

Non-Government Bills Unit: support for members and committees

Executive summary

1. The purpose of this note is to update the SPCB in relation to NGBU support for Members' and Committee Bills (partly as a follow-up to a paper from November 2019), and to seek agreement to continue in Session 6 the current arrangements for securing Bill-drafting resources.

Issues and options

Background: the Non-Government Bills Unit

2. NGBU's main role is to support MSPs seeking to introduce Members' Bills, but it also supports committees with Committee Bills, and outside promoters with Private Bills. In relation to Members' and Committee Bills, NGBU works closely with a small team of solicitors in the Legal Services office.

Background: November 2019 Paper

3. In November 2019, the SPCB considered a paper¹ outlining the situation NGBU then faced with Members' Bills, explaining how it was prioritising its resources to manage an exceptionally high level of demand.

4. At the time, 17 MSPs (all but one NGBU-supported) had obtained the procedural right to introduce a Member's Bill (having completed successfully the two-stage proposal procedure under Rule 9.14 of the standing orders). Six of those had already introduced Bills, and one no longer sought to do so. Of the remaining 10 MSPs, NGBU committed to enabling the first seven to introduce Bills by the procedural cut-off date of 1 June 2020. The paper suggested that there might be enough resource to support one more beyond that, but that it would be impossible to provide support for all the MSPs who had already obtained the right to introduce a Bill or would do so before 1 June.

Developments since November 2019

5. Since the paper was finalised, four more MSPs have obtained the right to introduce a Member's Bill, bringing the total for the session to 21. NGBU completed its work on the seven Bills referred to in the 2019 paper, and all seven have since been introduced. This brings to 12 the number of NGBU-supported Members' Bills introduced in the session – the highest number yet for any session since the Parliament began.

¹ Available on the Parliament website:
[https://www.parliament.scot/SPCB/2019/SPCB\(2019\)Paper_062.pdf](https://www.parliament.scot/SPCB/2019/SPCB(2019)Paper_062.pdf)

6. In the event, it did not prove possible for NGBU to support any additional Members' Bills beyond the seven identified in the 2019 paper. This was partly as a result of the disruption caused by the Covid-19 lockdown, and subsequent competing demands for the resources of Legal Services.

Members' Bills and Committee Bills in Session 5

7. Over the course of the session so far, NGBU clerks have had initial meetings with 49 MSPs to discuss 62 prospective Members' Bills. Thirty-four MSPs have lodged draft proposals, all but three of whom asked for, and were given, NGBU support (one of the others was supported by the Scottish Government and two by external bodies). Twenty-three (of the 34) MSPs have gone on to lodge final proposals.²

8. Of the 21 MSPs who have obtained the right to introduce a Member's Bill, 15 exercised that right by the 1 June deadline, and one more is expected to do so by 30 September.³ Of those 16 members, 12 have introduced NGBU-drafted Bills, one a Scottish Government-drafted Bill and three Bills drafted by other external sources⁴).

9. Two Committee Bills have so far been introduced in Session 5, one by the Standards, Procedures and Public Appointments (SPPA) Committee (on funding for registered political parties) and one by the Economy, Enterprise and Fair Work Committee (on pre-release access to official statistics). The SPPA Committee has published a report containing a proposal for a second Committee Bill (on historic complaints against MSPs). That Bill is currently under preparation.

10. Annexe A to this paper lists all the draft proposals for Members' Bills lodged in Session 5, showing which ones led to Bills being introduced, while Annexe B shows how the headline Session 5 figures for Members' and Committee Bills compare with those from earlier sessions.

Drafting resource in Session 5

11. The SPCB agreed in principle in November 2015 that NGBU could obtain Bill-drafting services from Parliamentary Counsel Office (PCO) as well as from a panel of independent drafters (on which it had relied exclusively up to that point).⁵ A formal agreement with the Scottish Government on access to PCO drafting resources was endorsed by the SPCB in February 2016.⁶ As part

² These figures could still increase, as it remains possible to lodge proposals right up until dissolution.

³ Rule 9.14 allows the Bureau, exceptionally, to extend the deadline for introducing a Member's Bill until 30 September. Johann Lamont MSP was granted such an extension on 18 August 2020 (the first time this has been done) and is therefore expected to introduce a Bill (on disabled childrens' transitions) by that new deadline.

⁴ One of these three was NGBU-supported during the proposal process.

⁵ See Minutes of SPCB meeting on 25 November 2015, item 7:

https://www.parliament.scot/SPCB/2015/SPCB-15-18-M_25-11-15.pdf

⁶ Available on the Parliament website: [https://www.parliament.scot/SPCB/Jan-Jun2016/SPCB\(2016\)Paper_008.pdf](https://www.parliament.scot/SPCB/Jan-Jun2016/SPCB(2016)Paper_008.pdf)

of that, it was agreed that NGBU's Session 5 drafting work would be roughly equally divided between the two sources (PCO and the panel).

12. Over the course of Session 5, the Head of NGBU and Chief Parliamentary Counsel have liaised regularly about the allocation of Bill-drafting work. In total, eight Bills have been allocated to panel drafters (two for each of the four individual drafters) and seven to PCO.

13. This arrangement has worked extremely well. The quality of Bill drafting work from both sources has been consistently high. The cost has also been very similar from each of the two sources – both in terms of the number of hours of drafting time spent on Bills, and on the hourly rate charged.⁷ There is therefore no obvious value-for-money advantage from one source of drafting over the other. Having the choice between two sources of drafting for each Bill has also made it easier to identify a drafter whose skill-set best matches the requirements of that particular bit of drafting work.

14. There were a couple of occasions when progress with particular Bills stalled for a number of weeks because the drafters concerned were temporarily unavailable or tied up with other work. This arose both with panel and PCO drafters and was as much to do with delays in getting instructions to drafters at the times originally agreed (when drafters had said they had availability) as it was with drafters being slow in responding. In both cases, while some time was lost as a result, the overall delay to introduction dates was minor. Although it did not prove necessary to re-allocate work to alternative drafters, it was reassuring to have that option available (as a back-stop).

15. Overall, the Session 5 arrangement has achieved its objective. It has given NGBU better access than it had in previous sessions to consistently high-quality Bill-drafting resources; it has secured value for money; and it has increased the resilience of a business-critical service.

Drafting resource in Session 6

16. For the reasons given above, NGBU proposes to continue with a similar arrangement in Session 6 – that is, to retain a small panel of independent drafters in addition to maintaining its arrangement with PCO, and to rely on each source of drafting for around half of the drafting work the Unit requires.

17. No action is required by the SPCB to continue the existing arrangement with the Scottish Government (allowing NGBU access to PCO drafting resource). The agreement signed in 2016 was not time-limited and so continues indefinitely unless and until either side withdraws from it.

18. The current drafting panel members were appointed for 5 years from November 2016, so their framework contracts do not expire until November 2021. However, the process of recruiting panel drafters (via a publicly-

⁷ PCO charges a standard hourly rate. Panel drafters charge separate rates, which were decided individually as part of the procurement process through which they were recruited to the drafting panels. While these rates vary, the average is similar to the PCO rate.

advertised procurement exercise) does require a substantial lead-time. Accordingly, it would be helpful to have confirmation now that the SPCB is content with the current arrangement (that is, of NGBU having access to a panel of drafters as well as to PCO resource), so that we can plan for that recruitment process in good time.

Resource implications

19. Should the SPCB agree with the above recommendation, there would be some staff time and cost involved in running a procurement exercise to establish a Session 6 drafting panel.

Governance issues

20. Members' and Committee Bills play an important part in the Parliament's legislative function, both in terms of contributing to its legislative output, and in providing a means for important issues of public interest to be aired and subject to robust scrutiny. The ability of NGBU to generate high-quality, well-drafted Bills is central to the effective delivery of this key element of the Parliament's business.

21. For these reasons, it is important that NGBU continues to have access to an adequate supply of Bill-drafting resource, with the flexibility to respond to variable levels of demand. The existing SPCB-Scottish Government agreement provides a robust framework for managing the provision of PCO drafting to NGBU, including on quality, timescales and price. A well-designed procurement exercise can provide a similarly robust framework for managing the supply of drafting by individual panel members. Together, these arrangements should ensure the reliable continuation of Bill-drafting services to NGBU throughout Session 6.

Publication Scheme

22. This paper can be published.

Decision

23. The SPCB is invited to:

- note the contents of this paper
- endorse the continuation of current arrangements for the securing of Bill-drafting services for NGBU during Session 6.

Andrew Mylne
Head of NGBU
September 2020

Draft proposals for Members' Bills, Session 5

This table lists all the draft proposals in Session 5, in the order they were lodged, showing whether a final proposal was lodged (and in what order) and, if so, whether the MSP secured the right to introduce a Bill. It also shows the order in which Bills were introduced, plus (for each Bill) an indication of its current status. Grey shading indicates where proposals or Bills were developed without support from NGBU.

	Topic	MSP (party)	Final proposal order	Right to introduce?	Bill	Status
1	Football Act (repeal)	James Kelly (Labour)	2	Yes	(2) Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland)	Enacted
2	Seat belts on school transport	Gillian Martin (SNP)	1	Yes	(1) Seat Belts on School Transport (Scotland)	Enacted
3	Prohibition of fracking	Claudia Beamish (Labour)	3	Yes		
4	Football (strict liability)	James Dornan (SNP)				
5	Transplantation (authorisation of the removal of organs etc.)	Mark Griffin (Labour)				
6	Tied pubs (code and adjudicator)	Neil Bibby (Labour)	6	Yes	(7) Tied Pubs (Scotland)	Stage 1 scrutiny under way
7	Children (equal protection from assault)	John Finnie (Green)	4	Yes	(3) Children (Equal Protection from Assault) (Scotland)	Enacted
8	Restricted roads (20 mph limit)	Mark Ruskell (Green)	5	Yes	(4) Restricted Roads (20 mph Speed Limit) (Scotland)	Rejected at Stage 1
9	Free personal care (persons under 65)	Miles Briggs (Con)				

	Topic	MSP (party)	Final proposal order	Right to introduce?	Bill	Status
10	Sanitary products (free provision)	Monica Lennon (Labour)	7	Yes	(5) Period Products (Free Provision) (Scotland)	Stage 1 completed
11	Regulation of privately-operated car parks	Murdo Fraser (Con)				
12	Social housing (automatic fire-suppression systems)	David Stewart (Labour)	8	No (SG indication)		
13	Protection of workers (retail and age-related sales etc.)	Daniel Johnson (Labour)	9	Yes	(6) Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland)	Stage 1 completed
14	Licensing of funfairs	Richard Lyle (SNP)	14	Yes	(9) Travelling Funfairs (Licensing) (Scotland)	Introduced and referred to lead committee
15	Pet shop licensing	Jeremy Balfour (Con)	10	No (SG indication)		
16	Industrial disease	Stuart McMillan (SNP)	12	Yes	(8) Liability for NHS Charges (Treatment of Industrial Disease) (Scotland)	Stage 1 scrutiny under way
17	Responsible breeding and ownership of dogs	Christine Grahame (SNP)	13	Yes	(13) Welfare of Dogs (Scotland)	Introduced and referred to lead committee
18	European Charter of Local Self-Government	Andy Wightman (Green)	11	Yes	(10) European Charter of Local Self-Government (Incorporation) (Scotland)	Stage 1 scrutiny under way
19	Culpable homicide	Claire Baker (Labour)	20	Yes	(14) Culpable Homicide (Scotland)	Introduced and referred to lead committee
20	Post-mortem examinations (defence time limit)	Gil Paterson (SNP)	15	Yes	(12) Post-mortem Examinations (Defence Time Limit)	Introduced and referred to lead committee

	Topic	MSP (party)	Final proposal order	Right to introduce?	Bill	Status
21	Restriction of outside remuneration etc. of MSPs	Neil Findlay (Labour)	17	Yes		
22	Protection of livestock	Emma Harper (SNP)	16	Yes	(11) Dogs (Protection of Livestock) (Amendment) (Scotland)	Stage 1 scrutiny under way
23	New-build homes (buyer protection)	Graham Simpson (Con)	19	Yes		
24	Wheelchairs (short-term access)	Jackie Baillie (Labour)	18	Yes		
25	Stalking Protection Orders	Rona Mackay (SNP)				
26	Fair rents	Pauline McNeill (Labour)	22	Yes	(15) Fair Rents (Scotland)	Introduced and referred to lead committee
27	Mediation	Margaret Mitchell (Con)	21	Yes		
28	Whole life custody	Liam Kerr (Con)				
29	Protection and conservation of wild mammals	Alison Johnstone (Green)				
30	Disabled children (transitions)	Johann Lamont (Labour)	23	Yes	(16?)	In pre-introduction process
31	Remote rural communities	Gail Ross (SNP)				
32	Mandatory registration of Automated External Defibrillators	Anas Sarwar (Labour)				
33	Right to food	Elaine Smith (Labour)				
34	Electricians	Jamie Halcro Johnston (Conservative)				

Annexe B

Members' and Committee Bills, Sessions 1-5

This table distinguishes between Members' Bills developed and instructed by NGBU (known as NEBU in Sessions 1-3), and those developed and instructed by other sources (e.g. the Scottish Government, or external persons or organisations). All Committee Bills so far introduced have been developed and instructed by NEBU/NGBU.

Session	Members' Bills introduced		Committee Bills introduced (all NGBU-supported)	Members and Committee Bills introduced	
	NGBU-supported	Not NGBU-supported		Total	Of which, NGBU-supported
1	5	11*	3	19	8 (42%)
2	9	8	1	18	10 (56%)
3	5	8	2	15	7 (47%)
4	9	4	1	14	10 (71%)
5	12	3 (4)**	2 (3)**	17 (19)**	14 (82%) (15 (79%))**

* = Some Session 1 Members' Bills were introduced prior to the establishment of NEBU in 2000

** = Figures in brackets are anticipated end-of-session figures