopters. The Member lodged an amendment on the same issue at Stage 3 but it was narrowly defeated.
Paul Martin MSP lodged an amendment at Stage 2 that would have meant that prior to making an adoption order the court would have to be satisfied that consideration had been given to placing a child with a married couple. Although the amendment was not moved but at Stage 2, at Stage 3 Paul Martin returned with an amendment that changed the criterion for adopting couples from being in "an enduring family relationship" to "a stable family unit." The amendment was passed on a narrow vote.

At Stage 3 a proposed amendment by Roseanna Cunningham MSP which would have prevented joint adoption by same sex couples was defeated.

Other amendments passed at Stage 3 were largely of a technical nature or in relation to the operation of permanence orders, and in particular the interaction of the court with the Children’s Hearing System.

**Adult Support and Protection (Scotland) Bill**

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<th>Bill Number:</th>
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<td>Introduced on:</td>
<td>30 March 2006</td>
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<tr>
<td>Introduced by:</td>
<td>Andy Kerr (Executive Bill)</td>
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<td>15 February 2007</td>
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<tr>
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2007 asp

**Passage of the Bill**

The Adult Support and Protection (Scotland) Bill [SP Bill 62] was introduced in the Parliament on 30 March 2006. Stage 1 commenced on 25 April 2006 with the Health Committee as the lead committee. The Stage 1 debate took place on 23 November 2006 and the Bill was passed following the Stage 3 parliamentary debate on 15 February 2007.

**Purpose and objectives of the Bill**

The Bill took forward recommendations of the Scottish Law Commission’s Report on Vulnerable Adults (Scot Law Com No 158, 1997), and those of the Social Work Services Inspectorate (now the Social Work Inspection Agency) and the Mental Welfare Commission following investigations into Scottish Borders Council. The Bill sought to protect and benefit adults at risk of being abused, by introducing investigative rights and duties as well as a range of post-assessment interventions. These measures were to be underpinned by the creation of local multi-disciplinary Adult Protection Committees to both oversee and coordinate the work of various agencies involved in abuse investigations and to develop prevention strategies.
In addition, the Bill sought to amend the Adults with Incapacity (Scotland) Act 2000 with the aim of simplifying and streamlining the protections for adults with incapacity whilst improving access to them. It also sought to make a number of amendments to the Social Work (Scotland) Act 1968 regarding the liable relatives rule, direct payments and ordinary residence. Finally, it sought to amend the Mental Health (Care and Treatment) (Scotland) Act 2003 to ensure that Mental Health Tribunal reviews take place every two years.

**Provisions of the Bill**

Part 1 of the Bill proposed new provisions for the protection of adults at risk of abuse. The Bill defined an adult at risk and what was to be considered as abuse. It placed a duty on local authorities to inquire if it believes an adult is at risk of abuse. It also placed a duty of cooperation on a number of bodies including the local NHS Board, to support the council with its inquiry or to inform the local authority of any adult it believes it is at risk of abuse. The Bill then provides local authorities with new powers to carry out assessments of the person and their circumstances; intervene to remove the adult or manage the risk of abuse; if necessary and in the last resort, to exclude the perpetrator; and, if necessary and in the last resort, to force entry to perform the above functions.

However, such interventions were to complement other interventions that did not require statute including informal mediation between victim and perpetrator to negotiate and agree future plans. The Bill also contained a principle to ensure that any intervention was essential for the welfare of the individual and the least restrictive possible.

Finally, Part 1 of the Bill proposed a duty on local authorities to establish a multi-agency Adult Protection Committee which would take a strategic overview in jointly managing adult protection policies, systems and procedures at a local level.

Part 2 of the Bill contained provisions to amend the Adults with Incapacity (Scotland) Act 2000. Following a two year consultancy, the work of the Parliament’s Justice 2 Committee and an Executive consultation, Part 2 aimed to address issues arising from the early days of implementation and ensure that the legislation was better able to meet its objectives by simplifying and streamlining the protections for adults with incapacity and improving access to them. Amendments were proposed in a number of areas including powers of attorney, authority to intromit with funds, intervention orders and guardianship orders.

Part 3 of the Bill sought a number of amendments and appeals to the Social Work (Scotland) Act 1968, namely amendments:

- to the provisions on ordinary residence to clarify and update the legislation determining which local authority is financially responsible for providing community care services especially when a person moves between local authority areas
- to repeal provisions regarding the liable relatives rule as it applies to charging for care home fees in Scotland
• to allow Scottish Ministers to make provision for the delegation of functions to local authorities so that the local authorities can exercise flexibility in designing an individual’s direct payments care package. It was proposed that the new power would allow local authorities to determine whether exceptional circumstances exist which would justify using direct payments to employ a close relative in a particular case.

Finally, Part 3 of the Bill sought to make an amendment to the Mental Health and Treatment (Scotland) Act 2003 to ensure that Mental Health Tribunal reviews take place every two years, as was the original attention of the Act.

Parliamentary consideration

Following its stage 1 scrutiny of the Bill the Health Committee published its Stage 1 Report on 10 November 2006. The Committee had major concerns with Part 1 of the Bill contending that the provisions raised fundamental issues about the balance between the reach of the state in its duty to protect, as against the rights of the individual. On the one hand the Committee accepted that this part of the Bill contained specific provisions which could be genuinely useful and help to counter the abuse of vulnerable people, especially the elderly. However, on the other hand it considered that the provisions were very widely drawn, potentially encompassing every adult member of the population. It also noted that a number of the groups that the Bill intended to help, in particular disability groups, were opposed to it and had raised some serious issues in evidence before the Committee.

The Committee recommended the following changes to Part 1 of the Bill:

• that the definition of who is covered by Part 1 of the Bill be amended so that it is not so all-encompassing and discriminatory in terms of those with disabilities
• the term ‘abuse’ should be removed from the Bill and replaced with a less pejorative term so that it does not stigmatisate and alienate those who have only been guilty of benign neglect, resulting in attempts to improve circumstances for the adult at risk being hindered
• the Bill should be amended so that it does not override rights established in other pieces of legislation, in particular the rights to advocacy and advanced statements contained in the Mental Health Act
• the same right to appeal that is proposed for banning orders should be extended to removal orders to reduce the risk of challenge under the European Convention of Human Rights
• the definition of the person who has the power to enter premises should be made more specific than ‘a council officer’
• the test which a Sheriff must apply before making a protection order against the wishes of the adult at risk should be tightened

The Committee welcomed the proposals in Part 2 of Bill, though did make one recommendation on an aspect of the amendments to the application to intromit with funds. It also supported the proposals in Part 3 of the Bill, though following evidence received did recommend that the Executive establish transitional arrangements under the ‘ordinary residence’ provisions of the Community Care and Health Act by order so
that a recipient of a care package continues to receive that package whilst the relevant local authorities agree the financial aspects.

On 17 November 2006 the Deputy Minister for Health and Community Care, Lewis Macdonald MSP, responded to the recommendations of the Committee on Part 1 of the Bill. He made commitments on all the recommendations, apart from that concerning the right of appeal to a removal order. Such commitments were reiterated during the Stage 1 debate on 23 November 2006.

On 11 December the Deputy Minister for Health and Community Care sent a letter to the Committee regarding its recommendations on Parts 2 and 3, and explained his reasoning for not supporting these. He also advised the Committee of a large amendment at Stage 2 which would seek to consolidate the proposed changes to the Adults with Incapacity Act in one amendment.

Stage 2 took place on 12 December 2006 (Part 1) and 19 December 2006 (Parts 2 and 3). As regards Part 1, the Minister made a number of amendments that he had committed himself to, including the definitions of “an adult at risk” and the term “abuse”, and making it clear that granting an order against the consent of an adult at risk is a last resort. In addition he either accepted at Stage 2 or said he would come forward with amendments at Stage 3 a number of issues raised by Members of the Committee. These included:

- that the Council officer visiting an adult at risk must explain why they are there
- the adult at risk must be made aware they can refuse medical examinations
- the Sheriff must be satisfied adult at risk can be taken to a suitable place

As regards Parts 2 and 3 a number of amendments were proposed by the Minister and accepted by the Committee. In addition a number of amendments were proposed by Members of the Committee. Some of these were agreed to, or the Deputy Minister gave assurances he would come forward with amendments at Stage 3. These amendments as well as all those concerning Part 1 are discussed in more detail in the SPICe Briefing 07/07 ‘Adult Support and Protection (Scotland) Bill: Parliamentary Consideration Prior to Stage 3’.

Stage 3 took place on 15 February 2003. Prior to it on 7 December 2007 the Deputy Minister for Health and Community Care sent a letter to the Convener of the Health Committee advising of a further amendment he intended to propose regarding the Adults with Incapacity Act 2000. The Deputy Minister also proposed amendments that he previously committed himself to taking account of the issues raised by Members of the Committee at Stage 2.
Health Board Elections (Scotland) Bill

Bill Number: SP Bill 63
Introduced on: 31 March 2006
Introduced by: Bill Butler (Member’s Bill)
Fell: 31 January 2007

Passage of the Bill

The Health Board Elections (Scotland) Bill [SP Bill 63] was introduced in the Parliament by Bill Butler MSP on 31 March 2006. Stage 1 evidence taking began on 24 October 2006 with the Health Committee as the lead committee. The Stage 1 debate took place on 31 January 2007 but the Bill fell on a vote of 55 for and 64 against with no abstentions.

Purpose and objectives of the Bill

The objective of the Bill was to make provision for local public elections to National Health Service Boards in Scotland, with the intention of democratising Scotland’s Health Boards. The Bill aimed to allow the public to influence health service delivery in their local communities, and to ensure greater openness, transparency, and local accountability between board members and the communities they serve.

Provisions of the Bill

The Bill made provision to reserve a majority of publicly elected Health Board places (50% plus no more than two) over appointed members. The chair would still be appointed by Scottish Ministers, but elected members would have majority control of the Board. Elected members would receive no remuneration.

The proposed method of election was via a postal ballot using the ‘first past the post’ electoral system in the context of a multi-member constituency for a fixed four year term, with all the costs being met by NHS boards.

Parliamentary consideration

With the exception of one Member, who opposed the Bill, the majority of the Health Committee was either in favour or neutral on the general principles of the Bill. The Committee had three main concerns which, in their view, required further consideration:

- the electoral system should provide more equitable geographical representation
- the proportion of directly elected members on the board
- the addition of remuneration for directly elected board members

The Bill fell at the Stage 1 debate on a vote of 55 for and 64 against. There were no abstentions.
Airdrie-Bathgate Railway and Linked Improvements Bill

Bill Number: SP Bill 64
Introduced on: 30 May 2006
Introduced by: Network Rail Infrastructure Limited (Private Bill)
Passed: In progress as at 23 March 2007
Royal Assent:

Passage of the Bill

The Airdrie-Bathgate Railway and Linked Improvements Bill [SP Bill 64] is a Private Bill, and, as such, is subject to different Parliamentary rules procedures. The Bill was introduced in the Parliament on 30 May 2006. The Airdrie-Bathgate Railway and Linked Improvements Bill Committee was established by Parliament on 15 June 2006 to consider and report on the Bill. The Final Stage of the Bill is due to take place on 28 March 2007.

Purpose and objectives of the Bill

The proposals in the Bill would allow Network Rail to construct an electrified double track railway between Airdrie and Bathgate, following the route of a previous railway line. Network Rail would also double track and, where necessary electrify, the existing Airdrie-Drumgelloch and Edinburgh-Bathgate railway lines using their existing statutory powers. The Bill grants Network Rail other powers required to build the railway, e.g. powers to build new roads or stop up existing roads. The end result would be a continuous electrified double track railway between Glasgow and Edinburgh via Airdrie and Bathgate.

The Bill allows for the construction of new stations in the villages Caldercruix and Armadale. The existing stations at Drumgelloch and Bathgate would be relocated and a new light maintenance depot built on the site of a rail served car storage yard in Bathgate, which will itself be relocated to Boghall, to the east of Bathgate. The existing Airdrie-Bathgate cycle path, which forms part of the National Cycle Network Route 75, would be relocated.

The specific objectives behind construction of the railway are to:

- improve direct access to labour markets in Glasgow, Edinburgh, and West Lothian for people living in the Airdrie to Uphall corridor.
- stimulate economic growth of the Airdrie to Uphall corridor by improving the connectivity of the area.
- assist in the delivery of social inclusion to communities in the Airdrie to Uphall corridor by providing enhanced public transport opportunities to those without access to private cars
- contribute towards increasing the number of people using public transport in Central Scotland and provide these communities with improved access into the national rail network.
• offer a public transport alternative to the M8 thus helping to reduce the rise in road congestion and subsequent environmental impacts
• construct a rail link that will allow for existing services on the Glasgow North electrics to operate as through services to Edinburgh providing an alternative to the Edinburgh-Glasgow main line service, thus assisting in reducing congestion at peak times

Provisions of the Bill

Part 1 of the Bill gives powers relating to the works required. There are two types of works, those that are specifically described in the Bill, and those carried out under more general powers. Part 2 of the Bill gives compulsory purchase powers. Part 3 covers a number of miscellaneous subjects, whilst Part 4 gives some definitions and sets out the powers of Scottish Ministers.

Parliamentary consideration

A Preliminary discussion by the Airdrie-Bathgate Railway and Linked Improvements Bill Committee was held on 28 June 2006. The Preliminary Stage in the Airdrie-Bathgate Railway and Linked Improvements Bill Committee commenced on 4 September 2006 and ended on 7 November 2006. The Preliminary Stage report was published on 14 November 2006.

Parliament considered the Bill on 23 November 2006. The Pre-Consideration Stage took place in the Airdrie-Bathgate Railway and Linked Improvements Bill Committee on 23 November 2006.

Passage of the Bill

The Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill [SP Bill 65] was introduced in the Parliament on 13 June 2006. The Scottish Executive sought the agreement of the Parliament to treat it as an Emergency Bill, under the provisions set out in Rule 9.21 of the Standing Orders of the Scottish Parliament. A motion to this effect was agreed on 15 June 2006 and the Bill was passed without amendment on the same day, with all stages of parliamentary scrutiny being dealt with by the Parliament as a whole.

Purpose and objectives of the Bill

The two most senior judges in Scotland are the Lord President of the Court of Session (who also holds the office of Lord Justice General in relation to the High Court of Justiciary) and the Lord Justice Clerk. The Bill makes provision for the functions of these two judges to be carried out by other senior judges when either office is vacant, or where the judge in question is unable to carry out the functions of the office because of ill health.

In seeking the agreement of the Parliament to treat the Bill as an Emergency Bill, the Minister for Justice stated that:

“I will briefly outline why I consider that it is important that this short but critical piece of legislation should be handled under those exceptional procedures.

The need arises because Scotland’s senior judge, the Lord President of the Court of Session, has been ill for some time and there is no indication of when he will return. Under the present law, a number of important functions may be carried out by the Lord President alone. His extended absence is already causing difficulties for the administration of the courts. The second most senior judge, the Lord Justice Clerk, has asked ministers to take early action to deal with this gap in our law. The only way in which we can remedy the situation is to legislate to put beyond any doubt that the Lord Justice Clerk may act in place of the Lord President during the Lord President’s incapacity.” (SP OR 15 June 2006, col 26619)
Background information on the Scottish court system and judiciary (including the roles of the Lord President and Lord Justice Clerk) is set out in SPICe briefing 06/50 on the Bill.

Provisions of the Bill

The Bill makes provision for the functions of the Lord President (including functions performed in the role of Lord Justice General) and Lord Justice Clerk to be carried out by other senior judges when either office is vacant, or where the judge in question is incapacitated (ie unable to carry out the functions of the office because of ill health).

The Bill provides that the Lord President may be treated as incapacitated where the First Minister receives a declaration to that effect signed by the Lord Justice Clerk and at least four other judges of the Inner House of the Court of Session. Similar provision is made in relation to the Lord Justice Clerk. Thus, in both cases, a majority of Inner House judges must agree.

Where the Lord President is incapacitated, or when the office is vacant, the Bill provides that his/her role can be performed by the Lord Justice Clerk. The Bill goes on to provide that, in such circumstances, the role of the Lord Justice Clerk can be performed by the next most senior judge of the Inner House (as determined by seniority of appointment). Similar provision is made for situations where it is the Lord Justice Clerk who is incapacitated (or where that office is vacant) – with the next most senior judge below the Lord Justice Clerk performing the role.

Parliamentary consideration

Following the Stage 1 debate, the general principles of the Bill were agreed with cross-party support.

Stage 2 of the Bill (considered by a Committee of the Whole Parliament) involved consideration of a number of detailed amendments which were withdrawn (or not moved) following debate.

Following the Stage 3 debate, the Bill was passed with cross-party support.
Transport and Works (Scotland) Bill

Bill Number: SP Bill 66
Introduced on: 26 June 2006
Introduced by: Tavish Scott (Executive Bill)
Passed: 8 February 2007
Royal Assent: 14 March 2007

2007 asp 8

Passage of the Bill

The Transport and Works (Scotland) Bill [SP Bill 66] was introduced in the Parliament on 26 June 2006. Stage 1 began on 5 September 2006 with the Local Government and Transport Committee as the lead committee. The Stage 1 debate took place on 22 November 2006, and the Bill was passed following the Stage 3 parliamentary debate on 8 February 2007. Royal Assent was received on 14 March 2007.

Purpose and objectives of the Bill

The Bill provides for the making of orders related to, or to matters connected with, the construction or operation of major transport infrastructure projects e.g. railways, tramways and inland waterways.

The Bill aims to replace the current approval system for major transport infrastructure projects (through a Private Act of the Scottish Parliament), with a new system of authorisation. Additionally, the Bill removes the current requirement to obtain an Act of the Scottish Parliament, following a special parliamentary procedure for certain road developments where there are objections from statutory bodies and for harbour developments where there is to be compulsory purchase, and replace it with a system similar to that described above.

Provisions of the Bill

The Bill is in 3 parts.

Part 1 makes provision to enable the Scottish Ministers, under an order-making power, to authorise transport developments and provides details of the procedure for the making of orders.

Part 2 modifies legislation relating to road and harbour developments, making the authorisation process for transport developments more consistent. It also establishes revised procedures for the making of Pilotage orders. A minor modification is made to the Transport (Scotland) Act 2001 to enable the Scottish Ministers to make grants and loans for the purchase of certain properties in consequence of a transport development.
Part 3 describes how secondary legislation (orders, rules and regulations) will be made. It also deals with modifications and repeals predominantly in respect of special Parliamentary procedure, and the commencement and short title of the Act.

Parliamentary consideration

The Local Government and Transport Committee took Stage 1 evidence on the Bill between September and November 2006. Based on the evidence taken, the committee made recommendations on:

- standards of consultation carried out by promoters and the Executive
- resourcing the Scottish Executive Inquiry Reporters Unit
- publication of inquiry reports by Scottish Ministers
- publication of a written statement when a Minister decides to go against the recommendations of an inquiry report

Stage 2 consideration of the Bill took place on 12 December 2006. The majority of amendments made were of a technical nature. The main changes are:

- an expansion to the list of authorities whose objection to a proposal will require a hearing or inquiry to be held
- additional parliamentary scrutiny for amendments to relevant legislation
- an extension of the application of the voluntary purchase scheme

Aquaculture and Fisheries (Scotland) Bill

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 67</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>29 June 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Ross Finnie (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>1 March 2007</td>
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<tr>
<td>Royal Assent:</td>
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2007 asp

Passage of the Bill

The Aquaculture and Fisheries (Scotland) Bill [SP Bill 67] was introduced on the 29 June 2006. Stage 1 commenced on 27 September 2006 with the Environment and Rural Development Committee as the lead committee. The Stage 1 debate took place on 20 December 2006 and the Bill was passed following the Stage 3 parliamentary debate on 1 March 2007.

Purpose and objectives of the Bill

The Bill has three main purposes: to provide a statutory basis for regulating previously unregulated practices in aquaculture; to enhance emergency powers for
controlling *Gyrodactylus salaris*, a parasite of salmon; and to make a number of miscellaneous amendments to salmon, freshwater and sea fisheries legislation.

**Provisions of the Bill**

The Scottish Executive published an aquaculture strategy in 2003. This included a commitment to legislate to improve the regulation of aquaculture. The Bill builds on this commitment. Part 1 of the Bill would introduce new powers to control sea lice and escapes from fish farms, and give a statutory underpinning to codes of good fish farming and shellfish farming practice.

*Gyrodactylus salaris* (GS) is a parasite of salmon. It is currently absent from the UK, but outbreaks have occurred in other European countries. In Norway and Finland it has wiped out salmon from entire river catchments. Scottish Ministers currently have some powers to control GS under fish health legislation, however, these would not extend to the two main methods of eradicating GS, both of which involve flushing river systems with chemicals. Part 2 of the Bill would provide these powers, and strengthen Ministers other powers to control the disease.

The Scottish Executive held a major consultation on freshwater fisheries management in 2000, and followed this with a Green Paper in 2001. The law on salmon and freshwater fisheries was brought together in the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. Part 3 of the Bill contains a number of amendments to this Act which have been drawn up in consultation with a Freshwater Fisheries Forum. It also includes a technical amendment to sea fisheries law. Part 4 of the Bill contains a number of miscellaneous provisions relating to: introduction of live fish into inland waters; provision of information about fish and shellfish farming; allowing Ministers to make payments for compulsory slaughter of fish, and more generally to support the aquaculture industry.

The Executive had intended to make changes to the system of managing freshwater fisheries in Scotland through this Bill. However, it was not possible to develop legislative proposals in time, and the Executive intends to bring forward another fisheries bill, sometime in the next Parliamentary session.

**Parliamentary consideration**

The Environment and Rural Development Committee’s Stage 1 report to the Parliament on the general principles of the Bill made a number of recommendations. In its findings, the Committee emphasised the importance of preventive measures to stop the parasite *Gyrodactylus salaris* (GS) reaching Scotland. The Committee called for more robust measures at ports to prevent it spreading to Scotland and recommended the launch of a high profile public information campaign about the importance of disinfecting angling gear and other water-sports equipment.

During Stage 2, the main amendments made to the Bill concerned sea fisheries. A new part was added which provides for administrative penalties for sea fisheries offences. This would give a person charged with an offence the option of accepting a fine, rather than being taken to court. The fixed penalty would not be classified as a criminal conviction. If the person did not accept the fixed penalty then they could be
taken to court as is the case at present. The introduction of a fixed penalty system was recommended by the Prime Minister’s Strategy Unit’s enquiry into the future of sea fisheries, which produced a report called ‘Net Benefits’ in 2004.

Schools (Health Promotion and Nutrition) (Scotland) Bill

Bill Number: SP Bill 68
Introduced on: 8 September 2006
Introduced by: Peter Peacock (Executive Bill)
Passed: 14 March 2007
Royal Assent: Awaiting Royal Assent

2007 asp

Passage of the Bill

The Schools (Health Promotion and Nutrition) (Scotland) Bill [SP Bill 68] was introduced on 8 September 2006 and the Communities Committee designated lead Committee. The Committee took evidence at stage 1 on 24 October 2006; on 1, 8, 15, 22 November 2006 and on 6 December 2006. The Committee reported on the general principles on 16 January 2007 in its Stage 1 Report and the Stage 1 debate was held on 24 January 2007. Stage 2 amendments were considered on 13 February 2007. The Stage 3 debate was held on 14 March 2007 following which the Bill was passed.

Purpose and objectives of the Bill

The Bill aims to improve the health of children by ensuring that food and drink supplied in local authority schools is nutritionally balanced and, more generally, it seeks to make all schools ‘health promoting’.

Provisions of the Bill

The Bill includes a duty to make schools ‘health promoting’, a duty to ensure food supplied meets nutritional standards, a power to provide free snacks, a duty to promote the uptake of free school meals and a duty protect the anonymity of those pupils taking free meals.

Parliamentary consideration

During Stage 1 the Committee took oral evidence over six meetings from 11 panels of witnesses, including children’s charities, food suppliers and health organisations. In addition the Committee went on two fact-finding visits. One to a primary in Kilmarnock and another to a high school Glasgow. Members also held a teleconference with pupils in hostel accommodation in Shetland. Issues arising at Stage 1 included:
The Committee agreed to the general principles in its Stage 1 report.

At Stage 2 the Bill was amended to provide for guidance to be issued on sustainable development. Amendments relating to free school meal entitlement, use of biometric data and facilities for food preparation were defeated.

At Stage 3 the Bill was amended to further specify the content of the guidance on sustainability. As at Stage 2 amendments relating to free school meals were defeated (although the First Minister, Jack McConnell, had recently announced his intention to use existing regulatory powers to extend entitlement). Other defeats included promotion of free breakfasts and the limitation of advertising and sponsorship from companies producing unhealthy food.

**Prostitution (Public Places) (Scotland) Bill**

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<th>Bill Number:</th>
<th>SP Bill 69</th>
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<tr>
<td>Introduced on:</td>
<td>15 September 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Tom McCabe (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>28 February 2007</td>
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<td>Royal Assent:</td>
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**Passage of the Bill**

The Prostitution (Public Places) (Scotland) Bill was introduced in the Scottish Parliament on 15 September 2006. The Local Government and Transport Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 3 October 2006. The Stage 1 debate took place on 17 January 2007 and the Bill was passed following the Stage 3 debate on 28 February 2007.

**Purpose and objectives of the Bill**

The Policy Memorandum published along with the Bill [as introduced] stated that:

- extending coverage of aspects of the Bill to the independent school and private nursery sector
- extending entitlement to free school meals
- infrastructure costs if uptake were to increase
- variation in uptake between local authorities and between primary and secondary
- vans outside schools selling unhealthy food
- promoting up take of school meals
- importance of involving children in the process rather than imposing solutions on them
“The Bill seeks to protect our communities from antisocial activity associated with prostitution in public places. The current law in Scotland is focused on those (predominately women) who sell sex on the street and not on those (predominately men) who purchase. There is a need to redress this balance in order to protect communities from the nuisance, alarm or offence arising from street prostitution-related activities in or near public places, whether caused by seller or purchaser.” (para 2)

Provisions of the Bill

The Bill [as introduced]:

- sought to repeal section 46 of the Civic Government (Scotland) Act 1982 which includes provisions making it an offence for a prostitute to loiter or solicit in a public place for the purposes of prostitution
- sought to replace the above offence with new provisions making it an offence for a person to loiter or solicit in a ‘relevant place’ for the purpose of prostitution (i.e. an offence focussed on those who sell sex)
- sought to introduce new provisions making it an offence for a person to loiter or solicit in a ‘relevant place’ for the purpose of obtaining the services of a prostitute (ie an offence focussed on those who seek to buy sex).
- The new provisions, unlike the offence set out in section 46 of the 1982 Act, expressly provided that there would only be an offence if a reasonable person would consider that the behaviour involved was ‘likely to cause alarm, offence or nuisance’.
- The new provisions were applied to any ‘relevant place’, which was defined as including a public place and a place to which at the material time the public are permitted to have access (whether on payment or otherwise)

The Bill [as passed]:

- does not repeal section 46 of the 1982 Act and does not introduce any new offence aimed at those who sell sex – thus, the existing criminal law in this area is not changed by the Bill
- provides that it is an offence for a person to loiter or solicit in a ‘relevant place’ for the purpose of obtaining the services of a prostitute (ie an offence focussed on those who seek to buy sex).
- The Bill no longer provides that there will only be an offence if a reasonable person would consider that the behaviour involved was ‘likely to cause alarm, offence or nuisance’ – given that this is also not required under section 46 of the 1982 Act, it will not be a requirement for the offences aimed at those who sell or those who seek to buy sex

Parliamentary consideration

As indicated above, the Bill underwent some significant changes during its passage through the Parliament: removing those who sell sex from the ambit of the Bill (thus focussing the Bill on those who seek to buy sex) and removing the need for evidence that the activities involved were likely to cause alarm, offence or nuisance before an offence is committed.
Other significant changes included:

- the removal of a provision which stated that no offence of loitering (as opposed to soliciting) is committed if a person is in a motor vehicle which is not public transport – it was felt that this provision would unduly limit the application of the new offence to ‘kerb crawlers’
- an increase in the maximum fine which may be imposed on those convicted of an offence under the Bill – increased from level 2 on the standard scale (currently £500) to level 3 (currently £1,000) (the maximum fine under section 46 of the 1982 Act is level 2)

All of the changes made to the Bill were as a result of amendments agreed to at Stage 2 and many of these changes followed on from recommendations of the Local Government and Transport Committee. Further information on the Parliament’s consideration of the Bill during Stages 1 and 2 of its passage is set out in the SPICe briefing 07/10 ‘Prostitution (Public Places) (Scotland) Bill: Parliamentary Consideration Prior to Stage 3’.

Home Energy Efficiency Targets (Scotland) Bill

Bill Number: SP Bill 70
Introduced on: 19 September 2006
Introduced by: Shiona Baird (Member’s Bill)
Passed: In progress as at 23 March 2007 but expected to fall at dissolution

Passage of the Bill

The Home Energy Efficiency Targets (Scotland) Bill [SP Bill 70] was introduced in the Parliament by Shiona Baird MSP on 19 September 2006, and the Communities Committee was designated as lead committee. In November 2006 the Communities Committee decided that it was not in a position to conduct scrutiny of this bill given its already heavy workload

Purpose and objectives of the Bill

The long term aim and primary objective of the Bill is to improve the energy efficiency of Scotland’s homes.

The Bill requires the Scottish Executive to set targets for achieving energy efficiency in domestic dwellings and the publication of an action plan and progress reports.

Provisions of the Bill

The Bill is in 3 parts:
Part 1 requires the Scottish Ministers to publish an initial home energy efficiency improvement target by 2011 and another by 2020.

Part 2 provides that the Scottish Ministers must include certain information within the plan, such as interim targets, resources deployed, and details on commissioned research.

Part 3 defines a number of terms used in the Bill, such as “home energy efficiency”, and “residential accommodation”.

**Parliamentary consideration**

In November 2006 the Communities Committee decided that it was not in a position to conduct scrutiny of this bill, or of two other Member’s Bills as part of its work programme, given its already heavy workload.

The Committee agreed to approach the Procedures Committee to request that it conduct an inquiry into the adequacy of the existing Rules which cover the Member’s Bills process and in particular the appropriateness of the deadline for the submission of such bills.

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**Commissioner for Older People (Scotland) Bill**

<table>
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<th>Bill Number:</th>
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<tr>
<td>Introduced on:</td>
<td>20 September 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Alex Neil (Member’s Bill)</td>
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<td>Passed:</td>
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**Passage of the Bill**

The Commissioner for Older People (Scotland) Bill [SP Bill 71] was introduced in the Parliament by Alex Neil MSP on 20 September 2006 and the Communities Committee designated as lead committee. The Parliamentary Bureau did not propose a timetable for the Bill and the Communities Committee decided that it was not in a position to conduct scrutiny of this bill given its already heavy workload.

**Purpose and objectives of the Bill**

The purpose of the Bill was to create a Commissioner for Older People in Scotland. Their role would be to promote and safeguard the rights and interests of older people, consider law, policy and practice, encourage recognition and use of older people’s skills and experience and challenge discrimination.
Provisions of the Bill

The Bill if passed would have established a Commissioner for Older People, nominated by the Parliament and appointed by the Sovereign. The Commissioner would have powers to investigate how service providers take account of the rights, interests and views of older people in the decisions they take and the work they do. The Commissioner would not be able to carryout investigations if the issues related to a reserved matter, an individual older person or a decision or proceedings in a court of tribunal. Under the powers outlined in the Bill, a Commissioner would be able to “require any person” to give evidence or produce documents. The Commissioner would be publicly funded by the Scottish Parliamentary Corporate Body from the Scottish Consolidated Fund.

Parliamentary consideration

The Bill was introduced on 20 September 2006 and the Communities Committee was designated as the lead committee. The Parliamentary Bureau did not propose a timetable for the Bill.

The Communities Committee decided that it was not in a position to conduct scrutiny of this bill, or of two other Member’s Bills as part of its work programme, given its already heavy workload.

The Committee agreed to approach the Procedures Committee to request that it conduct an inquiry into the adequacy of the existing Rules which cover the Member’s Bills process and in particular the appropriateness of the deadline for the submission of such bills.

The Finance Committee had begun consideration of the Bill on 31 October 2006 and reported on the Financial Memorandum of the Bill on 25 January 2007. Whilst recognising the position of the Communities Committee the Finance Committee published its report with a view to informing a future bill introduced in the next session.

Cairngorms National Park Boundary Bill

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 72</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>21 September 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>John Swinney (Member’s Bill)</td>
</tr>
<tr>
<td>Fell:</td>
<td>21 March 2007</td>
</tr>
</tbody>
</table>

Passage of the Bill

The Cairngorms National Park (Boundary) Bill [SP Bill 72] was introduced in the Parliament by John Swinney MSP on 21 September 2006. The Environment and Rural Development Committee was designated as lead committee and Stage 1
commenced on 31 January 2007. The Stage 1 debate took place on 21 March 2007. Following the debate, a motion to support the general principles of the Bill received 47 votes in favour, 64 against and 2 abstentions. Consequently, the Bill fell.

**Purpose and objectives of the Bill**

The Bill seeks to extend the boundaries of the Cairngorms National Park to include areas of Eastern and Highland Perthshire, and to change the composition of the Cairngorms National Park Authority (NPA). The stated objective of the Bill is to further the achievement of the National Park aims, as set out in National Parks (Scotland) Act 2000, within the Cairngorms area.

**Provisions of the Bill**

The Bill is in three parts:

Part 1 defines “the designation order” and “Cairngorms National Park Authority” as they are used in the Act.

Part 2 amends the boundary of the Cairngorms National Park by replacing the original 15 maps with a new set of 16 maps to include an area of Highland and Eastern Perthshire.

Part 3 proposes consequential changes in the composition of the Cairngorms National Park Authority to reflect the enlarged boundary encompassing part of the Perth and Kinross Council area.

**Parliamentary consideration**

The Environment and Rural Development Committee took Stage 1 evidence on the Bill in January and February 2007 and published its Stage 1 Report on the Bill on 6 March 2007. In the Stage 1 Report the Committee agreed, by five votes to four, to recommend that the general principles of the Bill should not be agreed to.

The Stage 1 debate took place on 21 March 2007. Following the debate, the Parliament voted 64 to 47 against the motion to agree the general principles of the Bill. There were 2 abstentions. The Bill, therefore, fell.
The Protection of Vulnerable Groups (Scotland) Bill [SP Bill 73] was introduced in the Parliament on 25 September 2006. Stage 1 commenced on 24 October 2006 with the Education Committee as the lead committee. The Stage 1 debate took place on 17 January 2007. Stage 2 commenced on 13 February 2007 and was completed on 20 February 2007. Stage 3 of the Bill took place on 8 March 2007 and the Bill was passed.

Purpose and objectives of the Bill

The Bill is based on recommendation 19 made in the report of the Bichard Inquiry in relation to England and Wales. This Inquiry was set up to look into failures in child protection procedures which were highlighted by the deaths of two schoolgirls in Soham in 2003. Recommendation 19 provided that new arrangements should be introduced requiring those who wish to work with children or vulnerable adults to be registered. Although the recommendations in the Bichard Report were directed at England and Wales, Scottish Ministers were also keen to take forward the recommendations.

Provisions of the Bill

The Bill makes provision for the creation of two lists – a Children's List (which builds on the foundation laid by an existing list created under the Protection of Children (Scotland) Act 2003) and a new Adults' List. If an individual is on a list then he or she will be barred from working in the workforce to which the list in question pertains. A key feature of the new lists is that they will be continuously updated on the basis of various sources, including the police.

The Bill also introduces a new system for vetting and disclosure of individuals who work, or wish to work, with vulnerable groups (i.e. children under the age of 18 and 'protected adults'). For the first time personal employers (e.g. a parent taking his or her child to the local piano teacher) as well as organisations acting as employers will be able to confirm that an individual is not barred.

The Scottish Executive anticipates that in practice the vetting function (i.e. the assembling of the relevant information) will be carried out by Disclosure Scotland and the barring function (i.e. deciding that an individual is unsuitable to work with
vulnerable groups) will be carried out by a new Central Barring Unit (CBU). It is intended that Disclosure Scotland and the CBU will be placed together under the auspices of a new Executive agency.

Part 3 of the Bill (removed at Stage 2 – see below) imposed duties on specified organisations (mainly public sector ones) to share information with councils for child protection purposes and a duty on Scottish Ministers to prepare a Code of Practice relating to information sharing.

Parliamentary consideration

In its Stage 1 Report the Education Committee commented that the consultation on Part 3 of the Bill has been insufficient and stated that it believed that further time for reflection and full consultation should be allowed.

The Committee also noted that there is considerable amount of subordinate legislation associated with the Bill. It commented that it is often difficult to reach conclusions on the general principles of bills without at least some awareness of the more detailed operational information.

Accordingly, the Committee recommended to Parliament that it approve the general principles of the Bill, subject to the removal of Part 3 and the production of, and opportunity to comment on, draft regulations, guidance and Codes of Practice on the rest of the Bill prior to Stage 2.

Before Stage 2 began, the Executive published a Pre-Consultation Discussion Paper on key areas of subordinate legislation relating to the Bill. The Education Committee then held an evidence session on the Discussion Paper prior to the commencement of Stage 2.

At Stage 2, Part 3 of the Bill was removed by way of non-Executive amendments supported by the Executive. In its response to the Stage 1 Report the Executive had indicated its intention to proceed to prepare a non-statutory Code of Practice dealing with information sharing. Furthermore, the Executive aimed to underpin this Code of Practice with statutory duties at the earliest future legislative opportunity.

Other key non-Executive amendments at Stage 2 covered topics including fees for disclosure checks and the process for determining whether an individual should be barred. The general thrust of these amendments was to try and get more information regarding such areas on the face of the Bill. Although the relevant amendments were not agreed to, they are areas on which the Executive intends to consult further in 2007 and to make further provision by way of secondary legislation. Executive amendments which were agreed to at Stage 2 include ones seeking to provide greater clarity on key definitions in the Bill, principally those relating to the type of posts that fall within the scope of the new vetting and barring scheme.

Another key issue addressed by non-Executive amendments at Stage 2 was the retrospective checking of existing workers. There were concerns, in the absence of more information on when such checking would have to be carried out, about the ability of some organisations to carry it out. The amendments sought further information. Although the relevant amendments were not agreed to, the Executive
undertook to lodge amendments at Stage 3 to ensure that the Parliament is able to scrutinise the introduction of retrospective requirements. During Stage 3, the Deputy Minister for Education and Young People stated that Executive amendments would “mean that retrospective checking cannot begin until Ministers have made regulations that have been approved by the Parliament through the affirmative resolution procedure”. The relevant amendments were agreed to.

Education (School Meals etc.) (Scotland) Bill

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 74</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>27 September 2006</td>
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<tr>
<td>Introduced by:</td>
<td>Frances Curran (Member’s Bill)</td>
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<tr>
<td>Passed:</td>
<td>In progress as at 23 March 2007 but expected to fall at dissolution</td>
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Passage of the Bill

The Education (School Meals etc.)(Scotland) Bill [SP Bill 74] was introduced in Parliament by Frances Curran MSP on 27 September 2006. The Communities Committee was designated the lead committee on the Bill on 4 October 2006. The Finance Committee considered the Bill in tandem with the Schools (Health Promotion and Nutrition) (Scotland) Bill (Executive Bill). However, no evidence was taken by the Communities Committee and the Bill did not proceed beyond stage 1.

Purpose and objectives of the Bill

To introduce free school meals in primary schools and to give powers to extend this provision to secondary schools.

Provisions of the Bill

The Bill sought to amend s.53 of the Education (Scotland) Act 1980 to place a duty on education authorities to provide water in all schools, and to provide free meals in primary schools. It also included order-making powers to extend entitlement to other school pupils and to introduce nutritional standards, a complaints mechanism and standards relating to the advertising or sale of food and drink in schools.

Parliamentary consideration

The Communities Committee did not discuss the Bill itself although the issue of free school meals was discussed during their consideration of the Schools (Health Promotion and Nutrition) (Scotland) Bill.

The Finance Committee took evidence on the Bill at the same time as it considered the Schools (Health Promotion and Nutrition) (Scotland) Bill and reported on both on
24 November 2006. The Committee had taken evidence from COSLA on 31 October 2006 and from Frances Curran (the Member in charge of the Bill) on 7 November 2006. The Finance Committee recommended that the costs in the Member’s Bill, taken together with those of the Executive Bill would “…not be insubstantial” and suggested that the lead committee consider whether it represented value for money in seeking to change people’s eating habits.

Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill

<table>
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<th>Bill Number:</th>
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<tr>
<td>Introduced on:</td>
<td>27 September 2006</td>
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<tr>
<td>Introduced by:</td>
<td>Cathy Jamieson (Executive bill)</td>
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<tr>
<td>Passed:</td>
<td>21 March 2007</td>
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<tr>
<td>Royal Assent:</td>
<td>Awaiting Royal Assent</td>
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Passage of the Bill

The Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill [SP Bill 75] was introduced on 27 September 2006 by the Minister for Justice. Stage 1 commenced on 29 November 2006 with the Justice 1 Committee as lead committee. The Stage 1 debate took place on 1 February 2007 and Stage 2 was taken by the Justice 1 Committee on 21 February 2007. Stage 3 of the Bill took place on 21 March 2007 and the Bill was passed without division.

Purpose and objectives of the Bill

The Bill aims to amend the law of damages concerning the right of relatives of a deceased person to claim damages in respect of the deceased’s death from mesothelioma (lung cancer caused by exposure to asbestos). The Bill will allow defined relatives of the deceased to claim non-financial damages even if the deceased made a successful claim during his or her lifetime.

Provisions of the Bill

The Bill will rectify the current position under the Damages (Scotland) Act 1976, in which a claim made by a deceased person during their lifetime, extinguishes the availability of a claim by their relatives.

Liability under the Bill is limited to damages under s1(4) of the 1976 Act, that is to non-patrimonial loss (damages for pain and suffering, loss of society, etc.). Under the Bill, where the deceased made a claim for pain and suffering during their lifetime, this will no longer bar the deceased’s relatives from making a claim.
The usual limitation period of three years will apply, which means that relatives must bring their claim within three years of the death of the deceased.

Although ‘relative’ is defined in Schedule 1 of the 1976 Act, it was amended by section 35 of the Family Law (Scotland) Act 2006 (asp 2) and is reflected in the definition of ‘relative’ in the Human Tissue (Scotland) Act 2006 (asp 4). For deaths on or after 4 May 2006 the definition of “immediate family” includes spouses or civil partners, cohabitants, parents and children, persons accepted as children, siblings and grandparents or grandchildren.

Parliamentary consideration

Committee discussion at Stage 1 was primarily devoted to the dilemma faced by mesothelioma sufferers: whether to claim while alive or to allow their relatives to claim after their death. It was felt that it was this dilemma which justified the legislation (see Justice 1 Committee Stage 1 Report). It was also felt that because mesothelioma is a condition caused exclusively as a result of exposure to asbestos, it would not be appropriate to include in the Bill a ministerial power to extend its provisions to other medical conditions.

The policy intention of the Scottish Executive was that the provisions in the Bill should apply only where application for recovery is made on or after the Bill comes into force - that is on or after seven days following Royal Assent. In this way, the provisions of the Bill will not apply those claims already settled at the date of commencement of the Bill. The Bill is retrospective only in the sense that its provisions will apply to cases already going through the courts.

At Stage 1, the Deputy Minister for Justice, Johann Lamont MSP, undertook to make the provisions of the Bill retrospective to some extent (see official report 13 December 2006). Amendments were successfully brought at Stage 2, such that the Bill's provisions will apply to any case in which the sufferer recovers damages or obtains a full settlement on or after 20 December 2006. In those circumstances, their relatives will not be barred from also making a claim for non-patrimonial damages. This provision will give certainty to those who have claims pending, as well as to the insurance industry.

The Stage 3 debate took place on 21 March 2007, there were no amendments and the Bill was passed without division.
Scottish Register of Tartans Bill

Bill Number: SP Bill 76
Introduced on: 28 September 2006
Introduced by: Jamie McGrigor (Member's Bill)
Withdrawn: 16 February 2007

Passage of the Bill

The Scottish Register of Tartans Bill [SP Bill 76] was introduced in the Parliament by Jamie McGrigor MSP on 28 September 2006. The Enterprise and Culture Committee was appointed as lead committee and considered the Bill at stage 1 on 5 December 2006. As a result of a Parliamentary debate on the “promotion of tartan and Scotland's tartan industry” on 7 February 2007, the Member in charge of the Bill (Jamie McGrigor) opted to withdraw the Bill. The Bill was formally withdrawn on 16 February 2007.

Purpose and objectives of the Bill

The Bill proposes the creation of a publicly accessible Scottish register of tartans to provide an archive of tartans, whether created in Scotland or elsewhere. The register would be maintained by a Keeper who would be appointed by the Crown on the recommendation of the Scottish Parliament.

Parliamentary consideration

During a Parliamentary debate on the “promotion of tartan and Scotland's tartan industry” on 7 February 2007, the Deputy Minister for Enterprise and Lifelong Learning, Allan Wilson MSP, stated that the Scottish Executive would undertake some work to consider whether:

“…the main principles of Mr McGrigor's bill would be best taken forward by working with existing public and private sector bodies, by exploring non-legislative options that may be open to us or by taking a legislative approach. I am grateful to Mr McGrigor for bringing his proposals this far.”

In his response, Mr McGrigor said:

“If the Executive were to take forward the general principles of my bill, it would be churlish of me to demand more parliamentary time from an already overburdened schedule. Therefore, I will consider withdrawing my bill, but I reserve the right to bring it back if I am re-elected and the Executive does not fulfil its promise.” (Col 31819)
Civil Appeals (Scotland) Bill

Bill Number: SP Bill 77
Introduced on: 29 September 2006
Introduced by: Adam Ingram (Member’s Bill)
Fell: 20 December 2006

Passage of the Bill

The Civil Appeals (Scotland) Bill [SP Bill 77] was introduced in the Parliament by Adam Ingram MSP on 29 September 2006. The Parliament’s Justice 2 Committee was designated as lead committee and, in light of advice relating to the legislative competence of the Bill (discussed below), recommended that the general principles of the Bill not be agreed to. A motion proposing that the Parliament does not agree the general principles was considered by the Parliament as a whole on 20 December 2006, with a majority of members voting in favour of the motion. As a result of this vote the Bill fell on 20 December 2006.

Purpose, objectives and provisions of the Bill

The Bill sought to end the current possibility of appeal to the House of Lords in relation to Scottish civil cases. In doing so it would also have prevented that possibility of appeal being transferred to the new Supreme Court of the United Kingdom (once that court is open for business).

The Bill also sought to establish an additional level of appeal within Scotland for Scottish civil cases. The new possibility of appeal would be to a ‘Civil Appeals Committee’, comprising judges appointed from existing judges of the Court of Session, and would exist where there was formerly a right of appeal to the House of Lords.

Information on current arrangements for appeals in Scottish cases, together with further information on the Bill, is set out in SPICe briefing 06/99.

Parliamentary consideration of the Bill

In his statement on legislative competence, the Parliament’s Presiding Officer identified a significant number of provisions in the Bill which he considered to be outwith the legislative competence of the Parliament. The provisions considered to be outwith competence included ones ending the possibility of appeal to the House of Lords in relation to Scottish civil appeals. The reason given for the Presiding Officer’s view in this area was that these provisions, in seeking to amend the judicial functions of the House of Lords were, in effect, seeking to amend the functions of the United Kingdom Parliament – a reserved matter under Schedule 5 to the Scotland Act 1998.

The Justice 2 Committee considered its approach to the Bill at its meeting on 28 November 2006. In light of the Presiding Officer’s statement on legislative
competence, the Committee agreed (by division: For 5, Against 2, Abstentions 0) to make a recommendation to the Parliament that the general principles of the Bill not be agreed to. (The recommendation was made under powers set out in Rule 9.14.18 of the Parliament’s Standing Orders.)

A motion proposing that the Parliament does not agree the general principles of the Bill was considered by the Parliament as a whole on 20 December 2006 – one member speaking in favour of the motion and one against.

Speaking in favour of the motion, David Davidson MSP (Convener of the Justice 2 Committee) highlighted the views of the Presiding Officer on legislative competence. He went on to state that:

"In the light of the evidence, I concluded that undertaking the extensive work that stage 1 consideration would involve would not be a productive use of the committee’s, or the Parliament’s, time (...). I do not criticise the policy aims of the proposal. Indeed, I recognise that there may be room for debate about the appropriate route for such appeals, but I do not believe that the bill is the correct vehicle for such a debate, given the competency issues I have outlined.” (SP OR 20 December 2006, col 30659)

Speaking against the motion, Adam Ingram argued that legal opinion on the competence of the Bill was split. He stated that:

"My view is that the legal advice given to the Presiding Officer could have been, and should be, challenged. Whether the bill is within the Parliament’s legal competence revolves around whether the judicial committee of the House of Lords should be regarded as a court or a part of the United Kingdom Parliament in the context of what the bill aims to do. Given that the bill focuses exclusively on the civil appeal process, the pith and substance of its purpose falls within a devolved, rather than a reserved, area.” (SP OR 20 December 2006, cols 30659-30660)

Following the above debate, members voted in support of the motion that the Parliament does not agree to the general principles of the Bill (by division: For 75, Against 36, Abstentions 0).
Provision of Rail Passenger Services (Scotland) Bill

Bill Number: SP Bill 78
Introduced on: 29 September 2006
Introduced by: Tommy Sheridan (Member’s Bill)
Fell: 9 November 2006

Passage of the Bill

The Provision of Rail Passenger Services (Scotland) Bill [SP Bill 78] was introduced in the Scottish Parliament on 29 September 2006 by Tommy Sheridan MSP. The Presiding Officer ruled on 28 September 2006 that the Bill was outside the legislative competence of the Scottish Parliament (see Explanatory notes). The Bill was considered by the Local Government and Transport Committee at its meeting of 24 October 2006. The Committee agreed that the Convener move a parliamentary motion recommending to Parliament that the general principles of the Bill were not agreed to, without the committee undertaking the usual Stage 1 process. The motion was debated by the Scottish Parliament on 9 November 2006. There was a division following the debate in which 99 members voted for and 16 against the motion. The Bill therefore fell.

Provisions of the Bill

The provisions of the Bill would have limited the type of organisation that Scottish Ministers could award any new ScotRail franchise to. The Bill would have required Scottish Ministers to reject any tender submitted to operate the franchise where either the service is to be operated for profit or the potential operator intends to pay shareholder dividends from the turnover, or profit, of the franchise. This would have meant that a franchise could only be awarded to a not-for-dividend/profit company.

Where no suitable bid to run the franchise was submitted then Scottish Ministers would have been required to provide rail services as the operator as a last resort. The Bill would have required the Scottish Ministers to provide services for a period of seven years, which could be reduced to a period of no less than four years. After this period Scottish Ministers would again have been required to tender for a new franchised rail operator under the rules explained above.

Parliamentary Consideration

The Bill was considered by the Local Government and Transport Committee at its meeting of 24 October 2006. Under the provisions of Standing Orders Rule 9.14(18) the lead committee charged with considering a Member’s Bill can recommend to the Parliament, on a motion of the convener, that the general principles of the Bill are not agreed to in one of three different circumstances, including:
“having regard to the terms of the Presiding Officer’s statement on legislative competence under Rule 9.3.1, the Bill appears to be clearly outwith the legislative competence of the Parliament and it is unlikely to be possible to amend it at Stages 2 and 3 to bring it within legislative competence”

The Committee agreed that the convener should propose such a motion, following a division where 5 Members supported the Convener’s proposals and 1 voted against. The motion was briefly debated by the full Parliament on 9 November 2006. The motion was subject to a vote in which 99 Members voted for and 16 against. The Bill therefore fell with no further action was required.

**Treatment of Drug Users (Scotland) Bill**

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<tr>
<th>Bill Number:</th>
<th>SP Bill 79</th>
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<tr>
<td>Introduced on:</td>
<td>29 September 2006</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Rosemary Byrne MSP (Member’s Bill)</td>
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<tr>
<td>Passed:</td>
<td>In progress as at 23 March 2007 but expected to fall at dissolution</td>
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**Passage of the Bill**

A draft proposal for the Bill was lodged on 21 April 2006, with the Member responsible for the Bill conducting a consultation on her proposals between April and August 2006. A final proposal was lodged on 24 August 2006 and the Treatment of Drug Users (Scotland) Bill [SP Bill 79] was introduced in the Parliament by Rosemary Byrne MSP on 29 September 2006. The Parliamentary Bureau subsequently referred the Bill to the Health Committee as lead Committee on 3 October 2006.

**Purpose and objectives of the Bill**

The objective of the Bill is to provide a statutory right for all drug users to be assessed for an individual holistic care plan within seven days of requesting such assistance, and for this care to be financed in part from a percentage of the monies seized under the Proceeds of Crime Act 2002.

**Provisions of the Bill**

The Bill places a duty on the Scottish Ministers to promote the integration of health and social care services to secure the prevention of drug misuse and the treatment of drug users.

The Bill provides that in discharging the above duty, the Scottish Ministers will make such further provision, by regulations, as they think fit in connection with (a) the introduction of a scheme to assess the needs of drug users to determine an appropriate care plan to treat their addiction; (b) the delivery of such health, social
care and employability services as may be necessary to treat and rehabilitate drug
users; and (c) the delivery of social care, child care and child protection services for
the families of drug users.

The Bill provides that the regulations will make particular provision for (a) the right of
a drug user to be assessed for a care plan within seven days of requesting one; (b)
the timeframe in which a care plan will be implemented for a drug user who is
susceptible to treatment; (c) the appointment and functions of persons designated to
carry out a care plan assessment; (d) the types forms and packages of health and
social care services to be deployed for drug users’, including detoxification,
residential and community based rehabilitation services and substitute prescribing;
(e) the form of employability support to be deployed to enable drug users to gain
employment or voluntary work experience; (f) the types, forms and packages of social
care and child care services for the families of drug users; and (g) a complaints
procedure for drug users and their families who are dissatisfied with those services
which have been provided.

The Bill also provides for the proceeds of drug crime to fund the treatment of drug
users and provides that where an accused has been convicted of an offence
concerning the possession, supply or trafficking of controlled drugs, proceeds
recovered shall be applied to fund care plans for drug users.

Parliamentary consideration

At its meeting on 27 January 2007 the Health Committee held a round-table
discussion on the broad subject of the treatment of drug users in Scotland. The
meeting included senior representatives of the health service, academics and
organisations that have a direct interest in the treatment of drug users, including
organisations that are involved in the delivery of front-line services to drug users. The
meeting was also attended by the Member responsible for the Bill.

The Health Committee agreed its report on the Treatment of Drug Users (Scotland)
Bill at its meeting on 6 March 2007.
Custodial Sentences and Weapons (Scotland) Bill

Bill Number: SP Bill 80
Introduced on: 2 October 2006
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 15 March 2007
Royal Assent: Awaiting Royal Assent

2007 asp

Passage of the Bill

The Custodial Sentences and Weapons (Scotland) Bill [SP Bill 80] was introduced in the Parliament on 2 October 2006. The Justice 2 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 24 October 2006. The Stage 1 debate took place on 11 January 2006. The Bill [as amended at Stage 2] was republished following completion of Stage 2 consideration on 27 February 2007. The Stage 3 debate took place on 15 March 2007 and the Bill was passed.

Purpose and objectives of the Bill

Parts 1 and 2 of the Bill deal with custodial sentences. They contain provisions aimed at delivering on Executive commitments to end the automatic and unconditional early release of offenders and to achieve greater clarity in sentencing. The Executive had asked the Sentencing Commission for Scotland to review a number of criminal justice issues, including arrangements for the early release of prisoners and their supervision once released. The Commission’s work in this area was followed by publication of the Executive’s proposals in ‘Release and Post Custody Management of Offenders’ (2006).

Part 3 of the Bill deals with weapons. In 2004 the First Minister announced a five-point plan to help tackle the problem of knife crime. Legislative provisions relating to three elements of the plan are now set out in the Police, Public Order and Criminal Justice (Scotland) Act 2006. Options in relation to the remaining two elements of the plan were set out in the Scottish Executive consultation paper ‘Tackling Knife Crime: a Consultation’ (2005). Provisions taking forward some of the consultation options were included in the Bill (as introduced), with the intention of putting in place safeguards which will help to prevent non-domestic knives and swords falling into the wrong hands.

Provisions of the Bill

Parts 1 and 2 of the Bill (custodial sentences) include provisions replacing the current system of automatic and sometimes unconditional early release for determinate sentence prisoners with a new sentence management regime for sentences of 15 days or more. Under the new regime such sentences will comprise a custody part and a community part. A minimum period of custody, between 50% and 75% of the
total sentence, will be set by the court at the time of sentencing. Where it is set at less than 75%, the Parole Board will, on the basis that the offender still poses a risk of serious harm to the public, be able to direct that the offender is kept in custody up to a maximum of 75% of the sentence. Offenders will be on licence during the community part of the sentence (a minimum of 25% of the total sentence). Breaches of licence conditions may result in recall to custody.

Part 3 of the Bill (weapons) contains provisions introducing a licensing scheme for the commercial sale of non-domestic knives and swords and placing further restrictions on the sale of swords (a ban on their sale subject to exemptions for legitimate purposes).

Parliamentary consideration

In relation to Parts 1 and 2 of the Bill (custodial sentences) the Justice 2 Committee’s Stage 1 Report stated that:

“The policy objectives of the Bill; to provide a clearer, more understandable system for managing offenders while in custody and on licence in the community, to take account of public safety by targeting risk and to have victims’ interests at its heart were welcomed by all from whom the Committee heard.”

(para 21)

However, the Stage 1 Report also highlighted a number of concerns in relation to whether the Bill (as introduced) would achieve these policy objectives. The Committee had fewer concerns in relation to Part 3 of the Bill (weapons) and supported both the introduction of the licensing scheme and further restrictions on the sale of swords.

The Stage 1 plenary debate focussed on the provisions in Part 1 and 2 of the Bill. It was similar to the deliberations of the Justice 2 Committee in that support for policy objectives in this area was tempered by concerns as to whether the provisions of the Bill would achieve the objectives.

Amendments to Parts 1 and 2 of the Bill included amendments: (a) placing, on the face of the Bill, the standard conditions to be attached to an individual’s licence on release from custody; (b) clarifying the court’s power to increase beyond 50% the proportion of the sentence which is to be served in custody, making clear that a list of matters which the court should take into account in this situation is not exhaustive; (c) ensuring that when the court sets the custody part of the sentence, it will say what that means in actual time; and (d) reforming the law in relation to how multiple custodial sentences are served to ensure, for example, that a second sentence of imprisonment is not simply served as part of an earlier custodial sentence. A number of key amendments were in response to concerns raised by the Justice 2 Committee at Stage 1.

Amendments to Part 3 of the Bill included the adding of a new section making the possession of an offensive weapon or knife in prison a criminal offence (subject to certain defences). The amendment was in response to a recommendation made by the Justice 2 Committee.
The Bill was passed with a majority of MSPs supporting it at Stage 3. The main concerns amongst Members related to resource implications of the provisions on custodial sentences (in particular the likely impact on prison numbers and criminal justice social work).

## Budget (Scotland) (No 4) Bill

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<td>Introduced on:</td>
<td>19 January 2007</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Tom McCabe (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>14 February 2007</td>
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<td>20 March 2007</td>
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### Purpose and objectives of the Bill

The passage of the Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2007-08. 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.

### Provisions of the Bill

The Bill will authorise over £26.3bn of cash expenditure by the Scottish Executive and its associated bodies, other organisations whose core funding is centrally provided (e.g. local authorities and health boards), the Forestry Commissioners, the Food Standards Agency, the Scottish Parliamentary Corporate Body and Audit Scotland.

For more details of the Scottish Budget process see the summary for the Budget (Scotland) Bill [SP Bill 16].
This Bill Summaries paper was produced by research staff of the Scottish Parliament Information Centre (SPICe). Members of the public may comment on the paper by e-mailing SPICe at spice@scottish.parliament.uk. However, SPICe researchers are not able to enter into personal discussion in relation to the contents of this paper or any other SPICe briefings.
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<td>Waverley Railway (Scotland) Act 2006</td>
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<td>Local Electoral Administration and Registration Services (Scotland) Act 2006</td>
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<td>Tourist Boards (Scotland) Act 2006</td>
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<td>Planning etc. (Scotland) Act 2006</td>
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