SUMMARIES OF BILLS
INTRODUCED IN THE SCOTTISH PARLIAMENT IN THE THIRD SESSION
(2007-2011)
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Introduction

This paper provides individual summaries of all bills introduced in the Scottish Parliament in its third Session - May 2007 to March 2011. For each bill, the summary includes the following information:

- key dates in the passage of the bill
- purpose and objectives of the bill
- main provisions of the bill
- parliamentary consideration of the bill

Public Bills

A bill is a draft Act that will, if passed and enacted, become part of the statute law.

Most bills are public bills, that is, they deal with matters of public policy and the general law. Public bills are introduced in the Parliament by Members of the Scottish Parliament (MSPs). The majority of public bills are introduced by MSPs who are members of the Scottish Executive\(^1\). These are called ‘Executive bills’.

Individual MSPs, who are not members of the Scottish Executive, can also introduce public bills. These are termed ‘Members’ Bills’. Each MSP can introduce a maximum of 2 Members’ Bills in a session. An MSP introducing a Member’s Bill must first lodge a draft proposal giving the short title of the proposed bill and an explanation of its purpose or purposes, along with a consultation document or a written statement of why such a consultation is not necessary (SO rule 9.14.3). A Member’s Bill must receive support from at least 18 MSPs representing at least half of the political parties (or groups) with 5 or more members in the Parliament.

Public bills can also be introduced by committees of the Scottish Parliament and these are known as ‘Committee Bills’.

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\(^1\) Following the Scottish Parliament election in 2007, the term “Scottish Executive” was changed to “Scottish Government” by the new SNP administration. The Scottish Executive remains the official designation. Note, however, that the Scotland Bill (2010) contains a clause which, if the Bill is passed, will give this change legal status.
Public Bill procedure

Public bills undergo three parliamentary stages:

**Stage 1** involves consideration of the general principles of the bill by the Scottish Parliament Committee designated as “the lead committee” by the Parliamentary Bureau. The lead committee submits a Stage 1 report to the Parliament which decides, on a motion of the member in charge of the bill, whether or not to agree to the general principles. (Scottish Parliament Standing Orders (SO) rule 9.6.4). The procedure for committee bills is slightly different in that a committee report on the bill's general principals is not required (SO rule 9.15.8). However, the Finance Committee and Subordinate Legislation Committee may be required to report to the Parliament, respectively, on the bill's Financial Memorandum and on any provisions conferring powers to make subordinate legislation.

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 at the point when the Parliament is dissolved prior to a Scottish Parliament general election. A public bill may be withdrawn at any time by the member in charge but will not be withdrawn after completion of Stage 1, except with the agreement of Parliament (SO rule 9.13).

**Stage 2**, also known as the “Detailed Consideration Stage”, involves in-depth examination of the bill by the lead committee (and possibly by other committees such as the Finance Committee and the Subordinate Legislation Committee). In certain circumstances the bill may be considered at Stage 2 by a Committee of the Whole Parliament (SO rule 9.7.1(b)).

**Stage 3** is the final consideration stage. This stage is taken in the Chamber and is the last opportunity to amend the bill. Following the Stage 3 plenary debate, the Parliament decides, on a motion lodged by the member in charge, to pass or reject the bill. (SO rule 9.8.2).

In certain circumstances a bill may be referred back to the lead committee for further Stage 2 consideration (SO rule 9.8.8), but this can happen only once.

A public bill may be withdrawn at any time by the member in charge, but this requires the agreement of Parliament after completion of Stage 1.

One specific category of Executive bill is a budget bill. Budget bills are subject to slightly different parliamentary procedures from other public bills (SO rule 9.16). For example, they can only be introduced by a member of the Scottish Executive; they do not require a Financial Memorandum, Explanatory Notes or Policy Memorandum, and there is no requirement for a parliamentary committee to report on the bill's general principles.
Private Bills

Private bills are bills introduced by an individual person, body corporate or unincorporated association of persons (known as the ‘promoter’) to obtain powers or benefits not currently allowed by the general law. Private bills are subject to a set of distinct rules and a different parliamentary process.

Private Bill procedure

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

**Preliminary Stage.** The Preliminary Stage is taken by a Private Bill Committee (SO rule 9A.5.1) established by the Parliament under SO rule 6.1.3. This stage involves consideration of the general principles of the bill and preliminary consideration of any objections to the bill. As for public bills, the Private Bill Committee reports to the Parliament on the general principles of the bill and whether it should proceed as a private bill (SO rule 9A.8).

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, the bill falls.

**Consideration Stage** involves consideration of the details of the bill by the Private Bill Committee (SO rule 9A.9). The Committee must take evidence from the bill’s promoter and objectors and from others, as it thinks fit (SO rule 9A.9.3). Preliminary consideration may also be given to late objections in certain circumstances (SO rule 9A.6.7A). Where an assessor has been appointed by the SPCB, the assessor will take evidence and report to the Private Bill Committee.

**Final Stage** proceedings take place at a meeting of the Parliament (SO rule 9A.10). The bill can be amended at this stage. A decision as to whether the bill should be passed is made on the motion of the convener of the Private Bill Committee.

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

A private bill may be withdrawn at any time by the promoter. Where such a 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).
Hybrid Bills

A Hybrid Bill is a Public Bill which makes provision about the public and general law; however its provisions can also directly affect the interests of particular individuals or bodies. These individuals or bodies are entitled to participate in the proceedings. Hybrid Bills can only be introduced by a member of the Scottish Executive. The procedures in place for Hybrid Bills are largely similar to those for Public Bills. However, they also incorporate certain procedural safeguards where the Hybrid Bill process may affect the private interests of particular individuals or bodies.

Referral to the Supreme Court

After a bill is passed by the Scottish Parliament a period of 4 weeks must elapse before the Presiding Officer can submit it for Royal Assent. During this period the bill, or any of its provisions, may be referred to the Supreme Court by the Advocate General for Scotland, the Lord Advocate or the Attorney General on the grounds of legislative competence (Scotland Act 1998 s.33). In October 2009, jurisdiction to decide devolution issues was transferred to the Supreme Court from the Judicial Committee of the Privy Council.

Where the Supreme Court decides that a bill, or any provision of it, is not within the Parliament’s legislative competence, or where the Secretary of State makes an order under s35 of the Scotland Act 1998 prohibiting the Presiding Officer from submitting the bill for Royal assent, the member in charge of the bill may, by motion, propose that the Parliament resolve to reconsider 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, passed by the Parliament, into an Act of the Scottish Parliament (asp).

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

Bills introduced in Session 3

Table 1 below shows the number and type of bills introduced in the Parliament in Session 3, by final outcome.
Table 1: Bills introduced in the Parliament in Session 3, by outcome

<table>
<thead>
<tr>
<th>Type of bill</th>
<th>Introduced</th>
<th>Passed</th>
<th>Withdrawn</th>
<th>Fallen</th>
</tr>
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</tr>
<tr>
<td>Private</td>
<td>2</td>
<td>2</td>
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<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>62</strong></td>
<td><strong>53</strong></td>
<td><strong>2</strong></td>
<td><strong>7</strong></td>
</tr>
</tbody>
</table>

In total, 62 bills were introduced in Session 3. Of these, 53 were passed by the Parliament, 2 were withdrawn and 7 fell. Of the 53 bills passed by the Parliament, 42 were Executive bills (including 1 Hybrid bill), 7 were Members’ bills, 2 were Committee bills and 2 were Private bills.

The 3 Executive bills which fell were:

- the Budget (Scotland) (No 2) Bill which fell on 28 January 2009 when a motion that the Bill be passed was disagreed to by the Parliament
- the Creative Scotland Bill, which fell on 18 June 2008 when the financial resolution to the Bill was voted against
- the Long Leases (Scotland) Bill which fell at the dissolution of Parliament.

Tables 2 and 3 below provide comparative information for Sessions 2 and 1, respectively.

Table 2: Bills introduced in the Parliament in Session 2, by outcome

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<th>Type of bill</th>
<th>Introduced</th>
<th>Passed</th>
<th>Withdrawn</th>
<th>Fallen</th>
</tr>
</thead>
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<td>53</td>
<td>-</td>
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<td>Committee</td>
<td>1</td>
<td>1</td>
<td>-</td>
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</table>
Session 3 saw the lowest number of bills introduced in the Parliament to date with 62 bills compared to 81 (Session 2) and 73 (Session 1). However, there were only 8 fewer Executive bills than in Session 2 and only 6 fewer than in Session 1. For the first time, the Executive failed to get all of its bills through Parliament with 3 bills falling\(^2\). More than half of the Members’ bills introduced were passed (7 of 13). The Parliament also passed its first Hybrid bill – the Forth Crossing Bill.

**Bill summaries - format**

Most bill summaries presented in this paper 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

\(^2\) Note, however, that on 7 December 2000 the Labour/Liberal Democrat Scottish Executive withdrew their Education (Graduate Endowment and Student Support) (Scotland) Bill replacing it on the same day with the Education (Graduate Endowment and Student Support) (Scotland) (No. 2) Bill.
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 the provisions made in the bill and how these change 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.

Bill summaries – presentation
For ease of reference, the Bill summaries are presented in Bill number order. Two indexes are provided at the end of the paper, one in alphabetical order of all the bills introduced in Session 3 (Index 1) and the other in year and asp number order (Index 2).

Abbreviations used in this paper
asp Act of the Scottish Parliament
B Budget Bill
C Committee Bill
E Enacted
Ex Scottish Executive
F Fell
H Hybrid Bill
M Member’s Bill
P Private Bill
RA Royal Assent
W Withdrawn
Table of bills introduced in Session 3 in bill number order showing bill type and outcome
(See Index 1 at the end of this document for an alphabetical list of Session 3 bills)

<table>
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<tr>
<th>SP Bill No</th>
<th>Year introduced</th>
<th>Bill title</th>
<th>Type of Bill</th>
<th>Outcome</th>
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<td>Abolition of Bridge Tolls (Scotland) Bill</td>
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<td>2007</td>
<td>Graduate Endowment Abolition (Scotland) Bill</td>
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<td>E</td>
</tr>
<tr>
<td>3</td>
<td>2007</td>
<td>Public Health etc. (Scotland) Bill</td>
<td>Ex</td>
<td>E</td>
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<td>4</td>
<td>2007</td>
<td>Glasgow Commonwealth Games Bill</td>
<td>Ex</td>
<td>E</td>
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<tr>
<td>5</td>
<td>2008</td>
<td>Budget (Scotland) Bill</td>
<td>Ex</td>
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<td>6</td>
<td>2008</td>
<td>Judiciary and Courts (Scotland) Bill</td>
<td>Ex</td>
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<td>7</td>
<td>2008</td>
<td>Creative Scotland Bill</td>
<td>Ex</td>
<td>F</td>
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<tr>
<td>8</td>
<td>2008</td>
<td>Scottish Register of Tartans Bill</td>
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Abolition of Bridge Tolls (Scotland) Bill

Bill Number: SP Bill 1
Introduced on: 3 September 2007
Introduced by: John Swinney (Executive Bill)
Passed: 20 December 2007
Royal Assent: 24 January 2008

2008 asp 1

Passage of the Bill

The Abolition of Bridge Tolls (Scotland) Bill [SP Bill 1] was introduced in the Parliament on 3 September 2007 by John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth. The Transport Infrastructure and Climate Change (TICC) Committee was appointed as lead committee for Stage 1. Its report was published on 13 November 2007. The Stage 1 debate took place on 15 November 2007 and Parliament voted to agree the general principles of the Bill by 107 votes to four, with two abstentions.

There were no amendments to the Bill at Stage 2.

The Bill was passed at Stage 3, following minor amendment, by 122 votes to three with one abstention.

Provisions of the Bill

The Abolition of Bridge Tolls (Scotland) Bill contained the following provisions:

- **Forth Road Bridge**: The Bill removes the legislative basis under which Forth Road Bridge tolling orders are made. The Bill also removes all other legislative reference to these tolling powers. In addition the current bridge tolling Orders are revoked and the Order establishing the Forth Estuary Transport Authority (FETA) is amended to remove reference to tolls.

- **Tay Road Bridge**: The Bill removes the legislative basis under which Tay Road Bridge tolling orders are made. The Bill also removes all other legislative reference to these tolling powers. In addition the current bridge tolling Orders are revoked along with the legislative requirement that bridge-related debt be fully repaid within 50 years of the bridge’s opening.

- **Erskine Bridge**: The Bill revokes all primary and secondary legislation relating to the charging of tolls on the Erskine Bridge.
Parliamentary Consideration

The TICC Committee took Stage 1 evidence on the Bill between September and November 2008. Based on evidence taken, the Committee made recommendations which included:

- The Scottish Government should undertake full consultation with stakeholders prior to the introduction of any Executive Bill

- Full consideration should be given to the environmental impacts of Scottish Government proposals even when these do not require statutory environmental impact assessments

- The Scottish Government should fund any FETA and Tay Road Bridge Joint Board (TRBJB) expenditure associated with the abolition of bridge tolls

- There should be speedy implementation of bus priority measures on bridge approach roads

- The Scottish Government and, where possible, FETA and TRBJB, should acknowledge the impact of the proposals on bridge staff to ensure staff are redeployed. Where this is not possible staff should be supported in finding new jobs and/or accessing training

- Individual transport policy decisions should be integrated with the National Transport Strategy

There were no amendments to the Bill at Stage 2. The Parliament agreed to two amendments at Stage 3, proposed by David McLetchie MSP, which prevents any bridge authority from promoting a road user charging scheme (a different mechanism from bridge tolling allowed under the provisions of the Transport (Scotland) Act 2001) for use of any road carried by a bridge under their jurisdiction.
Graduate Endowment Abolition (Scotland) Bill

Bill Number: SP Bill 2
Introduced on: 22 October 2007
Introduced by: Fiona Hyslop (Executive Bill)
Passed: 28 February 2008
Royal Assent: 4 April 2008

2008 asp 3

Passage of the Bill

The Graduate Endowment Abolition (Scotland) Bill was introduced in the Parliament on 22 October 2007. Stage 1 commenced on 7 November 2007 with the Education, Lifelong Learning and Culture Committee as the lead committee. The Stage 1 (general principles) debate took place on 20 December 2007 and the Bill was passed following the Stage 3 debate on 28 February 2008.

Purpose and objectives of the Bill

The Graduate Endowment (GE) fee was introduced in the academic year 2001-02, following the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (The 2001 Act). It was intended as a fixed payment to be made by certain graduates once they had completed their degree, in recognition of the benefits they receive from their period of higher education. It was intended that the income raised from the GE fee would be used to fund improvements in student support, to widen access and participation in higher education.

The Graduate Endowment Abolition (Scotland) Bill was introduced on 22 October 2007 to provide for the abolition of the GE fee for students completing their course on or after 1 April 2007. The Government’s Policy Memorandum that accompanied the Bill explained that the reason for abolishing the GE fee was that, as a policy it had failed to deliver its original aims of removing barriers to widening access and participation and using the GE fee income to support future generations of students. It stated that the increased debt burden on graduates remained a barrier to access and that the GE fee has acted as a disincentive to accessing higher education.

Provisions of the Bill

The Bill provided for the abolition of the GE fee for students who successfully complete their course (3 years or more) on 1 April 2007 or thereafter, and would therefore be liable to pay in April 2008. The Bill did not affect the three cohorts of graduates in 2005, 2006 and 2007 that have already paid, or are yet to pay. These students will remain liable to pay the GE fee.
Section 1 of the Bill repealed Sections 1 and 2 of the 2001 Act (and consequently the principal regulations associated with these sections), which made provisions for payment of a graduate endowment fee by certain persons, and for how the income arising from the graduate endowment fee should be used. Section 1 of the Bill also repealed paragraph 10 in schedule 3 of the Further and Higher Education (Scotland) Act 2005, which amended the 2001 Act.

Section 2 of the Bill removed the liability to pay the graduate endowment fee from graduates who completed their course on or after 1 April 2007. Section 2 (3) further provided that the Graduate Endowment fee is to be regarded as having never existed, for graduates otherwise liable from 1 April 2008 onwards. This subsection was included to ensure that should the Bill not have been passed until after 1 April 2008, those graduates would still not have to pay the GE fee.

The Bill also provided that those graduates who became liable to pay the GE fee before 1 April 2008 continued to be liable. Section 3 of the Bill made provisions for Section 1 of the 2001 Act and its principal regulations to remain in effect for these cohorts of graduates. The Bill did not, however, provide for Section 2 of the 2001 Act, which provided for the use of these GE funds for student support, to remain in effect.

Parliamentary consideration

In relation to the general principles of the Bill at Stage 1, the Education, Lifelong Learning and Culture Committee (the lead Committee) had some concerns that there was insufficient evidence to determine whether the abolition of the GE fee would, in itself, contribute to widening access to higher education. However, the Committee also noted that it had not found sufficient evidence that the GE element of the 2001 Act had fully achieved its aims of widening access to higher education, by using GE fee income to provide student bursary support, particularly in relation to those from deprived backgrounds.

The Committee’s Stage 1 scrutiny resulted in a number of significant criticisms of the Bill and highlighted a lack of alternative approaches to widening access to higher education. Whilst the Committee agreed with the intention of the Bill to remove barriers to access to higher education, it did not agree that abolishing the GE would be the most effective way of achieving that goal. The Finance Committee also expressed particular concern on the quality of the Financial Memorandum accompanying the Bill. The lead Committee in their Stage 1 Report, therefore, recommended that the general principles be not approved.

Amendments were passed at Stage 2, firstly to include a section in the Bill that places a duty on Scottish Ministers to monitor and report to the Parliament annually on the impact of abolishing the GE fee on widening access and participation in higher education. The second amendment placed a duty on Scottish Ministers to rectify any adverse effect on the sums available for student support as a result of abolishing the GE fee. This
amendment was redrafted at Stage 3 and agreed to. The Bill, as amended, was passed, and received Royal Assent on 4 April 2008.

Public Health etc (Scotland) Bill

Bill Number: SP Bill 3
Introduced on: 25 October 2007
Introduced by: Nicola Sturgeon (Executive Bill)
Passed: 12 June 2008
Royal Assent: 16 July 2008

2008 asp 5

Passage of the Bill

The Public Health etc (Scotland) Bill [SP Bill 3] was introduced in the Parliament on 25 October 2007. Stage 1 commenced on 9 January 2008 with the Health and Sport Committee as the lead committee. The Committee published its Stage 1 Report on 18 March 2008, with the Stage 1 (general principles) debate taking place on 17 April 2008. Stage 2 proceedings commenced on 7 May 2008 and ended on 21 May 2008. The Bill was passed following the Stage 3 parliamentary debate on 12 June 2008.

Purpose and objectives of the Bill

The main aim of the Bill was to modernise the legislative framework governing the practice of health protection, given that much of the statutory provision in this area dates back to the late 19th Century.

The proposals in the Bill originated from deliberations of the Public Health Legislation Review Group, which was convened by the then Scottish Executive to review the legislation and consider whether or not it was able to meet modern public health challenges. The proposals of the review group were set out in a national consultation in October 2006, the analysis of which was published in March 2007.

Provisions of the Bill

The main objective of the Bill was to modernise legislation on health protection, and, in summary, the main provisions included:

- clarifying the roles and responsibilities of NHS boards and local authorities
a new system of statutory notification for diseases, organisms and health risk states
powers for public health investigators
orders for medical examination, quarantine, exclusion, restriction and hospital detention
the Implementation of International Health Regulations
changes to the statutory nuisance regime
offences and penalties for non-compliance with aspects of the Bill

The Bill as introduced also proposed providing Ministers with the power to make regulations requiring operators of sunbed premises to provide information on the health effects of sunbeds.

Parliamentary consideration

In its Stage 1 Report, the Health and Sport Committee made a number of recommendations on the provisions to the Bill. These, together with the Scottish Government’s response, are contained in a SPICe briefing which outlines consideration of the Bill prior to stage 3. This briefing also discusses a number of issues that were debated during consideration of the Bill including the key amendments that were laid at stage 2, not all of which were agreed to.

The first of these was in connection with various court processes that were contained in the Bill as introduced. Evidence received by the Committee from the Law Society of Scotland suggested that court procedures referred to in the Bill were not competent. The Committee subsequently questioned the Minister for Public Health, Shona Robison MSP (the Minister), about this at Stage 1 and made a number of recommendations in its Stage 1 Report. This resulted in the Government lodging amendments at stage 2 to rectify the matter, all of which were agreed to.

A key consideration of the Committee was the extent to which the Bill encroached on civil liberties. Thus, the Committee questioned the safeguards contained in the Bill. For example, the Committee was concerned that the Bill did not allow for an appeal against an order for compulsory medical examination, as it did for other orders that restricted liberty. The Scottish Government stated that the policy intention behind the no appeal mechanism was that the decision to medically examine someone without consent would only occur as a last resort when it was crucial that evidence was obtained as to whether an individual or group of individuals had a particular infectious disease, or strain of disease, which could have a significant impact on public health. In addition, it considered that whilst orders that restricted liberty, i.e. exclusion, restriction, quarantine and detention, would remain in force while any appeal was being considered, this would not be possible in the case of medical examinations. However, in light of the Committee’s and other stakeholders’ concerns on this issue, the Government reconsidered the
position. Whilst an appeal mechanism could delay the examination, the Government was assured that quarantine, as an initial response, could prevent or reduce the risk of spread of potential infection, until such time as an appeal on medical examination could be heard. Thus, it brought forward amendments at Stage 2 to allow for appeal against medical examination.

A further area of significant debate concerned the provisions relating to the requirement to provide information on the affect of sunbeds on health. However, it was expected that, if the Bill passed stage 1, these provisions were likely to be amended at stage 2 by the Government (in collaboration with Kenneth MacIntosh MSP, who was drafting a proposal for a Sunbed Licensing (Scotland) Bill), (lodged 22 May 2008) to introduce a package of measures related to the regulation of sunbeds. Whilst welcoming the principle of some form of regulation the Committee reserved the right to seek further evidence once any amendments had been lodged.

At stage 2, two main sets of amendments were lodged. Helen Eadie MSP sought to introduce a national licensing scheme for sunbeds through amending the Civic Government (Scotland) Act 1982 (the 1982 Act). Mr Macintosh MSP proposed, with the support of the Scottish Government, to bring in a regulation scheme with a variety of provisions including: making it an offence for an operator to allow persons under the age of 18 to use a sunbed on their premises; and, empowering an authorised local authority officer to enter and inspect premises and an environmental health officer (EHO) to enter a dwelling place.

The Committee had sympathy with Helen Eadie’s amendments, particularly considering the difficulties of acting on health and safety standards. It was pointed out in evidence that a licensing scheme may make it easier to act on such standards, indeed some local authorities had already gone down this route. As health and safety standards were a matter for the UK Parliament, the Minister said she had begun discussions with the Health and Safety Executive to explore what could be done in practical terms about the problems of enforcement by EHOs. She suggested that if those discussions did not prove productive then discussions could take place on use of the 1982 Act, instead of trying to make further amendments at stage 3.

Following further debate, Helen Eadie’s amendments were not agreed to by a majority of the Committee, though Ken Macintosh’s were agreed to unanimously. One outstanding issue in relation to Mr Macintosh’s amendments was concerns about EHOs being able to enter private dwellings and the Minister agreed to further consider this at stage 3. At stage 3 an amendment lodged by Ross Finnie, which sought to ensure such intervention could only take place if it was granted by a sheriff, was agreed to.
Glasgow Commonwealth Games Bill

Bill Number: SP Bill 4
Introduced on: 9 November 2007
Introduced by: Nicola Sturgeon (Executive Bill)
Passed: 30 April 2008
Royal Assent: 10 June 2008

2008 asp 4

Passage of the Bill

The Glasgow Commonwealth Games Bill [SP Bill 4] was introduced in the Parliament on 9 November 2007. Stage 1 commenced on 7 November 2007 when the lead committee, Local Government and Communities, agreed their approach to the Bill. The Stage 1 (general principles) debate took place on 27 February 2008 and the Bill was passed following the Stage 3 parliamentary debate on 30 April 2008.

Purpose and objectives of the Bill

The Bill contained a number of diverse provisions which, in combination, seek to ensure that the Glasgow Commonwealth Games are organised effectively.

Provisions of the Bill

The provisions of the Bill included:

- The creation of new criminal offences prohibiting unauthorised advertising and outdoor trading within the vicinity of Games venues
- The creation of a new criminal offence to prohibit the unauthorised sale of Games tickets in public in excess of face value or with a view to making a profit, provide for the designation of enforcement officers empowered to enforce the Games advertising, street trading and ticket touting offences, and make it a criminal offence to obstruct them in their duties,
- providing councils with the power to make Games traffic regulation orders
- providing Scottish Ministers with the power to direct councils to make, vary or revoke any instrument which regulates road use in relation to the Transport Plan for the Games
- providing councils with the power to issue a Compulsory Purchase Order for land within their area which they believe is required for Games purposes
• providing Scottish Ministers with powers to pay grants and provide other forms of assistance to the Organising Committee of the Games and set conditions on such assistance; and

• providing Scottish Ministers with the power to repeal the Act once the Games have ended.

Parliamentary consideration

The Local Government and Communities Committee supported the general principles of the Bill but highlighted some specific issues where it considered the Bill could be improved. For example, the Committee considered that definitions of ‘vicinity’ and ‘precinct’ should be provided at the earliest opportunity. In addition, the Committee sought some amendments to the recruitment and powers of enforcement officers and sought a response from the Scottish Government regarding concerns over the compulsory purchase of land.

At Stage 2 of the Bill’s consideration 42 amendments were tabled by the Minister for Communities and Sport, Stewart Maxwell MSP. Some of the main amendments to the Bill at Stage 2 were:

• the removal of the term ‘Games Event’ and its replacement with the term ‘Games Location’

• all references to enforcement regulations within the Bill were removed with specific provision being made to allow Scottish Ministers to make regulations to specify criteria for appointment as enforcement officers and the procedure for people to claim compensation for damage done to their property

• Extending the powers of police officers in order that they have the same powers, restrictions, liabilities and protections as enforcement officers. The Bill, as introduced, had intended that the primary responsibility for enforcement would lie with enforcement officers, with police officers involved in a supporting role. Whilst this remains the intention of the Bill, the amendments at Stage 2 enable police officers to enforce the legislation independently of enforcement officers

No amendments to the Bill were agreed to at Stage 3.
Budget (Scotland) Bill

Bill Number: SP Bill 5
Introduced on: 17 January 2008
Introduced by: John Swinney (Executive Bill)
Passed: 6 February 2008
Royal Assent: 12 March 2008

2008 asp 2

Passage of the Bill

The Budget (Scotland) Bill [SP Bill 5] was introduced on 17 January 2008. The Stage 1 debate took place on 23 January. The Finance Committee considered the Bill at Stage 2 on 29 January and it was passed by the Parliament on 6 February 2008.

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 2008-09. 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. However, due to the Scottish Parliamentary election in May 2007 and the delay to the UK Spending Review, this year’s process was truncated with Committees looking at the Government’s spending plans later than normal, from November 2007 to January 2008.

Provisions of the Bill

The Bill will authorise over £27bn 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.
Judiciary and Courts (Scotland) Bill

Bill Number: SP Bill 6
Introduced on: 30 January 2008
Introduced by: Kenny MacAskill (Executive Bill)
Passed: 25 September 2008
Royal Assent: 29 October 2008

Passage of the Bill

The Judiciary and Courts (Scotland) Bill [SP Bill 6] was introduced in the Parliament on 30 January 2008. The Justice Committee, as lead committee, took oral evidence at stage 1 (general principles) at three meetings in March 2008. The stage 1 debate took place on 14 May 2008. Stage 2 consideration of amendments was completed by the Justice Committee on 10 June 2008. A total of 84 amendments were lodged at this stage. The stage 3 debate took place on 25 September 2008 when the Bill was passed unanimously by the Parliament.

Purpose and objectives of the Bill

The intention behind the Bill is to improve the justice system by modernising the arrangements for the judiciary and strengthening its role in relation to the governance of the Scottish Court Service (SCS).

Provisions of the Bill

The Bill provides a statutory guarantee of the continued independence of the judiciary in Scotland; establishes the Lord President as head of the Scottish Judiciary; places the Judicial Appointments Board on a statutory footing; sets out the procedures for the appointment and removal of the Lord President and Lord Justice Clerk; provides a scheme for dealing with judicial conduct; establishes a common procedure for removing judges and sheriffs; and sets out new governance arrangements for the SCS by transferring responsibility for the service from the Scottish Ministers to the Lord President and a judicially led board.

Parliamentary consideration

At stage 1, the Justice Committee expressed significant concern about the potential administrative burden that would be placed upon judicial post-holders, particularly the Lord President, and requested that the Scottish Government provide independent quantifiable evidence about the impact of
the Bill on judicial time. In relation to judicial conduct, the Committee agreed at stage 1 (by majority) that it was necessary to have a system for reviewing how a complaint has been handled and agreed (by majority) to the establishment of a Judicial Complaints Reviewer. A further area for debate was the issue of the accountability of the Scottish Court Service to the Scottish Parliament.

In response to the Committee’s concerns over the new governance arrangements of the SCS and the additional administrative burden placed on the judiciary, the Cabinet Secretary for Justice commissioned an independent review on the likely impact of the Bill on judicial time. The review acknowledged that the new governance arrangements would add to the administrative burden placed on the judiciary, but concluded that the proposals would strengthen the role and effectiveness of both the judiciary and the SCS and would not detract from the judicial role.

At stage 2, 84 amendments were lodged, of which 25 were agreed to. In relation to those agreed, of particular note were amendments to: add the Scottish Parliament to those organisations with a specific obligation to uphold the continued independence of the judiciary; and to enable the Lord President to require any judicial office holder to attend such training as he/she determines necessary.

At stage 3, 23 amendments were lodged, of which 17 were agreed to. In particular, an amendment which gives a member of the Judicial Appointments Board, who is to be removed from office, the opportunity to be heard by the Lord President or the Scottish Ministers was agreed to (despite Government opposition). The Bill, as amended, was passed unanimously.

Creative Scotland Bill

Bill Number: SP Bill 7
Introduced on: 12 March 2008
Introduced by: Alex Salmond (Executive Bill)
Fell: 18 June 2008

Passage of the Bill

The Creative Scotland Bill [SP Bill 7] was introduced in the Parliament on 12 March 2008. Stage 1 commenced on 18 March 2008 with the Education, Lifelong Learning and Culture Committee [hereafter the Education Committee] as the lead committee. The Committee published its Stage 1 report on 2 June
2008. The Stage 1 Parliamentary debate was held on 18 June 2008. The Parliament agreed to the general principles of the Bill however the financial resolution to the Bill was not agreed. Accordingly the Bill fell at Stage 1.

**Purpose and objectives of the Bill**

The Bill proposed the creation of a new cultural development body, termed Creative Scotland, which would inherit the resources and general purposes of the Scottish Arts Council and Scottish Screen. The Explanatory Notes describe five main purposes for the Bill:

- establish a national cultural development body, Creative Scotland
- provide for the functions of Creative Scotland
- give the Scottish Ministers a limited power to give directions to Creative Scotland
- dissolve the Scottish Arts Council, a body established by Royal Charter, and
- provide for the membership of and governance of Creative Scotland

**Provisions of the Bill**

As noted above, the Bill proposed the creation of a national cultural development body, termed Creative Scotland, which would take on the functions currently exercised by the Scottish Arts Council and Scottish Screen. The functions proposed for Creative Scotland in the Bill were:

- Promote understanding, appreciation and enjoyment of the arts and culture in all sections of society
- Identify, develop and support talent and excellence in the arts and culture
- Work to make real and bring to fruition the value and benefits of the arts and culture, and
- Support activities which involve the application of creative skills to the development of products and processes

In addition to the proposed new body having responsibility for the functions of the Scottish Arts Council and Scottish Screen, Creative Scotland was also to have a role in relation to the creative industries. Therefore the proposed new body would have a wider remit than that currently dealt with by the existing two bodies.

**Parliamentary consideration**

In addition to the lead Committee, the Finance Committee and Subordinate Legislation Committee also scrutinised the Bill. The Education Committee’s
Stage 1 report endorsed the ambition which lay behind the proposal to establish the proposed new body. However the Committee took the view that the Bill was limited in scope and therefore expressed concern that the measures contained in the Bill may be insufficient for it to achieve the ambitions which the Scottish Government had set for it. In particular the Committee highlighted that the remit and functions of the proposed new body were unclear and that there was a potential for confusion and of overlapping functions with other organisations. The Committee sought clarification of the purposes of the organisation particularly with regard to the economic remit of the organisation.

The Finance Committee report on the Bill had stated that the Financial Memorandum to the Bill ‘had been the weakest presented in the current parliamentary session’. The Education Committee endorsed this comment and raised concerns regarding a lack of clarity regarding how resources would be transferred to the new body and given the proposed level of financing how Creative Scotland would be able to deal with an expanded remit with a diminishing budget. The Committee also considered that the Financial Memorandum could have been more helpful in setting out alternative organisational structure options and their possible impact on transition costs.

Overall the Committee took the view that whilst endorsing the principle of establishing a single national cultural body the Committee did have significant concerns as to whether the Bill, as drafted, would be able to meet its objectives.

The Stage 1 debate on the Bill was held on 18 June 2008. The Parliament agreed to the general principles of the Bill. However, the financial resolution to the Bill was voted against [For – 49; Against – 68; Abstentions – 0]. Accordingly, the Creative Scotland Bill fell at Stage 1.
Scottish Register of Tartans Bill

Bill Number: SP Bill 8
Introduced on: 25 March 2008
Introduced by: Jamie McGrigor (Member's Bill)
Passed: 9 October 2008
Royal Assent: 13 November 2008

2008 asp 7

Passage of the Bill

The Scottish Register of Tartans Bill was introduced in the Scottish Parliament on 25 March 2008. Stage 1 commenced on 15 April 2008 when the Finance Committee took evidence on the Bill. The lead committee on the Bill, the Economy, Energy and Tourism Committee, commenced taking evidence at Stage 1 on 16 April 2008. The Stage 1 (general principles) debate took place on 19 June 2008. The Bill passed Stage 2 consideration at a meeting of the lead committee on 12 September 2008. The Stage 3 debate was held on 9 October 2008 at which the Bill was passed. The Scottish Register of Tartans Act received Royal Assent on 13 November 2008.

Purpose and objectives of the Bill

The purpose of the Bill was to establish a register of tartans. The register is intended to provide a repository of both existing records of current and historical tartan designs and as a means for new tartans to be registered.

Provisions of the Bill

The Bill proposed to:

- Create a publicly held and maintained Register of tartans
- Set up a system for registering new tartan designs
- Establish a statutory definition of tartan for the purposes of the operation of the Register
- Confer on the Keeper of the Records of Scotland the functions of keeping and maintaining the proposed Register and of overseeing the registration of new tartan designs, and
- Provide Scottish Ministers with a power to specify, by order, fees for services provided in relation to the Register such as the registration of new tartans and provision of copy material from the Register.
Parliamentary consideration

The Economy, Energy and Tourism Committee supported the general principles of the Bill. The Committee highlighted a number of areas where it considered that the Bill could be improved including:

- That the definition of tartan in the Bill (as introduced) be widened to allow for the requirement that the design should be capable of being woven
- That the member in charge of the Bill consider further whether a requirement to include a swatch of cloth with an application to register a tartan would help promote the textile industry in Scotland or whether this would act as a deterrent to applicants

At Stage 2 of the Bill, three amendments were moved. One amendment, tabled by Jamie McGrigor MSP, was passed. This amendment modified the definition of tartan to require that designs be capable of being woven.

At Stage 3, one amendment to the Bill was lodged and this amendment was passed by Parliament. The amendment allowed the Keeper of the Register of Tartans, when sending a certificate of registration to an applicant - or indeed at any later date - who had not previously provided a swatch of cloth pertaining to the proposed tartan, to request the applicant to submit such a sample.

Offences (Aggravation by Prejudice) (Scotland) Bill

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<th>SP Bill 9</th>
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<td>Introduced on:</td>
<td>19 May 2008</td>
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<tr>
<td>Introduced by:</td>
<td>Patrick Harvie (Member’s Bill)</td>
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<td>Passed:</td>
<td>3 June 2009</td>
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<tr>
<td>Royal Assent:</td>
<td>8 July 2009</td>
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2009 asp 8

Passage of the Bill

On 2 October 2007, Patrick Harvie MSP lodged a draft proposal for a Bill dealing with offences motivated by prejudice towards a person’s sexual orientation or disability. On 15 January 2008, the Scottish Government announced that it would be giving its backing to Patrick Harvie’s proposal and that the Bill would be taken forward as a ‘Handout Bill’ – a member’s bill which is sponsored and supported by the Government. The resulting Offences
The (Aggravation by Prejudice) (Scotland) Bill was introduced on 19 May 2008 by Patrick Harvie MSP.

The Justice Committee was designated as lead Committee for the Bill and commenced taking Stage 1 oral evidence on the general principles of the Bill on 13 January 2009. The Equal Opportunities Committee was designated as secondary committee and was tasked with examining whether the Bill’s proposals should be extended to include age and gender.

The Stage 1 debate took place on 18 March 2009. No amendments were lodged at Stage 2 and the Stage 3 debate was held on 3 June 2009. As at Stage 2, no amendments were lodged at Stage 3 and the Bill was passed.

Purpose and objectives of the Bill

The Bill seeks to ensure that, where it can be proven that an offence has been motivated by malice and ill-will based on the victim’s actual or presumed sexual orientation, transgender identity or disability, the court must take that motivation into account when determining sentence. These aggravations also extend to situations where an offender in committing an offence demonstrates malice and ill-will towards a particular group as a whole without the need for an individual victim to be identified. The Bill does not introduce any new offences.

It is already possible, at common law, for Scottish courts to take the motivation of an offender into account when determining sentence. However, the proposed statutory aggravations would ensure that the courts must consider evidence that the offender was motivated by hatred towards those groups included in the Bill.

Provisions of the Bill

The Bill is a short one containing only three sections. Section 1 of the Bill relates to prejudice relating to disability and applies where it has been proven that an offence was motivated by prejudice relating to disability. Section 2 of the Bill applies in the same way to prejudice relating to sexual orientation or transgender identity. Section 3 deals with commencement and the short title of the Bill.

Subsection 1(2) sets out when an offence is aggravated by prejudice relating to disability. There are two types of situation where this can arise. First, where an offender has demonstrated prejudice towards the victim based on their actual or presumed disability and secondly, where the offence was motivated by general malice and ill-will towards people who have a disability or particular disability. The Explanatory Notes to the Bill point out that this means that the aggravation can be applied even in cases where the malice and ill-will is expressed towards a wider group as a whole, without the need for a specific or individual victim to have been identified. For example, where a building
used by disability organisations is vandalised or daubed with graffiti that suggests prejudice against disabled people. The prejudice may have been demonstrated before, during or after the offence was committed. Subsection 2(2) of the Bill applies in the same way where offenders have demonstrated prejudice towards victims based on their actual or presumed sexual orientation or transgender identity.

**Parliamentary consideration**

The Bill proved to be uncontroversial during its progress through the Parliament. The Justice Committee agreed, on balance, to recommend that the Parliament agree to the general principles of the Bill at Stage 1 and, unusually, no amendments were lodged at either Stage 2 or Stage 3 of the Bill.

In its Stage 1 report, the Equal Opportunities Committee recommended that the Bill should not be amended to include aggravations based on either age or gender. However, the Equal Opportunities Committee did recommend that the Justice Committee consider amending the Bill to include a delegated power provision that would allow protection to be extended to other groups by statutory instrument if evidence emerged that such groups would benefit from the measures being proposed in the Bill. The Justice Committee did not support this recommendation believing that any proposed extension to criminal legislation should only be established through primary legislation.

**Disabled Persons’ Parking Places (Scotland) Bill**

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 10</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>2 June 2008</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Jackie Baillie (Member’s Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>26 February 2009</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>1 April 2009</td>
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2009 asp 3

**Passage of the Bill**

The Disabled Persons’ Parking Places (Scotland) Bill [SP Bill 10], a Member’s Bill, was introduced in the Parliament on 2 June 2008. Stage 1 commenced on 24 September 2008 with the Local Government and Communities Committee as the lead committee. The Stage 1 (general principles) debate took place on 26 November 2008 and the Bill was passed following the Stage 3 parliamentary debate on 26 February 2009.
Purpose and objectives of the Bill

The aim of the Bill is to make disabled persons’ parking places legally enforceable, preventing the misuse of such parking places by those not entitled to use them. Currently, most disabled persons’ parking places are only advisory and availability depends on the courtesy and consideration of other drivers.

Provisions of the Bill

The Bill requires every local authority to undertake a one-off audit of all disabled persons’ parking places within their area, whether on-street or off-street.

Local authorities will be required to convert all advisory on-street disabled persons’ parking places into enforceable parking places, unless they are no longer deemed necessary.

The Bill places a duty on every local authority to enter into negotiations with the owners of existing off-street car parks containing disabled persons’ parking places with a view to making them enforceable parking places and, where they cannot initially obtain such agreement, to continue to seek such agreement at least once every two years.

Parliamentary consideration

The Local Government and Communities Committee took evidence on the Bill between September and October 2008. The main concern during consideration of the general principles was over the uncertainty surrounding the figures in the Financial Memorandum. The Local Government and Communities Committee agreed with the Finance Committee that the overall estimate of £1.7m for creating enforceable disabled persons’ parking places across Scotland was subject to a significant degree of doubt. The Committee recommended in its Stage 1 Report that the Scottish Government and COSLA should negotiate the costs of implementing the Bill’s provisions to ensure that it would not unduly burden local authorities.

Uncertainty over costs continued during the Stage 1 debate, during which the Minister for Transport, Infrastructure and Climate Change stated that, as promoter of the Bill, Jackie Baillie MSP had responsibility for the financial memorandum and that the Government would support Ms Baillie in her discussions with COSLA.

At Stage 3, following negotiations and research by Jackie Baillie, the cost was estimated to be nearer £3m. The Minister, however, said that local authorities considered that costs would be closer to £6m. The Minister gave an undertaking that, following the passage of the Bill, officials would liaise with
local authorities to address the issue of how to take account of economies of scale and best value. The Minister also indicated that the Government would make funding available once more accurate figures become available.

There were no major changes in the Bill as passed. Only minor technical amendments were made at Stage 2.

Sexual Offences (Scotland) Bill

Bill Number: SP Bill 11
Introduced on: 17 June 2008
Introduced by: Kenny MacAskill (Executive Bill)
Passed: 10 June 2009
Royal Assent: 14 July 2009

2009 asp 9

Passage of the Bill

The Sexual Offences (Scotland) Bill [SP Bill 11] was introduced in the Parliament on 17 June 2008. The Justice Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 28 October 2008. The Stage 1 debate took place on 12 February 2009 and the Bill was passed following the Stage 3 parliamentary debate on 10 June 2009.

Purpose and objectives of the Bill

The Bill seeks to provide a statutory framework for sexual offences so that most offending of a sexual nature will, once the provisions of the Bill become law, be prosecuted under one of the offences in the Bill. As well as consolidating much of the existing law on sexual offences, the Bill seeks to reform and clarify the law in a number of important areas.

Provisions of the Bill

The Bill is divided into seven parts. Part 1 sets out a range of sexual offences in which the lack of consent of the victim is a central element in the definition of the offence. Part 2 deals with the concept of consent, and the related issue of reasonable belief in consent, whilst Part 3 deals with the capacity of mentally disordered persons to consent to sexual activity.
Part 4 contains sexual offences relating to sexual activity involving children (under the age of 16). A conviction for these offences does not require proof that the child victim did not consent. Part 5 sets out sexual offences dealing with situations where the accused holds a position of trust in relation to the victim. It provides that a position of trust exists in various situations where the victim is a child (under the age of 18) or a mentally disordered person. Again, a conviction for offences does not require proof that the victim did not consent.

Part 6 deals with the penalties for the offences set out in the Bill. Part 7 contains miscellaneous and general provisions.

The Bill is based on proposals put forward by the Scottish Law Commission in its Report on Rape and Other Sexual Offences (2007). The provisions in the Bill do, however, differ from those set out in the Commission’s report in a number of significant respects. Some of these differences existed in the Bill as introduced whilst others are the result of amendments to the Bill.

Parliamentary consideration

In general, the Bill attracted wide support across the Parliament. There were, however, a number of issues which were keenly debated, leading to important amendments in some areas. Three of these issues are highlighted below.

The Bill as introduced included new statutory offences of rape (wider in scope than the current common law offence of rape but still restricted to penile penetration) and sexual assault (similar in scope to the current common law offence of indecent assault). Concerns were expressed during Stage 1 that including penetrative sexual assaults with objects within the broad offence of sexual assault failed to clearly label them as potentially some of the most severe forms of sexual offence. In light of this evidence, the Justice Committee’s Stage 1 Report recommended that there should be a separate offence. The Government brought forward relevant amendments at Stage 2 and the Bill as passed includes an offence of sexual assault by penetration.

The Bill sets out a statutory definition of consent which includes a non-exhaustive list of factual situations where consent is by law held to be absent. Concerns were raised during parliamentary consideration about the implication in the Bill as introduced that a person could be said to have given prior consent to a sexual activity which that person could not consent to at the time of the activity (eg because the person is too intoxicated or is asleep at the time). These concerns led to a number of amendments being agreed to at Stages 2 and 3 which sought to restrict the validity of prior consent.

One of the main differences between the proposals put forward by the Scottish Law Commission and those contained in the Bill, as introduced, concerned how the law should deal with consensual sexual activity between older children (aged 13, 14 or 15). The Commission recognised that such activity could give rise to serious concerns about the welfare of the children.
involved. However, instead of applying the criminal law in such circumstances, it recommended that there should be a new non-offence ground for referring children involved in sexual activity to the Children’s Hearings System. The Government, whilst acknowledging that the Hearings System is the most appropriate avenue for intervention in most cases, favoured retaining the possibility of prosecuting children, and the Bill as introduced sought to criminalise some forms of consensual sexual activity between older children. The issue was examined in detail during Stage 1 and, on balance, both the Justice Committee and the Parliament as a whole favoured the Government’s approach – although a number of changes were made to the range of sexual activities covered by relevant offences.

**Damages (Asbestos-Related Conditions) (Scotland) Bill**

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<th>Bill Number:</th>
<th>SP Bill 12</th>
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<tr>
<td>Introduced on:</td>
<td>23 June 2008</td>
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<tr>
<td>Introduced by:</td>
<td>Kenny MacAskill (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>11 March 2009</td>
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<td>17 April 2009</td>
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2009 asp 4

**Passage of the Bill**

The Damages (Asbestos-Related Conditions) (Scotland) Bill [SP Bill 12] was introduced in the Parliament on 23 June 2008. The Justice Committee, as lead committee, took oral evidence at stage 1 on the general principles of the Bill at two meetings in September 2008. The stage 1 debate took place on 5 November 2008. Stage 2 consideration of amendments was completed by the Justice Committee on 2 December 2008. Five amendments were lodged at this stage. The stage 3 debate took place on 11 March 2009 when the Bill was passed by the Parliament. Nine amendments were lodged at stage 3.

**Purpose and objectives of the Bill**

The purpose of the Bill is to ensure that people who are negligently exposed to asbestos in Scotland and go on to develop certain asymptomatic asbestos-related conditions can continue to seek financial compensation for their condition.

The Bill will ensure that a House of Lords judgment in 2007 (Johnston v NEI International Combustion Ltd), which ruled that those with asymptomatic
pleural plaques are not entitled to claim compensation, is not applied in Scotland.

The asbestos-related conditions covered by the Bill are pleural plaques, pleural thickening and asbestosis. The pleura is a thin membrane covering the lungs and lining the inside of the chest walls.

Provisions of the Bill

The Bill has five sections. The first section provides that asbestos-related pleural plaques are an actionable personal injury. Section two has similar effect for asbestos-related pleural thickening and asbestosis. Section 3 provides that claims for these asbestos related conditions do not become time-barred during the period between the date of the House of Lords judgment (17 October 2007) and the date the Act comes into force. Section 4 sets out the provisions for commencement and retrospection. Section 5 gives the short title of the Act and provides that the Act binds the Crown.

Parliamentary consideration

In its stage 1 report, the Justice Committee accepted that the Bill represents a departure from the established principles of delict in Scotland. However, it did not accept that the Bill would overturn or undermine this law generally as it is expressly restricted to asbestos related conditions.

In relation to the potential cost of the Bill, the Committee noted that there was a considerable divergence in the figures provided by the Scottish Government and Thompsons Solicitors, on the one hand, and those provided by the insurance industry, on the other, regarding the number of pleural plaques claims likely to arise in Scotland in any given year. The Committee invited the Scottish Government to give further consideration to the figures it presented in the Financial Memorandum and to provide the Parliament with a reassurance that the figures represent a fair indication of the likely costs of the Bill. The Committee also sought greater clarity on the Statement of Funding Policy. The Scottish Government subsequently provided a reassessment of the financial implications of the Bill based on a re-examination of existing data, material that had come to light since the Bill was introduced and other, new material.

Five amendments were lodged at stage 2 (by Bill Butler MSP, supported by Robert Brown MSP). Mr Butler argued that the purpose of his amendments was to achieve the Scottish Government’s policy objective in a clearer, more direct and more economical way and in a way that would not give rise to unnecessary questions for the court. In speaking to his amendments, Mr Butler expressed doubt that the Bill, as drafted, would actually entitle the victims to claim damages for asbestos-related conditions. In particular, Mr Butler argued that the Bill, as drafted, did not make it sufficiently clear that pleural plaques are a personal injury which cause actionable damage for the
purposes of the law of delict. In response, the Minister for Community Safety (Fergus Ewing) argued that the amendments would introduce weaknesses that may unintentionally defeat the objectives of the Bill. Nonetheless, the Minister indicated that he would seek further discussions on the matter with relevant stakeholders before stage 3. The amendments were not pursued.

At stage 3, government amendments were lodged to meet the Scottish Government’s concerns and those articulated at stage 2 by Bill Butler and Robert Brown. In addition, an amendment was lodged by Derek Brownlee MSP which sought to ensure that the projected costs of the Bill are monitored after royal assent and that explanations are provided for any significant variance. Following debate this amendment was withdrawn. After debate, the Bill (as amended) was agreed to by division (the Conservative’s voted against).

Health Boards (Membership and Elections) (Scotland) Bill

<table>
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<th>Bill Number:</th>
<th>SP Bill 13</th>
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<td>Introduced on:</td>
<td>25 June 2008</td>
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<tr>
<td>Introduced by:</td>
<td>Nicola Sturgeon (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>12 March 2009</td>
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<td>Royal Assent:</td>
<td>22 April 2009</td>
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2009 asp 5

Passage of the Bill

The Health Boards (Membership and Elections) (Scotland) Bill was introduced in the Scottish Parliament on 25 June 2008 with the Health and Sport Committee designated as the lead committee. The stage 1 debate took place on 15 January 2009 and the Bill was passed on 12 March 2009.

Purpose and objectives of the Bill

The aim of the Bill was to improve public engagement and involvement with the NHS by allowing for the election of members to health boards on a pilot basis.

It was also an attempt to address the perceived unaccountability of health boards, whose members are either appointed by Ministers or sit on the Board by virtue of their position. In recent years a number of controversial health board decisions were made which were perceived to be at odds with elements of local public opinion. A previous Member’s Bill in the name of Bill Butler
MSP, had tried to rectify this by also seeking elected health boards but the Health Board Elections (Scotland) Bill fell at stage 1 in Session 2. However, although predominantly with the same aim, this Bill differed in a number of respects, primarily in that it sought to introduce health board elections on a pilot basis.

Provisions of the Bill

As noted above, the Bill sought to introduce elections to health boards by way of pilots. The Bill proposed that elected members along with local authority members should constitute a majority of the Board.

Many of the arrangements for holding elections were to be established in subordinate legislation, but there were some details outlined on the face of the Bill, including that:

- elections would be held every 4 years
- voting would be extended to 16 and 17 year olds
- elections would use a preferential voting system (e.g. single transferable vote), and
- each Board area would constitute an electoral ward.

The pilots established under the Bill would remain in force for up to seven years. National roll out of elections would be subject to evaluation and the evaluation report would be laid before Parliament

Parliamentary consideration

Stage 1

Much of the stage 1 debate focused on whether elections would actually achieve the intended aim of increasing and diversifying public engagement in the NHS. Concerns were expressed that elections could impact negatively on other initiatives with the same aim. The Health and Sport Committee (‘the Committee’) concluded that elections had the potential to increase involvement but they were not convinced by the evidence that they would be the most effective means of doing so. In this regard, there was greater support for pilots over immediate roll-out and the Committee recommended that, in order to make the evaluation more robust, pilots should be tested alongside alternative models for improving participation.

Other more specific concerns were expressed by the Committee regarding the conduct of elections. These included the lack of personal identifiers on postal ballots and also the creation of a young persons’ register to enable the franchise to be extended to 16 and 17 year olds.
The Committee recommended that the general principles of the Bill should be agreed to. However, it stated that this recommendation was given on the basis that the principle being agreed to was for pilots, rather than elections in general and, as such, the decision of Parliament at this stage should not be taken to pre-empt any future decision of Parliament on the roll-out of elections.

**Stage 2**

The main amendments to the Bill at stage 2 included various exclusions as to who can stand as an elected member, (e.g. MPs, MEPs). This was to help prevent politicising NHS Boards. Other changes included:

- the removal of a power for Ministers to dismiss elected members from the Boards
- the inclusion of a requirement for personal identifiers on postal ballots
- a requirement that pilots operate for two years before the evaluation report is laid before Parliament, and
- that the evaluation is conducted by someone independent of the Scottish Government or Health Boards.

Bill Butler MSP sought to amend the Bill to ensure that elected members constituted a simple majority of the Boards, but the amendment was not agreed to.

**Stage 3**

The main change to the Bill at stage 3 came from the Cabinet Secretary who successfully removed the requirement for personal identifiers on postal ballots in the pilot elections. She argued that, at the pilot stage, the cost would be disproportionate but, if rolled out, personal identifiers would be used.

The Bill was passed on 12 March 2009 and when enacted will allow pilot elections to take place in NHS Board areas to be specified in subordinate legislation. Elected members in these areas will make up a majority of the Board alongside council members. The ward area will be the same as the Board area and the election will utilise a preferential voting system. Those over the age of 16 who are resident in the Board area will be entitled to vote in the elections.

Following the pilots, Ministers must lay a report before Parliament which will outline the independent evaluation of how the pilots have affected levels of public participation, patient engagement and local accountability. It must also outline the cost of the pilots and the anticipated cost of roll out across the country. This report should be published between 2-5 years after the pilot elections have taken place. National roll-out of elections will only take place following the approval of a relevant order in the Scottish Parliament.
Scottish Parliamentary Pensions Bill

Bill Number: SP Bill 14  
Introduced on: 22 September 2008  
Introduced by: Alasdair Morgan on behalf of the Scottish Parliamentary Pension Scheme Committee (Committee Bill)  
Passed: 22 January 2009  
Royal Assent: 25 February 2009

2009 asp 1

Passage of the Bill

The Scottish Parliamentary Pensions Bill [SP Bill 14] was introduced in the Parliament on 22 September 2008. On 27 June 2007 the Scottish Parliament had agreed by resolution to the establishment of the Scottish Parliamentary Pension Scheme Committee, to make recommendations for a Committee Bill to replace the Scottish Parliamentary Pension Scheme rules. That Committee carried out a consultation on the terms of the pension scheme and reported on the Bill’s draft provisions.

Following this consideration, the Bill was debated at Stage 1 (general principles) on 12 November 2008. The Bill was passed, following a Stage 3 debate held on 22 January 2009. This was done without amendment as no amendments were lodged at Stage 3.

Purpose and objectives of the Bill

The instrument setting out the then Scottish Parliamentary Pension Scheme was transitory and transitional. The new legislation was passed in the context of a raft of changes to pensions law generally and the fact that the previous scheme was set to expire in April 2011. According to the Explanatory Notes to the Bill (Paragraph. 14), if the existing scheme was not replaced it, “…would create uncertainty about how parts of the 1999 pensions order comply with tax rules [under the Finance Act 2004].”

This, read in conjunction with s81 of the Scotland Act 1998, compelled the Scottish Parliament to pass new primary legislation. However, the new legislation is intended to cover more than Parliamentary Pensions including, as it does, provisions relating to grants to office holders and rules on the payment of resettlement grants. The reasoning behind this, as the Scottish Parliamentary Pension Scheme Committee 1st Report noted (paragraph 225-9), was that the current Grants Order raised age-related discrimination issues. It was considered reasonable to consider the Grants Order in light of equal opportunities legislation because, while grant payments are not made from the pension fund, there is a linkage to ill-health retirement criteria.
Provisions of the Bill

Management

The Bill provided for the appointment, conditions, remuneration, resignation and removal of Fund trustees to perform the management function previously carried out by the Scottish Parliamentary Corporate Body (SPCB).

Members’ contributions

The accrual rate of $\frac{1}{50}$th of final salary for each year of reckonable service would, under the Bill, change to $\frac{1}{40}$th if the member so chose. Exercising that choice would be associated with an increased contribution to the scheme by the member, set at a rate which would fully fund the improvement ($11\%$ of salary, as opposed to $6\%$ for a $\frac{1}{50}$th accrual rate).

Transfers, additions and commutation

As was the case under the previous scheme, although now in line with both the Finance Act 2004 and the Pension Schemes Act 1993, the Bill will allow for transfers into and out of the scheme, but only to and from another registered scheme.

Under the Finance Act 2004, a person who is a member of a tax-registered scheme may exchange (commute) part of their pension entitlement for a tax free lump sum called a “pension commencement lump sum”. This option was available under the previous scheme, independent of the Finance Act 2004.

The Bill provided that added years may be bought based on a member’s service and salary as an MSP or by instalment, and is subject to certain conditions. Under the previous scheme, the contribution limit was set at $15\%$ of a member’s salary; this was raised to $20\%$. At the same time, the option to make additional voluntary contributions under the SPPS, was removed.

Age and payment of pensions

Under the previous scheme, early retirement was not possible without 15 years reckonable service. Under the Bill, if a member elects to take early retirement, their pension will be reduced by $4\%$ for each year below age 65 at which the individual retires. This should be seen in the light of the Finance Act 2004 which raised the minimum pension age from 50 to 55 for members of a tax-registered occupational pension scheme, effective from April 2010.

The previous rules provided for the pension that would be payable at age 65 to be payable before normal retirement age if an MSP member is unable to adequately perform their duties due to ill health. The Bill provided for changes in line with the Finance Act 2004 to require evidence that the member is, and
will continue to be, incapable of carrying out their occupation and that periodic reviews should follow all ill-health pension awards (as recommended by the Committee Stage 1 Report, paragraph. 142). Members with a terminal illness would be allowed to commute their pension entitlement for a lump sum under certain conditions.

As was pointed out in paragraph 27 of the Scottish Parliamentary Pension Scheme Committee 1st Report, “As a result of the taxation changes in the Finance Act 2004, from 6 April 2006 scheme members are prevented, on reaching age 75, from receiving a tax-free lump sum on retirement, receiving tax relief on contributions or payment of a tax-free lump sum after death in service.” The Committee recommended (recommendation 10) that participating membership of the pension scheme should no longer be available to those age 75 and over; and that, “Scheme participants should be able to commute part of their pension into a tax-free lump sum immediately before age 75 whilst still serving as an MSP or officeholder or both” (Recommendation 18). These recommendations were accepted.

Under SPPS rules, where a member died while still in service, a gratuity was payable at three times salary. Under the Bill, this was increased to four times salary.

Following the Pension Scheme Committee recommendation, the previously separate arrangements for the First Minister and Presiding Officer were closed to new incumbents by the passage of the Bill, such that pension provisions are the same as for all other officeholders under the new scheme rules.

*Family members*

Provisions for spouses’ and civil partners’ pensions remain unchanged in the Bill, except on re-marriage or cohabitation and where a participating member dies within six months of marriage, in which case, unlike the previous scheme, under the Bill the pensions continue for life rather than terminate with those events.

The Bill provides that a qualifying partner may be the deceased’s spouse, civil partner, or a person who qualifies under the rules as an “unmarried partner”. Under the rules, the deceased should have notified the Trustees as to the identity of that person, which will give the surviving partner the same entitlement as a surviving spouse.

The annual partner’s pension is payable at 5/8ths of the deceased’s scheme pension entitlement.
Parliamentary consideration

At Stage 1, the Parliament agreed unanimously to the general principles of the Scottish Parliamentary Pensions Bill.

At Stage 2, nine largely technical amendments were agreed to without division, principally to tidy up the terms of the Bill and to allow members who reached 75 between Royal Assent and the ‘new rules day’ six months later, to benefit from the new lump sum provision in the Bill.

The rest of the Bill remained in its ‘as introduced’ state and the long title was agreed to. The Stage 3 debate was held on 22 January 2009. No amendments were lodged at Stage 3.

Flood Risk Management (Scotland) Bill

Bill Number: SP Bill 15
Introduced on: 29 September 2008
Introduced by: Richard Lochhead (Executive Bill)
Passed: 13 May 2009
Royal Assent: 16 June 2009

2009 asp 6

Passage of the Bill

The Rural Affairs and Environment Committee conducted a pre-legislative inquiry into flooding and flood management starting in September 2007 and reporting in May 2008. The Flood Risk Management (Scotland) Bill [SP Bill 15] was introduced in the Parliament on 29 September 2008. The Rural Affairs and Environment Committee was designated as lead committee, and the general principles of the Bill were agreed to at Stage 1 on 22 January 2009. The Bill was passed following the Stage 3 parliamentary debate on 13 May 2009.

Purpose and objectives of the Bill

The Bill seeks to introduce a framework to reduce the adverse consequences of flooding for human health, the environment, cultural heritage and economic activity. It seeks to transpose the EU Floods Directive, update legislation on flooding and amend legislation related to reservoirs in Scotland.
Prior to the Bill, the Government and the Rural Affairs and Environment Committee agreed that responsibilities for flood risk management in Scotland were unclear and needed to be clarified. One of the aims of the Bill therefore is to establish a clear framework of responsibility, with duties and powers defined so that each organisation involved knows exactly what is required.

**Provisions of the Bill**

The Bill seeks to place a general duty on Ministers, the Scottish Environment Protection Agency (SEPA) and responsible authorities to exercise their flood risk management function with a view to reducing overall flood risk and to achieve the objectives set out in flood risk management plans.

SEPA, together with responsible authorities, would be required under the Bill to prepare flood risk assessments, flood risk and flood hazard maps, and flood risk management plans. The assessment, maps and plans must be consistent with requirements under the Water Environment and Water Services (Scotland) Act (asp 3) 2003. SEPA would also be required to assess the possible contribution that the alteration of natural features and characteristics might have to sustainable flood risk management, and to report on this assessment.

Under the 1961 Flood Prevention Act, (which the Bill seeks to repeal) local authority were able to bring forward flood prevention schemes. The Bill seeks to create flood protection schemes instead of flood prevention schemes and seeks to create a more streamlined process for bringing forward such schemes and acquiring necessary permissions.

The Bill also aims to makes provisions related to reservoirs. This includes amending The Reservoirs Act 1975 (c.23) so that the SEPA takes over from local authorities as the relevant authority and enforcement authority for reservoirs. The Bill will introduce a new system of reporting incidents that could affect safety and require reservoir undertakers to produce plans.

**Parliamentary consideration**

Some of the main amendments made to the Bill in its passage through the Scottish Parliament are set out here. First, the term sustainable flood risk management was included in the long title of the Bill in order to send out a message that the Bill was about managing flood risk sustainably. Also related to sustainability, amendments were agreed that would require SEPA to identify measures that it considers would achieve the objectives of flood risk management in the most sustainable way. This would also mean that local flood risk management would be targeted at the most sustainable measures.

Second, amendments creating a stronger link between the implementation of flood risk management and flood risk management plans themselves, were agreed.
Third, a number of amendments relating to surface water management mapping and plans were agreed which required assessment, mapping and planning for surface water flood risk. Surface water management was covered in the scope but not specified on the face of the Bill as introduced.

Fourth, in passing through Parliament, there was considerable debate about the scale at which natural features and characteristics should be assessed and mapped. Amendments were agreed which clarified the scale of mapping of natural characteristics and, in particular, included information on local flood risk management plans. A further amendment was agreed which changed the interpretation of flood protection work by adding the terms “restoration” and “enhancement” of natural features to contribute to flood protection.

Fifth, the Bill, as introduced, sought to replace the duty on local authorities to carry out clearance and repair works of watercourses with a general duty to manage flood risk. This more specific duty was reinstated in the Bill’s passage through Parliament.

Finally, a Government amendment was agreed which required local authorities to create a register of flood protection schemes, which would ensure house buyers are alerted to flood protection schemes which may affect their property.

**Education (Additional Support for Learning) (Scotland) Bill**

Bill Number: SP Bill 16  
Introduced on: 6 October 2008  
Introduced by: Fiona Hyslop (Executive Bill)  
Passed: 20 May 2009  
Royal Assent: 25 June 2009

2009 asp 7

**Passage of the Bill**

The Bill was introduced on 6 October 2008 and stage 1 evidence was taken by the Education, Lifelong Learning and Culture Committee over five Committee meetings from 3 December 2008 to 21 January 2009. The stage 1 debate was held on 4 March 2009 and stage 3 on 20 May 2009.
Purpose and objectives of the Bill

The Bill as introduced aimed to make technical changes to the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act).

Provisions of the Bill

The Bill seeks to enable parents of children with additional support needs to apply directly to any local authority for the education of their child. A Court of Session ruling had made a strong inference that the legislation, as originally drafted, did not allow this. It will also add to the powers and remit of the Additional Support Needs Tribunal (the Tribunal), including interaction with Education Appeal Committees and the Sheriff Court and the creation of new grounds of appeal to the Tribunal.

Parliamentary consideration

The main amendments to the Bill were as follows:

**Definitions** Additional support is now defined as including provision, whether or not educational provision, to school children and children under school age. In addition, ‘looked after children’ will be deemed to have additional support needs, unless the education authority assesses otherwise.

**Assessments** An assessment of additional support needs will be able to be requested at any time. In addition, any disabled child under school age is to be entitled to an assessment.

**The Tribunal** New grounds for appeal to the Tribunal are; an appeal regarding any placing request to a special school; that a local authority has failed to discharge its duties on transitions from secondary school and that a local authority has failed to implement a Co-ordinated Support Plan. New powers of the Tribunal are the ability to specify when a placement will start and the ability to monitor the implementation of Tribunal decisions. In addition, Scottish Ministers will be required to provide a free advocacy service.

**Mediation and dispute resolution** Mediation services will be required to be independent of all functions of the local authority. Regulations may be made so that applications for dispute resolution are to be made to Ministers rather than local authorities.

**Information collection and provision** There were a number of changes to local authority duties to publish information under s.26 of the 2004 Act. In addition, Scottish Ministers are to collect and publish certain statistical data from local authorities. This is to be reported annually and Ministers are to report to Parliament every five years.
Policy announcements

The Minister indicated that he would issue letters of direction to local authorities regarding their duty to provide information to parents and the timescales in dispute resolution. He also said that a national advocacy scheme would be established with £100,000 funding; that he would write to local authorities about best practice in consulting with parents and commission a publicity campaign to highlight parents’ rights. The Minister will establish a working group to consider the implementation of the 2004 Act with regard to certain groups of children and young people. He will also consider how the collection of statistical data can be improved.

Procedural Issues

The passage of this Bill raised procedural issues about the cost of amendments. Because the costs associated with the Bill, as introduced, were not considered to be significant, a Financial Resolution was not required and so was not lodged. However, members sought amendments which the Presiding Officer ruled would have significant costs associated with them and this created the need for a financial resolution. Only a member of the Government or a junior Minister can lodge a Financial Resolution and the Minister indicated that he did not intend to do so. As a result, members were asked to provide costings for their amendments and proceedings could not be taken on amendments which were ruled by the Presiding Officer to have significant costs. The procedural issues raised are to be considered by the Standards, Procedures and Public Appointments Committee.

Climate Change (Scotland) Bill

Bill Number: SP Bill 17
Introduced on: 4 December 2008
Introduced by: John Swinney (Executive Bill)
Passed: 24 June 2009
Royal Assent: 4 August 2009

2009 asp 12

Passage of the Bill

The Climate Change (Scotland) Bill [SP Bill 17] was introduced in the Scottish Parliament on 4 December 2008. Stage 1 commenced on 20 January 2009 with the Transport, Infrastructure and Climate Change Committee as lead committee and the Rural Affairs and Environment Committee as a secondary
committee. The Economy, Energy and Tourism Committee also considered aspects of the Bill relevant to its remit, as did the Finance Committee and Subordinate Legislation Committee.

The Stage 1 (general principles) debate took place on 6 and 7 May 2009 and the Bill was passed following the Stage 3 Parliamentary debate on 24 June 2009. The Bill received Royal Assent on 4 August 2009.

Purpose and objectives of the Bill

The Bill contained provisions for setting targets for reducing greenhouse gas emissions, and to introduce a framework for advice and reporting on climate change. It further contained provisions to allow for climate change duties to be placed on local authorities and provisions on adaptation, muirburn, forestry, energy efficiency, waste reduction and recycling.

Provisions of the Bill

The Bill sought to set greenhouse gas emissions reduction targets of 80% by 2050 and an interim target of 50% by 2030. In addition, it introduced a mechanism for annual emissions reduction targets. The targets include emissions from international aviation and shipping. The Bill was drafted to give Scottish Ministers the power to establish an advisory body, a Scottish Committee on Climate Change, though the UK Committee on Climate Change is to be used in the first instance. The Bill sought to place a number of duties on Scottish Ministers to report to the Scottish Parliament on the ways intended to deliver these targets, and on progress towards the targets. The Bill contained provisions to place climate change duties on public bodies, and to require that a climate change adaptation programme be published. The Bill also included a wide range of other provisions including:

- varying timings of muirburn (the burning of vegetation – gorse, heather and grass – to stimulate new growth)
- modifying the functions of the Forestry Commissioners (to allow for more flexibility in developing renewable energy, and to allow for the leasing of parts of the National Forest Estate to private concerns)
- requiring the publication of an energy efficiency plan
- requiring Scottish Ministers to promote renewable heat
- requiring waste prevention plans to be prepared by businesses and public bodies; packing targets to be set; powers for Scottish Ministers to establish deposit and return schemes, and to charge for carrier bags

Parliamentary consideration

In their Stage One reports, the Transport, Infrastructure and Climate Change Committee, the Rural Affairs and Environment Committee and the Economy
Energy and Tourism Committee all made significant suggestions as to how the Bill could be improved. Changes were made at Stages 2 and 3 through Government and backbench MSP amendments, resulting in a Bill with a third more sections than as introduced. Significant changes included:

- the interim greenhouse gas emissions reduction target in the Bill was strengthened from 50% by 2030, to 42% by 2020 (with a caveat that the UK Committee on Climate Change would be asked if this was achievable)
- a requirement that the annual targets be set to ensure they delivered the 2020 and 2050 targets
- a domestic effort target to ensure that most of the emissions reductions take place in Scotland (rather than indirectly through, for example, the purchase of carbon credits on an open international market)
- strengthening the climate change duties to be placed on public bodies, who must act in a sustainable way to deliver the targets
- an extended list of organisations defined as public bodies
- a sustainable development duty on Scottish Ministers
- a requirement for Scottish Ministers to report to Parliament on the greenhouse gas emissions consequences of spending
- a requirement for a public engagement strategy on climate change
- more detailed provisions on the climate change adaptation strategy
- withdrawal of the provisions that would allow for the leasing of parts of the National Forest Estate to private concerns
- a duty to produce a land use strategy
- a requirement that Scottish Ministers provide for the assessment and improvement of the energy efficiency of living accommodation
- a requirement that local authorities allow for council tax reductions if improved energy efficiency measures are installed
- permitted development rights for domestic air source heat pumps and micro wind turbines
- a requirement that new Government buildings are very energy efficient
- a duty on Scottish Water to promote water conservation and water-use efficiency.
Budget (Scotland) (No 2) Bill

Bill Number:    SP Bill 18
Introduced on:  8 January 2009
Introduced by:  John Swinney (Executive Bill)
Fell:            28 January 2009

Passage of the Bill

The Budget (Scotland) (No 2) Bill [SP Bill 18] was introduced on 8 January 2009. The Stage 1 debate took place on 14 January. The Finance Committee considered the Bill at Stage 2 on 20 January. The motion that the Budget (Scotland) (No 2) Bill be passed was disagreed to by the Parliament on 28 January 2009 and the Bill therefore fell.

Purpose and objectives of the Bill

The Budget Bill is the final stage in the annual budget process and this Bill was intended to give parliamentary authority for spending in Scotland for financial year 2009-10. The budget process is intended to allow the Parliament’s subject committees the opportunity to comment on the Scottish Government’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 intended to authorise nearly £28.7bn of cash expenditure by the Scottish Government 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.
Arbitration (Scotland) Bill

Bill Number: SP Bill 19
Introduced on: 29 January 2009
Introduced by: Kenny MacAskill (Executive Bill)
Passed: 18 November 2009
Royal Assent: 5 January 2010

2010 asp 1

Passage of the Bill

The Arbitration (Scotland) Bill was introduced on 29 January 2009 by Kenny MacAskill MSP. The Economy, Energy and Tourism Committee was lead committee on the Bill and took oral evidence at Stage 1 on 20 and 27 May and 3 June 2009. The Committee published its Stage 1 Report on 18 June 2009 and the Stage 1 debate took place on 25 June 2009.

Stage 2 consideration of amendments was completed by the Economy, Energy and Tourism Committee on 7 October 2009. Sixty government amendments were lodged at Stage 2 (there were no non-executive amendments). All amendments were agreed to (without division).

Stage 3 consideration of amendments and debate took place on 18 November 2009. Thirty government amendments were lodged at Stage 3 (there were no non-executive amendments). All amendments were agreed to (again, without division).

Purpose and objectives of the Bill

The primary objectives of the Bill are that it clarifies and consolidates Scottish arbitration law (filling in gaps where they exist); provides a statutory framework for arbitrations which will operate in the absence of agreement to the contrary; ensures fairness and impartiality in the arbitration process; and minimises expense and ensures that the arbitration process is efficient.

Provisions of the Bill

A broad outline of the contents of the Bill is as follows:

- provisions about the extent of the Bill and to which arbitration agreements it will apply
- when the optional and mandatory rules in the Bill will apply
- suspension of court proceedings pending arbitration
• enforcement of arbitral awards
• provision to apply and adapt specific statutory arbitration procedures to reflect the Bill
• provision on the recognition and enforcement of New York Convention foreign arbitral awards
• provision on prescription and limitation and other miscellaneous provisions
• detailed rules to regulate arbitration (mostly optional, some compulsory), including:
  - commencement, appointment and challenge procedures
  - conduct of proceedings and the powers and duties of the arbitrator
  - duties of the parties
  - arbitral awards
  - intervention and control by the court
  - expenses
  - miscellaneous

**Parliamentary consideration**

In its Stage 1 Report, the Committee, with some caveats, indicated its support for the general principles of the Bill and recommended to the Parliament that they be approved. However, the Committee agreed (by majority) that the Bill, as it stood, was not yet fit for purpose and suggested that further amendments would be needed if it is to achieve its objectives. The Committee also reminded the Minister of his commitment to meet with relevant bodies to ensure consensus on how to amend the Bill at Stage 2 and called on the Minister to consult with consumer groups and trade bodies. The Committee made a number of specific recommendations and these can be accessed in its Stage 1 Report.

Amendments at Stage 2 were lodged and agreed to in relation to: anonymity in legal proceedings; tribunal decisions: absence of unanimity or majority; awards and interest; appeals; eligibility to act as arbitrator; UNCITRAL Model Law; arbitral appointments referee; power to amend Act: UNCITRAL arbitration rules; commencement arrangements. All other amendments were minor, technical or consequential.

Stage 3 amendments were lodged and agreed to in relation to provisional awards, court procedures, anonymity orders, rights to appeal and challenging awards.
Budget (Scotland) (No 3) Bill

Bill Number: SP Bill 20
Introduced on: 29 January 2009
Introduced by: John Swinney (Executive Bill)
Passed: 4 February 2009
Royal Assent: 10 March 2009

2009 asp 2

Passage of the Bill

The Budget (Scotland) (No 3) Bill [SP Bill 20] was introduced on 29 January 2009, the day after Budget (Scotland) (No 2) Bill fell.

At its meeting on 4 February 2009, the Parliament agreed to consider the Bill under the Emergency Bill procedure which allowed Stages 1, 2 and 3 to be considered by the Parliament on the same day. A description of Emergency Bill procedures is in Rule 9.21 of the Scottish Parliament's Standing Orders.

Using the Emergency Bill procedure at Stage 1, the Bill was referred immediately to the Parliament for consideration of its general principles. The Parliament agreed to the general principles on a motion of the member in charge of the Bill, and therefore the Bill was passed at Stage 1.

The Parliament then moved immediately to Stage 2 which was taken by a Committee of the Whole Parliament. A Marshalled List, groupings and an 'As Amended' version of the Bill were not produced for this Stage as no amendments were lodged. The Bill was passed at Stage 2.

The Stage 3 debate was held in Parliament immediately after previous Stages. A Marshalled List, groupings and an 'As Passed' version of the Bill were not produced for this Stage as no amendments were lodged. The Bill was passed at Stage 3.

Purpose and objectives of the Bill

The Budget Bill is the final stage in the annual budget process and this Bill gives parliamentary authority for spending in Scotland for financial year 2009-10. The budget process is intended to allow the Parliament's subject committees the opportunity to comment on the Scottish Government'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 authorises nearly £28.7bn of cash expenditure by the Scottish Government 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.

Scottish Local Government (Elections) Bill

Bill Number: SP Bill 21
Introduced on: 3 February 2009
Introduced by: Alex Salmond (Executive Bill)
Passed: 17 June 2009
Royal Assent: 21 July 2009

2009 asp 10

Passage of the Bill

The Scottish Local Government (Elections) Bill [SP Bill 21] was introduced in the Parliament on 3 February 2009. Stage 1 commenced on 11 February 2009 when the lead committee, Local Government and Communities, agreed its approach to the Bill. The Bill was also considered by the Finance and Subordinate Legislation Committees. The Stage 1 (general principles) debate took place on 14 May 2009 and the Bill was passed following the Stage 3 Parliamentary debate on 17 June 2009.

Purpose and objectives of the Bill

The Bill had two objectives. First, to de-couple local government elections from Scottish Parliament elections. This proposal came in response to the independent review of the 2007 Scottish Parliament elections which was carried out by Ron Gould. Secondly, the Bill sought to enable a broader range of electoral information at local government elections to be publicly available.

Provisions of the Bill

The Scottish Local Government (Elections) Bill sought to amend the date of Scottish local government elections so that the next council elections are held in 2012 and 2017. Thereafter, local government elections will revert to a four year electoral cycle. The Bill also proposed to provide Scottish Ministers with
a power to make regulations to allow for the publication of electoral data to polling station level. Prior to the Bill being passed, returning officers could only publish electoral data to ward level.

Parliamentary consideration

The Local Government and Communities Committee supported the general principles of the Bill. In doing so, the Committee, in its stage one report, raised concerns and sought clarification regarding a range of issues such as voter turnout, electoral information campaigns and the level of funding that will be made available to local authorities in order to implement the provisions of the Bill. No amendments were put forward at Stages 2 or 3 of the Bill and the Bill was passed without amendment.

Tobacco and Primary Medical Services (Scotland) Bill

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 22</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>25 February 2009</td>
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<tr>
<td>Introduced by:</td>
<td>Nicola Sturgeon (Executive Bill)</td>
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2010 asp 3

Passage of the Bill

The Tobacco and Primary Medical Services (Scotland) Bill [SP Bill 22] was introduced in the Parliament on 25 February 2009. Stage 1 commenced on 13 May 2009 with the Health and Sport Committee as the lead committee. The Committee published its Stage 1 Report on 14 September 2009, with the Stage 1 (general principles) debate taking place on 24 September 2009. Stage 2 proceedings commenced on 11 November 2009 and ended on 18 November 2009. The Bill was passed following the Stage 3 parliamentary debate on 27 January 2010.

Purpose and objectives of the Bill

There were two main purposes behind the Bill. Part one concerned the retailing of tobacco products, including prohibiting their display and establishing a register of tobacco retailers. Part two sought to amend the criteria for eligibility to provide primary medical services under the National Health Service (Scotland) Act 1978.
Many of the provisions concerning tobacco emanated from commitments made in the Scottish Government’s ‘Scotland’s Future is Smoke-free: A Smoking Prevention Action Plan’ (May 2008), which followed the report of the Smoking Prevention Working Group, ‘Towards a Future without Tobacco: The Report of the Smoking Prevention Working Group’, published in November 2006. It also took account of a proposal in a Members’ Bill by Christine Grahame MSP to introduce a licensing scheme for tobacco retailers. The provisions in relation to Primary Medical Services followed a consultation on proposed changes to the eligibility criteria for providers of primary medical services from October to December 2008 with the sector.

Provisions of the Bill

The main provisions of Part 1, concerning tobacco, were:

- to make it an offence to display tobacco and smoking related products
- to consolidate current provision concerning the sale of tobacco products and to propose that it would be a defence if the retailer believed the customer was 18 or over, or if they were shown appropriate forms of identification
- a ban on vending machines that sell tobacco
- the creation of a register of tobacco retailers in Scotland
- to introduce a number of enforcement provisions including placing a duty on local authorities to be responsible for the enforcement of the tobacco display, tobacco sale and retail registration provisions, and allowing council officers and police constables to issue Fixed Penalty Notices for offences committed under the same provision

Part 2 of the Bill sought to amend the National Health Service (Scotland) Act 1978 to ensure that any persons contracting with Boards to deliver primary medical services must, amongst other things, regularly perform, or be engaged in, the day to day provision of those services.

Parliamentary consideration

Probably the most contentious area of the Bill concerned the prohibition of tobacco displays. One of the key reasons put forward for this provision was that it would support efforts in tackling smoking amongst young people. Therefore, much of the debate surrounded whether or not there was significant evidence linking tobacco displays to smoking amongst younger age groups. Other areas of debate included: what the evidence from other countries that have instituted a ban (such as in Canada) actually showed; and, what economic effect the ban would have on retailers, particularly smaller retailers, both in terms of lost revenue and putting in place appropriate storage measures to comply with the legislation. In the Committee’s Stage 1 Report it
was noted that, on balance, the majority of the Committee thought that such a ban would have a positive effect in the long term and did not believe the measure would be disproportionate to the costs associated with it. However, at Stage 2 there was an amendment to delete this section from the Bill on the grounds that there was not a sufficient evidence base to show that the ban would have an impact on smoking rates. This was not agreed to by the Committee by a 7-1 majority. In addition, there was an amendment concerning compensation for retailers, which was withdrawn. An amendment was lodged at stage 3 which again sought to remove section 1 from the Bill, but was not agreed to by a majority in the Chamber.

The sale of tobacco products to those under 18 was another key area, which resulted in several amendments being lodged at stage 2. There were two main issues. The first concerned the proposal in the Bill to insert a defence that a retailer believed a person was 18 or over when purchasing tobacco. In the Committee’s Stage 1 Report, a majority of Members considered it would be a retrograde step to create such a defence. In response, the Scottish Government said it was in line with similar provisions in licensing legislation, and argued that it was necessary given the requirement of retailers to ask for a form of identification. However, at Stage 2 an amendment to remove the provisions was agreed to. Also on the age issue, the Committee noted that, under the Licensing (Scotland) Act 2005, it is an offence for a person aged under 18 to buy or to attempt to buy alcohol for him or herself. The Committee believed such a provision should be in place for tobacco. Amendments were proposed by the Minister at stage 2 to give effect to this recommendation. There were also amendments at stage 2 to combat proxy purchasing and to allow the police to confiscate tobacco.

Another controversial provision in the Bill concerned the proposal to ban vending machines. Whilst the Committee did not make any particular recommendation, there was concern within the industry about potential job losses of such a ban. Amendments were laid at stage 2 which sought to give Ministers the power to ban vending machines at a later date through subordinate legislation to allow a new system of radio-controlled vending machines to be tested. Others included exempting vending machines that were remote or radio controlled, and based in licensed premises. However, the Minister reiterated her view that there should be a full ban, believing that continuing to allow vending machine sales would undermine efforts to shift cultural attitudes to smoking. As regards vending machine operators, she stated that officials were holding discussions with them about lead-in times, adding that she was sympathetic to giving them the longest possible time to explore diversification. The amendments were either withdrawn or not agreed to by majority. Similar amendments were laid at stage 3 but were either not agreed to by a majority or withdrawn.

The key debate at stage 2 concerned amendments to remove Part 2 from the Bill. The effect of Part 2 was, some argued, to prevent private companies from being able to provide primary medical services. It was argued that this would prevent alternative sources of provision at a time of increasing demand.
for GP services. There were concerns that the current model of GP provision could not be sustained in the long term. The Cabinet Secretary argued that the debate was about whether contractors were directly involved in the running of health services or whether they had a more arm's length relationship with the NHS. She said the Bill did not prevent companies from holding contracts and agreed that it was not the case that developments in the delivery of general practice could only be provided through a commercial model, but could be done by the NHS through the model proposed in the Bill. The amendments were defeated by majority. A similar amendment was laid at stage 3, but was not agreed to by a majority in the Chamber.

In its stage 1 report the Committee recommended that consideration be given to amending the Bill so as to allow groups such as community co-operatives to hold contracts and deliver primary medical services, including a General Medical Services (GMS) contract. As a result, the Cabinet Secretary proposed amendments at stage 2 to expand the eligibility criteria to include any company rather than only a company limited by shares. She said this would allow many social enterprises to hold such a contract as long as they met the other criteria set out in the Bill. However, whilst welcoming the amendments, some Members of the Committee were concerned that such groups would still find it difficult to enter into a GMS contract. This is because of the additional criteria which would apply to this form of contract, which included that, to be eligible to provide such services, a medical practitioner must be a member of the company making the application. Amendments were lodged to address this. However, as the Cabinet Secretary had offered to discuss the matter further prior to stage 3, these were withdrawn. Further non-government amendments were proposed at stage 3 but were either not agreed to by a majority of Parliament or were withdrawn.

**Schools (Consultation) (Scotland) Bill**

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<th>SP Bill 23</th>
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<td>Introduced on:</td>
<td>2 March 2009</td>
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<tr>
<td>Introduced by:</td>
<td>Fiona Hyslop (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>19 November 2009</td>
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<tr>
<td>Royal Assent:</td>
<td>5 January 2010</td>
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2010 asp 2

**Passage of the Bill**

The Schools (Consultation) (Scotland) Bill SP Bill 23 was introduced on 2 March 2009. The Education, Lifelong Learning and Culture Committee was designated lead committee and began taking stage 1 evidence on 6 May.
The stage 1 debate was held on 2 September. Stage 2 was completed in a single session on 30 September. The stage 3 debate was held on 19 November and it passed the same day. The Bill received royal assent on 5 January 2010 and its provisions are expected to be commenced in April.

**Purpose and objectives of the Bill**

The Bill seeks to update the consultation procedure relating to certain proposals (including closure) with respect to all local authority schools – whether urban or rural. In addition, in response to concerns about the closure of rural schools, the Bill will require consideration of rural school closures in the wider context of the implications of such closures on the community. Lastly, the Bill seeks to change the system for Ministerial consideration of relevant proposals.

**Provisions of the Bill**

Sections 1-11 of the Bill propose revisions to the current process for consulting on school closures and other changes to the school estate. Under the Bill, the education authority would be required to:

- prepare a proposal paper which would be sent to HMIE and all other mandatory consultees
- hold a public meeting on the proposal
- consult for at least six weeks, including at least 30 days' term time, during which consultees could challenge information that they believed to be inaccurate or which was omitted
- publish a consultation report which would detail all the responses received and information gathered during the consultation period
- announce its final decision on its proposal after a period for further consideration.

Sections 12 to 14 of the Bill would require education authorities to have "special regard" to three factors before proceeding to propose and consult on the closure of a rural school. Authorities would be required to consider:

- any viable alternative
- the likely effect on the community
- the likely effect of different travel arrangements to an alternative school.
The Bill would provide Ministers with a six week period in which to ‘call in’ any decision. There would be no time limit for the ministerial decision. The grounds for ‘call in’ would be that either the consultation process had not been adhered to or that the local authority had failed to take account of “material considerations” when reaching its decision.

**Parliamentary consideration**

During stage 1, there was general support for the proposals. However, there were three main areas of concern. These related to the role of HMIe, whether the ‘special factors’ that apply to rural schools should in fact be applied to all schools, and concern about what failure "to take proper account of a material consideration" meant in relation to the Ministerial ‘call-in’ procedure.

The following amendments were passed at stage 2:

- A ‘closure proposal’ includes a proposal to permanently discontinue Gaelic medium education.
- Staff unions added to the list of people to be consulted on local authority proposals.
- An amendment clarifying that HMIe have 3 weeks from the end of the consultation period to lodge its report.
- Extending the time available for local authorities to notify Scottish Ministers of a proposal decision from one to five working days following the day of the decision.

At stage 3 further amendments introduced a right of parents and others to challenge the omission of relevant information from a proposal paper.
Criminal Justice and Licensing (Scotland) Bill

Bill Number: SP Bill 24
Introduced on: 5 March 2009
Introduced by: Kenny MacAskill (Executive Bill)
Passed: 30 June 2010
Royal Assent: 6 August 2010

2010 asp 13

Passage of the Bill

The Criminal Justice and Licensing (Scotland) Bill was introduced in the Parliament in March 2009. The Justice Committee, as lead committee, commenced taking stage 1 oral evidence on the general principles of the Bill in May 2009. The stage 1 debate took place in November 2009 and the Bill was passed following the stage 3 parliamentary debate in June 2010.

Provisions of the Bill

The Bill contains provisions relating to a wide range of distinct policy proposals, including ones dealing with sentencing, criminal offences, criminal procedure, disclosure of evidence, licensing under the Civic Government (Scotland) Act 1982 and alcohol licensing. During the stage 3 debate, the Justice Secretary noted that:

The Bill as introduced contained provisions relating to around 80 different topics. After stage 2, that number has grown to around 100 topics. The Bill is a comprehensive piece of legislation that takes forward the Government’s priorities to reform our justice system by providing measures that strengthen, simplify and modernise it.” (Official Report 30 June 2010, col. 27979)

Parliamentary consideration

Key areas of debate during scrutiny of the Bill included:

- proposals for a sentencing council – the Bill as introduced sought to create a Scottish Sentencing Council tasked with preparing sentencing guidelines for the criminal courts. Amendments agreed during stage 2 altered the proposed composition of the Council and provided that any guidelines will only take effect following endorsement by the High Court

- use of short custodial sentences – the Bill as introduced included a provision seeking to discourage the use of short custodial sentences
(defined as those of six months or less). The Justice Committee was divided on the extent to which the use of such sentences is appropriate and a stage 2 amendment, seeking to delete the relevant provision of the Bill, was agreed by majority (with the convener using his casting vote). Following vigorous debate, a stage 3 amendment adding a provision similar to that contained in the Bill, as introduced, but with short custodial sentences defined as those of three months or less, was agreed by a small majority

- sentencing for carrying knives – a stage 2 amendment, agreed by a majority of the Justice Committee (with the convener using his casting vote), added a new provision to the Bill seeking to establish a custodial sentence of at least six months as the norm for any adult convicted of carrying a knife in a public place. A stage 3 amendment deleting the new provision was, after robust debate, agreed by a small majority

- serious organised crime – the Bill as introduced sought to create various new offences relating to serious organised crime. The Justice Committee’s stage 1 report expressed support for the underlying intention of the provisions but raised concerns about some of the specifics (eg the scope of an offence dealing with the failure to report serious organised crime). The Scottish Government sought to provide reassurance and the relevant provisions were passed with only limited amendment (despite continuing concerns amongst some members)

- stalking and breach of the peace – stage 2 amendments sought to create a specific offence of stalking and a wider offence of threatening, alarming or distressing behaviour. It was intended that the second offence (proposed by the Scottish Government) could be used to prosecute both stalking and other activities which might be difficult to successfully prosecute as a result of recent court decisions clarifying the scope of the existing common law offence of breach of the peace. The specific stalking offence was agreed at stage 2 (although amended somewhat at stage 3). The Government did not move its stage 2 amendment setting out the wider offence, but noted that it would bring forward an alternative amendment at stage 3. A Government amendment inserting a new offence of threatening or abusive behaviour was agreed at stage 3. Although somewhat narrower than the offence considered at stage 2, some members still had concerns about the scope of this new offence

- prostitution – a number of stage 2 amendments proposed new offences relating to prostitution and paid-for sexual activities. Following the consideration of additional evidence sought during stage 2, some members of the Justice Committee highlighted the need for more detailed consideration of the issues before seeking to legislate. Although some of the proposals found support amongst members of the committee, relevant amendments were either rejected or not moved. A number of similar amendments were considered but rejected by a
majority of members at stage 3. During the debate, the Justice Secretary argued that the outcome of ongoing research into prostitution and trafficking should be considered before legislating further on the topic

- age of criminal responsibility – the Bill as introduced sought to amend current legal provisions so as to prevent any child under the age of 12 being prosecuted in the criminal courts. It did not seek to alter the legal presumption that no child under the age of eight years can be guilty of any offence. The result of this would be that a child aged between eight and 12 could still be held to have the mental capacity to commit a crime but could, where some form of compulsory intervention is considered necessary, only be dealt with through the children’s hearings system. Some members of the Justice Committee were attracted to the possibility of going further and increasing to 12 the age below which a child is deemed to lack the mental capacity to commit a crime. One member lodged a stage 2 amendment to achieve this result. It was, however, rejected by the committee. The relevant provisions of the Bill were agreed without amendment

- retention of fingerprint and DNA data – the Bill as introduced included provisions to extend existing police powers in relation to the retention of such data where there has been an unsuccessful prosecution, or where a child is dealt with through the children’s hearings system in relation to certain sexual and violent offences. Various stage 2 amendments lodged by members of the Justice Committee, seeking to alter these provisions, were rejected by the committee. However, amendments lodged by another committee member, seeking to extend retention powers where an alleged offender accepts certain alternatives to prosecution (eg a fiscal fine), were agreed

- disclosure of evidence in criminal cases – the Bill as introduced set out a statutory framework for the disclosure of evidence, by the prosecution to the accused, in criminal cases. The Justice Committee’s stage 1 report indicated that it supported the general policy of clarifying the rules on disclosure but raised some concerns (eg in relation to the complex nature of the provisions). The Scottish Government sought to reassure the committee in relation to the detail of the provisions and noted that a scheme for disclosure in other parts of the UK has statutory provisions of a similar length to those proposed in the Bill

The Bill as amended at stage 3 was passed with the support of a majority of members (for 64, against 61, abstentions 0). Labour and Conservative members voted against the Bill on the basis that they did not support the approach taken on certain sentencing issues – in particular, in relation to the use of short custodial sentences.
Marine (Scotland) Bill

Bill Number: SP Bill 25
Introduced on: 30 April 2009
Introduced by: Richard Lochhead (Executive Bill)
Passed: 4 February 2010
Royal Assent: 10 March 2010

2010 asp 5

Passage of the Bill

The Marine (Scotland) Bill [SP Bill 25] was introduced in the Parliament on 30 April 2009. Stage 1 commenced on 27 May 2009 with the Rural Affairs and Environment Committee as the lead committee. The Stage 1 (general principles) debate took place on 29 October 2009 and the Bill was passed following the Stage 3 parliamentary debate on 4 February 2010.

Purpose and objectives of the Bill

The Bill sought to create a new legislative and management framework for the marine environment. This included a new system of marine planning, a revised system of licensing marine activities, powers to establish marine protected areas, new legislation relating to seals, and new powers for marine enforcement officers.

According to the Scottish Government, the Bill sought to complement the UK Marine and Coastal Access Bill, which was passing through Westminster at the same time. Marine Scotland was created ahead of the introduction of the Bill as a directorate of the Scottish Government, as the organisation which would deliver many of the provisions in the Bill.

Provisions of the Bill

At the time of introduction, there was no marine planning system in place in Scotland. The Bill sought to establish a national marine plan and a number of regional marine plans which would co-ordinate policies governing the regulation and licensing of offshore activities. It was proposed that the planning system would be guided by high level objectives which would in turn form the basis of the Marine Policy Statement (MPS) for all UK administrations, although Scottish Ministers had reserved the right not to adopt the final MPS.

The Bill required that specified activities, such as dredging and dumping, must be licensed. Activities below a certain (undefined) threshold could be
registered rather than licensed. The Bill also contained provisions so that renewable energy projects could go through a more streamlined consents process.

The Bill provided for the designation of nature conservation marine protected areas (MPAs), demonstration and research MPAs and historic MPAs. Within MPAs, marine conservation orders and marine management schemes could be implemented to manage activities and impacts in the area.

The repeal of the Seals Act 1970 was provided for and the Bill sought to make it illegal to kill any seal except under licence. Finally the Bill provided for the appointment of enforcement officers and a set of common enforcement powers to enable them to enforce marine legislation.

Parliamentary consideration

An amendment at stage 2 added a new general duty to the Bill to require Scottish Ministers and public authorities to act in ways that are "best calculated to further ... sustainable development" (section 3). Another general concern expressed by the Rural Affairs and Environmental Committee was that the Bill did not sufficiently display a commitment to climate change. Amendments were passed to include greater explicit commitment to management of climate change.

At Stage 1 the Rural Affairs and Environment Committee had concerns about the fit of the Scottish and the UK Marine Bills. A number of amendments were introduced at Stage 2 and 3 which ensured the Scottish Bill was consistent with the UK Marine and Coastal Access Act 2009.

At Stage 1 the Rural Affairs and Environment Committee agreed that there should be a requirement (rather than a discretion) for MPA sites to be designated and that there should be a coherent network of sites overall.

Finally, there was considerable debate at both stages 2 and 3 about the licensing of fish farms. The Bill provides that local authorities (who were responsible for aquaculture consents) will now have the option to opt out of aquaculture consenting and transfer powers to Marine Scotland. The Government argued that this allows flexibility and opportunity for greater streamlining, but others, including the majority of the Rural Affairs and Environment Committee, felt that such an approach was inconsistent with other licensing requirements.
Public Services Reform (Scotland) Bill

Bill Number: SP Bill 26
Introduced on: 28 May 2009
Introduced by: John Swinney (Executive Bill)
Passed: 25 March 2010
Royal Assent: 28 April 2010

2010 asp 8

Passage of the Bill

The Public Services Reform (Scotland) Bill was introduced in the Parliament on 28 May 2009. Stage 1 commenced on 1 September 2009 with the Finance Committee as the lead Committee. The Bill was also considered at Stage 1 by the Education, Lifelong Learning and Culture Committee, the Health and Sport Committee and the Rural Affairs and Environment Committee. The Stage 1 (general principles) debate took place on 7 January 2010 and the Bill was passed following the Stage 3 parliamentary debate on 25 March 2010.

Provisions of the Bill

The following outlines some of the main features of the Bill.

**Part 1: Simplification of Public Sector Landscape**

Part 1 of the Bill dissolves a number of public bodies including:

- the Deer Commission Scotland (DCS) whose functions are transferred to Scottish Natural Heritage (SNH)
- the Advisory Committee on Sites of Special Scientific Interest whose functions are transferred to SNH
- the Scottish Records Advisory Council – the Keeper of the Records of Scotland will co-ordinate advice to Ministers on archives and records matters
- the Scottish Industrial Development Board (SIDAB) – administration of the Regional Selective Assistance (RSA) grant schemes on which SIDAB currently advises will be transferred to Scottish Enterprise
- the Building Standards Advisory Committee – functions will be continued by the Scottish Government’s Building Standards Division
• the Historic Environment Advisory Council for Scotland (HEACS) – functions will be delivered by Historic Scotland.

**Part 2: Order Making Powers**

Part 2 contains order making powers to provide a mechanism for making further changes to the public bodies’ landscape more quickly as and when opportunities arise. Specific pre-conditions and restrictions apply to the use of this power.

Part 2 also includes duties on public bodies to provide information on payments made in excess of £25,000 and information on certain expenditure such as public relations, overseas travel, hospitality and entertainment and external consultancy.

**Part 3: Creative Scotland**

Part 3 establishes Creative Scotland as the new national body for arts and culture, taking over the functions of the Scottish Arts Council and Scottish Screen.

*Parts 4-5: Health, Social Care and Social Work Scrutiny*

Parts 4 and 5 pave the way for the reorganisation of some scrutiny and improvement bodies with the establishment of Social Care and Social Work Improvement Scotland, Healthcare Improvement Scotland and amendment of the Mental Welfare Commission’s powers to focus its role as a protective body and ensure joined up working arrangements with the new scrutiny bodies.

**Part 6: Scrutiny**

Part 6 contains other provisions for scrutiny improvement, focussing on striking a balance between the need for independent external scrutiny and the ability of service providers to undertake robust self-assessment and self-improvement.

**Parliamentary consideration**

The most controversial part of the Bill was in relation to the order-making powers in Part 2. In Stage 1 evidence to the Finance Committee, various witnesses argued that these powers gave the Executive too much power to abolish bodies via secondary rather than primary legislation. There were also concerns about the Parliamentary Bodies being on the list of public bodies subject to the powers. Stage 2 and 3 amendments imposed constraints on the use of these order-making powers.
Amendments passed meant that the abolition of a person, body or office-holder is only competent if the person, body or office-holder in question has no functions left to exercise – i.e. only if the functions have been abolished or transferred elsewhere. Other amendments included provisions to protect the independence of the judiciary and judicial decision making; civil liberties; and any existing duties to protect and preserve cultural heritage.

In terms of the parliamentary procedure for use of the order-making powers, the Scottish Government lodged amendments in response to the recommendations of the Subordinate Legislation Committee which would require proposals for an order under section 10 or 13 of the Bill to be subject to an enhanced form of “super-affirmative” procedure. In its amendment 57, the Scottish Government proposed that if Scottish Ministers intend using the order-making power they must lay before the Parliament a copy of the proposed draft order and the proposed explanatory document and send copies of that order to any person who is required to be consulted. There would then be a period of 60 sitting days to allow consultation and to allow scrutiny by parliamentary committees should they wish. Once laid, the draft order would be subject to the affirmative resolution procedure.

Amendments were also passed which prevented Scottish Ministers from using the order-making powers in respect of the parliamentary commissioners or ombudsmen unless requested to do so by the Scottish Parliamentary Corporate Body (SPCB).

Interpretation and Legislative Reform (Scotland) Bill

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 27</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>15 June 2009</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Alex Salmond (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>28 April 2010</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>3 June 2010</td>
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2010 asp 10

Passage of the Bill

The Interpretation and Legislative Reform (Scotland) Bill (SP Bill 27) was introduced in the Parliament on 15 June 2009. Stage 1 commenced on 23 June 2009 with the Subordinate Legislation Committee as the lead committee and the Standards, Procedures and Public Appointments Committee as the secondary committee. The Stage 1 (general principles) debate took place on 13 January 2010 and the Bill was passed following the Stage 3 parliamentary debate on 28 April 2010.
Purpose and objectives of the Bill

The Interpretation and Legislative Reform (Scotland) Bill was a highly technical Bill which, in replacing three transitional orders made under the Scotland Act 1998, sought to provide the Scottish Parliament with its own distinct subordinate legislation procedures. The transitional orders replaced were SI 1999/1096; SI 1999/1379 and SI 1999/1593.

Provisions of the Bill

As well as providing a definition of a Scottish Statutory Instrument (SSI), the Bill also dealt with the publication, interpretation and operation of Acts of the Scottish Parliament and instruments made under them.

In addition, the Bill provided procedures for dealing with orders which require a special parliamentary procedure which were not included in the new procedures established by the Transport and Works (Scotland) Act 2007.

The Scottish Government also used the Bill (s34) to introduce the means to give Ministers the power to change the procedure, on a resolution of the Parliament, to which devolved subordinate legislation is subject by amending the parent Act.

The Bill also introduces a substantive change to the law (s20) in that it contains a provision under which Acts of the Scottish Parliament or Scottish instruments bind the Crown except in so far as an Act or instrument provides otherwise. This reverses the previous default provision in which the Crown was not bound unless so stated in an Act or instrument. The legal community raised concerns about this proposed change.

Finally, the Bill, as introduced, sought to allow Scottish Ministers to amend Acts or SSIs in advance of their re-enactment in a Consolidation or Codification Bill to the extent that such amendments, “facilitate, or are otherwise desirable in connection with, the consolidation of the law on the subject”. However, concerns were raised in committee that this power was too wide and was open to misuse. As a consequence, the provision was removed by Scottish Government amendment at stage 2.

Parliamentary consideration

The Scottish Government provided a response to the Committee’s Stage 1 Report on 12 February 2010. This response led to a series of Government amendments at Stage 2. The Subordinate Legislation Committee considered the Bill at Stage 2 on 16 March 2010.

The amendments which were agreed to included:
• An amendment to Section 12 to clarify that the date at which a reference in an Act of the Scottish Parliament or a Scottish instrument to a European Union instrument is to be fixed is the date the Act receives Royal Assent or the instrument is made. This is to ensure that amendments made to EU instruments during the passage of a Bill are caught, including amendments still to come into force.

• Amendments to section 26 to provide that where an Act of the Scottish Parliament or Scottish instrument requires a document to be served on a person and where such documents are to be served electronically, agreement in writing has first to be given by both parties.

Section 28 was amended so that instruments subject to negative procedure which the Parliament has resolved to annul, other than instruments which contain an Order in Council, must be revoked by order by the responsible authority. ‘Responsible authority’ in this provision includes not just Scottish Ministers but any responsible authority.

• Section 30, which provides for devolved subordinate legislation, which is not subject to either negative or affirmative procedure by virtue of an enactment to be laid before Parliament, was amended to include a list of Acts and statutory provisions excluded from this requirement. Subordinate legislation made under these Acts tends to be of a highly localised and temporary nature, e.g. road closures.

• Section 33 was amended to clarify the position that, where enabling powers subject to different scrutiny procedures (affirmative or negative) are combined in a single instrument, that instrument must be subject to the highest level of scrutiny of the combination. In other words, if a power to make devolved subordinate legislation subject to affirmative procedure is combined with a power to make devolved subordinate legislation subject to negative procedure, the resulting instrument will be subject to affirmative procedure.

• The Scottish Government also introduced an amendment (S42A) to require the responsible authority to provide signed copies of each SSI to the Keeper of the Records of Scotland and to make the Keeper responsible for the preservation of such SSIs.

• In response to a recommendation from the Committee, the Government laid amendments to give Ministers power to make such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

At Stage 3, which took place on 28 April 2010, a number of minor amendments – including amendments to simplify classification of court rules as SSIs for every act of adjournal and act of sederunt – were lodged by the
Scottish Government and agreed to by the Parliament on the same day the Parliament passed the Bill.

**Convention Rights Proceedings (Amendment) (Scotland) Bill**

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 28</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>15 June 2009</td>
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<tr>
<td>Introduced by:</td>
<td>Kenny MacAskill (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>18 June 2009</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>23 July 2009</td>
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**Passage of the Bill**

The Parliament agreed that the Convention Rights Proceedings (Amendment) (Scotland) Bill should be treated as an Emergency Bill at the meeting of the Parliament on 18 June 2009. All Stages of the Bill were taken on 18 June 2009. No amendments were lodged at Stages 2 and 3.

**Purpose and objectives of the Bill**

The Convention Rights Proceedings (Amendment) (Scotland) Bill imposes a one year time limit on all future Convention rights compensation claims brought under the Scotland Act 1998, thereby limiting the Scottish Government’s future liability for breaches of human rights to those claims which are raised within one year of the breach taking place.

**Provisions of the Bill**

The Bill is short (two sections). Section 1 of the Bill adds a new subsection to section 100 of the Scotland Act 1998 [human rights] and also provides that the Bill will apply only to legal proceedings brought on or after 2 November 2009. Section 2 provides that the Act will come into force on the day after Royal Assent (there will be no separate commencement order).

**Parliamentary consideration**

All Stages of the Bill were taken on 18 June 2009. No amendments were lodged at Stages 2 and 3.
Control of Dogs (Scotland) Bill

Bill Number: SP Bill 29
Introduced on: 22 June 2009
Introducted by: Christine Grahame (Member’s Bill)
Passed: 22 April 2010
Royal Assent: 26 May 2010

2010 asp 9

Passage of the Bill

The Control of Dogs Scotland Bill was introduced in the Scottish Parliament on 22 June 2009. Stage 1 commenced on 1 September 2009 with evidence being taken by the Finance Committee. The lead Committee was the Local Government and Communities Committee which held two oral evidence sessions on the Bill on 18 and 25 November 2009. The Bill was also considered by the Subordinate Legislation Committee. The Stage 1 (general principles) debate took place on 10 February 2010. Stage 2 consideration of the Bill was completed at a meeting of the Local Government and Communities Committee on 24 March 2010. The Bill was passed, following the Stage 3 Parliamentary debate, on 22 April 2010. The Act received Royal Assent on 26 May 2010.

Purpose and objectives of the Bill

The Bill sought to modernise the law on control of dogs through changing the focus of legislation from the ‘breed’ of dogs towards control of the behaviour of dogs through promoting responsible dog ownership.

Provisions of the Bill

The Bill contained four main provisions. First, it introduced a new regime of ‘dog control notices’ (DCN) which will enable local authorities to impose measures on the owner, or person in charge of the dog, where that person has failed to keep the dog under control. Secondly, the Bill enables local authorities to apply to a court to have a dog destroyed where it considers a dog is out of control and dangerous. Thirdly, the Bill extends the liability of a person where a dog is dangerously out of control from public places to all places. Lastly, the Bill provides Scottish Ministers with a power to establish a national database of dog control notices.
Parliamentary consideration

The general principles of the Bill, in terms of promoting more responsible dog ownership, were generally welcomed by the Local Government and Communities Committee. The Committee did express, in their Stage 1 report, some concerns about specific aspects of the proposed dog control notice regime and regarding the estimated costs of implementing the Bill.

At Stage 2, a number of amendments to the Bill were agreed to. These amendments sought to clarify the meaning of ‘alarm’ and ‘apprehensiveness’ and that the additional requirements set out in a dog control notice can be varied by Scottish Ministers. Finally, the timescale for implementation of the Bill was extended from 6 months to 9 months from the date of Royal Assent in order that local authorities would have sufficient time to implement the Bill.

At Stage 3, three amendments to the Bill were agreed to. These amendments removed a reference to the ‘size and power’ of a dog from the Bill and that Scottish Ministers must provide guidance to local authorities in relation to the exercise of their functions and the role of authorised officers set out in the Bill. The Bill was also amended to clarify that the alarm or apprehensiveness caused to a person, by a dog’s behaviour, can be deemed as reasonable in all circumstances.

Legal Services (Scotland) Bill

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 30</th>
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<tr>
<td>Introduced on:</td>
<td>30 September 2009</td>
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<tr>
<td>Introduced by:</td>
<td>Kenny MacAskill (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>6 October 2010</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>9 November 2010</td>
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2010 asp 16

Passage of the Bill

The Legal Services (Scotland) Bill [SP Bill 30] was introduced in the Parliament on 30 September 2009. The Justice Committee was designated as the lead committee at stage 1. The Committee published its stage 1 report on 12 March 2010, with the stage 1 debate on the general principles of the Bill taking place on 28 April 2010. Stage 2 proceedings commenced on 8 June 2010 and ended on 29 June 2010. Over 400 amendments were lodged at Stage 2. A further 156 amendments were lodged at stage 3. The Bill was passed following the stage 3 parliamentary debate on 6 October 2010.
The passage of the Bill coincided with a period of robust discussion and debate within the legal profession about the issue of alternative business structures (ABS) and, in particular, external ownership of law firms. The Law Society eventually adopted a compromise policy on ABS, supporting majority ownership of law firms remaining with solicitors, a position that was ultimately incorporated into the legislation.

**Purpose and objectives of the Bill**

The Bill concerns the provision and regulation of legal services in Scotland. The principal effect of the Bill will be to liberalise the legal services market in Scotland by allowing solicitors who offer legal services to operate using certain business models which are currently prohibited. The Bill aims to enable new forms of service provision, improve efficiency and innovation within solicitors’ firms and allow access to different methods of capitalisation. In particular, the Bill seeks to enable solicitors to enter into business relationships with non-solicitors, allows investment by non-solicitors in solicitors’ firms and allows external ownership of solicitors’ firms. The extent to which the Bill allows external ownership varied during the passage of the Bill.

**Provisions of the Bill**

The Bill proposes various amendments to the Solicitors (Scotland) Act 1980 to remove restrictions on solicitors entering into business relationships with non-solicitors, to allow investment by non-solicitors and external ownership, and to create a regulatory framework in which the new types of business will operate (part 2).

Insofar as traditional business models will remain an option for those solicitors who choose to carry on practising within those structures, the Bill has been described as enabling rather than prescriptive (although the Bill will arguably alter the environment in which the whole legal profession operates).

The Bill will create a tiered regulatory framework in which the Scottish Government is responsible for approving and licensing regulators who, in turn, will regulate licensed legal services providers, as shown below:

- first, the Scottish Ministers will license and regulate “approved regulators”
- secondly, the approved regulators will license and regulate “licensed providers”
- thirdly, a licensed provider, as a regulated body, will have obligations to manage and oversee people in the entity (including lawyers, other professionals and non-professionals) in a way which is compatible with the regulatory regime imposed by the approved regulator.
The Bill also includes:

- regulatory objectives and professional principles which will apply to legal professionals, whether or not they choose to join licensed providers (part 1)
- measures to reflect changes in the governance of the Law Society of Scotland (part 4)
- statutory codification of the framework for the regulation of the Faculty of Advocates (part 4)
- provisions enabling the Scottish Legal Aid Board to monitor the availability and accessibility of legal services in Scotland (part 4)
- a new regulatory complaint to be dealt with by the Scottish Legal Complaints Commission (part 2)
- provisions to allow others to apply for rights to obtain confirmation to the estates of deceased persons (part 3)
- a new regulatory regime for will writers (part 3) (inserted at stage 2)

Parliamentary consideration

The impact of the reforms on consumers of legal services and/or the general public proved difficult to quantify at stage 1. It was generally acknowledged by those giving evidence to the Justice Committee that the main opportunities that the Bill would provide - certainly financially - would be for the larger law firms. It was also argued that the majority of traditional small or medium-sized law firms could, if they wished, remain largely unaffected by the Bill. However, some argued that the Bill would threaten small and rural firms.

Allowing multi-disciplinary practices would, it was argued, allow firms to bring a range of services, such as surveying, accountancy and legal services, under one umbrella. In addition, allowing ABS would enable firms to, for example, bring their office managers, accountants and paralegals into the partnership. However, evidence was also presented that multi-disciplinary practices could be formed under the existing business model.

The Bill (as introduced) did not seek to establish any restriction on the number of approved regulators that may exist at any one time. However, it was expected that only one or two bodies would apply (most probably the Law Society and the Institute of Chartered Accountants of Scotland). Some questioned how realistic it was, given Scotland’s small jurisdiction, to have more than one regulator. The Justice Committee was not persuaded that
there would be any great benefit in having more than one or two approved regulators. At stage 3, amendments were agreed that would limit the number of approved regulators to no more than three.

Concerns were expressed about the Scottish Ministers having a direct role in regulating the legal profession and the extent to which this could, or could be seen to, undermine the independence of the legal profession. Some witnesses proposed a statutory advisory panel, whilst others proposed an enhanced role for the Lord President. The Justice Committee shared concerns about the extent of proposed ministerial involvement and the perceived threat to the independence of the legal profession. The Committee agreed, therefore, that the Lord President should have a greater role in the process of the approval of regulators. At stage 2, amendments were agreed to which provided an enhanced role for the Lord President in relation to certain aspects of the regulation of the legal profession.

One of the central policy intentions of the Bill was to allow outside investment in legal firms. In simple terms, the Bill sought to end the solicitor monopoly of the ownership of firms that provide legal services. The Bill, therefore, provides that one should not have to be a solicitor to own a firm that provides legal services and allows up to 100 per cent external ownership of law firms. This part of the Bill attracted the greatest degree of controversy and concern. During the stage 1 debate, some discussion took place around the safeguards set out in the Bill in relation to outside investors, and a proposed co-ownership model with a 75:25 or 60:40 per cent split of lawyer to non-lawyer ownership was mooted. At stage 2, the Bill was amended to create a cap of 49 per cent ownership or control that an external investor could have over a licensed legal services provider. Although further discussion and refinement on this matter took place at stage 3, the compromise position was ultimately retained. Amendments had previously been accepted at stage 2 that would allow the Scottish Ministers to vary by regulation the percentage of external ownership permissible.

Concerns were expressed that the Bill would restrict the ability of not-for-profit organisations, such as citizens advice bureaux, to provide legal services to the public. At stage 2, amendments were agreed to allow solicitors employed by citizens advice bodies to give advice directly to third parties (a practice that is not currently permitted) and to exempt citizens advice bodies from the new regulatory regime.

Will writing is not a reserved activity under the Solicitors (Scotland) Act 1980. In other words, unqualified and unregulated individuals can provide will writing services to the public. Subsequent to the Bill’s introduction, the Minister wrote to the Committee to inform it of a proposed amendment to allow for the introduction of regulation of will writers. At stage 2, amendments were passed to provide a regulatory framework for non-lawyer will writers and to prevent any unregulated non-lawyers from drafting wills for fee, gain or reward. At stage 3, non-executive amendments were lodged which would
allow the Scottish Ministers to make regulations for the regulation of estate administration. These amendments were not agreed to.

A “McKenzie friend” is a lay person who assists someone who is representing themselves in court. A McKenzie friend can help by giving advice, taking notes and providing moral support. Following the introduction of the Bill, the Minister advised the Committee that he was considering whether those without a right of audience (such as McKenzie friends) should be able to address the court in certain circumstances. At stage 2, amendments were passed to enable a McKenzie friend to address the court on behalf of a party litigant in circumstances in which the court considers it appropriate to do so.

Ure Elder Fund Transfer and Dissolution Bill

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<th>Bill Number:</th>
<th>SP Bill 31</th>
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<tr>
<td>Introduced on:</td>
<td>1 October 2009</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Trustees of the Ure Elder Fund for Indigent Widow Ladies (Private Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>3 March 2010</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>9 April 2010</td>
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2010 asp 7

Passage of the Bill

The Ure Elder Fund Transfer and Dissolution Bill was introduced in the Parliament in October 2009. The committee established to consider the Bill (under private bill procedure) published its preliminary stage report in January 2010. This was followed by a preliminary stage debate in the chamber in February 2010.

With the agreement of the Parliament, no consideration stage was held in relation to the Bill. The Bill was passed following a final stage debate in the chamber in March 2010 and, following Royal Assent on 9 April 2010, became the Ure Elder Fund Transfer and Dissolution Act 2010.

3 In relation to private bills, the consideration stage allows the relevant committee to consider the detail of a bill. It involves the committee meeting to: (a) hear evidence on the bill (including any objections to it); and (b) consider and dispose of any amendments.
**Purpose and objectives of the Bill**

The Ure Elder Fund for Indigent Widow Ladies was a registered Scottish charity governed by provisions in the Ure Elder Fund Order Confirmation Act 1906. A memorandum produced by the promoters of the Bill noted that:

“The result of the 1906 Act and the amendments made to it is that the trustees of the fund hold the fund for charitable purposes to primarily benefit ‘indigent widow ladies connected with Glasgow or Govan’ (i.e. there is a preference for funds to be given to impoverished widows connected with Glasgow or Govan). The cumulative effect of the amending legislation from 1929 to 1971 is that there is no maximum level of income which could prevent an application for a grant from the fund succeeding. However, the trustees of the fund are only permitted to pay a maximum of £25 per annum to each selected beneficiary.” (Paragraph 7)

The memorandum went on to state that:

“The promoters consider that there is a need for change given the restrictions on the ability of the trustees to apply the fund as imposed by the provisions of the 1906 Act and subsequent amendments to it. These provisions are outdated and affect the ability of the trustees to provide genuine charitable benefit. The promoters do not consider that the charitable funds are used to their best effect by having the fund constituted by an act of Parliament particularly given that charity law, regulation and practice has changed significantly in recent years and substantially since 1906.” (Paragraph 8)

In light of the above, the Bill sought to transfer the property, rights, interests and liabilities of the fund to a successor charitable trust. This purpose was carried forward by the resulting 2010 Act, which came into force two months after receiving Royal Assent.

**Parliamentary consideration**

The preliminary stage report indicated that the committee supported the aims of the trustees in trying to broaden the application of the fund. The general principles of the Bill were agreed following the preliminary stage debate.

One of the issues highlighted in the preliminary stage report concerned whether a more streamlined process might be put in place to reorganise charities constituted by legislation. During the preliminary stage debate (cols. 23642-23643), the committee convener noted that:
“In taking evidence, the committee learned that around 185 charities were set up under legislation. Some could be in similar circumstances to the Ure Elder fund, requiring an act of Parliament to reorganise and move forward. It was put to the committee that there might be scope for a different process to help such bodies, which could be looked at in the context of a charity law review. The relevant minister, Fergus Ewing, has written to me and confirmed that the Scottish Government is committed to reviewing by 2015 the Charities and Trustee Investment (Scotland) Act 2005.”

The preliminary stage report also noted that no objections had been submitted in relation to the Bill and that committee members did not wish to lodge any amendments. In light of this, it recommended that the consideration stage be omitted. This was subsequently agreed by the Parliament. The Bill was passed without amendment.

Home Owner and Debtor Protection (Scotland) Bill

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<th>Bill Number:</th>
<th>SP Bill 32</th>
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<td>Introduced on:</td>
<td>1 October 2009</td>
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<tr>
<td>Introduced by:</td>
<td>Nicola Sturgeon (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>11 February 2010</td>
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<td>Royal Assent:</td>
<td>18 March 2010</td>
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2010 asp 6

Passage of the Bill

The Home Owner and Debtor Protection (Scotland) Bill was introduced on 1 October 2009. Stage 1 evidence was taken by the Local Government and Communities Committee over four Committee meetings from 28 October to 11 November 2009. The Bill was also considered by the Finance Committee on 17 November 2009 and the Subordinate Legislation Committee on 27 October 2009. The stage 1 debate was held on 17 December 2009. Stage 2 consideration of amendments took place on 27 January 2010. The stage 3 debate took place on 11 February 2010 and the Bill was passed. It received Royal Assent on 18 March 2010.

Purpose and objectives of the Bill

The Bill as introduced aimed to protect people struggling to deal with debt by increasing protection for people facing repossession of their homes or bankruptcy.
Provisions of the Bill

The Bill had two parts. Part 1 of the Bill amended the Heritable Securities (Scotland) Act 1894, the Conveyancing and Feudal Reform (Scotland) Act 1970 and the Mortgage Rights (Scotland) Act 2001. Part 1 of the Bill allowed for all repossession cases to be considered in court (with the exception of cases of voluntary surrender), ensured that repossession cases are dealt with using summary application court procedures. It also outlined pre-action requirements creditors must satisfy. It allowed entitled residents (such as the debtor’s partner) to intervene, enabled a decree issued in favour of a creditor to be recalled in certain circumstances, allowed lay representation and for the notice period in a calling-up notice to be shortened with the consent of the debtor.

Part 2 of the Bill focussed on bankruptcy. It introduced a new route into bankruptcy, allowing a debtor to apply to an “authorised person” for a certificate which demonstrates their insolvency, enabled certain assets and liabilities, including a family home, to be excluded from a trust deed while still allowing it to become protected, extended the protection offered to the family home in bankruptcy and for those entering a protected trust deed. It also required trustees to notify the local authority when an action could lead to repossession of a home, allowing the local authority to respond. It removed certain requirements to advertise in the Edinburgh Gazette.

Parliamentary consideration

Stage 1 scrutiny of the Bill was carried out by the Local Government and Communities Committee. The main themes discussed in the Committee’s Stage 1 Report were the “voluntary surrender” process, the number of petitions for recall of a decree and whether lay representation would be sufficiently resourced. In relation to Part 2 of the Bill, it stated that the consultation had been unsatisfactory and recommended that the Scottish Government should address insolvency practitioner concerns that the Bill would take work away from the sector in favour of the Accountant in Bankruptcy. It recommended that the Scottish Government should engage with stakeholders to address concerns over how proposals to exclude the family home from a protected trust deed will operate and stated that reassurances were needed in relation to plans to improve the Register of Insolvencies so it could replace current requirements to advertise in the Edinburgh Gazette. The Stage 1 debate took place on Thursday 17 December 2009 and the general principles of the Bill were agreed to.

At stage 2, Scottish Government amendments to address concerns about the voluntary surrender process, recall of decree, insolvency practitioners’ work and the exclusion of the family home in protected trust deeds were passed. Amendments which would extend the court’s powers to consider a creditor application for eviction under the Conveyancing and Feudal Reform
(Scotland) Act 1970 were rejected, while similar amendments to the Heritable Securities (Scotland) Act 1894 were agreed.

The stage 3 debate took place on 11 February 2010. Three amendments were lodged. At stage 2, Mary Mulligan MSP had lodged amendments that sought to introduce reasonableness tests. One of these amendments was agreed to and one was rejected. The stage 3 amendments were intended to ensure consistency between the Heritable Securities (Scotland) Act 1894 and Conveyancing and Feudal Reform (Scotland) Act 1970. These amendments were agreed to. There was one Scottish Government amendment which was a technical amendment that made a minor clarification for the operation of the amended section 40 of the Bankruptcy (Scotland) Act 1985 in relation to trust deeds. This amendment was agreed to.

**Forth Crossing Bill**

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 33</th>
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</thead>
<tbody>
<tr>
<td>Introduced on:</td>
<td>16 November 2009</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>John Swinney (Hybrid Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>15 December 2010</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>20 January 2011</td>
</tr>
</tbody>
</table>

2011 asp 2

**Passage of the Bill**

The Forth Crossing Bill [SP Bill 33] was introduced in the Parliament on 16 November 2009. A 60 day objection period followed the introduction of the Bill, which concluded on 26 January 2010 (the objection period had been extended to take account of the days when the Office of the Clerk was closed in 2009/2010). Ninety objections to the Bill were lodged. The lead Committee was the Forth Crossing Bill Committee (FCBC). There was no secondary Committee but the Transport Infrastructure and Climate Change Committee (TICC) also considered the Bill; see paragraph 176 of the Stage 1 Report for the TICC involvement. The FCBC began its Stage 1 consideration on 3 February 2010. This fell into two parts – consideration of the general principles of the Bill and preliminary consideration of objections. The Stage 1 debate took place on 26 May 2010.

Stage 2 consideration of the Bill fell into two distinct phases. During the first phase, an assessor appointed by the Committee considered objections outstanding from Stage 1. The assessor considered evidence from objectors and the Bill promoter then produced a report with recommendations for the FCBC. The Committee agreed to accept all of the assessor's
recommendations and made some additional recommendations of its own. The Committee published its Stage 2 Report on 3 November 2010.

The second phase of Stage 2 consideration saw the FCBC meet to consider amendments to the Bill on 17 November 2010.

The Bill was passed following the Stage 3 parliamentary debate on 15 December 2010.

**Purpose and objectives of the Bill**

The Bill seeks to grant Scottish Ministers the necessary powers to construct a new cable stayed road bridge over the Firth of Forth, adjacent to the existing Forth Road Bridge, along with new and upgraded connecting roads and associated traffic management infrastructure.

**Provisions of the Bill**

The Bill provides Scottish Ministers with all the powers they require to construct and operate the Forth Crossing and associated access roads and related infrastructure. This includes the power to build the bridge and access roads, interfere with navigation on the Forth in certain circumstances, acquire land compulsorily or by agreement, enter and use land and direct electricity, gas, telecommunications and water and sewerage system operators to move equipment and apparatus if required for bridge related construction.

**Parliamentary consideration**

The FCBC identified a series of issues that required further work by Transport Scotland in its Stage 1 report; principally, improved traffic management measures to reduce through traffic travelling via Newton Village, that work should start immediately on encouraging modal shift on cross-Forth journeys, and on the role of local authorities in environmental monitoring and enforcement during the construction phase and additional provisions for noise and vibration monitoring and enforcement during construction. The Committee requested that Transport Scotland produce a revised Code of Construction Practice to reflect these recommendations prior to the beginning of Stage 2.

The Committee determined that all of the “whole Bill” objections should be rejected. The Committee considered that all objections to specific parts of the Bill should go forward to Stage 2.

The remaining objections were considered at Stage 2 by an assessor appointed by the Committee. The assessor heard evidence from objectors and the Bill promoter. During these hearings the Promoter made a number of commitments and revisions. The assessor, taking account of the
commitments made by the promoter, recommended that all of the remaining objections be dismissed. The Committee accepted the assessor’s recommendations, commended the objectors, made a number of recommendations for additional undertakings to be made by the promoter and agreed a number of amendments.

The Bill was passed following the Stage 3 debate on 15 December 2010 by 108 votes in favour to three against.

**Alcohol etc. (Scotland) Bill**

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 34</th>
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</thead>
<tbody>
<tr>
<td>Introduced on:</td>
<td>25 November 2009</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Nicola Sturgeon (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>10 November 2010</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>15 December 2010</td>
</tr>
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</table>

2010 asp 18

**Passage of the Bill**

The Alcohol etc. (Scotland) Bill was introduced in the Scottish Parliament on 25 November 2009. The Health and Sport Committee, as lead committee, commenced taking stage 1 oral evidence on the general principles of the Bill on 10 February 2010. The stage 1 debate took place on 10 June 2010 and the Bill was passed following the stage 3 parliamentary debate on 10 November 2010.

**Purpose and objectives of the Bill**

The purpose of the Bill was to amend licensing legislation to introduce a number of proposals aimed at reducing alcohol related harm.

**Provisions of the Bill**

The Bill contained a number of provisions for reducing alcohol related harm. These included:

- The introduction of a minimum price per unit of alcohol sold
- A ban on quantity discounts for alcohol
- Extending the on-trade restrictions on promotions to the off-sales trade
Introducing a ‘social responsibility levy’ on licensed premises to meet or contribute to local authority expenditure in pursuing the licensing objectives (for example, preventing crime and disorder or protecting and improving public health)

A requirement for licensing boards to produce a ‘detrimental impact statement’ on the off-trade sale of alcohol to under 21s in an area

A requirement for licensees to operate an age verification policy

The power for licensing boards to vary licence conditions for more than one licence at a time

**Parliamentary consideration**

**Stage 1**

Much of the stage 1 scrutiny of the Bill focused on the proposal for a minimum unit price (MUP) for alcohol. The main arguments for MUP included that it would reduce consumption and therefore alcohol-related harm, and that it would be a targeted measure as it would mainly affect the cheaper drinks more likely to be bought by heavier drinkers. Critics of the policy claimed (among other things) that it would not affect heavy and harmful drinkers as they are less sensitive to price, that it would disproportionately affect low income groups and it would only serve to increase the profits of major retailers at the expense of the majority of moderate drinkers.

The stage 1 report from the Health and Sport Committee showed that the Committee was divided on the subject of MUP but, in the interests of further scrutiny, it recommended the Bill should move to stage 2 and called on the Government to place the minimum price on the face of the bill.

Committee opinion was also split on the proposals relating to the sale of alcohol to under 21s. This was because the detrimental impact statement along with the power to vary licence conditions could be used by licensing boards to raise the age of purchase in specific local areas. Raising the purchase age to 21 across the whole of Scotland had previously been consulted on by the Government and found little support.

Other key conclusions of the Committee at stage 1 included that the age verification policy should be based on the age of 25 and that the social responsibility levy should be applied to all licence holders, with incentives for those who adhere to a level of good practice.
**Stage 2**

At stage 2 the Scottish Government lodged amendments to set the MUP at 45 pence per unit and to introduce a ‘sunset clause’ which would allow the MUP to be piloted for 6 years. Despite these proposals the minimum pricing provisions were removed by a successful opposition amendment.

There were also a number of notable opposition amendments which fell. These included the creation of a National Licensing Forum, restrictions on the caffeine content of alcoholic drinks and making the social responsibility levy a fault-based system.

Successful amendments included requiring the mandatory age verification policy to be based on the age of 25 (rather than 21) and the removal of the provisions on the detrimental impact statement on the sale of alcohol to under 21s.

**Stage 3**

At stage 3 a number of amendments sought to reintroduce provisions previously debated, most notably, MUP and restrictions on the caffeine content of alcoholic drinks. Both were voted down. Opposition amendments were passed which specifically prohibited licensing boards raising the purchase age of alcohol to 21.

**The Bill (As passed)**

While the flagship MUP and the provisions on the sale of alcohol to under 21s were not in the Bill as passed, the remainder of the Bill’s original provisions remained broadly intact. Consequently, when enacted, the Alcohol etc. (Scotland) Act 2010 will;

- ban quantity discounts on off-sale purchases
- ban the supply of an alcoholic drink free or at a reduced price on the purchase of another drink
- limit alcohol promotions to the alcohol display areas of off-sales premises
- require licensees to operate an age verification policy based on an age of 25
- give local authorities the power to apply a social responsibility levy to licensed premises in its area (details to be outlined in regulations)
allow licensing boards to amend the licence conditions for more than one licence at a time, but allow licensees to make representations about any proposed changes

Crofting Reform (Scotland) Bill

Bill Number: SP Bill 35
Introduced on: 9 December 2009
Introduced by: Richard Lochhead (Executive Bill)
Passed: 1 July 2010
Royal Assent: 6 August 2010

2010 asp 14

Passage of the Bill

The Crofting Reform (Scotland) Bill was introduced in the Parliament in December 2009. The Rural Affairs and Environment Committee, as lead committee, commenced taking stage 1 oral evidence on the general principles of the Bill in January 2010. The Committee took evidence at six meetings, and considered its stage 1 report at a further five meetings. The Committee’s report was published on 6 May 2010. The stage 1 debate took place on 13 May 2010. Stage 2 amendments to the Bill were considered by the Rural Affairs and Environment Committee at three meetings on the 2, 9 and 16 June 2010. The Bill was passed following the stage 3 debate on 1 July 2010.

Purpose and objectives of the Bill

Crofting law reform was a part of the previous Scottish Executive’s land reform programme, and a Crofting Reform etc. Bill was introduced in the Second Session of the Parliament in 2006. Parts of the Bill proved to be controversial, and it was substantially amended, before being passed as the Crofting Reform etc. Act 2007 (asp 7). The main concern was that the buoyant housing market in the Highlands and Islands had led to the growth of a market in crofts, which in some communities was resulting in the best crofting land being developed for housing. This was felt by many to be threatening the future of crofting as a protected system of agricultural land tenure, and the Bill was not seen as preventing this. The Scottish Executive agreed to establish a Committee of Inquiry on Crofting to develop a vision for the future of crofting, and proposals for further legislative reform. The present Bill followed from the recommendations of the Committee of Inquiry, although not all the recommendations were taken forward, following responses to a consultation on a Draft Bill.
Provisions of the Bill

Part 1 contains provisions to reorganise the Crofters Commission. When brought into force, it will be renamed the Crofting Commission, and its functions will be amended to reflect its new focus on crofting regulation (the Commission’s development function has been executively transferred to Highlands and Islands Enterprise). When the term of the present appointed Commission comes to an end, up to six out of a maximum of nine Crofting Commissioners will be elected by crofters.

Part 2 of the Act contains freestanding provisions which, when they are brought into force, will require the Keeper of the Registers of Scotland to establish and keep a new Crofting Register. Each entry in the Register will contain a title sheet which would include a map showing the boundaries of the croft. All new crofts created after the Bill is enacted would require to be registered. Crofts would also require to be registered when there is a change in ownership of the croft land. Otherwise, crofts would require to be registered when certain regulatory applications concerning the croft are made by the crofter. For example, if the crofter applies to enlarge; exchange; assign; divide; bequeath; sub-let; or decroft part or all of their croft, they will be required to register it at that time. The Act sets out the process to be followed, and provides that disputes over the registration of croft boundaries would ultimately be resolved by the Scottish Land Court. The Crofters Commission and the Scottish Government will map and record the boundaries of common grazings.

Part 3 of the Act contains new provisions on absentee crofters and misuse and neglect of crofts. Since 1976, crofters have been able to buy their croft, and around a quarter of crofters have done so. In law, a crofter is the tenant of a croft. Crofters who had purchased their crofts were thus technically landlords of a vacant croft, which they could have been required to relet, although this was not done so long as they continued to reside on the croft. Part 3 of the Act resolves this by defining “owner-occupier crofters” for the first time in crofting law. It will, when brought into force, also equalise the responsibilities of owner occupiers and tenant crofters by requiring owner-occupier crofters to reside on or near their crofts and to put them to purposeful use. It contains new and enhanced powers for the Crofting Commission to take action against absenteeism and misuse or neglect of their croft by both tenant and owner-occupier crofters.

Part 4 of the Bill contains further amendments of the 1993 Act. If a crofter sells their croft to a person out with their family within five years of acquiring ownership of the croft, the former landlord of the croft is entitled to a further payment from the crofter, known as ‘landlord’s claw back’. Section 26 of the Act will extend this claw back period to ten years. The Scottish Land Court has ruled that “it is not appropriate to use a control designed to protect crofting interests for the purpose of acting as a second planning authority”. The consequence of this ruling is that the Crofters Commission feels unable to refuse a decrofting application where planning consent has already been
granted. The Act changes this by strengthening the grounds on which the Crofters Commission can reject a decrofting application, including those where the applicant has already obtained planning permission. This is intended to address speculation on croft land.

Part 5 of the Bill contains general and miscellaneous provisions. These include a power for Scottish Ministers to make amendments to enactments on crofting by order prior to consolidation. Such an order could only be made once a Consolidation Bill had been introduced in the Parliament. The Government has said it intends to consolidate crofting law in the next Parliament.

**Parliamentary consideration**

Non-Government amendments made to Part 1 of the Act during stage 2 will allow anyone 16 or over to stand as a candidate for election to the Crofting Commission if they were nominated by a registered crofter, and to allow the spouse, civil partner or cohabitant of a crofter to vote in elections to the Crofting Commission. Amendments that would prevent the Commission from charging for handling regulatory applications were rejected on the Convener’s casting vote. The Government agreed to make the Crofting Commission a statutory consultee to planning applications which concern croft land by amending planning regulations.

In its Stage 1 report, the Rural Affairs and Environment Committee divided evenly over the merits of the proposed Register in Part 2 of the Act. During Stage 2, non-Government amendments to remove the provisions on the Register from the Bill were rejected on the Convener’s casting vote. Over one hundred Government amendments to Part 2 of the Bill were agreed to by division. The four members of the Committee opposed to the Register abstained in these divisions.

Government Amendments to Part 3 of the Act were agreed at Stage 2 to restate crofters’ duty to cultivate and maintain their croft, to empower the Crofting Commission to enforce this, and to ensure that tenant crofters and owner-occupier crofters are subject to the same regulatory requirements.

As a result of a Government amendment made at Stage 2, Part 4 of the Act will now close a legal loophole which arose out of a case called Whitbread v Macdonald whereby a crofter was not eligible to pay claw back if it was conveyed direct to a nominee. The Act provides that such transfers will be subject to claw back unless the transfer is to a member of the crofter’s family. This change had been recommended by the Rural Affairs and Environment Committee in its report.

A number of other amendments were also agreed during Stage 2 to improve the law on croft succession, and to remove the requirement for appeals on
crofting law to the Scottish Land Court to be by way of “stated case”, a procedure which was said to be cumbersome and costly.

The Bill, as amended at stage 3, was passed with the support of a majority of members (for 66, against 0, abstentions 59). Labour and Liberal Democrat members abstained because they did not support the provisions in the Bill on the Register of Crofts.

**Housing (Scotland) Bill**

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 36</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>13 January 2010</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Nicola Sturgeon (Executive Bill).</td>
</tr>
<tr>
<td>Passed:</td>
<td>3 November 2010</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>9 December 2010</td>
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</table>

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**Passage of the Bill**

The Housing (Scotland) Bill [SP Bill 36] was introduced in the Parliament on 13 January 2010. Stage 1 commenced on 15 March 2005 with the Local Government and Communities Committee as the lead committee. The Stage 1 (general principles) debate took place on 23 June 2010 and the Bill was passed following the Stage 3 parliamentary debate on 3 November 2011.

**Purpose and objectives of the Bill**

The principal policy objectives of the Bill, as introduced, were to “… improve the value that social housing delivers for tenants and taxpayers, to safeguard the supply of housing for the benefit of future generations of tenants and to improve the conditions in private sector housing” (Policy Memorandum).

**Provisions of the Bill**

The Bill, as introduced, was structured into 15 parts. Parts 1 to 10 concern the Scottish Housing Regulator and registered social landlords. The Bill would provide a framework for the establishment of a Scottish Housing Regulator as an independent body, rather than as an Executive Agency as it currently is, and modernise its functions and powers. The Regulator would be required to establish a Scottish Social Housing Charter which would define the outcomes that social landlords should be achieving and would provide the framework for the Regulator to assess and report on the performance of social landlords.
Part 11 would end the right to buy for new tenants and for new supply social housing. Part 12 would amend the system of private landlord registration while Part 13 would make changes to the powers available to local authorities under the Housing (Scotland) Act 2006 to address disrepair in private housing. Part 13 would also make changes to the system of HMO licensing as set out in the Housing (Scotland) Act 2006.

Part 14 includes provisions regarding unauthorised tenants and changes to the definition of local connection in respect of homelessness applications. Finally, Part 15 sets out supplementary and final provisions.

**Parliamentary consideration**

The Local Government and Communities Committee, in its Stage 1 Report, supported the general principles of the Bill but raised concerns over the inclusion of provisions relating to private rented housing given that another Bill on private rented housing was due to be introduced in the Parliament at a later date. In light of these concerns, the Scottish Government removed the provisions relating to private rented sector housing and HMOs at Stage 3 and included them in the Private Rented Housing (Scotland) Bill [SP Bill 54] which was introduced in Parliament on 4 October 2010.

At Stage 2 the majority of amendments agreed to were proposed by the Government and related to Parts 1 to 10 of the Bill and many of these were minor or technical amendments. A number of amendments sought to increase the participation of tenants, homeless persons and other services users in the work of the Scottish Housing Regulator.

More substantial amendments agreed at Stage 2 included provisions that sought to provide protection for tenants facing eviction for rent arrears. Further amendments would allow social landlords and their connected bodies to be exempt from the 20 years rules in relation to long leases and heritable securities. The aim of this change is to facilitate new forms of housing investment into the sector.

Other amendments agreed at Stage 2 sought to clarify the law in relation to unauthorised tenants. The effect of these amendments would be that after obtaining a repossession decree against a borrower who lets their property, a lender would have to raise further proceedings to evict any assured tenant under the Housing (Scotland) Act 1988.

A non-Government amendment agreed at Stage 2 would require local authorities to assess a homeless applicant’s need for housing support services, where it believed this was necessary, and to provide the required services. Government amendments at Stage 3 revised the wording of this provision and introduced a power to allow Scottish Ministers to make regulations about the assessment, and the provision of, housing support.
services. Ministers would also be required to consult bodies that represent local authorities and bodies that represent the interests of homeless persons.

Finally, at Stage 3, amendments were passed that require Scottish Ministers to collect certain statistical information about right to buy.

**Budget (Scotland) (No 4) Bill**

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<tr>
<th>Bill Number:</th>
<th>SP Bill 37</th>
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<tr>
<td>Introduced on:</td>
<td>14 January 2010</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>John Swinney (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>3 February 2010</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>10 March 2010</td>
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2010 asp 4

**Passage of the Bill**

The Budget (Scotland) (No 4) Bill [SP Bill 37] was introduced on 14 January 2010. The Finance Committee considered the Bill at Stage 2 on 26 January and the Bill was passed by the Parliament on 3 February 2010.

**Purpose and objectives of the Bill**

The Budget Bill is the final stage in the annual budget process and this Bill gives parliamentary authority for spending in Scotland for financial year 2010-11. The budget process is intended to allow the Parliament’s subject committees the opportunity to comment on the Scottish Government’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 authorises approximately £31bn of cash expenditure by the Scottish Government 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.
End of Life Assistance (Scotland) Bill

Bill Number: SP Bill 38
Introduced on: 20 January 2010
Introduced by: Margo MacDonald (Member’s Bill)
Fell: 1 December 2010

Passage of the Bill

The End of Life Assistance (Scotland) Bill [SP Bill 38] was introduced in the Parliament on 20 January 2010. The End of Life Assistance (Scotland) Bill Committee (the Committee) was established on 10 February 2010 following a motion by Mike Rumbles, on behalf of the Parliamentary Bureau. The motion (S3M-5710) was agreed to by division: For 69, Against 48, Abstentions 1. The Committee’s remit was to consider and report on the general principles of the Bill. The Committee first met on 2 March 2010, issued its call for evidence on 3 March 2010 and began taking oral evidence on 7 September 2010. The Committee published its Stage 1 Report on 18 November 2010, with the Stage 1 debate taking place on 1 December 2010. The Parliament did not agree to the general principles of the Bill, and, as a result, the Bill fell.

Purpose and objectives of the Bill

The aim of the Bill was to “enable persons whose life has become intolerable and who meet the conditions prescribed in the Bill to legally access assistance to end their life” (Policy Memorandum, 2010, paragraph 2). Whilst there was an acceptance that good quality palliative care can ensure a dignified and peaceful death for most people, it maintained that this was not so for a small number of people, thus recognising their autonomy and rights to seek assistance to die.

Provisions of the Bill

The Bill defined end of life assistance as “…assistance, including the provision or administration of appropriate means, to enable a person to die with dignity and a minimum of distress”. It then provided for a range of eligibility criteria, including that a person seeking assistance be aged 16 years of age or over, and that they have been registered with a medical practice in Scotland for a continuous period of at least 18 months.

The Bill also stated that, to be eligible, a person seeking assistance must either have been diagnosed as having a terminal illness and finds life intolerable, or be permanently physically incapacitated to such an extent as not to be able to live independently and finds life intolerable. Terminal illness was further defined as being a progressive condition where death could reasonably be expected within six months. Intolerability was not further
defined on the basis that the test for it was to be a subjective one determined by the person seeking assistance.

To be able to obtain end of life assistance a person would be required to make two formal requests, in writing and witnessed, to be approved by the same designated medical practitioner. The Bill detailed what the designated medical practitioner would have to take into account before approving each request, including that the individual met the eligibility criteria noted above and that all feasible alternatives, including palliative care, had been considered. As part of the process for the first and second request, a psychiatric assessment would be required, where the psychiatrist would meet the applicant and assess capacity as well as discussing a number of matters, including that they were eligible for end of life assistance and discussing the person’s feelings and reasons for making the request.

Once the second formal request had been approved, the Bill stipulated that a written, signed agreement be drawn up between the designated practitioner and the requesting person. This would have to cover certain issues, including who is to provide the end of life assistance, and the means by which assistance is to be provided. In addition, assistance was to take place within 28 days from the date the requesting person was informed of approval of their second formal request. However, it also proposed that the agreement did not become effective until the expiry of two clear days from the date of its conclusion.

Parliamentary consideration

The Committee’s call for evidence led to in 601 written responses being submitted. A wide range of views were expressed on the Bill as a whole and on specific elements of the Bill. A SPICe briefing summarised the written evidence, and was designed to alert Members to the key themes raised by respondents. Based on the written responses, the Committee agreed a programme of evidence sessions which took place in September 2010. It heard from 48 witnesses from a range of backgrounds – academic, legal, health service, health professional, religious and voluntary.

The range and complexity of the evidence received is reflected in the Committee’s Stage 1 Report, which was published on 18 November 2010. It first considered the current legal position and the concepts of autonomy and dignity, and the use of comparisons with other jurisdictions. It then looked at the key provisions in the Bill in detail - the terminology used, the qualifications of designated practitioners and psychiatrists, age, requirements relating to the actual provision of assistance, safeguards for doctors and other professionals, equalities issues and the Financial Memorandum. In the Report, there is a discussion of the evidence received followed by the Committee’s recommendation and conclusion on that specific issue. However, the overall conclusion of the Committee was that:
“…the majority of the Committee was not persuaded that the case had been made to decriminalise the law of homicide as it applies to assisted suicide and voluntary euthanasia, termed ‘end-of-life assistance’ in the Bill, and, accordingly, does not recommend the general principles of the Bill to the Parliament.” (Paragraph 257).

The Stage 1 debate took place on 1 December 2010. As is common with proposed legislation of this type, the debate was considered to be a matter of conscience for individual Members. One key point of note was that the Scottish Government, through the Cabinet Secretary for Health and Wellbeing, stated the following view:

“Like the bill committee, the Government believes that the current law is clear—it is not lawful to assist someone in committing suicide—and has no plans to change it.” (OR col. 31050).

Sixteen Members voted for the Bill, 85 Members voted against and 2 Members abstained. As a result, the Bill fell.

Scottish Parliamentary Commissions and Commissioners etc. Bill

<table>
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<tr>
<th>Bill Number:</th>
<th>SP Bill 39</th>
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<tr>
<td>Introduced on:</td>
<td>27 January 2010</td>
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<tr>
<td>Introduced by:</td>
<td>Trish Godman on behalf of the Review of SPCB Supported Bodies Committee (Committee Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>9 June 2010</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>19 July 2010</td>
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2010 asp 11

Passage of the Bill

The Scottish Parliamentary Commissions and Commissioners etc. Bill (SP Bill 39) was introduced in Parliament on 27 January 2010. The Bill was a Committee Bill and as such was not referred at Stage 1 to a lead committee for a report on its general principles. However the Finance Committee did consider and report on the Financial Memorandum in the normal way and the Subordinate Legislation Committee also reported on the Bill. The Stage 1 debate took place in the normal way and the Bill passed Stage 1 on 24 March 2010. The Finance Committee then considered the Bill at Stage 2. The Bill was passed following the Stage 3 parliamentary debate on 9 June 2010.
Purpose and objectives of the Bill

The Bill was introduced following the work of the Review of SPCB Supported Bodies Committee, which was set up as an ad hoc committee to consider and report on whether alterations should be made to the terms and conditions of the office-holders and the structure of the bodies supported by the SPCB (Scottish Parliament Corporate Body); to consider how any proposals, including the addition of any new functions, for future arrangements should be taken forward, including by way of a Committee Bill, and to make recommendations accordingly.

The Committee published its report in 2009. The report made 43 recommendations and the Committee suggested that 27 of those recommendations should be implemented by means of a Committee bill.

On 18 June 2009 the Parliament agreed that a Committee bill should be introduced to harmonise the SPCB-supported office-holders' terms and conditions of appointment and to enhance their governance arrangements.

Provisions of the Bill

The Bill would establish a new standards body the ‘Commission for Ethical Standards in Public Life in Scotland’. This body would take over the functions of the Chief Investigating Officer, the Scottish Parliamentary Standards Commissioner and the Office of the Commissioner for Public Appointments in Scotland. One member of the new Commission would assume the roles and responsibilities of the Chief Investigating Officer and the Scottish Parliamentary Standards Commissioner, while another would take on the functions of the Office of the Commissioner for Public Appointments in Scotland.

The Bill would also extend the role of the Scottish Public Services Ombudsman to take over the functions of the Scottish Prisons Complaints Commission and transfer the sponsorship of the Standards Commission for Scotland from Scottish Ministers to the SPCB.

Parliamentary consideration

As the Bill was the result of the recommendations of an ad hoc Committee, established to consider the terms and conditions of the office-holders and the structure of the bodies supported by the SPCB, the only substantial amendments it required were at Stage 2. These amendments took account of the consequential amendments required by the Public Services Reform (Scotland) Act 2010, which had received Royal Assent on 28 April 2010.
William Simpson’s Home (Transfer of Property etc) (Scotland) Bill

Bill Number: SP Bill 40
Introduced on: 28 January 2010
Introduced by: Trustees of William Simpson’s Asylum (Private Bill)
Passed: 9 June 2010
Royal Assent: 27 July 2010

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Passage of the Bill

The William Simpson’s Home (Transfer of Property etc) (Scotland) Bill was introduced in the Parliament on 28 January 2010. The committee established to consider the Bill (under private bill procedure) published its preliminary stage report on 7 May 2010. This was followed by a preliminary stage debate in the chamber on 12 May 2010. Consideration stage of the Bill was held on 25 May 2010. The Bill was passed following a final stage debate in the chamber on 9 June 2010 and, following Royal Assent on 27 July 2010, became the William Simpson’s Home (Transfer of Property etc) (Scotland) Act 2010.

Purpose and objectives of the Bill

William Simpson’s is a charity providing residential accommodation for people with alcohol-related brain damage or mental health problems. It also provides respite and day care services. The charity was constituted as an incorporated body by a private act of parliament in 1864.

In light of: (a) changes to charity law, regulation and practice; and (b) social changes increasing the demand for the charity’s services, the trustees of the charity concluded that arrangements under the 1864 Act for its operation and governance were no longer appropriate. During the final stage debate, Shirley-Anne Somerville noted that:

“The trustees wished to change the home’s [i.e. the charity’s] constitution to provide better governance arrangements and to develop its work to provide services to a wider and larger group of people, but they considered that such developments were not possible given the restrictions that were placed on the home and the trustees by the 1864 Act. After investigating a number of alternatives including the use of charity law, the trustees concluded that, given the statutory nature of the charity, the only way in which to achieve their objectives was to introduce legislation through the private bill procedure to transfer the existing property, rights, duties,
interests, employees and liabilities to a new charitable company and to dissolve the existing home.” (col. 27058)

The Bill set out measures to achieve these aims, which are now provided for in the resulting 2010 Act (which came into force two months after receiving Royal Assent).

**Parliamentary consideration**

The preliminary stage report indicated that the committee: (a) recognised the necessity of the Bill in terms of the charity’s operation and future development; and (b) supported the trustees’ commitment to retain the original ethos of the charity. The general principles of the Bill were agreed following the preliminary stage debate.

Some technical amendments were agreed to by the committee during consideration stage of the Bill.

Following a short final stage debate, the motion to pass the Bill was agreed to without division.

**Children’s Hearings (Scotland) Bill**

| Bill Number: | SP Bill 41 |
| Introduced on: | 23 February 2010 |
| Introduced by: | Michael Russell (Executive Bill) |
| Passed: | 25 November 2010 |
| Royal Assent: | 6 January 2011 |

2011 asp 1

**Passage of the Bill**

The Children’s Hearings (Scotland) Bill was introduced on 23 February 2010. It completed stage 1 on 16 June, stage 2 on 3 November and was passed following two sessions at stage 3 on 24 and 25 November.

**Purpose and objectives of the Bill**

The purpose of the Bill is to modernise and streamline the operation of the children’s hearings system, deliver greater national consistency and simplify the provisions for warrants and orders. It is also intended to ensure that the
system is robust in the face of developments in the European Convention on Human Rights.

Provisions of the Bill

The Bill restates much of the existing law on children’s hearings, removing it from the Children (Scotland) Act 1995. The main change is the establishment of a new NDPB, “Children’s Hearings Scotland” to take on the functions of Children’s Panel Advisory Committees (CPACs), local authority functions relating to local training and paying expenses, and functions of Ministers in relation to recruitment, appointment and national training of panel members. Instead of 32 separate children’s panels there will be a single panel appointed by a National Convener. In addition, there are various changes to the hearings process including a rationalising of warrants and orders, modernising the grounds for referral and providing for a national scheme through the civil legal aid system for state funded legal representation in children’s hearings and associated court proceedings.

Amendments to the Bill during its passage through the Parliament included: provision for a national panel of safeguarders, restriction to the circumstances in which an offence ground will appear on a criminal record disclosure certificate, amendments intended to ensure children’s views are heard and greater specification of what became known as the ‘feedback loop.’

Parliamentary consideration

The Bill is a culmination of a long process of consultation and review which started in 2004. SPICe briefings 10/24 and 10/77 provide more detail on the Bill as introduced and as amended at stage 2. There were over 400 amendments lodged at stage 2 and 156 at stage 3. While most were government amendments, there were also a large number of successful non-government amendments which in some cases made substantial changes to the Bill. The most controversial measures were subject to further amendment at stage 3.

Throughout the passage of the Bill, and indeed the entire reform process, there has been a lack of consensus both between and within stakeholder groups about exactly how the administration of children’s hearings should be changed. At stage 3 the Minister, Adam Ingram MSP, referred to there being: “no united voice amongst our partners on many matters and that has been very tricky to overcome” (OR 25 November col. 30957). He stated that the Bill contained compromises but that opinion differed too widely on some issues to be able to accommodate all the views of all the partners.

The most controversial issue was the balance between national and local control. The intention of improving consistency by giving powers to the National Convener, abolishing CPACs and reducing the role of the local authority was seen by some as unnecessary centralisation. Amendments at
stage 2 by Liz Smith MSP placed Area Support Teams\textsuperscript{4} under local authority control rather than that of the National Convener. The Minister stated that this compromised the impartiality and independence of the system to the degree that the Bill would be outside the legislative competence of the Parliament and would be referred to the Supreme Court (OR 25 November col. 30951-2). However, amendments at stage 3 by Liz Smith and supported by the Minister re-instated National Convener control of ASTs. In order to safeguard the local connection, CPAC members will be given automatic membership and ASTs will be established with local authority agreement. Liz Smith described this as: “the best possible compromise.”

Another area where changes at stage 2 were further altered is in the ‘feedback loop.’ Section 173 in the Bill as introduced provided for the collection and sharing of general information about the implementation of hearing decisions. It was described by Ken MacIntosh MSP as the most important provision in the Bill (OR 24 November col. 30774). At stage 2 it was amended to specify a great deal of detail about what information was to be provided, but this was replaced at stage 3 by less onerous requirements.

An issue causing considerable concern at stages 1 and 2 related to the existing law on criminal records. As the law stood, if an offence ground was accepted or established by the hearing or the sheriff, the child would have a criminal record. This would be disclosed if they later apply to work with vulnerable groups. This was amended to the effect that only serious and sexual offences will be recorded and these will be recorded as ‘alternatives to prosecution’ rather than as convictions. The Scottish Government will consult on the list of offences that will continue to be recorded.

Other changes at stage 3 included:

- Providing for regulations to change the definition of a ‘relevant person.’ The minister accepted that this was a developing area of case law and may need to be changed in the future.

- Further provision for incorporating children’s views, including their involvement in training panel members, a regulation making power to make further provision on advocacy, consultation with children on the appointment of the National Convener and Principal Reporter and enabling children and relevant persons to appeal against a Sheriff’s decision about which is the relevant local authority. The Minister opposed this last amendment but it was agreed following a vote.

- The provision for a super-affirmative regulatory procedure for the alteration of the National Convener’s powers.

\textsuperscript{4} These will be established by the National Convener to take on many of the functions currently carried out at a local authority level by CPACs. CPACs are independent of the local authority although they receive administrative support from them.
Patient Rights (Scotland) Bill

Bill Number: SP Bill 42
Introduced on: 17 March 2010
Introduced by: Nicola Sturgeon (Executive Bill)
Passed: 24 February 2011
Royal Assent: 31 March 2011

2011 asp 5

Passage of the Bill

The Patient Rights (Scotland) Bill was introduced in the Scottish Parliament on 17 March 2010 and the Health and Sport Committee was designated as the lead committee. Stage 1 oral evidence on the general principles of the Bill was taken over the autumn with the stage 1 debate taking place on 17 November 2010. The Bill was passed following the stage 3 parliamentary debate on 24 February 2011.

Purpose and objectives of the Bill

The purpose of the Bill was to promote and strengthen patient rights.

Provisions of the Bill

The Bill contained a number of provisions for enhancing patient rights, these included:

- The creation of new statutory rights for patients which would be in addition to their existing rights
- The creation of a set of principles which would underpin how healthcare is delivered
- The creation of a statutory treatment time guarantee (TTG) of 12 weeks
- Renewing the legislation on complaints and giving patients a right to complain, raise concerns or give feedback
- The creation of a Patient Advice and Support Service (PASS), responsible for promoting the rights and responsibilities in the Bill
- The creation of Patient Rights Officers (PROs), responsible for providing advice and information to patients about the PASS, the health service, giving feedback and making complaints
Parliamentary consideration

**Stage 1**

At stage 1 of the Bill, much of the debate focused on whether primary legislation was the best method to promote and strengthen the rights of patients. Concerns related to this included the fact that the rights provided for in the Bill would not be enforceable through the courts and that the Bill did not enshrine all rights available to patients. Subsequently, some felt those rights not stated in the Bill may be treated with less priority.

Other areas of debate included:

- The potential of the TTG to skew clinical priorities and concerns over what would, and would not be, included within it
- The likely impact of changes to the complaints system and the effect of giving patients a right to complain
- The need for a new PASS and the role of PROs
- The financial implications of the Bill

The overall conclusion of the Committee at stage 1 was that it was unable to make a recommendation to Parliament on the general principles of the Bill. This was primarily due to a division of opinion on the use of primary legislation. Those committee members opposed to primary legislation were of the opinion that a revised patients’ charter may be a more appropriate vehicle.

**Stage 2**

The most significant amendment made to the Bill at stage 2 was the inclusion of a duty which would require ministers to publish a patients’ charter of rights and responsibilities. This charter would be a comprehensive account of all of the existing rights and responsibilities of patients, and have the ability to confer new ones. Other key changes included the removal of the provisions which would create the role of PROs.

Some amendments that were debated but not agreed to included the creation of a system of ‘no-fault’ compensation and the replacement of the Treatment Time Guarantee with a ‘Patient Guarantee’ in which the maximum wait would be set by the patient’s General Practitioner.
Stage 3

The Bill remained broadly unchanged at stage 3 with most amendments intended to ‘fine-tune’ the existing provisions. These amendments included removing the ability of the patients’ charter to create new rights or alter existing rights. Also, the role of the PASS was amended to allow it to promote patient rights not in the Bill and to deal with matters beyond the health service. This was to enable the PASS to provide a more holistic service.

The Bill (As Passed)

When enacted, the Patient Rights (Scotland) Act 2011 will:

- Require Ministers to publish a comprehensive ‘Charter of Patient Rights and Responsibilities’ which should outline all rights and responsibilities existing at the time of publication
- Give NHS bodies a duty to uphold the health care principles outlined in the schedule to the Act
- Implement a statutory treatment time guarantee of 12 weeks with eligibility to be defined in regulations
- Implement a system of ‘feedback, comments, concerns or complaints’
- Create the Patient Advice and Support Service

Historic Environment (Amendment) (Scotland) Bill

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<td>4 May 2010</td>
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<tr>
<td>Introduced by:</td>
<td>Fiona Hyslop (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>20 January 2011</td>
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<td>23 February 2011</td>
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Passage of the Bill

The Historic Environment (Amendment) (Scotland) Bill (SP Bill 43) was introduced in the Parliament on 4 May 2010. Stage 1 commenced on 8 June with the Education, Lifelong Learning and Culture Committee as the lead committee. The Subordinate Legislation and Finance Committees also
considered the Bill. The Stage 1 (general principles) debate took place on 4 November 2010 and the Bill was passed, without amendment at Stage 3, on 20 January 2011.

**Purpose and objectives of the Bill**

The Historic Environment (Amendment) (Scotland) Bill sought to amend three pieces of current legislation: the Historic Buildings and Ancient Monuments Act 1953 (c.49); the Ancient Monuments and Archaeological Areas Act 1979 (c.46) and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

The Scottish Government saw the Bill as a means to address specific gaps and weaknesses in the existing heritage legislation framework which were identified during discussions with stakeholders. Scottish Ministers believed the provisions in the Bill would improve the ability of the regulatory authorities to work with partners (e.g. local authorities and charities) to manage Scotland’s unique historic legacy for the benefit of future generations.

The Government also wanted the Bill to be read in the context of Scottish Ministers’ broader ambitions for how Historic Scotland should develop: to become more flexible, more open, more accessible and more outward looking.

**Provisions of the Bill**

The Bill sought to extend the operation of enforcement notices and stop notices, which have been a feature of the Scottish town and country planning systems for decades, and temporary stop notices which were introduced by the Planning etc. (Scotland) Act 2006 to the scheduled monument system, and to introduce listed building stop notices and temporary stop notices.

The Bill also sought to create a new duty for Scottish Ministers to compile and maintain two new statutory inventories, one for battlefields and one for gardens and designed landscapes.

**Parliamentary consideration**

The Scottish Government Minister in charge of the Bill submitted a number of technical amendments at stage 2 including amendments to address the concerns raised in the Subordinate Legislation Committee’s stage 1 report. The Committee had drawn the Parliament’s attention to the proposed use of delegated powers in subsections 15(2) and 15(3).
Autism (Scotland) Bill

Bill Number: SP Bill 44
Introduced on: 26 May 2010
Introduced by: Hugh O’Donnell MSP (Member’s Bill)
Fell: 12 January 2011

Passage of the Bill

The Autism (Scotland) Bill was introduced in the Parliament on 26 May 2010. Stage 1 commenced on 10 November 2010 with the Education, Lifelong Learning and Culture Committee as the lead Committee. At the Stage 1 debate on 12 January 2011, the Parliament disagreed to the general principles of the Bill and the Bill therefore fell.

Purpose and objectives of the Bill

There is currently no legislation that relates specifically to people with autistic spectrum disorders. The Bill’s purpose was to address an inconsistency or ‘postcode lottery’ in the provision of ‘relevant services’ to people on the autistic spectrum across Scotland. The Bill intended to place a statutory duty upon the Scottish Government to produce a ‘national autism strategy’ to meet the needs of children and adults with autism; and to issue related statutory guidance to local authorities and health boards with respect to the services they provide to people on the autistic spectrum.

Provisions of the Bill

The Autism (Scotland) Bill had five sections. Section 1 would have provided for a statutory duty to be placed on Scottish Ministers to prepare and publish a national autism strategy by no later than 4 months after the Bill came into force. Scottish Ministers would have been required to keep the autism strategy under review and revise it, if required. It would have also placed a duty on Scottish Ministers to consult appropriate organisations and people. The Bill did not prescribe the content of a national autism strategy.

To secure the implementation of a national autism strategy, Section 2 of the Bill would have required Scottish Ministers to issue guidance to NHS bodies and local authorities in relation to the ‘relevant services’ they provide to people on the autistic spectrum, by no later than 12 months after the day on which the Bill would have come into force. The Bill would have prescribed the ‘relevant services’ the guidance should cover. It would also have placed a duty on Scottish Ministers to keep the guidance under review and to consult with NHS bodies, local authorities and appropriate stakeholders, both before issuing the guidance and when revising it in any substantial way. Section 3 of the Bill would have placed a statutory duty upon local authorities and NHS bodies to ‘have regard to’ the guidance issued under Section 2.
Parliamentary consideration

The Committee received substantial evidence on the Bill from individuals on the autistic spectrum, their families, carers and support organisations, who identified significant barriers to accessing the additional support and services they require. During evidence sessions at Stage 1, the introduction of a national autism strategy was generally welcomed and the Committee was convinced that a national strategy could help to focus the delivery of services to people on the autistic spectrum more effectively.

After the Bill was introduced, the Scottish Government issued a draft autism strategy for consultation on 9 September 2010, arguing legislation was not required to underpin such a strategy and that existing inclusive legislation, such as the Education (Additional Support for Learning) (Scotland) Act 2009 and the Equality Act 2010, already provided for those with additional support needs. Those in favour of introducing legislation felt that, while existing legislation does provide for access to many services for people with autism, it is often not implemented effectively, and that the proposed legislation would give a national autism strategy ‘more teeth’. However, while the Committee acknowledged that there may be issues around the implementation of existing legislation in this policy area, it concluded that passing more legislation was not an appropriate response to the poor implementation of existing legislation. The Committee felt that there had not yet been sufficient time to evaluate the impact of relevant legislation.

The statutory interpretation likely to be given to the proposed duty on local authorities and NHS bodies to ‘have regard to’ guidance issued by the Scottish Ministers was viewed by the Committee as crucial in determining whether passing this legislation would lead to an improvement in the ‘relevant services’ provided to those on the autistic spectrum. The Member in charge of the Bill stated in the Financial Memorandum, and in evidence to the Committee, that the Bill would only incur minimal costs for local authorities and NHS bodies. During evidence sessions it was argued that, if the statutory interpretation of ‘have regard to’ was that the guidance was only advisory, such legislation was likely to have minimal cost implications but would not necessarily lead to any improvement in the provision of ‘relevant services’. If, on the other hand, the ‘have regard to’ provision was interpreted to mean that the guidance was to have binding effect, the Committee felt that it would be necessary for the Bill to be significantly amended to impose clear and specific duties on local authorities and NHS bodies; as a consequence, local authorities and NHS bodies would face significant costs and may have been required to give higher priority to people with autism than to other groups with additional support needs. In addition, as such duties would impose a significant cost burden, the Bill would likely have required a Financial Resolution, which, under Rule 9.12.6 of Standing Orders, could only be lodged by a Scottish Government Minister.

The Committee, therefore, concluded that the Bill, as introduced, would not provide robust enough obligations to achieve meaningful differences to
service provision for people with autism and that resources would be better spent focusing on the implementation of existing legislation and duties, especially for adults with autism. The Committee recommended to the Parliament that the general principles of the Bill not be agreed to, and the Bill fell at Stage 1.

**Domestic Abuse (Scotland) Bill**

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<th>SP Bill 45</th>
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<tbody>
<tr>
<td>Introduced on:</td>
<td>27 May 2010</td>
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<tr>
<td>Introduced by:</td>
<td>Rhoda Grant (Member's Bill)</td>
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<tr>
<td>Passed:</td>
<td>16 March 2011</td>
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<td>Royal Assent:</td>
<td>20 April 2011</td>
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2011 asp 13

**Passage of the Bill**

The Domestic Abuse (Scotland) Bill [SP Bill 45] was introduced in the Parliament on 27 May 2010. The Justice Committee was designated as the lead committee for stage 1 consideration of the general principles of the Bill. The Committee’s stage 1 report was published on 12 January 2011. Although it did not support certain parts of the Bill, the Committee recommended to the Parliament that the general principles be agreed to. The stage 1 debate took place on 19 January 2011, when the general principles of the Bill were unanimously agreed to by Parliament. Stage 2 proceedings took place on 8 February 2011. Stage 3 proceedings took place on 16 March 2011, when the Bill was passed unanimously by the Parliament.

**Purpose and objectives of the Bill**

The Bill aims to increase access to justice for victims of domestic abuse and enable police and prosecutors to provide a more robust response to breached civil protections orders.

**Provisions of the Bill**

Section 1 of the Bill [as introduced] introduces a new section (section 8A) to the Protection from Harassment Act 1997 to remove the requirement to show a course of conduct before a non-harassment order can be granted in civil proceedings involving domestic abuse. This new section would only apply when the conduct which led to a non-harassment order being sought was conduct that constituted or involved “domestic abuse”. To obtain a non-
harassment order under the Bill, a person would only need to prove one occasion of harassment, not that there had been a course of such conduct.

Section 2 of the Bill [as introduced] would have removed the means test for legal aid applications in respect of certain civil domestic abuse-related proceedings. This section of the Bill was removed at stage 2.

Section 3 of the Bill [as introduced] seeks to create a new criminal offence of breaching a domestic abuse related interdict. It would make it a criminal offence to breach an interdict with a power of arrest in domestic abuse cases. This new criminal offence would be punishable on summary conviction by imprisonment for a term not exceeding six months, or a fine not exceeding the statutory minimum, or both.

Section 4 of the Bill [as introduced] would have provided a statutory definition of domestic abuse (section 4). It provided that where behaviour falls within the meaning of abuse (including violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm, or distress) and which occurs in any of the listed relationships, it will be considered to be domestic abuse. The listed relationships include where a person is (or was) married to, or the civil partner of, or a partner in an established relationship of any length with, the person who carried out the abuse; or the perpetrator’s parent, child, grandparent or grandchild (whether by blood or adoption). Section 4(3) provided that Scottish Ministers may, by order, add further types of relationships to this list. This section of the Bill was removed at stage 2.

Parliamentary consideration

Section 1 of the Bill [as introduced] received wide support on the basis that it would bring civil provisions into line with criminal provisions and would remove the requirement for a victim to go through a period of repeated abuse before being able to access a protective court order. At stage 1, the Committee recognised the wide support for this proposal and supported it, but noted that a statutory definition of domestic abuse is likely to be required in order for this section to be operational. A number of minor amendments were made to section 1 at stages 2 and 3.

In relation to section 2 of the Bill [as introduced], it was noted during stage 1 that eligibility for legal aid is not assessed merely on the basis of a means test. In fact, there is a three-part eligibility test: the means test, a legal basis for the case test and a reasonableness test. Although the Bill proposed removing the means test for domestic abuse cases, the two other tests would still apply. This section gave rise to a number of questions and concerns about what the effect might be on the numbers of cases that might be brought and the resultant increase in costs, primarily for the Legal Aid Fund but also the Scottish Court Service. The Committee considered that this section would produce an inequality of arms between pursuers and defenders in such
cases. The Committee was not persuaded that there was a compelling case to prioritise domestic abuse cases above other cases where protective orders were being sought and did not, therefore, support the provisions of section 2. Section 2 of the Bill was removed at stage 2.

In relation to section 3, evidence was presented at stage 1 that existing mechanisms for dealing with breaches of interdict were regarded as inadequate and take-up was low. The Committee accepted that, in many cases, the granting of a protective order would be sufficient to deter the behaviour complained of, and that the current two day detention under existing powers of arrest provided a useful respite to victims. However, the Committee supported the view that a criminal sanction for breach of a domestic abuse interdict was necessary to give victims proper protection. The Committee was content that this provision would represent a strengthening of the current system and was of the view that the criminal standard of proof, together with corroboration, must apply. Again, the Committee noted that, in order to identify breaches of interdict with a power of arrest in cases of domestic abuse, it was likely that a statutory definition of domestic abuse would be required.

In relation to section 4, the evidence presented at stage 1 raised a number of potential difficulties and questions about the scope of the definition of domestic abuse as set out in the Bill and the need for a statutory definition at all. The Committee reached the view that a definition is necessary in order that accused persons, courts, solicitors and victims have clarity as to whether the breach of a particular order is to be a criminal offence. The Committee was also inclined to the view that the definition should cover the normally accepted categories of partners rather than wider family relationships. However, section 4 of the Bill was removed at stage 2.

Because of the removal of section 4, a number of definitional issues arose. The Bill was, therefore, further amended at stage 2 to provide greater clarity on when breach of an interdict is a criminal offence. In particular, the categories of interdict to which section 3 applies were limited by reference to the “normally accepted” categories of partners (spouses, civil partners and cohabiting couples). At stage 3, the Bill was further amended to ensure that this provision applied to boyfriends and girlfriends.

The Bill was passed unanimously by Parliament.
Commissioner for Victims and Witnesses (Scotland) Bill

Bill Number: SP Bill 46
Introduced on: 27 May 2010
Introduced by: David Stewart (Member’s Bill)
Fell: 22 March 2011

Passage of the Bill

The Commissioner for Victims and Witnesses (Scotland) Bill [SP Bill 46] was introduced in the Parliament on 27 May 2010 by David Stewart MSP. The Bill sought to establish a commissioner whose general function would be to promote and safeguard the interests of victims and witnesses. This Bill was one of four Members’ Bills introduced at or around the sessional cut-off point for such Bills (1 June 2010) and was referred to the Justice Committee. When the Committee agreed the order in which it would undertake scrutiny of these Bills, this Bill was last in line.

As a result of the volume of other work, including Scottish Government Bills introduced later but given priority by the Committee, it did not prove possible to carry out a full Stage 1 inquiry into this Bill. Mr Stewart was, however, given an opportunity towards the end of the session to put on the record his reasons for introducing the Bill (see Justice Committee Official Report 8 March 2011).

Purpose and objectives of the Bill

The Bill sought to establish a commissioner for victims and witnesses in Scotland. Under the Bill, the Commissioner would have a general and overriding function to promote and safeguard the interests of victims and witnesses. The Bill, amongst other things, set out specific functions that the Commissioner might exercise in order to fulfil his or her general function:

- promote awareness and understanding of the interests of victims and witnesses (by, for example, encouraging the consideration and understanding of issues affecting victims and witnesses)

- promote best practice in relation to victims and witnesses (by identifying initiatives and areas of best practice in Scotland and elsewhere)

- publish or otherwise disseminate information or ideas (in order to provide relevant, topical information to assist with policy or legislative developments)

- provide advice or guidance
• provide education or training

• promote, commission, undertake or publish research

Provisions of the Bill

The Bill, amongst other things, provides that the Commissioner would be able to monitor and review any area of the law, or any policies or practices, of relevant public authorities and recommend changes. Before undertaking a review of any area of the law the Commissioner would have to first consult with the Scottish Law Commission.

The Bill also provides that the Commissioner would be able to investigate the policies and practices of relevant public authorities in relation to the interests of victims and witnesses. The Commissioner would have a relatively broad discretion as to the scope of any such investigation, as long as it related to a matter of particular significance to victims and witnesses. The Commissioner would not, however, be permitted to question the findings of any court, tribunal or inquiry in the course of an investigation.

The Commissioner would not have the power to investigate individual cases involving victims or witnesses as the member in charge of the Bill considered that this may potentially risk the majority of the Commissioner’s time being spent undertaking such investigations, to the exclusion of core responsibilities. If, however, an individual case gave rise to a wider issue affecting victims or witnesses, the Commissioner would have been able to undertake an investigation into that issue.

Parliamentary consideration

As noted above, the Justice Committee did not have time to scrutinise the Bill at Stage 1. Accordingly, the Bill fell at the end of the Parliamentary session.
Protection of Workers (Scotland) Bill

Bill Number: SP Bill 47
Introduced on: 1 June 2010
Introduced by: Hugh Henry (Member’s Bill)
Fell: 22 December 2010

Passage of the Bill

The Protection of Workers (Scotland) Bill was introduced in the Parliament on 1 June 2010, with the Parliament’s Economy, Energy and Tourism Committee being designated as lead committee for the purpose of scrutinising the Bill. Following the consideration of evidence, the Committee recommended in its stage 1 report that the general principles of the Bill are not agreed to.

A stage 1 debate on the Bill was held in the chamber on 22 December 2010, following which a majority of MSPs voted against a motion seeking the agreement of the Parliament to the general principles of the Bill. As a result, the Bill fell on that date.

Purpose and objectives of the Bill

The Bill provided for a specific statutory offence relating to assaults on people whose work brings them into face-to-face contact with members of the public. By doing so, it sought to highlight the problem of assaults on such workers and provide them with additional protection. Under the terms of the Bill, the proposed offence would have been prosecuted under summary procedure, with a maximum custodial sentence of 12 months and/or a fine of up to £10,000.

The Bill as introduced would not have extended the scope of the criminal law – any behaviour which could have been prosecuted under the proposed statutory offence can be prosecuted under existing criminal offences such as common law assault. A conviction for the existing common law offence of assault, when prosecuted in the summary sheriff courts, currently attracts the same maximum sentence as the proposed offence. However, common law assault may also be prosecuted under solemn procedure where the maximum sentences are higher.

A key argument advanced by those supporting the Bill was that the Parliament would, by passing it, send out a strong public policy message that it views assaults on relevant workers as a particular problem which should be treated as such by all those involved. Supporters of the Bill also sought to draw parallels between its provisions and the protections currently provided by the Emergency Workers (Scotland) Act 2005. The Bill was similar to the 2005 Act in providing for a specific statutory offence of assaulting particular types of
worker. There were, however, also differences, including the fact that the 2005 Act also makes it an offence to obstruct or hinder a relevant worker.

**Parliamentary consideration**

The Economy, Energy and Tourism Committee’s stage 1 report noted that “it is clear that there is strong support for the basic principle that the rights of those who provide a service to the public should be respected”, but questioned “whether primary legislation is the most appropriate method of seeking to ensure the protection of public facing workers” (paragraph 82). The Committee stated that it:

> “welcomes, and shares, the commitment of the member in charge of the Bill to promote the protection of, and respect for, public facing workers and recognises that there is a need for a culture change to tackle unacceptable behaviour towards those workers.” (paragraph 85)

However, its report concluded that:

> “the proposals in the Bill will not extend the protection currently available under the common law offence of assault and therefore recommends that the general principles of the Bill are not agreed to.” (paragraph 86)

Instead, the report recommended that other action is taken, stating that:

> “The Committee is of the view that the introduction and application of both sentencing and prosecution guidelines in relation to assaults on workers providing a public service would be beneficial in tackling the perception that aggravating circumstances are not taken seriously.” (paragraph 64)

In arguing for the Bill, Hugh Henry MSP (the member in charge of the Bill) stated during the stage 1 debate that:

> “The bill is based on the simple notion that anyone who attacks a worker who is serving the public should be charged with a specific offence and punished accordingly. The Parliament accepted the principle of such an approach when it passed the Emergency Workers (Scotland) Act 2005. The bill seeks to adopt similar measures and provide them for workers other than police officers, fire officers and health service staff.” (col. 31855)

In explaining why the Scottish Government did not support the Bill, the Justice Secretary said during the stage 1 debate:
“No one disagrees that workers who serve the public deserve protection. What the stage 1 scrutiny has revealed, however, is that there is disagreement on how best that can be achieved. It is important to be clear about the effect that the bill would have if it were passed. It would take a bit of the existing common law of assault and replicate it as a new statutory offence. It would not extend the criminal law in any way and it would not, therefore, extend new protections at all.” (col. 31859)

As noted above, the Bill fell after a majority of MSPs voted against a motion seeking the agreement of the Parliament to its general principles.

**Criminal Sentencing (Equity Fines) (Scotland) Bill**

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<td>Introduced on:</td>
<td>1 June 2010</td>
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<tr>
<td>Introduced by:</td>
<td>Bill Wilson (Member’s Bill)</td>
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**Passage of the Bill**

The Criminal Sentencing (Equity Fines) (Scotland) Bill was introduced in the Parliament by Dr Bill Wilson MSP on 1 June 2010. The Parliament’s Justice 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 should not be agreed. Following this recommendation, Dr Wilson withdrew the Bill on 25 November 2010, prior to a stage 1 plenary debate being held.5

**Purpose and objectives of the Bill**

The Bill sought to add to the range of sentences which courts can employ where a public limited company is convicted of a criminal offence – allowing them to impose what was referred to as an “equity fine”. As for other fines, a court would impose a fine of a specified amount. The difference being that the company would be required to pay that amount from the proceeds of a new issue of shares in the company.

The policy memorandum published along with the Bill argued that courts dealing with crimes committed by public limited companies should have a

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5 Rule 9.13 of the Parliament’s Standing Orders allows a bill to be withdrawn by the member in charge of it. Where a bill has completed stage 1 (which the Criminal Sentencing (Equity Fines) (Scotland) Bill did not), a bill may only be withdrawn with the agreement of the Parliament.
sentencing option which allows them to impose a financial penalty, the impact of which will be felt by the owners of the company (i.e. the shareholders). It was intended that the equity fine would achieve this through a dilution of the value of the shareholding of existing shareholders in the company.

Parliamentary consideration

In his statement on legislative competence, the Parliament’s Presiding Officer indicated that, in his view, the provisions of the Bill were not within the legislative competence of the Scottish Parliament. This was on the basis that it sought to legislate in relation to issues of company law which are reserved to the UK Parliament under the terms of the Scotland Act 1998. This assessment was disputed by Dr Wilson.

Schedule 5 to the Scotland Act 1998 provides that the “creation, operation, regulation and dissolution of types of business association” is a reserved topic. Public limited companies are a type of business association. Thus, the question of legislative competence turned on whether or not the Bill sought to deal with the operation or regulation of public limited companies.

Following consideration of evidence relating to legislative competence, the Justice Committee stated in its stage 1 report that:

“The Committee’s view is that this Bill, because its primary purpose is to enable a court to order a company to alter its share capital, necessarily makes provision relating to the operation and regulation of business associations – a matter that is reserved to the UK Parliament. The Committee does not accept that the Bill relates only to the devolved matter of criminal sentencing, or that its provision is equivalent to an alteration of the levels of fines that may be imposed on corporate offenders. The Committee also does not consider that the application of section 101 is relevant in this instance.

The Committee therefore does not believe that this Bill is, or could become, fit to be passed – or, if it were passed, that it would survive a challenge to its legislative competence either before or after enactment.

In these circumstances, the Committee does not believe that it would be an effective use of Parliamentary resources to carry out a full Stage 1 inquiry on this Bill in order to reach an informed view on its policy merits.” (paragraphs 8-10)

In light of the above, the Justice Committee recommended that the general principles of the Bill should not be agreed by the Parliament.
The Bill was subsequently withdrawn by Dr Wilson without it being considered by the whole Parliament at stage 1.

**Damages (Scotland) Bill**

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 49</th>
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<tr>
<td>Introduced on:</td>
<td>1 June 2010</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Bill Butler (Member’s Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>3 March 2011</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>7 April 2011</td>
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**Passage of the Bill**

The Damages (Scotland) Bill [SP Bill 49] was introduced in the Parliament on 1 June 2010. Stage 1 commenced on 7 September 2010 with the Justice Committee as the lead committee. The Stage 1 (general principles) debate took place on 15 December 2010 and the Bill was passed following the Stage 3 parliamentary debate on 3 March 2011.

**Purpose and objectives of the Bill**

The Bill is based on a report of the Scottish Law Commission and contains provisions which seek to consolidate and reform the law on damages for wrongful death, i.e. damages in situations where someone is dying or has died from personal injuries caused by the wrongful act or omission of another person.

**Provisions of the Bill**

Whilst much of the Bill will result in a consolidation of the existing law, when enacted it will also make a number of substantive changes to the existing law. Two major changes are summarised in the paragraphs below.

In the first place, in relation to the victim’s claim for damages, the Bill provides for changes to the way the victim’s claim for future patrimonial loss (i.e. future economic loss) is calculated. At present, the approach usually adopted by the courts is to make a deduction from the victim’s projected future income for his or her reasonable living expenses over the period the victim would have lived (but for his or her injuries), with this latter figure being calculated on a case-by-case basis. However, the Bill provides that the victim’s reasonable living expenses should be presumed to be 25% of the victim’s projected future net
income, although this can be departed from “for the purpose of avoiding a manifestly and materially unfair result” (section 1).

The Bill when enacted will also make changes to the way the relatives’ claim for loss of financial support is calculated. At present, where the relative making the claim is the deceased’s spouse, civil partner, cohabitant or his or her dependent child, loss of support is usually calculated by reference to a formula laid down in the case of Brown v Ferguson but this formula is thought to be outdated, particular in relation to its effect on the dual income family. In respect of the relatives’ claim for loss of financial support, the Bill provides instead that where the relative making the claim is the deceased’s spouse, civil partner, cohabitant or dependent child, it should be assumed that the deceased used 75% of his or her net income to support his or her family. Again, this figure can be departed from “for the purpose of avoiding a manifestly and materially unfair result” (section 7).

**Parliamentary consideration**

At Stage 1 the Justice Committee, whilst approving the general principles of the Bill, expressed concern over several aspects of the Bill as introduced.

In the Bill as introduced it was not possible to depart from the figure of 25% in the context of the victim’s claim for damages, nor was it possible to depart from the figure of 75% in relation to the relatives’ claim for loss of financial support. The Committee recommended an approach allowing for flexibility to deal with unusual sets of circumstances and this recommendation was reflected in amendments to the Bill passed at Stage 2.

The Committee also did not approve of the provision in the Bill, as introduced, to restrict the categories of relative who can claim damages for patrimonial loss and amendments passed at Stage 2 removed this proposed change from the Bill.

The Bill as introduced also stated that, in the context of the relatives’ claim for non-patrimonial losses, such as grief and sorrow, mental illness caused by the victim’s death should not be compensated for. On the other hand, the Committee recommended that the law should be left in its current state until a decisive court ruling on the issue or separate legislation is introduced on damages for psychiatric injury. An amendment to the Bill passed at Stage 2 adopted the Committee’s recommendation in this regard.
Palliative Care (Scotland) Bill

Bill Number: SP Bill 50
Introduced on: 1 June 2010
Introduced by: Gil Paterson (Member’s Bill)
Withdrawn: 2 December 2010

Passage of the Bill

The Palliative Care (Scotland) Bill [SP Bill 50] was introduced in the Parliament on 1 June 2010. The Health and Sport Committee was appointed lead Committee for stage 1 scrutiny of the Bill. The Committee first discussed the Bill on 23 June 2010, and issued its call for written evidence on 7 July 2010. The Committee published its Stage 1 Report on 29 November 2011. The Bill was withdrawn by the Member in Charge on 2 December 2010, under Standing Order Rule 9.13.

Purpose and objectives of the Bill

The Bill stemmed from evidence that palliative care services vary across Scotland in terms of both provision and quality. It sought to “secure access to palliative care (including end of life care) for everyone in Scotland with a progressive life-limiting condition, and their family members” (Policy Memorandum, paragraph 4).

Provisions of the Bill

The Bill had two key provisions, both of which were to be provided for through the introduction of new sections to the National Health Service (Scotland) Act 1978 (c 29) (the 1978 Act):

- to provide or secure the provision of palliative care for persons who have been diagnosed with a life-limiting condition and their family members, based on the reasonable needs of such persons

- setting up reporting arrangements so that provision can be monitored by Scottish Ministers and the Parliament. This will require Scottish Ministers to report annually on the provision of palliative care, based on the data arising from 11 key indicators which are set out in the Bill

The Bill also contained definitions for “life limiting condition”, “palliative care”, “family members” and “reasonable needs”.

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Through these provisions, the Bill sought to give legislative effect to the key objectives of the Scottish Government’s palliative care strategy, ‘Living and Dying Well’, which was published in October 2008.

Parliamentary consideration

The Committee’s call for evidence resulted in 70 written responses being submitted. A wide range of views were expressed on the Bill as a whole and on specific elements of it. A summary of the written evidence was produced for the Committee to alert Members to the key themes raised by respondents. Based on the written responses, the Committee agreed a programme of evidence sessions which took place in late October and early November 2010. It heard from 22 witnesses from a range of backgrounds – the NHS, palliative care organisations, health professionals, the voluntary sector and the Scottish Government. The SPICe briefing on the Bill also includes a brief analysis of the responses received and uses them to discuss the provisions in the Bill.

The range of evidence received is reflected in the Committee’s Stage 1 Report, which was published on 29 November 2010. There was general agreement that palliative care should be given more priority. However, there was much debate surrounding whether or not there should be specific provision for palliative care services in the 1978 Act, over and above the general duty in section 1 to promote a comprehensive and integrated health service. Those in favour considered that the variable nature of palliative care required such a solution. They also pointed to the fact that a precedent had already been set as the 1978 Act specified a number of services that Ministers have a duty to provide. These include the care of mothers and young children (s 38), and vaccinations and immunisations (s 40). Those against a specific duty were concerned that it would skew health service priorities. Many also believed that progress was being made under the current strategy. They argued that this should be fully implemented and analysed before considering whether or not there was a need for legislation.

There was also significant discussion concerning the reporting provisions in the Bill. Whilst there was general agreement that better reporting mechanisms were required, there were differing opinions concerning how easy it would be to measure the indicators outlined in the Bill, given available data sources. This, as well as the provision of services, led to concerns about the assumptions made in the Financial Memorandum.

After considering the evidence, the Committee (2010, paragraphs 146-151) came to a number of conclusions. It noted the motivation of the Member in Charge of the Bill and shared his desire to bring improvements to the delivery of palliative care. However, it also considered that:
• progress was being made under the Scottish Government’s current strategy and that more time was required before its full impact could be evaluated

• that there may be unintended consequences of passing the Bill

• that introducing a statutory duty in primary legislation may result in the flexibility of service provision being lost

However, it also sought a commitment from the Scottish Government to produce a suite of appropriate indicators to allow for the monitoring and reporting of progress against the strategy.

It recommended, by a majority, that the Parliament should not agree to the general principles of the Bill.

Following publication of the Stage 1 Report, on 2 December 2010, the Member in Charge notified the Presiding Officer that he was withdrawing the Bill, under Standing Order Rule 9.13.

Property Factors (Scotland) Bill

Bill Number: SP Bill 51
Introduced on: 1 June 2010
Introduced by: Patricia Ferguson (Member’s Bill)
Passed: 3 March 2011
Royal Assent: 7 April 2011

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Passage of the Bill

The Property Factors (Scotland) Bill ("the Bill") is a Member's Bill introduced by Patricia Ferguson MSP on 1 June 2010. The Local Government and Communities Committee was designated as the lead committee for stage 1 consideration of the general principles of the Bill. The Committee’s stage 1 report was published on 16 November 2010. The Committee agreed, with some caveats, to recommend to the Parliament that the general principles of the Bill be agreed to. The stage 1 debate took place on 8 December 2010, when the general principles of the Bill were unanimously agreed to by Parliament. Stage 2 proceedings took place on 19 January 2011 and 26 January 2011. Stage 3 proceedings took place on 3 March 2011 when the Bill was passed unanimously by the Parliament.
Purpose and objectives of the Bill

The Bill requires property factors to be registered on a ‘property factors register’ and makes provision for the establishment of a system for the resolution of disputes between homeowners and property factors.

Provisions of the Bill

Part 1 of the Bill relates to the registration of property factors. This part of the Bill, amongst other things, provides that the Scottish Ministers must prepare and maintain a register of property factors; defines what is meant by the term “property factor”\(^6\); makes it an offence for a property factor to operate without being registered; requires the Scottish Ministers to consider whether a property factor is a fit and proper person to be registered as a property factor; requires the Scottish Ministers to prepare a code of conduct as to minimum standards of practice expected by registered property factors; and requires Scottish Ministers to allocate a number to each registered property factor which registered property factors must include in any document sent to a homeowner (the “property factor registered number”). The provisions in the Bill relating to the property factor registered number were added at stage 3.

Part 2 of the Bill relates to dispute resolution. The main effects of Part 2 of the Bill are to establish a homeowner housing panel and homeowner housing committees to consider disputes between factors and homeowners; enable a homeowner to apply in writing to the homeowner housing panel for a determination of whether their property factor has failed to comply with any term of the contract between them or to ensure reasonable compliance with the property factors code of conduct; and make it an offence to fail, without reasonable excuse, to comply with a property factor enforcement order issued by a homeowner housing committee.

The Financial Memorandum identifies the costs linked to the homeowner housing panel as including staff fees and expenses, obtaining reports and the hire of premises for hearings. It states that the “costs are expected to be modest as the Bill would utilise the existing infrastructure of the private rented housing panel” (PRHP) and explains that the “precise cost cannot currently be quantified since it will be demand-led” but that they were “unlikely to exceed the current budget for the PRHP.” The Budget for the PRHP in 2007/08 was £428,000 with an actual spend of £386,482 for the year. Similarly, in 2008/09 the budget was £414,000, with a spend for the year of £377,877. According to the Scottish Government, the indicative cost of extending the remit of PRHP would be in the region of £103,000 per year in addition to further administrative and organisational costs associated with handling and filtering cases.

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\(^6\) The statutory definition includes local authorities, housing associations and land maintenance companies (a point clarified during the passage of the Bill). This part of the Bill also allows the Scottish Ministers to modify the definition.
Part 3 of the Bill, amongst other things, provides that the Bill shall come into force on 1 October 2012 (or such earlier date as the Scottish Ministers may by order appoint).

Parliamentary consideration

At stage 1, the Committee agreed, albeit with some caveats, to recommend to the Parliament that the general principles of the Bill be agreed to. During the stage 1 debate, the Minister for Housing and Communities (Alex Neil MSP) indicated that the Government, like the Committee, supported the general principles of the Bill, but that greater clarity was required in a number of areas.

The introduction of a statutory regulatory framework, as opposed to a voluntary accreditation scheme, for property factors was one of the key areas of debate to emerge from the evidence heard and received by the Committee at stage 1. In its stage 1 report, the Committee agreed that there was a need to establish a statutory framework to regulate property factors. During the stage 1 debate, the Minister indicated that the government had come to accept that a statutory approach was appropriate.

Significant concerns were raised at stage 1 in relation to the provisions of the Bill which provide for the removal of a property factor from the register (sections 8 and 9). At stage 2, amendments were passed which sought to allay the concerns expressed at stage 1 about the deregistration of property factors by providing a notice period of 21 days for removal from the register in order to enable customers to take steps to find a replacement factor.

Although there was a widespread recognition in evidence concerning the need for a dispute resolution system, there were differing views as to what form that should take. During the stage 1 debate, the Minister indicated the Scottish Government’s preference for an ombudsman system on the grounds that the costs of running an ombudsman scheme would be lower and would, in any case, fall to the industry rather than the taxpayer. At stage 2, amendments were passed that sought to ensure that the costs of the dispute resolution service provided for in the Bill do not fall entirely to the taxpayer. However, the system of dispute resolution originally proposed by the Bill was, in the main, retained.

A major issue to emerge during consideration, although not specifically dealt with by the Bill, was the ability of homeowners to switch property factor. Evidence was presented to the effect that switching provider was particularly difficult where land-owning maintenance companies were concerned. During the stage 1 debate, the Minister indicated that the Government would carry out research on switching by residents. During the stage 3 debate, the Minister said that the Government would shortly be issuing a consultation, which will cover switching of land maintenance companies and will ask whether more information can be provided to prospective home owners on potential land maintenance obligations.
Passage of the Bill

The Wildlife and Natural Environment (Scotland) Bill [SP Bill 52] was introduced in the Scottish Parliament on 9 June 2010. Stage 1 began on 23 June 2010 with the Rural Affairs and Environment Committee designated as the lead committee. The Stage 1 (general principles) debate took place on 2 December 2010, and the Bill was passed following the Stage 3 parliamentary debate on 2 March 2011. The Bill received Royal Assent on 7 April 2011.

Purpose and objectives of the Bill

The Bill makes provision for a range of measures designed to update legislation protecting wildlife in Scotland and to ensure that legislation which regulates and manages aspects of the natural environment is fit for purpose. It is intended to:

- Maintain the high quality of Scotland’s natural environment and biodiversity
- Ensure that wildlife and natural environment legislation is responsive to the needs of economic and social development in Scotland

Provisions of the Bill

The Bill is in 35 sections (6 parts) and a schedule. It deals with a wide range of issues under the broad theme of updating wildlife protection legislation. Specifically, the Bill makes provisions to:

- modernise game law
- abolish the designation ‘areas of special protection’ (due to powers with similar effect existing in other legislation)
- improve snaring practice
- regulate invasive non-native species
- change the licensing system for protected species
- amend current arrangements for deer management and stalking
- strengthen the law relating to the protection of badgers
- make changes to the times at which muirburn may be practised and how it is managed
- make operational changes to the management of Sites of Special Scientific Interest (SSSI)

Parliamentary consideration

The Rural Affairs and Environment Committee (RAEC) took evidence between June and November 2010. Based on the evidence taken, the committee noted 115 recommendations and conclusions in its Stage 1 Report. At Stage 2, the RAEC considered 166 amendments, of which 70 were successful.

The most significant change to the Bill at Stage 2 resulted from Government amendments to introduce vicarious liability. During Stage 1 the Committee heard evidence that gamekeepers persecute birds of prey because they are either explicitly or implicitly encouraged to do so by their employers. The current law includes an offence of “knowingly causing or permitting” but the Committee heard that it has rarely been possible to secure a conviction in such cases. The amendment means that where a person has committed certain offences against wild birds, or set traps for them or possessed poisons illegally under the Wildlife and Countryside Act 1981, that person’s employer, can be charged with the same offence.

A number of Government amendments were agreed to on the provisions dealing with invasive non-native species (INNS). These include an amendment which responded to a recommendation in the Committee’s Stage 1 report that the Code of Practice on INNS should be subject to Parliamentary Procedure.

An amendment from John Scott MSP was agreed to which makes the code of practice on sustainable deer management subject to affirmative parliamentary procedure.

Some other amendments were withdrawn or not moved. These related to:

- Providing for various additional measures to deter bird of prey persecution, where ultimately Government would have powers to restrict the shooting of game in certain areas.
- Inconsistencies in the use of single witness evidence when trying game poaching and egg stealing offences and other wildlife crimes. The Committee heard evidence that cases which turned on the evidence of one witness alone were rarely, if ever, brought, but also that there was inconsistency in that single witness evidence was possible for poaching and egg-stealing, but not other wildlife crimes.
- Banning snaring, or requiring snares to be marked with an individual identification number.
- Extending the Scottish Society for the Prevention of Cruelty to Animals current animal welfare investigation powers to allow them to have a wider role in investigating wildlife crime.
- Requiring land owners/occupiers to further sustainable deer management by complying with a code of practice drawn up by SNH, or requiring owners/occupiers in a particular area to collaborate in the production of a deer management plan.

At Stage 3, 30 amendments were agreed to without division and 6 by division; 13 were disagreed to by division; 3 were moved and withdrawn; and 11 were not moved. Key changes to the Bill at Stage 3 include:

- Extending the period of “catching up” (the after season period where it is permissible to gather up birds for breeding purposes) from 14 to 28 days.
- Requiring a chief constable to take account of whether snaring is the most appropriate method of control before issuing an ID number
- Requiring those who set snares to keep a record of location, date when set, and what was caught
- Establishing a review of the snaring provisions in the Bill
- Further extension of the offence of vicarious liability

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill

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<tr>
<th>Bill Number:</th>
<th>SP Bill 53</th>
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<tr>
<td>Introduced on:</td>
<td>29 September 2010</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Nicola Sturgeon (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>22 March 2011</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>27 April 2011</td>
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Passage of the Bill

The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Bill (SP Bill 53) was introduced in the Parliament on 29 September 2010. The Equal Opportunities Committee, as lead Committee, commenced Stage 1 by issuing a call for written evidence on the general principles of the Bill on 30 September 2010. The Committee’s Stage 1 report was published on 26
January 2011 and the Stage 1 debate took place on 2 February 2011. The Committee considered amendments at Stage 2 at a meeting of 1 March 2011. The Bill was passed following the Stage 3 debate on 22 March 2011.

**Purpose and objectives of the Bill**

The aim of the Bill is to provide a specific civil remedy for those threatened with forced marriage and those already in such a marriage. An underlying aim of the Bill is to bring Scotland in line with existing legislation in the rest of the UK in terms of preventing forced marriage and protecting victims.

**Provisions of the Bill**

The Bill has two main provisions:

- **Part 1** makes provision for forced marriage protection orders (FMPOs) to protect people from being forced to enter into a marriage without their free and full consent and to protect those who have already been forced to enter into marriage without such consent. A FMPO will allow a sheriff court or the Court of Session to require those responsible for forcing another person into marriage to stop or change their behaviour or to require them to carry out one or more of a range of actions, for example, refrain from certain conduct, comply with certain directions, or provide information to the court. Breach of an FMPO would be a criminal offence. The Bill would also allow for local authorities and the Lord Advocate to act as designated relevant third parties to apply, without leave, for an FMPO on behalf of vulnerable victims.

- **Part 2** clarifies the jurisdictional rules that apply where individuals, including victims of a forced marriage, wish to seek a declaration from the sheriff court to make such a marriage void.

**Parliamentary consideration**

The Equal Opportunities Committee issued a call for written evidence on 30 September 2010 and held two oral evidence sessions at Stage 1 on 23 November 2010 and 14 December 2010, which included representation from a number of organisations which support victims of forced marriage, as well as ACPOS, officials from the UK Ministry of Justice and the Minister for Housing and Communities. Throughout the Parliamentary process there has been broad support for the main principles of the Bill. At Stage 1, the Committee’s report notes that the Bill was welcomed as a positive step in offering protection to victims of forced marriage. The Committee reached the following conclusion in its Stage 1 report:

> “Having heard harrowing evidence on the damage that forced marriage does to individuals in particular and to society more generally, the
Committee supports the view expressed by many witnesses that while numbers may be relatively low, the detrimental impact of forced marriage is extremely high and cannot be tolerated; that civil remedies are not sufficient; and that forced marriage must be addressed through more victim-centred legislation”.

Some recommendations for further improvements to the Bill, and requests for additional information or clarification, were put forward by the Committee. The Scottish Government responded to the Committee’s Stage 1 report on 14 February 2011.

Twelve amendments were lodged at Stage 2. Amendments agreed to at Stage 2 reflected points for clarification including the definition of ‘force’ and power of arrest attached to breach of an FMPO.

Six amendments were lodged by the Scottish Government at Stage 3, all of which were agreed to. These included extending the provision for victims and third parties to apply to vary, recall or extend an FMPO to include individuals who were not originally involved with the order. The aim is to avoid difficulties where a victim wishes to have support from a different agency.

The Bill was passed following the Stage 3 debate on 22 March 2011.

**Private Rented Housing (Scotland) Bill**

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<tr>
<th>Bill Number:</th>
<th>SP Bill 54</th>
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<tr>
<td>Introduced on:</td>
<td>4 October 2010</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Nicola Sturgeon (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>17 March 2011</td>
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<tr>
<td>Royal Assent:</td>
<td>20 April 2011</td>
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**Passage of the Bill**

The Private Rented Housing (Scotland) Bill [SP Bill 54] was introduced in the Parliament on 4 October 2010. The Local Government and Communities Committee was designated as the lead committee. The Stage 1 (general principles) debate took place on 27 January 2011 and the Bill was passed following the Stage 3 parliamentary debate on 17 March 2011.
Purpose and objectives of the Bill

The principal policy objectives of the Bill, as introduced, were to, “...improve standards of service for consumers in private rented housing and enable continued sustainable growth in the sector”.

Provisions of the Bill

The Bill, as introduced, was structured into four main parts. Part 1 proposed amendments to the private landlord registration system, as set out in the Antisocial Behaviour etc (Scotland) Act 2004, with the aim of supporting and assisting local authorities to enforce the system. Part 2 proposed some changes to the HMO licensing regime, as set out in the Housing (Scotland) Act 2006, with the aim of improving the effectiveness of the regime. Part 3 proposed to introduce a new statutory overcrowding notice that local authorities could serve on a landlord of a privately rented house where overcrowding is linked to an adverse effect on the health or wellbeing of the occupants, neighbours or others or on the amenity of the locality. Finally, Part 4 proposed some miscellaneous provisions that related to the private rented sector tenancy regime, for example, a provision proposed that landlords must provide tenants with specified documents (a tenant information pack) at the start of the tenancy.

Parliamentary consideration

The Local Government and Communities Committee, in its Stage 1 Report, supported the general principles of the Bill but expressed some concern about the practical application of the proposed overcrowding statutory notice. The Committee was concerned that it was difficult to predict the likely consequences arising from the provisions in relation to levels of homelessness and the impact on housing stock.

Thirty-three amendments were lodged at Stage 2, of which eighteen were agreed. Most of the amendments agreed were lodged by the Scottish Government and the majority of those related to the provisions on overcrowding statutory notices (OSNs) (with a smaller number relating to landlord registration). Amongst the amendments agreed were those that sought to ensure that tenants in properties affected by an overcrowding statutory notice receive appropriate assistance, by changing the power for a local authority to provide information and advice to occupants of a house, where a notice is served, to a duty to do so.

The two non-Government amendments that were agreed to sought to facilitate increased institutional investment in the private rented sector through amendments to the Land Tenure Reform (Scotland) Act 1974. A non-Government amendment was lodged that would have required Scottish Ministers to report regularly on the use of overcrowding statutory notices. The Minister was supportive of the principle of the amendment but suggested that
the drafting could be improved. A revised version of the amendment was brought forward at Stage 3 and was agreed.

A number of non–Government amendments relating to HMOs were lodged at Stage 2. Some of these sought to address the perceived negative impact of large concentrations of HMOs in certain localities. This gave rise to a debate about the extent to which the Bill could, or should, address these issues. None of the amendments in relation to HMOs were agreed at Stage 2.

However, at Stage 3 amendments relating to HMOs were agreed. One of these amendments gives local authorities powers to refuse to grant an HMO licence if it considers that there is (or as a result of granting the licence there would be) overprovision of HMOs in the locality. Another amendment extends the list of factors that local authorities must consider when determining whether a property is suitable for occupation as an HMO to include whether any rooms have been subdivided or whether rooms have been adapted so as to result in an alteration to the situation of the water and drainage pipes in it.

Most of the other amendments agreed at Stage 3 were minor or of a technical nature.

**Reservoirs (Scotland) Bill**

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<th>Bill Number:</th>
<th>SP Bill 55</th>
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<tr>
<td>Introduced on:</td>
<td>6 October 2010</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Richard Lochhead (Executive Bill)</td>
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<tr>
<td>Passed:</td>
<td>9 March 2011</td>
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<td>Royal Assent:</td>
<td>12 April 2011</td>
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**Passage of the Bill**

The Reservoirs (Scotland) Bill [SP Bill 55] was introduced in the Scottish Parliament on 6 October 2010. Stage 1 began on 1 December 2010 with the Rural Affairs and Environment Committee designated as the lead committee. The Stage 1 (general principles) debate took place on 27 January 2011, and the Bill was passed following the Stage 3 parliamentary debate on 9 March 2011. The Bill received Royal Assent on 12 April 2011.

**Purpose and objectives of the Bill**

The Bill makes provision for a new legal and administrative framework for the construction and management of reservoirs with the objective of reducing the
risk of an uncontrolled release of water and the consequences of any subsequent flooding.

The Bill also provides for the creation of offences to support the Water Environment and Water Services (Scotland) Act 2003 (asp 3). These provisions are not connected to those relating to reservoir safety.

Provisions of the Bill

Part One of the Bill creates a framework for the construction and management of reservoirs to reduce the risk of an uncontrolled release of water and the consequences of subsequent flooding. This part sets out a new regulatory regime for the safe construction and operation of controlled reservoirs in Scotland, and makes provision in the following main areas:

- definition of controlled reservoirs as being capable of holding 10,000m$^3$ or more of water, including associated infrastructure e.g. spillways, valves and pipes; and their compulsory registration by managers
- classification of each reservoir according to risk
- regulation, supervision and inspection of controlled reservoirs by panels of engineers
- requirement for incident reporting, flood planning, and for SEPA to enforce the provisions of the Bill

Part Two of the Bill provides for the creation of offences to support the Water Environment and Water Services (Scotland) Act 2003. These are not connected to Part One.

Parliamentary consideration

The Rural Affairs and Environment Committee took evidence between December 2010 and February 2011. Based on this, the committee raised concerns over:

- the definition of a controlled reservoir to include pipes, spillways, etc.; it was thought that this might impose an unrealistic and costly duty of inspection on reservoir managers
- the duty of multiple reservoir managers to co-operate with each other
- technical points relating to the appropriate role of engineers during construction, and ongoing inspection and supervision of reservoirs
- a lack of provisions enabling SEPA to charge registration and subsistence fees
• technical aspects of the Bill requiring further consultation with the Institution of Civil Engineers (ICE)
• the costs to, and financial assistance for, reservoir managers new to regulation

The main changes made to the Bill following Stage 2 were:

• an amendment to the definition of a controlled reservoir, removing the requirement to inspect all intakes and tunnels potentially spread over a substantial area
• clarification of who is intended to be captured as the manager of a reservoir, and the duty of multiple reservoir managers to co-operate with each other
• clarification of the appropriate role for engineers, as well as a number of changes to the supervision, inspection, certification and reporting regime throughout the lifetime of a reservoir
• SEPA enabled to charge for registration and subsistence fees in relation to costs incurred in the exercise of its functions under the Bill, which were omitted from the Bill as introduced
• Scottish Ministers given the power to issue grants to reservoir managers of high or medium risk reservoirs which were not previously regulated to assist them with compliance with obligations arising as a result of the Bill

At Stage 3, 20 minor drafting amendments were agreed to without division.

Public Records (Scotland) Bill

Bill Number: SP Bill 56
Introduced on: 7 October 2010
Introduced by: Fiona Hyslop (Executive Bill)
Passed: 16 March 2011
Royal Assent: 20 April 2011

2011 asp 12

Passage of the Bill

The Public Records (Scotland) Bill (SP Bill 56) was introduced in Parliament on 7 October 2010. Stage 1 commenced on 27 October 2010 with the Education, Lifelong Learning and Culture Committee (ELLC) as the lead committee, the Bill was also considered by the Subordinate Legislation
Committee. The Stage 1 (general principles) debate took place on 10 February 2011 and the Bill was passed following the Stage 3 parliamentary debate on 16 March 2011.

**Purpose and objectives of the Bill**

The Public Records (Scotland) Bill was a technical bill which sought to introduce an obligation, on named Scottish public authorities, to produce and implement a Records Management Plan. The Bill was part of the legacy of the Historic Abuse Systematic Review which uncovered significant failures in records management in residential schools and children’s homes. The Bill also sought to amend the provisions of the Public Records (Scotland) Act 1937 in relation to Scottish Court records.

**Provisions of the Bill**

As well as introducing an obligation, on named Scottish public authorities, to produce and implement a Records Management Plan (RMP) the Bill also gives the Keeper of the Records of Scotland (the Keeper) a statutory role to issue guidance to the authorities on the form and content of the RMPs, and to prepare a model plan.

The Bill also gives the Keeper the power to review whether authorities are complying with their plans and the power to issue warning notices, and publicise their issue, to authorities who are failing to comply with their obligations under the provisions of the Bill. The Bill also provides the meaning of “public records” and establishes the status of the records of contractors carrying out functions on behalf of a named authority.

The Bill’s provisions also amend the Public Records (Scotland) Act 1937 to deal with the transmission of Scottish court records to the Keeper.

Schedule 1 of the Bill provides a list of the authorities which will be subject to the provisions of the Bill.

**Parliamentary consideration**

In their Stage 1 report the ELLC Committee noted concerns were raised, by a number of the witnesses and in the written evidence, that the legislation would mean that there would be a statutory requirement to produce RMPs instead of a voluntary scheme. However the Committee agreed with the other witnesses, including the Scottish Information Commissioner, that as the bodies should already have addressed records management in order to comply with the Freedom of Information (Scotland) Act 2002, the new legislation would bring a consistency to records keeping currently lacking across the sector.
Amendments agreed at Stage 2, from both Committee members and the Scottish Government Minister, changed the tone of the Bill so that the language focused on continuing improvement rather than failure. Amendments from the Scottish Government were also agreed to ensure that when the Keeper decides on proposed RMPs he must take regard of the nature of the authority and its public records, so that a one-size-fits-all approach will not be taken.

Another amendment from the Minister placed a duty on authorities to ensure that their RMPs should take account of the different levels of risk associated with the management of different kinds of records. The Government believed this addressed concerns raised by the voluntary sector and COSLA that the Bill should focus on records that are considered to be high risk.

The Government also addressed the concerns of the voluntary sector bodies – which provide common services across different authorities that they might need to work with a multitude of RMPs – by moving amendments making it easier for groups of authorities to choose to have common RMPs for separate functions, e.g. child care functions.

Scottish Ministers also had amendments accepted which require the Keeper to consult on guidance and model RPMs with the authorities affected by them. However other amendments from Committee Members to place a similar requirement with regard to any affected contractors were not moved.

Government amendments were also agreed to restrict the Keeper’s power to require an authority to review and submit its plan for approval.

Local Electoral Administration (Scotland) Bill

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2011 asp 10

Passage of the Bill

The Local Electoral Administration (Scotland) Bill was introduced in the Parliament on 7 October 2010. Stage 1 commenced on 16 November 2010 with evidence being taken by the Subordinate Legislation Committee. The lead Committee was the Local Government and Communities Committee
which held two oral evidence sessions on the Bill on 17 November and 18 December 2010. The Stage 1 (general principles) debate took place on 2 February 2011. Stage 2 consideration of the Bill was completed at a meeting of the Local Government and Communities Committee on 2 March 2011. The Bill was passed, following the Stage 3 Parliamentary debate, on 16 March 2011. The Act received Royal Assent on 20 April 2011.

Purpose and objectives of the Bill

The Bill has a dual purpose. Firstly, it seeks to establish an Electoral Management Board for Scotland (EMB) with responsibility for local government elections. Secondly, it proposes an extension of the Electoral Commission’s remit to include Scottish local government elections. In broader terms, the Bill forms a part of a wider response to the events around the 2007 Scottish Parliament and local government elections.

Provisions of the Bill

The Bill consists of two substantive parts. Part One deals with establishing an EMB and details the membership of the EMB, reporting arrangements of the Body and provides the convener of the EMB with a power of direction over Returning Officers.

Part Two of the Bill extends the Electoral Commission’s remit to include local government elections which is the only set of elections taking place in Scotland, and in the UK, which the Electoral Commission previously had no formal role in supporting. The Bill enables the Electoral Commission to:

- report on the administration of local government elections
- include local government elections in Scotland within the Electoral Commission’s Observers Scheme
- be consulted on changes to electoral law and involved in changes to electoral procedures
- apply performance standards to returning officers for local government elections, and
- provide guidance and advice to electoral administrators, candidates and political parties

The Bill also requires the Electoral Commission to produce an annual report on the performance of their functions in relation to local government elections in Scotland, which will be laid before the Scottish Parliament and be
The Bill therefore provides for an independent UK body to report to the Scottish Parliament for its delivery of the functions outlined above.

**Parliamentary consideration**

The general principles of the Bill, in terms of improving electoral administration in Scotland, were generally welcomed by the Local Government and Communities Committee. The Committee did comment that it would be logical for the remit of the EMB to be extended to include other elections taking place in Scotland, albeit recognising that legislative responsibility for these elections were reserved.

At Stage 2, three amendments to the Bill were lodged, all by the Scottish Government, and all three amendments were agreed to unanimously by the Local Government and Communities Committee. The amendments agreed to, which were primarily technical in nature, included enabling the Scottish Public Sector Ombudsman to consider any complaints relating to the Electoral Commission’s functions with regard to Scottish local government elections. At Stage 3, one amendment to the Bill was lodged by the Scottish Government. The amendment, which was technical, was agreed to unanimously.

**Certification of Death (Scotland) Bill**

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2011 asp 11

**Passage of the Bill**

The **Certification of Death (Scotland) Bill** [SP Bill 58]) was introduced in the Parliament on 7 October 2010. Stage 1 commenced on 24 November 2010 with the Health and Sport Committee as the lead committee. The Stage 1 (general principles) debate took place on 3 February 2011 and the Bill was passed following the Stage 3 parliamentary debate on 16 March 2011. The Bill received Royal Assent on 20 April 2011.

**Purpose and objectives of the Bill**

The Bill seeks to establish a system to review medical certificates of cause of death and still-birth certificates by medical reviewers and the senior medical...
Provisions of the Bill

The functions of the six medical reviewers and the senior medical reviewer will be to review a random sample of Medical Certificates of Cause of Death, which are referred to them by the Registrar General for Scotland.

The Registrar General will be required to refer for review certificates of a particular description, as requested by a medical reviewer. This may take place after the death has been registered. And a district registrar will have discretion to refer a certificate for review where he or she deems it appropriate. Reviews may also be conducted following the application of an interested person, that is:

- any relative of the deceased
- any person present at the death
- the deceased's executor or other legal representative
- the occupier, at the time of death, of the premises where the death occurred, or
- if there is no such person under (a)-(d) above, any other person having knowledge of the particulars to be registered.

Reviews will be done with a view to assessing the accuracy of the certificates, in respect of the cause of death among other factors. The Bill also proposes to amend the form of medical certificates to show additional medical information and to indicate whether it is safe to cremate a body.

Where a person has died outwith Scotland and the body is to be cremated in Scotland, medical reviewers will determine whether it is safe to cremate the body. They may also assist with arranging a post-mortem in such cases from outwith the UK if no cause of death is available and the body is to be disposed of in Scotland.

The Bill seeks to create the offence of disposing of a body or body parts without authorisation.

There is scope for subordinate legislation throughout the Bill:

- to provide for the form and content of applications for a post-mortem examination of those who have died abroad
- in relation to fees to be charged in respect of medical reviewer functions
• for provision about applications by interested persons, such as the procedure to be followed, the form and content of applications and any action to be taken by medical reviewers in respect of the applications for review made by an interested person

• for any guidance issued for the purposes of, or in connection with, the provisions of the Bill, and

• for specifying the certificates or other documentation required for the burial, cremation or other disposal of the body of a still-born child or a deceased person.

The Bill seeks to provide for the establishment of two pilot test sites, with the outcome reported to the Parliament.

**Parliamentary consideration**

In its **Stage 1 report** the Health and Sport Committee recommended agreement to the general principles of the Bill. However, it expressed concerns surrounding the proposed sample size of certificates referred for review, but welcomed the Minister’s proposals to increase the random sample size and to add an extra tier of review.

The Committee expressed concern at the removal of the requirement for approval from a second and a third doctor from cremation cases. A further concern was expressed about the quality of, and confidence in, the system in respect of the accurate recording of the cause of death, to which the Minister responded in oral evidence that the level of scrutiny would be increased. However, the Committee believed that accuracy in the completion of death certificates could be improved with appropriate use of technology.

Another issue raised was that no level of experience was specified as a pre-requisite for eligibility to sign death certificates and that, if the aim is to drive up quality, there should be an experience qualification specified.

A concern was expressed around medical reviewers’ proposed workload and that the system should not unduly delay disposal of the body and this should be clear in the Bill. Further concerns were raised with respect to particular difficulties for remote and island communities, relating to potential delays in both initial certification and review.

The Committee felt that responsibility for assessing the validity of documentation in cases of repatriation of the deceased for burial or cremation should be exercised centrally.

Because most of the changes to the procedure for review of death certificates apply to subordinate legislation not before the Parliament, there were few amendments passed at Stage 2. But the Bill was amended to empower the medical reviewer to determine whether, in respect of someone who has died abroad and whose body has
been repatriated, that the documentation is in order. This is to be done following the request of a relevant person. In addition, an employee of Health Improvement Scotland (HIS), other than a medical reviewer, may not exercise any function of a medical reviewer other than those under section 16A, that is the verification of foreign death certificates.

At Stage 3, amendments agreed to were largely technical, other than the amendment in the name of Shona Robison MSP. That amendment applied to the ability of Scottish Ministers, under paragraph 2(7) of the Bill, to suspend, by statutory instrument, the referral of certificates for review (a) during an epidemic, or (b) “where the Scottish Ministers consider, on reasonable grounds, that it is necessary to do so to prevent, or to prevent the spread of, infectious diseases or contamination.” The amendment adds subsections to the effect that where the statutory instrument consists only of revoking an earlier order made under subsection (7), or an order revoking an earlier order as well as making any “supplementary, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient.” In such cases, the original statutory instrument will be subject to annulment in pursuance of a resolution of the Parliament.

Double Jeopardy (Scotland) Bill

Bill Number: SP Bill 59
Introduced on: 7 October 2010
Introduced by: Kenny MacAskill (Executive Bill)
Passed: 22 March 2011
Royal Assent: 28 April 2011

2011 asp 16

Passage of the Bill

The Double Jeopardy (Scotland) Bill was introduced in the Parliament in October 2010. The Justice Committee, as lead committee, commenced taking stage 1 oral evidence on the general principles of the Bill in November 2010. The stage 1 debate took place in February 2011 and the Bill was passed following the stage 3 parliamentary debate in March 2011. It was the final bill to be passed during the third session (2007-2011) of the Parliament.

Purpose and objectives of the Bill

The existing common law rule against double jeopardy generally prevents someone from being tried twice for the same crime. The Bill restates that rule in statute. In doing so, it seeks to clarify and reform certain aspects of the current rule – in particular, providing for a number of exceptions to the rule.
Provisions of the Bill

The Bill provides for a general rule against double jeopardy comprising two elements:

- a core rule preventing a second prosecution for offences which a person could have been convicted of in the original case

- a broader principle aimed at preventing the improper splitting of charges by a prosecutor seeking multiple chances of convicting an accused in relation to a single set of acts

It also provides for three exceptions to the general rule against double jeopardy, allowing an acquitted person to be tried again where:

- tainted acquittals – the original acquittal is tainted by an offence against the course of justice (eg one involving the intimidation of witnesses)

- new evidence of admissions – the prosecutor has new evidence that the accused admitted committing the offence

- general new evidence – the prosecutor has other new evidence of guilt

The Bill is based on proposals put forward by the Scottish Law Commission in its Report on Double Jeopardy (2009). However, the Bill (both as introduced and passed) departs from the Commission’s recommendations in a number of important respects. For example, the Commission argued that any general new evidence exception should only apply to cases originally determined after the coming into force of that exception. The Bill does not adopt this restriction, instead allowing retrospective application of the exception.

Parliamentary consideration

In general, the Bill attracted wide support across the Parliament – both in relation to retaining a general rule against double jeopardy and allowing for some exceptions to that rule. Key areas of debate during parliamentary scrutiny of the Bill included the following:

- provisions establishing a general new evidence exception with retrospective application – the general approach in the Bill as introduced was supported by the Parliament and is reflected in the Bill as passed

- provisions restricting the application of the general new evidence exception to a list of particular offences – the Bill was amended to replace the list with provisions restricting the exception to High Court cases
• provisions establishing a specific new evidence exception for admissions which is not restricted to cases involving serious offences (thus applying more widely than the general new evidence exception) – although the provisions establishing this exception were amended (to bring them more into line with the general new evidence exception) the original approach on this point (i.e. to serious offences) is still reflected in the Bill as passed.

In addition, new provisions were added to the Bill, by stage 3 amendment, to ensure that the statutory regime for the disclosure of evidence in criminal cases (set out in the Criminal Justice and Licensing (Scotland) Act 2010) will apply to all relevant stages of a case where the Bill allows for a further prosecution. Although quite substantial, the new provisions were not considered to be controversial.

The Bill was passed at stage 3 without division.

Criminal Procedure (Legal Assistance, Detention and Appeals) Scotland Bill

Bill Number: SP Bill 60
Introduced on: 26 October 2010
Introduced by: Kenny MacAskill (Executive Bill)
Passed: 27 October 2010
Royal Assent: 29 October 2010

2010 asp 15

Passage of the Bill

The Criminal Procedure (Legal Assistance, Detention and Appeals) Scotland Bill [SP Bill 60] was introduced in the Parliament by the Scottish Executive on 27 October 2010. Following agreement by the Parliament to treat the Bill as an Emergency Bill, all 3 stages were taken, and the Bill was passed, on the same day. An Emergency Bill is an Executive Bill which needs to be enacted more rapidly than the normal legislative timetable allows, for example, to amend the law in response to a recent court judgement which has exposed a loophole or problem of interpretation in an existing enactment. An Emergency Bill must first be introduced as an Executive Bill and then be converted to an Emergency Bill by the Parliament, on a motion by a member of the Government.
Purpose and objectives of the Bill

The Cabinet Secretary for Justice introduced the Bill following the judgement by the UK Supreme Court in the case of Cadder v Her Majesty’s Advocate. The Supreme Court found that the practice in Scots law whereby the police could detain a suspect for questioning for a limited period of time (up to 6 hours) without an automatic right of access to a solicitor was contrary to the European Convention on Human Rights. The Bill, amongst other things, sought to address this issue by providing that a suspect must have automatic access to legal advice from the point of their detention by the police.

Provisions of the Bill

The Bill, as introduced, sought to:

- provide a statutory right to legal advice for suspects being questioned by the police
- extend the six-hour maximum period of detention during which a suspect could be detained by the police
- provide a mechanism that can be used (if necessary) to ensure that adequate legal aid arrangements are available for detained suspects
- reinforce the principles of certainty and finality set out in the Supreme Court’s decision in Cadder

Parliamentary consideration

All stages of the Bill were considered on the same day (27 October 2010) in accordance with emergency bill procedure. Key areas of debate during scrutiny of the Bill included:

Right of suspects to have access to a solicitor

The Bill, as introduced, included a provision ensuring that a suspect has a right to have a private consultation with a solicitor prior to and during questioning by the police.

The Bill also provided that a private consultation with a solicitor could be delayed where it was necessary in the interest of the investigation, or the prevention of crime, or the apprehension of offenders. A number of MSPs raised concerns that this particular provision appeared to restrict the rights of suspects to have access to a solicitor during police questioning which had been the subject of the determination in Cadder v HMA. Robert Brown MSP lodged an amendment at stage 2 which sought to delete this provision.
However, after a division, the amendment was disagreed to. Robert Brown revisited this issue with an amendment at stage 3 which sought to ensure that any restriction of a suspect’s right to have access to a solicitor before and during questioning by the police could only take place in “exceptional circumstances”. The Scottish Government accepted this amendment and it was passed without division.

**Extension of detention periods**

The Bill sought to amend section 14 of the Criminal Procedure (Scotland) Act 1995 by providing that the 6 hour maximum period of detention be replaced by an initial maximum period of 12 hours which could then be extended for a further 12 hours giving a maximum detention period of 24 hours. The initial period of detention would only be extended if a “custody review officer” was satisfied that continued detention would be necessary to secure, obtain or preserve evidence relating to an offence in connection with which the person was being detained; an offence in connection with which the detained person was being detained was an indictable offence; and that the investigation was being conducted diligently and expeditiously.

Robert Brown MSP lodged a number of amendments on this issue during stage 2 scrutiny of the bill. Amongst other things, the amendments sought to: (a) retain the six hour period of detention with the possibility of extension up to 12 hours by an officer of the rank of inspector or above only where exceptional circumstances existed; and (b) allow for further extension to the detention period up to a maximum of 24 hours but only on application to a sheriff. Following debate, these amendments were either disagreed to, not moved or withdrawn.

**References by the Scottish Criminal Cases Review Commission (SCCRC)**

The Bill sought to address the possibility of the SCCRC\(^7\) receiving applications on the basis that legal access was denied to a suspect during detention, applications which could potentially be made in relation to historical convictions where no other appeal route was available. The Bill provided that the Commission must have regard to finality and certainty in making referrals to the High Court. It also provided that the court may reject a reference from the Commission if it considers that it would not be in the interests of justice for any appeal arising from the reference to proceed. Finality and certainty in criminal proceedings is identified as a specific factor for the High Court to consider in making this assessment.

During the passage of the Bill, Christine Grahame MSP expressed concern that the role of the Commission would be substantially changed by the above provisions and lodged an amendment at stage 2 to remove the relevant section of the Bill. Following a division the amendment was disagreed to.

\(^7\) The Commission's role is to review and investigate cases where it is alleged that a miscarriage of justice may have occurred in relation to conviction, sentence or both.
Passage of the Bill

The Long Leases (Scotland) Bill [SP Bill 61] was introduced in the Parliament on 10 November 2010. Stage 1 commenced on 18 January 2011 with the Justice Committee as the lead committee. A Stage 1 report was published by that Committee on 3 March 2011. However, the Stage 1 (general principles) debate did not take place and the Bill fell at the dissolution of Parliament.

Purpose and objectives of the Bill

The purpose of the Bill was to convert tenants’ rights under very long leases into ownership and, in so doing, implement the recommendations of a report of the Scottish Law Commission (SLC) on long leases. If the Bill had successfully completed its parliamentary passage it would have been the final part of a series of recent legislative reforms to the system of property law in Scotland based on reports published by the SLC.

Provisions of the Bill

The automatic conversion scheme under the Bill applied to ‘qualifying’ long leases. Broadly speaking, a ‘qualifying’ long lease was defined as a registered lease of over 175 years which had more than 100 years left to run (section 1). As well as the conversion scheme, the other key feature of the Bill was the compensation scheme for former landlords relating to the loss of their rights of ownership on the appointed day (Part 3).

The Bill also made provision for the tenant’s right to opt-out of the conversion scheme for qualifying long leases (Part 4). Additionally, the Bill made provision for other exceptions relating to the scope of the conversion scheme (see, for example, section 1(4) which includes an exception for long leases where the annual rent is more than £100 and an exception for long leases relating to pipes and cables).

Finally, the Bill sought to give opportunities to former landlords to preserve sporting rights associated with qualifying leases (section 7) and would have created a framework for the conversion of certain conditions in a qualifying lease to real burdens (Part 2). A real burden is a form of title condition affecting land which survives changes of ownership of the affected land. The Bill provided for the leasehold conditions converted to real burdens to be
enforceable by various parties, including, in some instances, neighbours to the former tenants.

Parliamentary consideration

The report of the Justice Committee recommended approval of the general principles of the Bill. However, its report also highlighted a number of issues which had arisen during consideration of the Bill at Stage 1.

One of the main issues which the Justice Committee had to consider was whether long leases of common good property should be exempted from the scope of the Bill. The common good is a fund of money and assets owned and administered by each Scottish local authority in respect of each former burgh within the area of that local authority. In many council areas, it consists of a substantial portfolio of land, buildings, other assets and investments. The Committee ultimately was not persuaded by the arguments advanced in favour of such an exemption but noted its disappointment that there was still not an accurate and complete record of common good property in Scotland.

The Committee also had to consider a number of issues relating to the scope of the exemption for leases where the annual rent was £100 or more (section 1(4)). This exemption was intended to exclude from the scope of the Bill leases which were negotiated on commercial terms. However, some stakeholders argued that the exemption was not wide enough to serve this purpose. In its report the Committee welcomed the Scottish Government’s undertaking to consider the evidence received at Stage 1 and to seek to reach agreement with stakeholders on the way forward.
Budget (Scotland) (No 5) Bill

Bill Number: SP Bill 62
Introduced on: 20 January 2011
Introduced by: John Swinney (Executive Bill)
Passed: 9 February 2011
Royal Assent: 16 March 2011

2011 asp 4

Passage of the Bill

The Budget (Scotland) (No 5) Bill [SP Bill 62] was introduced on 20 January 2011. The Stage 1 debate took place on 26 January 2011, the Finance Committee considered the Bill at Stage 2 on 1 February 2011 and the Bill was passed by the Parliament on 9 February 2011.

Purpose and objectives of the Bill

The Budget Bill is the final stage in the annual budget process. This Bill gives parliamentary authority for spending in Scotland for financial year 2011-12. The budget process is intended to allow the Parliament’s subject committees the opportunity to comment on the Scottish Government’s spending plans 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. However, this year’s process was truncated. Due to the UK Spending Review being published in October, and the Scottish Government’s Draft Budget 2011-12 in November, committee scrutiny of the Government’s spending plans took place from November 2010 to January 2011.

Provisions of the Bill

The Bill authorises approximately £30bn of cash expenditure by the Scottish Government 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.
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