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Pàrlamaid na h-Alba

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**SPICe Briefing**

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# **SPICe Bill Summaries - Session 5**

**SPICe Research**

This briefing provides short summaries of all bills considered by the Scottish Parliament in Session 5.



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# Introduction

This briefing provides short summaries of all bills considered by the Scottish Parliament during the 5th Session of Parliament, from 2016 to 2021. These summaries are intended to be complementary to the information on [the bills and laws section of the Parliament's website](#) and have been prepared by SPICe subject specialists.

SPICe intends to produce annual bill summary briefings during Session 6.

# Age of Criminal Responsibility (Scotland) Bill

Age of Criminal Responsibility (Scotland) Bill

Bill Number: SP Bill 29

Introduced on: 13 March 2018

Introduced by: John Swinney MSP (Government Bill)

Passed: 7 May 2019

Royal Assent: 11 June 2019

## Passage of the Bill

The Age of Criminal Responsibility (Scotland) Bill ("the Bill") was introduced in the Scottish Parliament on 13 March 2018. The Bill was referred to the Equalities and Human Rights Committee ("the Committee") as lead committee for consideration.

The Committee began taking oral evidence on the Bill in September 2018 and took evidence at four meetings: [6 September](#); [20 September](#); [27 September](#); and [4 October](#). On 28 October 2018, the Committee also undertook fact findings visits to three secure units for children and young people as part of its Stage 1 scrutiny of the Bill.

The Committee published its [Stage 1 report](#) on the Bill on Wednesday 7 November 2018. The Bill completed Stage 2 consideration on 7 February 2019 and was passed on 7 May 2019.

## Purpose and objectives of the Bill

The main purpose of the Bill was to raise the age of criminal responsibility (ACR) in Scotland from eight to 12. This would align it with the current minimum age of prosecution in Scotland and reflect the country's progressive commitment to international human rights standards. The ACR in Scotland is the age at which a child can be charged with having committed an offence, referred to the Principal Reporter, and potentially to a children's hearing on that basis.

Another objective of the Bill was to ensure, amongst other things, that children under the ACR are not stigmatised by being criminalised at a young age by 2 being labelled an "offender" and are not disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life.

## Provisions of the Bill

The Bill was in five parts:

- Part 1 concerned with raising the age of criminal responsibility

- Part 2 relates to disclosure of convictions and other information
- Part 3 deals with the provision of information to victims
- Part 4 relates to the investigatory and other powers of the police
- Part 5 includes final provisions

As set out above, the key provision in the Bill was raising the ACR from eight to 12 and this proved to be the subject of the most significant consideration as the Bill progressed.

### **Parliamentary consideration**

The Policy Memorandum to the Bill stated that the Scottish Government considered raising the age of criminal responsibility above 12, possibly to 14, but rejected this on the basis that:

“No child under 12 is currently responded to in the adversarial criminal justice system, or subject to punitive sanctions. Instead, they are responded to using a welfare-based approach in the children's hearings system”.

In the Committee's oral evidence sessions, the majority of stakeholders queried whether a move to 12 was 'progressive' or likely to meet Scotland's international human rights commitments (as suggested by the Bill's Policy Memorandum). They pointed out that increasing the ACR to 12 would only achieve the minimum internationally acceptable age, as defined by the UN Committee on the Rights of the Child. They also argued that an ACR of 12 would only just lift Scotland off the bottom of the EU league table on ACR.

Thirty-nine of the 41 responses received by the Committee to its [call for evidence](#) took a view on the ACR.

Out of those, 15 respondents (roughly 38%) agreed that 12 was the appropriate age at which to set the ACR. A further 20 respondents (51%) agreed that the ACR should be raised to 12 for now, but with a view to increasing this further in future. There was, therefore, general agreement amongst stakeholders to increase the ACR to 12, with the majority of both written and oral contributors signalling a desire to go further.

A number of witnesses who provided oral evidence to the Committee argued that the ACR should be raised further, perhaps to 14, 16 or 18.

Duncan Dunlop, Chief Executive of Who Cares? Scotland, suggested that a move to 12 wasn't enough. He stated, “this is not making Scotland the best place in the world to grow up in; it is just about getting us on a par with the worst places in Europe.”

Bruce Adamson, the Children and Young People's Commissioner Scotland drew attention to the UN Convention on the Rights of the Child:

“Children are children up to the age of 18 and the question should not be how to justify raising the age from eight to 12, but how we justify treating children under 18 in a criminal manner. There may well be justifications, but the starting point for our discussions needs to be 18 and we need to be looking at 14 or 16 as the norm, internationally.”

Others took a different view.

Police Scotland suggested that 12 was the most appropriate ACR, saying that:

“ whilst we understand the debate regarding setting the age of criminal responsibility at a higher age, we are mindful that the nature of children’s actions and the prevalence of that behaviour changes as the age group increases to 12 and above.”

Malcolm Schaffer, Head of Practice and Policy at the Scottish Children's Reporter Administration, suggested that increasing the ACR to 12, and bringing this into line with the age of prosecution, was "an easy one to crack in terms of the legislative impact". However, he went on to acknowledge that an increase to 16 would be desirable, but that an increase to a higher age would require further work to "identify any potential gaps in powers", including the need to think about "the implications for the case of somebody who commits a very serious and significant offence at the age of 15 years and 11 months".

Alex-Cole Hamilton MSP brought forward amendments at Stage 2 and Stage 3 of the Bill, which sought to raise the ACR to either 14 or 16 years of age. The respective amendments were voted down at both Stage 2 and Stage 3 of the Bill.



# Agriculture (Retained EU Law and Data) (Scotland) Bill

Bill Number: SP Bill 59

Introduced on: 6 November 2019

Introduced by: Fergus Ewing MSP (Government Bill)

Passed: 26 August 2020

Royal Assent: 1 October 2020

## Passage of the Bill

The Bill was introduced in Parliament on 6 November 2019. The Rural Economy and Connectivity Committee was designated lead committee.

The [timetable for consideration of the Bill is available on the Scottish Parliament website](#).

## Purpose and objectives of the Bill

The [Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#) made provision for Scottish Ministers to:

- By regulation, “simplify and improve the operation of” retained EU Common Agricultural Policy (CAP) regulations in Scotland, to provide for the continuation of the CAP beyond 2020 and to modify the financial provision in CAP legislation.
- By regulation, amend marketing standards for Scotland.
- Make regulations regarding carcass classifications.
- Collect agricultural data for a specified set of purposes. Failure to provide this data may incur a fine.

The EU Common Agricultural Policy has provided the legislative framework for agricultural policy and support since the UK joined the EU. Following EU exit, the same rules that applied under CAP largely continue to apply in Scotland, as they have been ‘retained’ - in essence, copied over - as part of [a new category of law called ‘retained EU law’](#). These retained EU laws remain the law in Scotland unless the Scottish Parliament decides to pass a new law to change them. This Bill provided Scottish Ministers with the power to make changes to this body of EU law.

## Parliamentary consideration

The Parliament’s [Rural Economy and Connectivity Committee](#) supported the general principles of the Bill but had some reservations.

The Committee highlighted a number of things in its [stage 1 report, including](#) that:

- Stakeholders expressed concern that the Bill lacked an overall purpose, and recommended that the Scottish Government give consideration to those concerns.
- Stakeholders expressed concern that use of the powers in the Bill may result in regression of standards and invited the Scottish Government to consider whether the Bill could be amended to address this. The Committee however expressed reassurance following commitments by the Cabinet Secretary that the powers would not be used to regress on standards.
- It agreed with the [Delegated Powers and Law Reform Committee's Stage 1 report](#) and stakeholders view that it would not be proportionate for the power to simplify and improve the operation of retained CAP legislation to be available to Scottish Ministers in perpetuity. The Committee expressed concern that this could result in more substantive amendments to rural policy by secondary legislation into the future. The Committee therefore agreed with DPLRC that a sunset clause would be appropriate.
- It was concerned that substantive changes may be brought forward using secondary legislation made under the negative procedure, and recommended that measures brought forward with wider policy implications should be made using the affirmative procedure.

[Stage 2 saw 45 amendments lodged](#) and some amendments agreed to. In terms of substantive changes, agreed amendments included:

- A sunset clause on Scottish Ministers powers to simplify or improve CAP legislation, continue to provide for the operation of CAP legislation for one or more years beyond 2020, and to modify financial provisions in the CAP legislation. These powers are not available to Scottish Ministers after 7 May 2026.
- Changes to the procedure for regulations made under Section 8 on marketing standards. These regulations are now subject to the affirmative procedure.

[Twenty four amendments were lodged at stage 3](#). Amendments passed included:

- A change from the negative procedure in Section 2 (power to simplify or improve the operation of CAP legislation), Section 5 (power to modify CAP legislation on public intervention and private storage aid), and Section 6 (Power to simplify or improve CAP legislation on aid for fruit and vegetable producer organisations) to an 'either or' procedure.
- A change from the negative procedure in Section 10 (carcass classification) to the affirmative procedure.
- An addition to the list of purposes for which agricultural data can be collected, to include monitoring or analysing supply sources for food (including the availability of those sources to the public) and household expenditure on food.
- A new Section 20A setting out a requirement for a new Scottish agricultural policy. Scottish Ministers must lay a report before the Scottish Parliament by 31 December 2024 detailing progress towards establishing a new Scottish agricultural policy. The report is required to address a number of issues in relation to this new policy.

Since the passage of the Bill, the Scottish Government used these powers to, for example, [make changes to the 'greening' rules](#) for 2021, [to shorten the required length of land-](#)

management contracts under agri-environment and organic schemes, and to amend the penalties for overclaiming certain subsidies.

# Air Departure Tax (Scotland) Bill

Bill Number: SP Bill 3

Introduced on: 19 December 2016

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 20 June 2017

Royal Assent: 25 July 2017

## Passage of the Bill

The Finance and Constitution Committee scrutinised the Bill at Stage 1 and published its [Stage 1 report](#) on 1 April 2017.

The Delegated Powers and Law Reform Committee [reported on the delegated powers](#) set out in the Bill on 1 March 2017.

The [Stage 1](#) debate on the Air Departure Tax (Scotland) Bill took place on 25 April 2017.

The Finance and Constitution Committee considered [Stage 2 amendments](#) on 17 May 2017, and an [amended version of the Bill](#) was published on 18 May 2017.

Following the [Stage 3 debate](#) on 20 June 2017, the Bill was passed and received Royal Assent on 25 July 2017.

## Purpose and objectives of the Bill

[According to the Scottish Government](#), the Bill:

“...makes provision for Air Departure Tax (ADT), a tax to be charged on the carriage of chargeable passengers on chargeable aircraft by air from airports in Scotland. The tax is to be payable by aircraft operators.”

The Bill does not set Air Departure Tax rate amounts.

## Provisions of the Bill

The Air Departure Tax (Scotland) Bill introduces an Air Departure Tax (ADT) to replace the current UK Air Passenger Duty (APD). Much of the ADT Bill achieves the same outcome as the existing APD legislation. However, tax bands, tax rate amounts and tax exemptions are not covered in the Bill and will be set out in secondary legislation at a later date. This differs significantly from existing UK APD legislation, which includes APD exemptions, tax bands and tax rate amounts in the primary APD legislation.

The ADT Bill:

- provides for a tax charged on the carriage of passengers on flights that begin in Scotland and identifies Revenue Scotland as the body responsible for collection of the tax (Part 1);

- sets out the key concepts underlying the tax, including identifying the passengers and aircraft in respect of which the tax will be charged; these largely replicate the concepts and definitions of the UK APD legislation (Part 2);
- sets out the tax rates structure, but does not set bands and rates (these are to be set by regulations) (Part 3);
- provides for administrative matters relating to the payment, collection and management of the tax, including registration, tax returns, a power to obtain security for payment of the tax and a requirement for aircraft operators based outside the European Economic Area (EEA) to appoint EEA-based tax representatives (Part 4)

## Parliamentary consideration

The Finance and Constitution Committee scrutinised the Bill at Stage 1 and published its [Stage 1 report](#) on 1 April 2017.

The Committee supported the broad principles of the Bill, but was critical of the lack of detail on proposed exemptions from the definition of ‘chargeable passenger’ and ‘chargeable aircraft’. It also criticised the lack of analysis of the economic, social, environmental and financial impacts of the Scottish Government's policy of a 50% reduction in ADT by the end of the parliamentary session, which was set out in [accompanying documents](#).

The Finance and Constitution Committee considered [Stage 2 amendments](#) on 17 May 2017, and an [amended version of the Bill](#) was published on 18 May 2017. The main change in the amended Bill was the inclusion of details of proposed exemptions, responding to the concerns raised in the Committee’s Stage 1 report.

A number of amendments requiring Ministers to prepare an aviation emissions policy and produce an impact assessment of the legislation were not agreed to. However, at the [Stage 3 debate](#) on 20 June 2017 amendments were agreed to which placed duties on Ministers to take account of the economic, environmental and social impacts of the legislation.

# Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill

Bill Number: SP Bill 56

Introduced on: 30 September 2019

Introduced by: Roseanna Cunningham MSP (Government Bill)

Passed: 17th June 2020

Royal Assent: 21 July 2020

## Passage of the Bill

The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill was introduced in the Scottish Parliament on 30 September 2019.

It was scrutinised at Stage 1 by the Environment, Climate Change and Land Reform (ECCLR) Committee. The ECCLR Committee [published its Stage 1 report on 10 February 2020](#). The Stage 1 debate took place on 12 March 2020.

Stage 2 proceedings took place on 26 May 2020 and [the Bill as amended at Stage 2 was published](#).

The [Bill was passed after a final Stage 3 debate](#) and vote on 17 June 2020 and [became an Act on 21 July 2020](#).

## Purpose and objectives of the Bill

The Bill amended the Animal Health and Welfare (Scotland) Act 2006 (“2006 Act”), several pieces of wildlife legislation, and the Animal Health Act 1981 for the purposes of further protecting health and welfare in connection with animals and wildlife in Scotland. A key aspect of the Bill was to increase the maximum available penalties for the most serious instances of animal cruelty in respect of both domestic and kept animals, and wildlife. Prior to introducing the Bill, the Scottish Government consulted separately on [proposals relating to animal welfare offences](#) and [proposals relating to wildlife crime](#).

## Provisions of the Bill

The [SPICe briefing on the Bill](#) provides information on the provisions of the Bill (as introduced) in detail. The Bill as passed:

- **Increased maximum penalties** for certain offences in the 2006 Act, so that the maximum penalty for both causing unnecessary suffering to animals and for organising or participating in animal fighting is now five years imprisonment and an unlimited fine.
- **Increased maximum penalties** for over 50 separate wildlife offences. This followed an independent review of wildlife crime penalties which made a number of

recommendations in 2015 ('the Poustie review').

- **Extended time limits on bringing proceedings** for these offences by virtue of making them triable on indictment.
- Created new delegated powers to allow **Fixed Penalty Notice (FPN) regimes** to be developed for less serious animal health, animal welfare and wildlife offences, outwith the court system. These are expected to be introduced in future secondary legislation.
- **Removed the need for a court order** (where certain procedures are followed) where enforcement authorities seek to rehome, sell or destroy animals that have been taken into possession because they are suffering or likely to suffer - which aims to speed up the process of rehoming.
- Changed the law where a person is charged with **harming a service animal** e.g. a police dog, to prevent the accused from claiming they did so in self-defence, so called 'Finn's law'.
- Strengthened requirements on courts to consider issuing a **disqualification order** in every case where a person is convicted of a serious animal welfare offence e.g. an order preventing that person from keeping certain animals.
- Expanded the **use of vicarious liability** - where a person who has or manages land can be held responsible for crimes committed by someone else on that land - for certain wildlife offences relating to the trapping and snaring of animals.
- Removed a basis for the **licensing of the killing of seals by fish farms**.
- Increased **legal protection for mountain hares**.

### Parliamentary consideration

The [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 30 September. The Bill was accompanied by:

- an Explanatory Note
- a Policy Memorandum
- a Financial Memorandum
- statements on legislative competence by the Presiding Officer and the Scottish Government.

The lead committee for the Bill was the ECCLR Committee. The ECCLR Committee took evidence from Scottish Government officials, [issued a call for views between 10 Oct 2019 and 12 Nov 2019](#), and held evidence sessions with a range of stakeholders. The ECCLR Committee [published its Stage 1 report on 10 February 2020](#), recommending to the Parliament that it support the general principles of the Bill.

The main issues explored by the Committee at Stage 1 were:

- Increasing maximum penalties for animal welfare and wildlife offences and whether the penalties proposed were appropriate and proportionate (particularly the categorisation of wildlife crime offences).

- Implications of new provisions enabling rehoming (and other interventions) without a court order, of animals taken into possession, and associated compensation provisions, including implications for animal owners, and for local authorities and rehoming centres.
- The rationale for introducing Fixed Penalty Notices for less serious animal welfare offences.
- The need for and appropriate formulation of 'Finn's law' to reduce barriers to prosecuting someone who has harmed a service animal e.g. a police dog.
- Some wider issues in relation to animal welfare crimes, such as the effectiveness of other approaches (besides imprisonment and fines) to addressing animal cruelty e.g. disqualification orders, empathy training and access to information by authorities about previous convictions or issues.
- Some wider issues in relation to wildlife crime, such as use of vicarious liability, issues with detection of wildlife crime, use of alternative approaches (to imprisonment and fines) such as general licence suspensions, and links with broader discussions around grouse moor management.

The Delegated Powers and Law Reform Committee considered the Bill at Stage 1 and [published its report on 19 November 2019](#), stating it was content with the delegated powers provisions in the Bill.

The Stage 1 debate took place on 12 March 2020 and [the motion on the general principles of the Bill was agreed to](#).

Stage 2 proceedings took place on 26 May 2020 and [the Bill as amended at Stage 2 was published](#).

**Multiple amendments were made to the Bill at Stage 2** (all of which were lodged by the Scottish Government), including:

- Introducing provisions for fixed penalty notices for certain wildlife offences. The Scottish Government said that prior to the bringing forward of secondary legislation to introduce a Fixed Penalty Notice scheme, further stakeholder consultation will be undertaken to help develop the details;
- Changes to detailed provisions for where animals are taken into possession and may be rehomed without a court order – relating to how decision notices are served to owners of animals and associated compensation provisions;
- An amendment relating to the use of pesticides in wildlife crime, to ensure that where an individual was in possession of a banned ingredient, they would have a defence if they can show that the possession was in accordance with regulation (EC) 1107/2009 of the European Parliament and Council – relating to the legitimate possession of plant protection products.

The [Bill was passed after a final Stage 3 debate](#) and vote on 17 June 2020 and [became an Act on 21 July 2020](#).

**Multiple amendments were made to the Bill at Stage 3**, including:



- Strengthened requirements on courts to consider issuing a **disqualification order** in every case where a person is convicted of a serious animal welfare offence e.g. an order preventing that person from keeping certain animals.
- An expansion of the **use of vicarious liability in wildlife crime** - where a person who has or manages land can be held responsible for crimes committed by someone else on that land. Vicarious liability was introduced by the Wildlife and Natural Environment (Scotland) Act 2011 in relation to certain offences against birds of prey. The amendment expanded vicarious liability for certain offences relating to the trapping and snaring of animals.
- Removed a basis for the **licensing of the killing of seals by fish farms**. It was possible for fish farms to shoot seals under license, under the Marine (Scotland) Act 2010, to protect the health and welfare of farmed fish, or to prevent serious damage to fish farms. These two bases for granting a licence authorising the killing or taking of seals were removed by this amendment. The driver behind this change was a new provision in the US Marine Mammal Protection Act, expected to come into force in 2022, requiring that nations exporting commercial fish to the US are held to the same standards as US commercial fisheries, where the taking of marine mammals is prohibited. The change was made in order to protect exports of farmed Atlantic salmon to the US.
- A new requirement for Scottish Ministers to, as soon as practicable, and no later than 1 March 2021, lay a report before the Scottish Parliament on the **use of acoustic deterrent devices by fish farms**.
- Increased **legal protections for mountain hares** in response to concerns about numbers of mountain hares being culled as part of grouse moor management. The amendment provided for mountain hares to be included on Schedule 5 of the Wildlife & Countryside Act 1981 (as amended), giving them full protection. This means that at any time of the year, anyone who intentionally or recklessly kills, injures or takes mountain hare without a licence will be acting unlawfully. A licensing system has since been developed by NatureScot.
- A new requirement for Scottish Ministers **to conduct a review of whether the provisions of the Act** (i.e. Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020) are “sufficient to ensure appropriate standards of animal welfare, animal health and protection of wildlife”. The review must consider whether provision should be made— (a) for a specific offence of theft of a pet, (b) to prohibit attaching, or causing or permitting the attaching, to a dog or other animal of a collar or other wearable device designed to administer an electric shock, (c) appropriate penalties for any such offences. The review must be completed as soon as practicable and no later than 1 April 2025 and be laid before the Scottish Parliament.
- A new requirement for Scottish Ministers to publish a report (within 5 years of commencement of the provision) on **steps that have been taken to ensure information sharing** in relation to persons who have been convicted of certain animal welfare and wildlife offences (including Fixed Penalty Notices and Disqualification Orders). This was in response to concerns raised during Stage 1 that enforcement authorities lack access to information about prior offenders which may enable a more preventative approach to animal cruelty.

# Budget (Scotland) Bill

Bill Number: SP Bill 4

Introduced on: 26 January 2017

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 23 February 2017

Royal Assent: 31 March 2017

## Passage of the Bill

The Budget (Scotland) Bill [SP Bill 4] was introduced on 26 January 2017. The Stage 1 debate took place on 2 February, the Finance and Constitution Committee considered the Bill at Stage 2 on 8 February, and the Bill was passed by Parliament on 23 February 2017.

## Purpose and objectives of the Bill

The Budget Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2017-18.

## Provisions of the Bill

The Bill authorises approximately £34.5bn 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.

The Budget is underpinned by forecast tax revenues from the devolved taxes (Land and Buildings Transaction Tax and Scottish Landfill taxes) and non-savings non-dividend income tax, which is a shared tax with the UK.

## Parliamentary consideration

The Bill was amended at Stage 2 to provide an increase of £160 million to Local Government; £25 million to police reform and £35 million to Scottish Enterprise.

These amendments were funded through use of the budget exchange mechanism (which allows carry over of funding between years), and updated projections from the non-domestic rates pool and a reduction in the anticipated cost of borrowing repayments in 2017-18.

These changes were agreed between the Scottish Government and the Green Party as part their deal to achieve a parliamentary majority for the passage of the 2017-18 Budget.

# Budget (Scotland) (No.2) Bill

Bill Number: SP Bill 25

Introduced on: 25 January 2018

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 21 February 2018

Royal Assent: 28 March 2018

## Passage of the Bill

The Budget (Scotland) Bill [SP Bill 25] was introduced on 25 January 2018. The Stage 1 debate took place on 31 January, the Finance and Constitution Committee considered the Bill at Stage 2 on 7 February, and the Bill was passed by Parliament on 21 February 2018.

## Purpose and objectives of the Bill

The Budget Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2018-19.

## Provisions of the Bill

The Bill authorises approximately £36bn 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.

The Budget is underpinned by forecast tax revenues from the devolved taxes (Land and Buildings Transaction Tax and Scottish Landfill taxes) and non-savings non-dividend income tax, which is a shared tax with the UK.

## Parliamentary consideration

The Bill was amended at Stage 2 to provide an increase of £125m to Local Government (with an additional £34.5m allocated to Local Government in 2017-18); £10.5m for inter-island ferries; £2m for fuel poverty; £200,000 for marine protected areas; and £70,000 for the Scottish Sports Association.

These amendments were funded from a combination of tax increases (as voted for by Parliament in the Rate Resolution debate of 20 February 2018) and funding from the Scotland Reserve.

Income tax increases were agreed between the Scottish Government and the Green Party as part their deal to achieve a parliamentary majority for the passage of the 2018-19 Budget. The deal involved increased spending on the areas covered above (primarily for local government) funded by changes to the Scottish Government's initial income tax proposals.

Parliament agreed that the Scottish higher rate tax threshold should be set lower than initially proposed (£43,430 instead of £44,273). This has the effect of bringing more income tax payers into the higher rate bracket, and increasing forecast income tax revenues.

# Budget (Scotland) (No.3) Bill

Bill Number: SP Bill 42

Introduced on: 19 December 2018

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 21 February 2019

Royal Assent: 29 March 2019

## Passage of the Bill

The Budget (Scotland) (No.3) Bill [SP Bill 42] was introduced on 19 December 2018. The Stage 1 debate took place on 31 January, the Finance and Constitution Committee considered the Bill at Stage 2 on 6 February, and the Bill was passed by Parliament on 21 February 2019.

## Purpose and objectives of the Bill

The Budget Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2019-20.

## Provisions of the Bill

The Bill authorises approximately £37.8 billion 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.

The Budget is underpinned by forecast tax revenues from the devolved taxes (Land and Buildings Transaction Tax and Scottish Landfill taxes) and non-savings non-dividend income tax, which is a shared tax with the UK.

## Parliamentary consideration

The Bill was amended at Stage 2 to provide an increase of £90 million to local government and £4 million to health.

These amendments were funded through additional consequentials provided by HM Treasury as part of the UK supplementary estimates.

These changes were agreed between the Scottish Government and the Green Party as part their deal to achieve a parliamentary majority for the passage of the 2019-20 Budget.

# Budget (Scotland) (No.4) Bill

Bill Number: SP Bill 63

Introduced on: 6 February 2020

Introduced by: Kate Forbes MSP (Government Bill)

Passed: 5 March 2020

Royal Assent: 18 March 2020

## Passage of the Bill

The Budget (Scotland) (No.4) Bill [SP Bill 63] was introduced on 6 February 2020. The Stage 1 debate took place on 27 February, the Finance and Constitution Committee considered the Bill at Stage 2 on 4 March, and the Bill was passed by Parliament on 5 March 2020.

## Purpose and objectives of the Bill

The Budget Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2020-21.

## Provisions of the Bill

The Bill authorises approximately £43 billion 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.

The Budget is underpinned by forecast tax revenues from the devolved taxes (Land and Buildings Transaction Tax and Scottish Landfill taxes) and non-savings non-dividend income tax, which is a shared tax with the UK.

## Parliamentary consideration

The Bill was amended at Stage 2 to provide an increase of £95 million to local government; an additional £15 million for free bus travel for young people aged 18 and under, and £45 million in capital for net zero projects. An additional £13 million resource and £5 million capital was also provided to Justice for police services.

These changes were agreed between the Scottish Government and the Green Party as part their deal to achieve a parliamentary majority for the passage of the 2020-21 Budget.

# Budget (Scotland) (No.5) Bill

Bill Number: SP Bill 87

Introduced on: 28 January 2021

Introduced by: Kate Forbes MSP (Government Bill)

Passed: 9 March 2021

Royal Assent: 29 March 2021

## Passage of the Bill

The Budget (Scotland) (No.5) Bill [SP Bill 87] was introduced on 28 January 2021. The Stage 1 debate took place on 25 February, the Finance and Constitution Committee considered the Bill at Stage 2 on 8 March, and the Bill was passed by Parliament on 9 March 2021.

## Purpose and objectives of the Bill

The Budget Bill is the final stage in the annual budget process and gives parliamentary authority for spending in Scotland for financial year 2021-22.

## Provisions of the Bill

The Bill as passed authorises approximately £48 billion 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.

The Budget is underpinned by forecast tax revenues from the devolved taxes (Land and Buildings Transaction Tax and Scottish Landfill taxes) and non-savings non-dividend income tax, which is a shared tax with the UK.

## Parliamentary consideration

The Bill was amended at Stages 2 and 3 to allocate over £1.2 billion in additional COVID-19 related Barnett consequentials.

Changes were agreed between the Scottish Government, the Green Party, and for the first time in the parliamentary session, with the Liberal Democrats as part of a tripartite deal to achieve a parliamentary majority for the passage of the 2021-22 Budget.

The deal with the Scottish Green Party included the following amendments:

- Pandemic Support Payments of £130 to households receiving Council Tax Reduction and two payments of £100 to families of children qualifying for free school meals. This is expected to cost £100m.
- The phased introduction of free school meals to all primary school children by August

2022. £49.75 million has been allocated to this policy in 2021-22.

- An £800 pay rise for public sector workers earning up to £25,000 (the initial Budget proposals included a £750 pay rise), and a 2% increase for those earning over £25,000 up to £40,000 (the original Budget proposals included a 1% increase for public sector workers earning below £80,000). The SFC state that this will cost around £100 million.
- Extending free bus travel to under 22s, with £17 million budgeted in 2021-22 for making as much progress in delivery of this policy “as possible”.
- £40 million to support the “green recovery”, including a further £15 million for active travel, £10 million for energy efficiency, £10 million for biodiversity and £5 million for agri-environmental measures.

The deal with the Scottish Liberal Democrats included:

- An extra £120 million for Mental Health services (announced in February).
- £60 million for Education to facilitate lower class sizes (this again was announced in February and has been allocated to the Education and Skills portfolio, but will ultimately go through Local Authorities).
- Support further education catch-up efforts for children and young people from disadvantaged backgrounds with a £20 million Pupil Equity Fund premium.
- £15 million to pay for skills training, upskilling and business support in the North East in recognition of the twin impacts of the pandemic and the downturn in the oil and gas sector.

The Stage 2 and 3 amendments were funded through additional consequentials provided by HM Treasury as part of the response to the COVID-19 pandemic.



# Census (Amendment) (Scotland) Bill

Bill Number: SP Bill 40

Introduced on: 2 October 2018

Introduced by: Fiona Hyslop MSP (Government Bill)

Passed: 12 June 2019

Royal Assent: 18 July 2019

## Passage of the Bill

The [Census \(Amendment\) \(Scotland\) Bill](#) (SP Bill 40) was introduced on 2 October 2018. The Culture, Tourism, Europe and External Affairs Committee ('the Committee') was designated as lead committee. The Bill completed Stage 1 on 28 February 2019, Stage 2 on 2 May 2019 and was passed by the Parliament at Stage 3 on 12 June 2019.

## Purpose and objectives of the Bill

The aim of this short Bill, as introduced, was to allow questions on sexual orientation and 'prescribed aspects' of gender identity to be answered on a voluntary basis.

As society changes over time, census questions have to be updated to reflect these changes. It is widely accepted that there are data gaps on sexual orientation and gender identity. Including questions on these demographics in the Census will provide valuable data for public service planning purposes and will help public bodies meet duties under the Equality Act 2010.

It was proposed that the prescribed aspect for gender identity, to be set out in secondary legislation, would be 'trans status/history'. The working definition of 'trans' used by the National Records of Scotland (NRS), is that it is an umbrella term for anyone whose gender identity or gender expression does not fully correspond with the sex they were assigned with at birth.

## Provisions of the Bill

The Bill made provisions to amend the Census Act 1920 to make sure no-one will be fined for not answering questions on sexual orientation or gender identity. All other questions in the census are mandatory. If a person refuses to answer a census question, or gives a false answer, they are liable to a fine of up to £1,000. The only exception to this is the question on religion which is also voluntary.

## Parliamentary consideration

### *Stage 1*

The Committee received a range of evidence that supported the inclusion of these questions on a voluntary basis. It was recognised that the data would be useful for public service planning purposes, as well as helping the public sector monitor discrimination and

comply with the Public Sector Equality Duty. The general principle of the Bill was described as inclusive as well as being respectful to people's right to privacy.

The Committee supported the general principles of the Bill at Stage 1, but made recommendations including:

- amending the Bill at Stage 2 to avoid the perception that sex and gender identity have been conflated
- that the sex question should remain binary – male/female
- clarity on the approach to the sex question regarding self-identification
- that there should be further consultation with women's groups.

Most of the recommendations refer to wider aspects of the census and its development. The Scottish Government said it was engaging with the women's groups that responded to the Committee's call for evidence.

The approach to the sex question, which is not dealt with in this Bill, will be considered through the programme of question testing and engagement with different groups. National Records of Scotland (NRS) will continue to work closely with the Committee and keep them updated on developments with the sex question.

### *Stage 2*

A key concern raised at Stage 1 was that the Bill conflated sex with gender identity. There were concerns that this could have unintended impacts on data collection and on the sex-based protections under the Equality Act 2010.

Over the course of Stage 1 scrutiny, there was broad agreement that the concept of 'gender identity' might cause confusion.

At Stage 2, the Committee agreed to a Scottish Government amendment that placed 'transgender status and history' in to the schedule to the Census Act 1920. It removed the provision that would have added the phrase "(including gender identity)" to the paragraph in the schedule that contains the word "sex".

The Cabinet Secretary for Culture, Tourism and External Affairs, Fiona Hyslop MSP, said the amendment was a response to the perceived conflation of sex and gender identity in the Bill as introduced. She also indicated that NRS had worked with a range of stakeholders on the specific text of the amendment.

### *Stage 3*

There were no amendments at Stage 3

During the Stage 3 debate, a number of broader issues were raised.

It was noted that the Bill's journey was not smooth, that it took place against the background of proposed changes to the Gender Recognition Act 2004. Claire Baker MSP, a Committee member, said, "At times, the debate has been too divisive, aggressive and intolerant of alternative views." This view was shared by a number of Members speaking in the debate.

The Committee's Convener, Joan McAlpine MSP, said that "I reject the concept of innate gender identity, but I will vote for the bill in a spirit of pragmatism and compromise." The Convener made a number of other points:

- That a majority of Committee members had rejected the idea of a non-binary sex question.
- In her view, the sex question should be based on biological sex, rather than self-identification. The Convener referred to online guidance that had been introduced for the 2011 census, "without any public scrutiny", that allowed people to answer the sex question based on how they identify.
- The impact that a sex question based on self-identification might have on accurate data collection.

The Cabinet Secretary indicated that passing the Bill would mean that questions on sexual orientation and transgender status and history can be asked, on a voluntary basis. The Parliament will still have to agree that the questions will be asked in the 2021 census. A Census Order will direct what topics can be asked about, and Census Regulations will include the detail of the questions to be asked.

At Stage 3, the Bill was passed unanimously: For 115, Against 0, Abstentions 0

# Child Poverty (Scotland) Bill

Bill Number: SP Bill 6

Introduced on: 9 February 2017

Introduced by: Angela Constance MSP (Government Bill)

Passed: 8 November 2017

Royal Assent: 18 December 2017

## Passage of the Bill

The [Child Poverty \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 9 February 2017. The Social Security Committee was the lead committee considering the provisions in the Bill. The Committee's [stage 1 report](#) was published on 22 May 2017, and the stage 1 debate took place on [1 June 2017](#). On [8 November 2017](#), after the stage 3 debate, the Bill was passed.

## Purpose and objectives of the Bill

The Bill came about as a response to the repeal of significant sections of the UK Child Poverty Act 2010. The repeals meant the replacement of the previous four income-based targets on child poverty with new measures on worklessness and educational attainment. In addition, the previous Social Mobility and Child Poverty Commission's remit was changed to remove the child poverty aspects of its work.

The Policy Memorandum noted that these changes represent "a shift towards characterising poverty as a lifestyle choice rather than addressing the social and economic drivers that cause people to fall into or remain in poverty". In response, the Child Poverty (Scotland) Bill proposed to put into Scottish statute four income-based targets on child poverty and a range of reporting mechanisms to allow progress against these targets to be assessed.

## Provisions of the Bill

The Bill proposed the following targets to be achieved by April 2030:

- Less than 10 per cent of children live in households that are in relative poverty.
- Less than five per cent of children live in households that are in absolute poverty.
- Less than five per cent of children live in households that are in combined low income and material deprivation.
- Less than five per cent of children live in households that are in persistent poverty.
- Setting out on the face of the Bill a set of interim targets to be achieved by April 2024, to show progress towards the achievement of the final targets at April 2030.
- The establishment in statute of a poverty and inequality commission.

- Consideration of the option to bring forward legislation that would allow the Scottish Ministers to top up child benefit as a route to tackling child poverty (Alison Johnson MSP).
- Having regard to the situation of low income households with children where there is someone in the household who “has one or more protected characteristics” (Jackie Baillie MSP).

The Bill also introduces requirements on the Scottish Ministers to publish their proposed actions to tackle child poverty and to report on progress against these proposed actions. In addition, local authorities and partner health boards are also to jointly report progress on their activity to address child poverty at the local level.

### **Parliamentary consideration**

In its Stage 1 Report, the Committee acknowledged this as a framework bill, so its purpose is to highlight policy intent while also providing a context in which national and local action to address child poverty is taken. On this basis, the Committee supported the principles of the Bill as offering a way of focusing minds and resources, while setting out “a clear vision of where, as a society, we want to be”.

A number of specific recommendations were made at stage 1 that resulted in amendments to the Bill at stage 2. Of particular note:

The recommendations made in the Committee’s stage 1 Committee report, the Scottish Government response and the amendments agreed to at stage 2, are summarised in this [SPICe briefing](#).

At stage 3 there were 47 amendments lodged. The majority (36) were from Angela Constance MSP. These were largely technical amendments to modify and correct minor drafting issues arising from stage 2 amendments. A small number of amendments relate to more substantial additions to the Bill:

Three amendments were not moved. All others were moved and agreed to.

# Children Equal Protection from Assault (Scotland) Bill

Bill Number: SP Bill 38

Introduced on: 6 September 2018

Introduced by: John Finnie MSP (Members' Bill)

Passed: 3 October 2019

Royal Assent: 7 November 2019

## Passage of the Bill

The [Children \(Equal Protection from Assault\) \(Scotland\) Bill](#) (SP Bill 38) was introduced on 6 September 2018. The Equalities and Human Rights Committee ('the Committee') was designated as lead committee. The Bill completed Stage 1 on 28 May 2019 (a further evidence session was held on 6 June 2019 prior to Stage 2), Stage 2 on 20 June 2019, and was passed by the Parliament at Stage 3 on 3 October 2019.

## Purpose and objectives of the Bill

The short Bill aimed to help bring to an end the physical punishment of children by parents and others caring for or in charge of children.

The Bill's purpose was to abolish the defence of 'reasonable chastisement', and drive a cultural change to discourage the use of physical punishment. The defence of reasonable chastisement can currently be used by parents and others caring for or in charge of children if they are prosecuted for assaulting a child. The defence allows for physical force to be used to discipline a child, with some restrictions set out in section 51 of the Criminal Justice (Scotland) Act 2003.

## Provisions of the Bill

The Bill provided children with equal protection from assault by abolishing the defence of 'reasonable chastisement'. This will mean that a parent (and others caring for or in charge of children) charged with the assault of a child will no longer have the defence, in either criminal or civil proceedings, that the use of force constituted 'reasonable chastisement' or 'justifiable assault'.

The Bill also included a duty on Ministers to raise awareness about the effect of the Bill.

This a Member's Bill. However, it had the support of the Scottish Government who said they would set up an implementation group for the Bill.

## Parliamentary consideration

### *Stage 1*

The Bill generated strong views both in support of and against the Bill. The Committee received over 440 written submissions, 39 of which were from organisations and the remainder from individuals. Those who supported the Bill were mainly from organisations, and those against the Bill were mainly individuals.

Many submissions at Stage 1 questioned the term ‘assault’ and that it is wrong to suggest that a ‘loving smack’ constitutes assault. However, the Committee heard that ‘assault’ does not need to involve substantial violence or injury.

All submissions agreed that violence against children is wrong. However, some argued that smacking should not be seen as violence, while others argued that physical punishment sits on a spectrum of violence in children’s lives.

The Committee heard a range of evidence and research to support the view that physical punishment is always harmful to children. However, others questioned the validity of such research. The Committee also heard from parents who had been smacked as a child, or used physical punishment on their children, who said they had not seen lasting detrimental effects. Ultimately, the Committee’s view was that the “potential harm to children from physical punishment greatly outweighs any perceived benefits”.

There was debate about the use of physical intervention when children put themselves in danger, such as running into a road. Some said that the use of restraint is necessary to protect a child and that this would not be affected by the Bill. Others felt this was a situation where physical punishment could be justified. The Committee did not support the view that physical punishment is required to protect children from harm.

There was strong support from the international human rights community for the ending of physical punishment of children. Most witnesses supported the view that the realisation of children’s rights could not be fully achieved without taking legislative steps to remove the defence of reasonable chastisement. The Committee explored whether there was any conflict with other rights – the right to respect for right to private and family life, and the right to freedom of thought, belief and religion. They said “we do not see these rights as conflicting and nowhere is a parent’s right to physically punish their child enshrined in international treaties or conventions.”

Many witnesses said the Bill would bring clarity to the law, which would in turn provide increased clarity for parents and service providers. The Committee said it recognised that there was a lack of clarity around the law which led to confusion amongst parents and carers, and made it harder for public services to have confidence in their approach when working with parents. The Committee agreed that the Bill was necessary, alongside a public education and awareness campaign.

Consideration was given to the potential costs associated with the Bill, for awareness raising, and any cost implications for the police, social work, health boards and third sector organisations that provide parenting support. The Committee asked the Scottish Government’s implementation group for the Bill to consider the cost implications.

A key concern of many individual submissions and through engagement visits, was that the Bill would criminalise parents. Although the Bill did not create any new offences, there was a fear from many that large numbers of parents would face prosecution should the Bill pass. However, the Committee were reassured by evidence from other countries that similar legislation did not lead to notable increases in the criminalisation of parents.

The Committee also noted the fact that the Lord Advocate did not attend to give evidence,

and would be invited again to attend before Stage 2 consideration of amendments.

A majority of the Committee approved the general principles of the Bill at Stage 1.

However, two members of the Committee (Oliver Mundell MSP and Annie Wells MSP) wrote a Minority Report, which is included in the Stage 1 report. They criticised the Bill for suggesting that parental smacking was the same as assault, and said that “There can be no doubt this Bill will criminalise actions or behaviours which are currently lawful.” They also criticised the Committee’s scrutiny of the Bill, suggesting that the committee had spent “too little time listening to legal experts.”

The Bill passed Stage 1 by division: For 80, Against 29, Abstentions 2.

### *Additional evidence before Stage 2*

Before Stage 2, the Committee held a further evidence session with the Lord Advocate.

The Lord Advocate said that the Bill would simplify the law, that as the law stands parents do not have an unqualified right to smack or chastise a child. “Subject to the defence of reasonable chastisement, an assault by a parent on a child is a criminal offence.

Allegations that a parent has assaulted their child are investigated by the police and reported to the Crown and may be, and are, prosecuted.”

Regarding what constitutes ‘assault’, the Lord Advocate said:

“...the legal test for an assault is straightforward. It is an attack on the person of another with the relevant mens rea, or mental state for committing a crime, and courts are used to applying those tests in a range of circumstances.”

The Lord Advocate said that, should the Bill pass, he would issue guidelines on the investigation and reporting of allegations of assaults by parents on children.

### *Stage 2*

At Stage 2, three additional members attended the Committee, Adam Tomkins MSP, Liam Kerr MSP, and John Finnie MSP.

Adam Tomkins MSP had wanted to lodge amendments “to give clarity to the meaning of ‘assault’, for the purposes of the bill.” However the Convener determined that they were inadmissible.

Oliver Mundell MSP lodged an amendment that sought to provide reassurance that, “for the avoidance of doubt”, parents could “act in the best interest of the child”, and use physical contact with a child for the purpose of physical restraint to protect a child from harm.

John Finnie MSP, Member in charge of the Bill, did not support the additional tests set out in the amendment and said it would have the reverse effect, “it will introduce doubt, rather than dispel it.”

Oliver Mundell MSP withdrew the amendment and said he would lodge a new version of the amendment at Stage 3.

Liam Kerr MSP’s amendment was aimed at introducing a more prescriptive Ministerial duty to raise awareness, including references to other legislation and, ‘good parenting practice’.



However, the Committee did not support the amendment (For 2, Against 5, Abstentions 0).

Oliver Mundell MSP lodged amendments requiring guidance from Ministers and the Lord Advocate, which would require to be published before commencement of the Act. He chose not to move the amendment on the Lord Advocate's guidance, given that the Lord Advocate indicated guidance would be published once the Bill is passed. The Committee did not support the amendment on Ministerial guidance (For 2, Against 5, Abstentions 0).

He also lodged an amendment requiring a Ministerial statement on additional resources to support the Bill. Maree Todd MSP, Minister for Children and Young People, suggested this amendment was an attempt to delay the Bill, because "Outside the ordinary budget process, it would be unusual for the Scottish Government to provide a statement on the resources being provided to various bodies, and for the Parliament to specifically approve that." The Committee did not support the amendment (For 2, Against 5, Abstentions 0).

Annie Wells MSP lodged an amendment to require a Ministerial statement on data – the number of cases where the 'reasonable chastisement' defence had been a 'relevant factor' - before the commencement of the Act. The Minister said again that this seemed an attempt to delay the Bill, as the Committee has already heard that such data is not available. The Committee did not support this amendment (For 2, Against 5, Abstentions 0).

No amendments were agreed to at Stage 2.

Oliver Mundell MSP and Annie Wells MSP noted dissent on section 1 which would abolish the defence of reasonable chastisement, and the long title of the Bill.

### *Stage 3*

Adam Tomkins MSP raised a point of order that he had wanted to lodge two amendments, but these were determined inadmissible by the Presiding Officer.

Oliver Mundell lodged two amendments to try and provide reassurance to parents. The first was similar to the amendment at Stage 2, that, "for the avoidance of doubt", parents could "act in the best interest of the child", make physical contact for the purpose of restraint, and "exercise the person's lawful parental rights and responsibilities." The second amendment tried to limit the abolition of the defence of reasonable chastisement by stating it "applies only with regard to physical punishment and does not otherwise affect lawfully exercised parental rights and responsibilities."

Richard Lyle MSP lodged an amendment to require the Lord Advocate to publish guidance.

No amendments were agreed to.

At Stage 3, the Bill was passed with a vote of For 84, Against 29, Abstentions 0.

# Children (Scotland) Bill

Bill Number: SP Bill 52

Introduced on: 2 September 2019

Introduced by: Humza Yousaf MSP (Government Bill)

Passed: 25 August 2020

Royal Assent: 1 October 2020

## Passage of the Bill

The [Children \(Scotland\) Bill](#) (SP Bill 50) was introduced on 2 September 2019. It was a Government Bill.

The Justice Committee led on the scrutiny of the Bill at Stage 1. It held oral evidence sessions in November and December 2019, as well as during January and February 2020.

The Delegated Powers and Law Reform Committee reported on the delegated powers contained in the Bill as introduced (November 2019). The Finance and Constitution Committee also considered the financial implications of the Bill.

The Justice Committee published its Stage 1 Report on the Bill on 1 May 2020. The Scottish Government [responded by letter on 21 May 2020](#). The Stage 1 debate took place on 27 May 2020.

Stage 2 amendments were considered by the Justice Committee on 23 June 2020.

[SPICe produced a briefing on the Bill in advance of Stage 3](#), including detailed considerations of the issues raised at Stage 1 and Stage 2 of the Bill.

The Stage 3 debate took place on 25 August 2020. The Bill received unanimous support.

The Bill (as amended) received Royal Assent on 1 October 2020 to become the [Children \(Scotland\) Act 2020 \(asp 16\)](#).

## Purpose and objectives of the Bill

Sometimes parents end up in dispute with each other, or another family member, over the care of their children. For example, this can happen when the parents are separating or divorcing. The Bill introduced important changes to how such disputes are resolved.

The Bill set out significant reforms to Part 1 of the Children (Scotland) Act 1995 ('the 1995 Act'), as well as making some changes to other legislation affecting children.

Part 1 of the 1995 Act contains various 'parental responsibilities and rights' ('PRRs') in respect of children living in Scotland. In practice, PRRs are powers which enable parents to take key parenting decisions on behalf of their children.

[The Scottish Government described the overarching policy objectives of the Bill as to:](#)

- ensure the views of the child are heard in court cases under Part 1 of the 1995 Act
- ensure the best interests of the child are at the centre of those court cases and in [children's hearings](#)
- further comply with [United Nations Convention on the Rights of the Child](#) (UNCRC) in family court cases
- improve the protection for victims of domestic abuse and their children.

## **Provisions of the Bill**

The main provisions of the Bill (in the Bill as introduced) are described below.

### *Children's participation*

Sections 1 to 3 and 15 made changes to the 1995 Act and other legislation to help children participate in decisions about them.

### *Statutory factors*

Section 12 of the Bill introduced two new statutory factors to guide the court's assessment of the welfare of the child in an individual case.

### *Vulnerable people*

Sections 4 to 7 aimed to improve the experience of vulnerable people in the courtroom in family cases, such as those affected by domestic abuse.

### *Child welfare reporters and child contact centres*

Sections 8, 9 and 13 provided for statutory regulation of several aspects of the 'machinery' associated with the 1995 Act including:

- child welfare reporters, who provide important information to the court on children
- child contact centres, which provide neutral venues where children and parents can meet with each other.

### *Siblings*

Section 10 of the Bill said that, for [looked after children](#), a local authority must, with some qualifications, promote "personal relations and direct contact" with siblings.

### *Failure to obey a court order*

Where someone failed to obey a court order, section 16 of the Bill imposed a duty on the court to investigate why this has happened.

### *Delay in court cases*

Section 21 of the Bill said that, in various types of family cases the court must consider the risk to the child's welfare that delay would pose.

## **Parliamentary consideration**

### *Stages 1 and 2 of the Bill*

The main issues attracting attention at Stage 1 and 2 of the Bill were:

- whether the provisions of the Bill were going to be sufficiently resourced to be effective in practice
- the role of [alternative dispute resolution](#) (ADR) in the context of family cases
- whether statutory provisions aimed at protecting the confidentiality of information about children were required in the Bill.

### *Stage 3 of the Bill*

In this section any references to individual provisions are [to those in the Bill as passed](#).

Government amendments passed at Stage 3 introduced the following changes:

- a stipulation that solicitors (not just the courts) must refer their clients to a regulated child contact centre (section 9ZA)
- provision for legal aid for various forms of alternative dispute resolution (section 16A)
- a requirement on the Government to arrange a pilot scheme. Except where there is domestic abuse, this would require parties in a dispute to attend mandatory information meetings on the options available to resolve a dispute (section 16B).

Non-Government amendments at Stage 3 made the following changes:

- the introduction of a new provision (section 21B) which requires the Scottish Ministers, no later than five years after the date of Royal Assent, to review, and report to Parliament on, the ability of children to effectively participate in decision-making
- a new version of a specific statutory duty (originally introduced by non-Government amendment at Stage 2) relating to the confidentiality of children's information (section 13B).

Other issues which had prominence at Stage 3 (having also featured at Stages 1 and Stage 2) included whether any changes to the Bill should be made:

- to create a child's right to see their grandparents. At present, there is no automatic right.
- to promote [shared parenting](#), that is to say the principle by which both parents have equal, or very similar, amounts of involvement in the life of their child.

Ultimately, no relevant changes to the Bill were made at Stage 3 on these topics.

# Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill

Bill Number: SP Bill 14 (Session 5)

Introduced on: 1 June 2017

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 1 May 2018

Royal Assent: 5 June 2018

## Passage of the Bill

The [Civil Litigation Bill](#) (SP Bill 14) was introduced in the Scottish Parliament by Michael Matheson, then Cabinet Secretary for Justice, on 1 June 2017.

The Justice Committee was the lead committee for scrutinising the Bill. It took Stage 1 evidence in September, October and November 2017.

The Committee's [Stage 1 Report](#) was published on 21 December 2017. The [Scottish Government responded](#) in January 2018.

The [Stage 1 debate](#) took place on 16 January 2018.

Stage 2 consideration took place at Justice Committee meetings on [27 February 2018](#) and [6 March 2018](#).

The Stage 3 debate took place on [26 April 2018](#) and [1 May 2018](#). The Bill was passed unanimously on 1 May 2018.

## Purpose and objectives of the Bill

The Bill would implement those recommendations of the [Review of Expenses and Funding of Civil Litigation in Scotland](#) (2013) which require legislation. This review is more commonly referred to as the Taylor Review.

The Bill's aim is to improve access to justice by making the costs of civil court action more predictable and increasing the options available to pay for court action.

The Bill would also take forward several outstanding proposals from the [Scottish Civil Courts Review](#) (2009) – also known as the Gill Review. This recommended wide-ranging reforms to the civil court system in Scotland to make it more effective and efficient.

## Provisions of the Bill

The Bill's main provisions would:

- regulate no win, no fee agreements, including damages-based agreements (where lawyers get a percentage share of compensation in successful cases)

- introduce qualified, one-way costs shifting (QOCS) in personal injury cases – this alters the normal rule that the loser pays the winner’s legal expenses
- place requirements of third parties who fund litigation for financial gain (and are not otherwise involved in the legal action)
- require transparency in relation to funding arrangements from all those who bring civil court action
- create salaried posts for auditors of court (who deal with disputes over claims for legal expenses between parties to court action)
- introduce powers to create court rules governing “group proceedings” – were one set of legal proceedings are brought by two or more parties so that costs and risks can be shared.

## **Parliamentary consideration**

There were a number of controversial areas as the Civil Litigation Bill progressed through the Scottish Parliament. In summary, these were:

### *Regulation of claims management companies*

Claims management companies negotiate compensation claims on behalf of injured people, but they do not employ solicitors or represent people in court. There have been concerns that some claims management companies behave unscrupulously.

Claims management companies were previously regulated in England and Wales, but not in Scotland.

The Civil Litigation Bill did not contain any provisions on regulation. However, the Justice Committee recommended that claims management companies should be regulated. As a result, the Scottish Government agreed to the extension to Scotland of proposals in Westminster legislation for regulation by the Financial Conduct Authority.

### *Treatment of compensation for future loss*

Someone who is seriously injured may claim compensation for losses which will happen in the future, such as future care costs and loss of future earnings.

Under the Bill’s proposals for damages-based agreements, lawyers would be able to claim a percentage of an injured person’s compensation if the case was won. This would include compensation for future loss in certain cases. This led to concerns that injured people may be left with insufficient compensation to meet their future needs.

The Bill was amended at Stage 2 to exclude compensation for future loss from the percentage take in damages-based agreements. However, the Bill was amended again at Stage 3 to reverse this change. MSPs were persuaded that lawyers may not be prepared to take on complex future loss cases under a damages-based agreement unless their remuneration was increased in this way.

### *Qualified, one-way costs shifting*

Under QOCS, the injured person is not liable for the defender’s legal expenses if they lose but can still claim their expenses from the defender if they win. If an injured person

conducts their case in a dishonest or unreasonable way, they can lose the protection of QOCS.

Amendments at Stage 2 changed the tests to lose QOCS protection to cover fraudulent behaviour as well as words. They also clarify that activities which occurred before the claim came to court were covered.

Stage 2 amendments also established that unreasonable behaviour was to be judged on the definition of “Wednesbury unreasonableness”. This is a decision so unreasonable that no reasonable person acting reasonably could have reached it.

### *Group proceedings*

The Bill would enable court rules creating group proceedings to be brought forward. Such proceedings would be run on what is called an “opt-in” basis. Those who wish to join the court action would have to positively choose to do so.

However, some stakeholders argued that a facility for “opt-out” proceedings was important for taking low value consumer cases. In an “opt-out” procedure, action is brought on behalf of all those estimated to have suffered loss. If someone does not want to participate, they have to opt-out.

The Bill was amended at Stage 2 to allow rules for opt-out proceedings to be brought forward. It was further amended at Stage 3 to make clear that opt-in and opt-out rules did not have to be brought forward at the same time.

### *Post-legislative scrutiny*

There was significant debate during the passage of the Bill about whether it was likely to increase access to justice or encourage more spurious claims.

For this reason, it was amended at Stage 2 to require the Scottish Government to carry out post-legislative scrutiny after five years. This would cover all the provisions, with a particular focus on those dealing with QOCS and group proceedings.

It was amended again at Stage 3 to clarify that the group proceedings provisions would be reviewed five years after court rules became operational.

# Civil Partnership (Scotland) Bill

Bill number: SP Bill 57

Introduced on: 30 September 2019

Introduced by: Shirley-Anne Somerville MSP (Government Bill)

Passed: 23 June 2020

Royal Assent: 28 July 2020

## Passage of the Bill

The [Civil Partnership \(Scotland\) Bill \(SP Bill 57\)](#) was introduced on 30 September 2019. The Equalities and Human Rights Committee was designated as lead committee. The Bill completed Stage 1 on 19 May 2020, Stage 2 on 11 June 2020 and was passed by the Parliament at Stage 3 on 23 June 2020.

## Purpose and objectives of the Bill

The Bill aimed to introduce civil partnerships for mixed sex couples.

When it was introduced, mixed sex couples in Scotland only have the option of getting married if they wished to have their relationship legally recognised. Same sex couples had the choice of getting married or forming a civil partnership.

Civil partnerships for mixed sex couples have been introduced in England, Wales and Northern Ireland. This followed a ruling by the Supreme Court that said that the situation was discriminatory and incompatible with the European Convention on Human Rights.

The inequality could be eliminated either by abolishing civil partnerships or by extending them to mixed sex couples.

The Scottish Government aimed to extend civil partnerships to mixed sex couples to uphold human rights and equality of opportunity. This would also provide parity with the rest of the UK.

## Provisions of the Bill

The Bill made changes to existing legislation to allow for mixed sex couples to form civil partnerships. This included consequential changes to Scottish family law, and allowed for the recognition of certain overseas relationships between mixed sex couples.

The provisions included:

- removing the reference to a civil partnership being 'of the same sex'
- overseas registered partnerships recognised as civil partnerships in Scotland
- interim recognition of mixed sex civil partnerships formed outside of Scotland. This allowed for those relationships to be recognised as marriages in Scotland, until civil



partnerships for mixed sex couples in Scotland come into force

- replicating provisions for religious or belief registration of mixed sex civil partnership, as with same sex civil partnerships
- allowing mixed sex couples in a civil partnership to convert their relationship to a marriage in the same way as same sex civil partners
- a power for Scottish Ministers to make regulations to enable a marriage to be converted to a civil partnership
- grounds for dissolution of mixed sex civil partnership be the same as with same sex civil partnership
- ending the requirement for a person in a civil partnership who obtains a Gender Recognition Certificate to end their relationship, as long as their partner consents to the civil partnership continuing. This mirrors provisions in respect of marriage
- extending provision on forced marriage to civil partnerships
- a range of amendments relating to family law that make provision for mixed sex civil partnership.

### **Parliamentary consideration**

At Stage 1, concern was raised about the provision for different sex civil partnerships formed outside of Scotland to be temporarily “treated as if in a marriage” until different sex civil partnerships can be registered in Scotland. The intention was to allow different sex civil partners who moved to Scotland to access the rights and responsibilities that would come from a marriage, until different sex civil partnerships come into force.

However, some witnesses expressed disappointment that their civil partnership would be treated as marriage during this interim period, despite the pragmatic aim of the provision.

An amendment was made at Stage 2. This made it clear that while legal protections were provided during the interim period by treating the civil partnership as if it were a marriage in law, that did not prevent the partners from presenting themselves as civil partners and not married.

The Bill, as introduced, extended provision for mixed sex civil partners to convert their relationship into a marriage; this matched with the existing provision for same sex civil partnerships in Scotland. There were no plans to allow couples to convert their marriage to a civil partnership.

However, throughout Stage 1 scrutiny, a number of witnesses raised this as a concern. Almost all the witnesses supported conversion of a marriage to a civil partnership on the basis of equality, stating the many symbolic, emotional and cultural reasons people have for not wanting to be married. There was also concern that Scotland could become out of step with the rest of the UK, which had been consulting on the conversion of marriage to civil partnership.

At Stage 2, the Bill was amended to provide Scottish Ministers with the power to make regulations on changing marriages to civil partnerships. The Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville MSP, noted that this reflected what

had been done in England and Wales, and in Northern Ireland, where similar powers are in place. The use of the regulation-making power would provide an opportunity to consider this proposal in further detail.

At Stage 3, the Bill was passed with a vote of 64 For, 0 Against, and 0 Abstentions.

# Climate Change (Emissions Reduction Targets) (Scotland) Bill

Bill Number: SP Bill 30

Introduced on: 23 May 2018

Introduced by: Roseanna Cunningham MSP (Government Bill)

Passed: 25 September 2019

Royal Assent: 31 October 2019

## Passage of the Bill

The Environment Climate Change and Land Reform Committee scrutinised the Bill at Stage 1 and published its [Stage 1 Report](#) on 4 March 2019.

The Delegated Powers and Law Reform Committee [reported on the delegated powers](#) set out in the Bill on 14 November 2018.

The [Stage 1](#) debate on the Climate Change (Emissions Reduction Targets) (Scotland) Bill took place on 2 April 2019.

The Environment Climate Change and Land Reform Committee took further evidence on the Bill at Stage 2 on [14 May 2019](#), and considered Stage 2 amendments on [21 May 2019](#), and [28 May 2019](#). A [Stage 2 Report](#) was published on 5 June 2019.

An [amended version of the Bill was published](#) on 26 June 2019.

Following the [Stage 3 debate](#) on 25 September 2019, the Bill was passed and received Royal Assent on 31 October 2019.

## Purpose and objectives of the Bill

The primary purpose of the Bill is to respond to the UNFCCC Paris Agreement which seeks to limit global temperature rises to "well below" 2 degrees celsius and to "pursue efforts" to limit the increase to 1.5 degrees above pre-industrial levels. It makes substantial changes to Scotland's greenhouse gas emissions reduction targets (against a 1990 baseline), as well as improving transparency.

## Provisions of the Bill

The Climate Change (Emissions Reduction Targets) (Scotland) Bill [as introduced] set targets for greenhouse gas emissions reductions of:

- 56% by 2020
- 66% by 2030
- 78% by 2040

- 90% by 2050.

All targets are now expressed in percentage terms, rather than megatonnes of carbon to improve stability and transparency.

The Bill also:

- makes changes to the way emissions are accounted for when assessing and reporting on targets
- sets a default limit of zero carbon credit usage for all future years, unless Ministers bring forward regulations
- complements the move to percentage based targets by freezing the methods used to measure emissions for rolling periods of up to five years
- changes the name of Reports on Policies and Procedures to Climate Change Plans and extends the time available for parliamentary consideration of the Plan
- rationalises and improves existing annual reporting duties, and stops double reporting. It also puts a new reporting requirement in place to provide further detail on progress against Climate Change Plans.

Following the publication of further scientific evidence by the Intergovernmental Panel on Climate Change (IPCC), and amendment by the Parliament at Stage 3, the Bill [as passed] sets targets for greenhouse gas emissions reductions of:

- 56% by 2020
- 75% by 2030
- 90% by 2040
- Net-zero by 2045.

### **Parliamentary consideration**

The Environment Climate Change and Land Reform Committee scrutinised the Bill at Stage 1 and published its [Stage 1 report](#) on 4 March 2019.

The Committee supported the broad principles of the Bill, but called for further clarity and transparency, as well as improvements to target setting, measurement and reporting.

Following the publication of further research by the IPCC, the Environment Climate Change and Land Reform Committee took further evidence on the Bill at Stage 2 on [14 May 2019](#), and considered Stage 2 amendments on [21 May 2019](#), and [28 May 2019](#). A Government amendment at Stage 2 put a net-zero target in place for 2045.

At the [Stage 3 debate](#) on 25 September 2019, a new target of a 75% reduction in greenhouse gas emissions by 2030 was agreed to.

# Consumer (Scotland) Bill

Bill Number: SP Bill 49

Introduced on: 5 June 2019

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 6 May 2020

Royal Assent: 9 June 2020

## Passage of the Bill

The [Consumer Scotland Bill](#) (SP Bill 49) was introduced on 5 June 2019. It was a Government Bill.

The Economy, Energy and Fair Work Committee ('the Economy Committee') led on scrutiny of the Bill at Stage 1. It held oral evidence sessions in October and November 2019.

The Delegated Powers and Law Reform Committee reported on the delegated powers contained in the Bill (October 2019). The Finance and Constitution Committee also considered the financial implications of the Bill.

The Economy Committee published its Stage 1 Report on the Bill on 28 December 2019. The [Scottish Government responded](#) by letter on 15 January 2020. The Stage 1 debate took place on 23 January 2020.

Stage 2 amendments were considered by the Economy Committee on 25 February 2020.

The Stage 3 debate took place on 6 May 2020. The Bill received unanimous support. The Bill (as amended) received [Royal Assent](#) on 9 June 2020 to become the Consumer Scotland Act 2020 (asp 11).

## Purpose and objectives of the Bill

The Bill established Consumer Scotland as the body with responsibility for consumer advice and advocacy (campaigning on behalf of consumers) in Scotland. These aspects of consumer policy were devolved to the Scottish Parliament in the Scotland Act 2016. It is expected that Consumer Scotland will work closely with existing consumer organisations in delivering its functions.

The Bill also created a "consumer duty", a requirement for certain public bodies to consider the impact of their decisions on consumers. The intention was that this would enable consumer issues to be taken into consideration in policies developed by those bodies.

In the Policy Memorandum which accompanied the Bill, the Scottish Government stated that supporting consumers helps to support the whole economy by increasing confidence. It also argued that consumer support can tackle poverty and disadvantage and drive behavioural change (such as environmentally-friendly practices).

## **Provisions of the Bill**

The Bill created an independent body called Consumer Scotland with the main purposes of providing (or supporting provision of) advocacy and advice on consumer issues. It had the following overarching aims:

- reducing harm to consumers
- increasing confidence among consumers
- increasing the extent to which consumer matters are taken into account by public bodies in Scotland
- promoting sustainable consumption
- advancing inclusion and well-being.

The Bill's provisions established Consumer Scotland as a body which:

- is accountable to the Scottish Parliament
- must use its powers in a collaborative way
- must specifically consider the needs of vulnerable consumers
- has powers to require certain bodies to provide information and to conduct research.

## **Parliamentary consideration**

There was broad support for the establishment of Consumer Scotland from MSPs. The main areas of contention are set out below.

- Ensuring Consumer Scotland collaborated effectively with other bodies dealing with consumer issues

It was recognised that there were already a lot of organisations working in this field. Amendments to the Bill expanded the duty to collaborate beyond the public sector, to include any person or body. They also required Consumer Scotland to report on how it had “had regard” to the work of other organisations.

- Defining vulnerable consumers

The Economy Committee heard evidence that vulnerability depended on context rather than characteristics. Most consumers would be vulnerable at some point (for example, after bereavement). For many, that vulnerability would not be long-term.

The definition which appeared in the Bill as introduced was amended to focus on consumers who have fewer options, or faced more harm, than typical consumers. Vulnerable consumers will also be represented on the board of Consumer Scotland.

- Protecting small businesses

The Economy Committee recognised that small businesses could face many of the same disadvantages as individual consumers. The Bill was therefore amended so that small businesses were included in the definition of consumer and in the requirements of the

consumer duty.

- Ensuring environmental and well-being concerns were taken forward by Consumer Scotland

There were concerns that the framework for Consumer Scotland did not sufficiently recognise environmental, well-being and sustainability issues. Its functions were amended to include advancing inclusion and well-being, as well as promoting sustainable consumption. It was also placed under a duty to consider the environmental impact of the actions of consumers.

- Product recall

There was no central source of information about product recalls, meaning that consumers often failed to react. Consumer Scotland was given responsibility for facilitating the creation of a database of major product recalls in Scotland and publicising this to consumers.

# Contract (Third Party Rights) (Scotland) Bill

Bill Number: SP Bill 5

Introduced on: 21 September 2017

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 21 September 2017

Royal Assent: 30 October 2017

## Passage of the Bill

The [Contract \(Third Party Rights\) \(Scotland\) Bill](#) (the Bill) was introduced in the Scottish Parliament on 21 September 2017 by the Scottish Government.

The Delegated Powers and Law Reform Committee (the Committee) took Stage 1 evidence at its meetings on [14 March](#), [21 March](#), [28 March](#), [18 April](#) and [25 April](#) 2017.

The Committee published its [Stage 1 Report](#) on 12 May 2017 and the Stage 1 debate took place on [25 May 2017](#).

The Committee considered amendments to the Bill at Stage 2 on [27 June 2017](#) and the Bill as amended at Stage 2 was published on [30 August 2017](#).

The Stage 3 debate took place on [21 September 2017](#). The Bill received Royal Assent on 30 October 2017 to become the Contract (Third Party Rights) (Scotland) Act 2017.

## Purpose and objectives of the Bill

The Bill is a Scottish Law Commission Bill. It reforms the common law rules on third party rights (i.e. the rules which allow the parties to a contract to create rights for third parties) and replaces them with a statutory version. The aim is to make the law clearer and more usable.

## Provisions of the Bill

The Bill abolishes the existing common law rules on third party rights in Scotland (sometimes known by the Latin term *jus quaesitum tertio* or JQT). It includes provisions on:

- the creation of third party rights
- remedies available to third parties
- defences available against third parties
- arbitration and third parties



- the renunciation of third party rights.

The prescription of third party rights (i.e. the time limit during which a claim can be made based on a third party right). Further details can be found in the [SPICe Briefing](#).

### **Parliamentary consideration**

Most of the consideration of the Bill in the Scottish Parliament was of a technical nature.

The Scottish Government brought forward [certain technical amendments at Stage 2](#). Amongst other things, these were aimed at clarifying the right of a third party to be treated as a party to an arbitration agreement and aspects of the abolition of the common law rules. The Bill passed at Stage 3 without further amendment.

# Coronavirus (Scotland) Bill

Bill Number: SP Bill 66

Introduced on: 31 March 2020

Introduced by: Michael Russell MSP (Government Bill)

Passed: 1 April 2020

Royal Assent: 6 April 2020

## Passage of the Bill

The [Coronavirus \(Scotland\) Bill](#) was introduced on 31 March 2020, and the Parliament agreed to treat it as an emergency bill, with stages 1, 2 and 3 all happening on the day after introduction on 1 April 2020.

## Purpose and objectives of the Bill

The aim of the Bill was to respond to the emergency situation caused by the coronavirus pandemic. The Bill added to the changes which affect Scotland that were made by the Coronavirus Act 2020 ("the 2020 Act"). This Act was passed by the UK Parliament on 25 March 2020.

The Bill made changes to some of the duties of public bodies, with the aim of letting them focus on work which responds to the coronavirus outbreak. This included changes that would:

- allow essential public services to continue to be delivered
- support businesses
- protect the health of people living and working in Scotland

It also made significant legislative changes affecting the justice system.

## Provisions of the Bill

The main parts of the bill covered the following areas:

- measures to **protect renters from eviction** during the outbreak by adjusting the notice periods for the majority of repossession grounds across both private and social rented sectors (s2 and schedule 1)
- measures to provide **additional protection to debtors** by extending the legally enforceable pause on creditor enforcement of debts (called a "moratorium on diligence") when someone seeks money advice. The extension was from six weeks to six months (s3 and schedule 2)
- provision to make temporary changes to legislation in relation to **children and vulnerable adults** (s4 and schedule 3)

- provisions aimed at supporting the operation of the justice system during the coronavirus outbreak, including ones providing for **court business by electronic means**, the **extension of time limits in criminal cases** and the **early release of prisoners** (s5 and schedule 4)
- measures providing for temporary modifications of legislation in relation to **alcohol licensing**, such as providing for remote hearings, so the system could continue to function during the pandemic (s6 and schedule 5)
- provision in relation to the **functions of public bodies** including various changes relating to licensing under the Civic Government (Scotland) Act 1982, local authority meetings and the provision of accounts under the Public Finance and Accountability (Scotland) Act 2000 (s7 and schedule 6)
- a range of **other provisions** including measures relating to social security, commercial leases, the planning system, the registration of land and property, changes to the Anatomy Act 1984, changes to the scrutiny of secondary legislation and provisions relating to Business improvement districts.

All the measures introduced by the Bill were **limited to the duration of the coronavirus (Covid-19) outbreak** (s11), with the majority of them (those introduced under Part 1 of the Bill) automatically expiring on 30 September 2020, six months after they come into force. The bill indicated that these may be extended for two further periods of six months, meaning that the measures in the Bill would last for a maximum of 18 months. Conversely, s12 provided a power to bring forward the expiry date of Part 1 provisions.

### Parliamentary consideration

With agreement from the Parliament, this was treated as an emergency bill, which progressed through and completed in one day.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell) confirmed in his opening remarks that in attempting to secure consensus, the government would seek to amend the bill to remove provisions allowing it to provide for trials on indictment without a jury. Relevant changes were subsequently agreed.

Despite the wide-ranging effects of the bill, the circumstances of the pandemic meant that there was general support for the principles.

Given its emergency status, under Stage 2, the bill was considered by a Committee of the Whole Parliament.

A series of amendments were made on housing issues, particularly relating to the rights of tenants and potential evictions arising as a result of the pandemic. The government indicated they would wish to work with Members from across the Parliament, but a number of opposition amendments were not agreed to.

One area of contention were the proposals around freedom of information, and in particular the proposal for extending the period of response to a freedom of information request from 20 working days to 60 working days. The issue was fiercely contended, but the Parliament narrowly passed the extension (the Presiding Officer casting the deciding vote) meaning giving public bodies 60 working days to respond to freedom of information requests.

At the end of proceedings, the result of the division was, For 80, Against 0, Abstentions 0. The motion was agreed to unanimously and the Coronavirus (Scotland) Bill was passed.

# Coronavirus (Scotland) (No 2) Bill

Bill Number: SP Bill 71

Introduced on: 11 May 2020

Introduced by: Michael Russell MSP (Government Bill)

Passed: 20 May 2020

Royal Assent: 26 May 2020

## Passage of the Bill

The [Coronavirus \(Scotland\) \(No. 2\) Bill](#) was introduced in the Parliament on Monday 11 May 2020. On 12 May 2020, the Parliament agreed that the Bill should be treated as an Emergency Bill.

Normally, all stages of an Emergency Bill are taken on the same day, unless the Parliament agrees to an alternative timescale. Also, Stage 2 is normally taken by a Committee of the Whole Parliament. However, for this Bill, the Parliament agreed a different timescale and also agreed that Stage 2 should be taken by the COVID-19 Committee.

The agreed timescale for the Bill was:

- 12 May: Stage 1 consideration by the Covid-19 Committee and by the Delegated Powers and Law Reform (DPLR) Committee
- 13 May: Stage 1 debate
- 19 May: Stage 2 consideration by the Covid-19 Committee
- 20 May: Stage 3 final consideration in Chamber

The [DPLR Committee considered the delegated powers in the Bill on 12 May and reported to the COVID-19 Committee](#). The general principles of the Bill were considered by the COVID-19 Committee on Tuesday 12 May.

The [general principles of the bill were debated in the Chamber on 13 May and agreed to](#).

## Purpose and objectives of the Bill

At the time of the Coronavirus (Scotland) Bill, the Scottish Government said that further primary legislation would be required. This second Bill was intended to “supplement and complement” the first Bill.

The purpose of this second Bill was to make further changes to the way essential public services operate, to provide more support for business and to assist central and local government and health and social care services to respond effectively to the COVID-19 pandemic. [For a more detailed briefing on the Bill, as introduced, see this SPICe Briefing.](#)

The Bill included:

- measures to ensure that business and public services can continue to operate well
- changes to some obligations and duties on public services
- changes to protect certain student tenants
- support for carers and power to reduce non-domestic rates
- changes aimed at supporting the operation of the justice system

The Bill also contained the following safeguards:

- most of the measures in the Bill will expire at the end of September 2020 (They could be extended up to a maximum duration of a further year, if the Parliament approves this)
- where a measure is no longer needed, Scottish Ministers can bring it to an end earlier
- Scottish Ministers must review and report on the measures every 2 months.

### **Provisions of the Bill**

The bill contained a wide range of measures under the following headings

- Housing and tenancies
- Social care sector
- Young carer grants supplement
- Extension of services under the minor ailment service
- Bankruptcy
- Regulation of businesses
- Scottish welfare fund: monitoring of applications
- Marriage and civil partnerships
- Concessionary travel
- Sale of Alcohol
- Fixed penalty notices under Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020
- Operation of the justice system
- Land and buildings transaction tax: repayment of additional amount
- Relief to be provided to small business tenants
- Electronic signing and registration of documents

- Freedom of Information
- Traffic Regulation
- Low Emission Zones
- Advancement of equality and non-discrimination
- Conditions of support for business
- Reports by the Scottish Ministers on coronavirus subordinate legislation.

## **Parliamentary consideration**

### *Stage 1*

At stage 1, the COVID-19 Committee recommended that the Parliament agree to the general principles of the Bill. Further clarification was sought for some areas, such as on the arrangements for marriages and civil partnerships, and issues such as freedom of information, housing rights (including for students), and support for carers were also highlighted.

The Parliament agreed to the general principles of the Bill.

### *Stage 2*

Some of the parliamentary activity at Stage 2 is set out below

In relation to housing some of the amendments covered a Tenants Hardship fund and a tenant rent support fund, a possible two year rent freeze, and disregarding rent arrears arising during the pandemic, as well as rent arrears and the grounds for eviction. All these amendments were disagreed to.

On social care *two amendments* in the name of Michael Russell inserted new provisions in Chapter 3, section 65 of the Public Services Reform (Scotland) Act 2010, about cancellation of the registration of care services – these were agreed to.

An opposition amendment (Monica Lennon MSP) placed a duty on the Care Inspectorate to report to Parliament on care home inspections every two weeks during the emergency period and was agreed to.

An amendment from Jackie Baillie MSP, that every care home must make a daily report during the emergency period on the number of deaths or suspected deaths from coronavirus, and that this should be reported to ministers and Parliament, was agreed to.

Other amendments, for example on the young carers supplement, and on bankruptcy were not agreed to.

However, on civil marriages and partnerships amendment 36, in the name of Adam Tomkins MSP, was agreed to. This required Scottish Ministers, to “take such steps they consider to be necessary” to ensure that it is still possible to marry or enter into a civil partnership during the period the proposed legislation is in force. The amendment also required Scottish Ministers to report to the Scottish Parliament every two months on the steps taken by Scottish Ministers and the number of marriages and civil partnerships which have taken place in Scotland during the reporting period.

During its Stage 2 consideration of the Bill, the Covid-19 Committee unanimously *agreed to Amendment 3*, put forward by Ross Greer MSP, to restrict the power of the police to issue fixed penalty notices under the Regulations. The Regulations, as originally made, allow the police to issue fixed penalty notices to people aged 16 or over. The amendment provided for this to be raised to 18 or over.

The Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS) has been in place since 1 April 2016 and places a 4% charge on purchases of additional residential properties in Scotland (such as buy-to-let properties and second homes) of £40,000 or more. *Amendment 40* sought to increase the 27 month reclaim period by 9 months to 36 months, and so bring Scotland in line with the rest of the UK. Reflecting the concerns raised about potential impacts on housing markets in island and rural communities, the government agreed to this amendment.

One of the more controversial areas related to **freedom of information**. Following passing of the Coronavirus (Scotland) bill, public bodies now had 60 working days to respond to freedom of information requests rather than the 20 working days provided for by the Freedom of Information (Scotland) Act 2002 (FOISA). Nine amendments relating to FOI were considered at Stage 2, including one from Mike Russell MSP, proposed adjusting the timescales for public bodies to respond to freedom of information requests from 60 days to 40 days, except in the case of the Scottish Ministers which would revert to the 20 working days. However, this was not agreed to with 4 votes for and 5 votes against.

Amendments 11, 12 and 13 were lodged by Ross Greer MSP and supported by Adam Tomkins MSP. These three amendments sought to remove the extension to freedom of information deadlines provided for by the 2020 Act whilst retaining the ability to give notice electronically and allowing the Scottish Information Commissioner to allow discretion to take into account the impact of coronavirus when considering whether public bodies have met their duties under Part 1 of FOISA. The amendments were agreed without division.

Amendment 45 which was lodged by Neil Findlay MSP sought to place a requirement on Scottish Ministers to report on the freedom of information performance of the Scottish Government during the emergency period of the pandemic. The amendment was agreed to by 5 votes to 4.

### *Stage 3*

At Stage 3, Amendment 4, from Pauline McNeil MSP related to reporting on domestic abuse incidents, and was agreed to. Amendment 5 from Adam Tomkins MSP set out reporting requirements for Covid related instruments and was agreed to. Graeme Simpson MSP brought forward amendments relating to student housing (agreed to), whilst another amendment from the government introduced a pre-eviction phase into proceedings. Some of the issues discussed at Stage 2 were also revised and reprised, but not agreed to.

Opposition amendments were also sought relating to the social care sector, specifically on collective bargaining (not agreed to), and a social care staff support fund (agreed to). Government amendments covered areas of care homes emergency directions; emergency intervention orders; and the giving of notices by the Care Inspectorate.

Jackie Baillie MSP put forward a number of amendments on the bankruptcy process, including proposals to reduce the fees charged to apply for bankruptcy. Several amendments which extended the exemptions from fees for those receiving certain social security benefits were agreed to.



The Scottish Government also confirmed support for Adam Tomkins MSP's amendments at Stage 2 on marriages and civil partnerships. In this regard, the Government put forward some "tidying up" amendments, supported by Adam Tomkin MSP, which were agreed to.

Colin Smyth MSP put forward amendments for a scheme of free bus travel for NHS and social care workers during the emergency measures. The government was supportive of such a scheme, but said new legislation was not required (amendment not agreed to)

On freedom of information the Scottish Government said that it "has listened to the will of Parliament, which has clearly indicated where it thinks the balance should be struck in relation to freedom of information during the emergency period. The Government's amendments on FOI seek to ensure that the will of Parliament is delivered". The government amendments were agreed to.

In the vote on the Bill, the result was: For 76, Against 0, Abstentions 0, and the motion was agreed to that the Parliament agrees that the Coronavirus (Scotland) (No. 2) Bill be passed.

# Damages (Investment Returns and Periodical Payments) (Scotland) Bill

Bill Number: SP Bill 35

Introduced on: 14 June 2018

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 19 March 2019

Royal Assent: 24 April 2019

## Passage of the Bill

The [Damages Bill](#) (SP Bill 35) was introduced in the Scottish Parliament on 14 June 2018 by Michael Matheson MSP, the then Cabinet Secretary for Justice.

The Economy, Energy and Fair Work Committee took the role of lead committee for scrutiny of the bill. It took Stage 1 evidence in October and November 2018.

The Committee published its [Stage 1 report](#) on 3 December 2018. The [Scottish Government responded](#) on 12 December 2018. The [Stage 1 debate](#) took place on 18 December 2018.

Stage 2 amendments were considered by the Economy Committee on [22 January 2019](#).

The [Stage 3 debate](#) took place on 19 March 2019, and the Bill was passed unanimously on that date. The Bill received royal assent on 24 April 2019.

## Purpose and objectives of the Bill

The Bill deals with technical issues about how payments are calculated and made when someone claims compensation for future loss in personal injury cases. Future loss covers losses an injured person may experience in the future, such as future care costs or future lost earnings.

## Provisions of the Bill

The Bill would:

- **Reform the way the “discount rate” is calculated** – the discount rate is the adjustment made to a compensation award for future loss to reflect the fact that the injured party receives the compensation before the loss occurs (so that it can gain or lose value).
- **Give the courts the power to require payment of compensation via periodical payment orders** – which allows payment by regular instalments rather than a lump sum.

## Parliamentary consideration

*Discount rate*

The Bill set out a standard methodology for calculating the discount rate. This used a cautious, notional investment portfolio to calculate expected returns. A series of standard adjustments were then made to reach the discount rate.

At Stage 3, MSPs agreed to increase the deduction made to take account of costs relating to financial advice and taxation from 0.5% to 0.75%.

A Stage 2 amendment increased the period between reviews of the discount rate methodology from three to five years. This was seen as reducing the risk of the parties to court action trying to manipulate a case's progress. They may do this in the hope that the case would be settled when a discount rate more favourable to their interests was in force.

A Stage 2 amendment also made it explicit that Scottish Ministers must review the make-up of the "notional investment portfolio" at the same time as the discount rate was reviewed.

*Periodical payment orders*

At Stage 2, the Bill was amended to require the courts to specify their reasons for believing that ongoing payment from the defender was "reasonably secure" when issuing a periodical payment order.

A Stage 3 amendment would place an obligation on the courts to have regard to the injured person's preference when deciding whether to impose a periodical payment order. This addressed concerns that pursuers might have legitimate reasons for wanting a lump sum payment instead.

# Defamation and Malicious Publication (Scotland) Bill

Bill Number: SP Bill 61

Introduced on: 2 December 2019

Introduced by: Humza Yousaf MSP (Government Bill)

Passed: 2 March 2021

Royal Assent: 21 April 2021

## Passage of the Bill

The [Defamation and Malicious Publication \(Scotland\) Bill](#) was introduced on 2 December 2019. It was a Government Bill.

The Justice Committee took forward Stage 1 scrutiny of the Bill. It held its first evidence session on 17 March 2020. Further evidence-taking was delayed by coronavirus and took place in August and September 2020.

The Delegated Powers and Law Reform Committee raised no concerns about the delegated powers in the Bill in its Stage 1 Report (February 2020). The Finance and Constitution Committee also considered the financial implications of the Bill.

The Justice Committee published its Stage 1 Report on 14 October 2020. The [Scottish Government responded](#) by letter on 29 October 2020. The Stage 1 debate took place on 5 November 2020.

The Justice Committee considered Stage 2 amendments to the Bill on 26 January 2021. The Delegated Powers and Law Reform Committee issued a further report on the delegated powers in the Bill as amended at Stage 2 (February 2021).

The Stage 3 debate took place on 2 March 2021, and the Bill was passed unanimously. It received [Royal Assent](#) on 21 April 2021 to become the Defamation and Malicious Publication (Scotland) Act 2021 (asp 10).

## Purpose and objectives of the Bill

The current law has been argued to support the right to protection of private life at the expense of freedom of expression. The Bill implemented, broadly, Scottish Law Commission recommendations which sought to redress this balance.

Much of the existing law on defamation is obscure and based on judges' decisions in previous court cases. The Scottish Government intended to make the law easier to understand by setting it out in legislation. The Bill also strengthened and modernised aspects of the law.

Various proposals in the Bill also had the effect of raising the threshold for bringing

defamation court actions. This was argued to help rebalance the law towards protecting freedom of expression.

## Provisions of the Bill

The main changes made by the Bill are:

- putting aspects of the common law (the traditional law developed by judges' decisions in individual cases) into legislation. This included introducing a statutory definition for defamation, and creating defences of truth, publication in the public interest and honest opinion.
- introducing a “serious harm test”, so that someone can only be successful in court proceedings for defamation if they can demonstrate that they have suffered serious harm.
- preventing public authorities, including some private bodies with public functions, from suing for defamation (referred to as the “Derbyshire principle”)
- giving “secondary publishers” – those who are not the author, editor or commercial publisher of defamatory material – protection from legal action.
- replacing the law on verbal injury with a new type of civil wrong called malicious publication, covering material causing harm to certain business interests.
- changing the time limits for bringing defamation and malicious publication actions so that court action must usually be raised within one year of the first publication of material.

## Parliamentary consideration

MSPs broadly supported the intentions of the Bill. However, there were concerns about whether several proposals struck the right balance between freedom of expression and the right to a private life.

- The serious harm test

The serious harm test is an import from English legislation. It was intended to reduce the appeal of England as a forum to bring defamation court actions. Some stakeholders argued that, as there were only a small number of defamation court cases in Scotland, there was no need to introduce a new threshold.

Amendments at Stage 2 and 3 sought to remove the threshold or change the standard to “actual” rather than “serious” harm. However, they were not moved or not agreed to, leaving the serious harm test intact.

- Prohibition on public authorities suing for defamation

There was general concern that this proposal in the Bill as introduced was not clearly drafted. It was uncertain how bodies such as businesses and charities might be affected.

Media stakeholders argued that the definition should be extended to cover anyone delivering public services, including private businesses. However, some legal stakeholders raised concerns that the drafting went wider than the current legal position and could prevent bodies such as universities from protecting their reputation.

A Stage 2 Scottish Government amendment which was argued to clarify the definition was agreed to. However, other amendments intended to broaden the scope of the prohibition were rejected (or not moved).

- Malicious publication

It was the Scottish Government's intention that the new civil wrong of malicious publication would apply to statements which were both false and made maliciously. However, in practice, the drafting in the Bill may have meant that all that had to be shown was indifference to the truth. There was speculation that this relatively low threshold could result in malicious publication, rather than defamation, becoming the preferred route for protecting business interests.

Stage 2 Scottish Government amendments clarified that a statement had to be both false and malicious, and that there must be a "reckless" indifference to the truth to meet the requirement for falseness. Amendments intended to apply the serious harm test, and the statutory defences available for defamation, to malicious publication were withdrawn or not moved.

- Court orders requiring the removal of allegedly defamatory material

The Bill created a new power for the Scottish courts to require a third party to remove allegedly defamatory content. This power could be used at the beginning of legal proceedings, before the issues had been decided on by a court, as well as at the end. Media stakeholders argued that this was disproportionate.

The Bill was amended to make clear that the power could not be used to require material to be removed from a website before a court had reached a final decision on the case. Instead, a website could be required to include a statement explaining that the material was the subject of litigation.

# Disclosure (Scotland) Bill

Bill Number: SP Bill 50

Introduced on: 12 June 2019

Introduced by: John Swinney MSP (Government Bill)

Passed: 10 June 2020

Royal Assent: 14 July 2020

## Passage of the Bill

The [Disclosure \(Scotland\) Bill](#) (SP Bill 50) was introduced on 12 June 2019. The Education and Skills Committee was designated as lead committee. The Bill completed Stage 1 on 16 January 2020, Stage 2 on 11 March 2020 and was passed by the Parliament at Stage 3 on 10 June 2020.

## Purpose and objectives of the Bill

The Bill sought to amend the law governing how the state discloses previous offending behaviour and the Protecting Vulnerable Groups ("PVG") scheme. These services can be used for a range of purposes, typically as part of the process for individuals gaining employment or taking on voluntary roles.

The key purposes of the Bill were to:

- simplify the Disclosure System
- safeguard children and vulnerable adults
- balance this with an individual's right to move on positively from offending behaviour.

## Provisions of the Bill

The Bill reforms and reduces the types of disclosure products available. It makes changes to the PVG Scheme and creates offences both for employers (and similar) and individuals where an individual would undertake a regulated role when they are not members of the relevant PVG Scheme – essentially making the scheme mandatory for individuals performing those roles. The Bill seeks to reduce the likelihood of an offence committed by an individual when they are a child, being disclosed and creates new processes for applying for disclosed information to be removed from state disclosures.

The Bill could be considered as part of a package of reforms to the management of offenders and the treatment of convictions of individuals under 18 years of age. The policy intentions of the Bill interact with two other Acts passed in Session 5 by the Scottish Parliament: the Management of Offenders (Scotland) Act 2019 and the Age of Criminal Responsibility (Scotland) Act 2019. For example, the the Management of Offenders (Scotland) Act 2019 changed the time that certain offences would become spent and therefore, normally, would not be required to be disclosed.

## Parliamentary consideration

The Education and Skills Committee considered the Bill at Stage 1 and amendments at Stage 2.

The [Committee's Stage 1 report](#) broadly supported the Bill's intentions. It identified a number of areas of interest, including:

- Ensuring the Bill dovetailed with provisions of the Age of Criminal Responsibility (Scotland) Act 2019 and the Management of Offenders (Scotland) Act 2019.
- The review processes.
- Clarity on how to apply a two-stage test on deciding whether to disclose information (the two-stage test is first whether the information is relevant to the disclosure and second whether the information ought to be disclosed).
- Whether exempting under 16-year olds from the PVG scheme would impact on volunteering opportunities.
- Clarity of the system.

Key amendments at Stage 2 included a change to the approach of the disclosure of childhood convictions. The amended Bill amended the Rehabilitation of Offenders Act 1974 to the effect that all childhood convictions would become spent immediately except for “the most serious forms of criminality during childhood”. Spent convictions would not be disclosed in a Level 1 disclosure. Alongside this, the Bill was amended to remove any decision-making by Disclosure Scotland as to whether to include childhood convictions in a Level 1 Disclosure – any unspent convictions will be disclosed. The purpose of these changes was to ensure that duties to self-disclose convictions and state disclosure were aligned.

The Committee agreed Scottish Government amendments which provided more detail on how to apply a two-stage test when deciding whether information should be disclosed.

Stage 3 proceedings took place on 10 June 2020. Most of the amendments were of a technical nature. The Scottish Government also lodged amendments in relation to the definition of a protected adult and domestic abuse under the PVG scheme.

At both Stage 2 and 3, Alex Cole-Hamilton MSP lodged amendments that sought to bring elements of elected representatives' roles into the ambit of the PVG scheme. Mr Cole-Hamilton argued that elected representatives potentially have power and influence over children and protected adults and that it is anomalous that elected members are not subject to the PVG scheme. The amendment were not agreed at Stage 2 and Mr Cole-Hamilton withdrew the amendment at Stage 3 after the Scottish Government committed to commission a review to look at the issue.

The Disclosure (Scotland) Bill passed Stage 3 by a vote of 63 for, 0 against and 0 abstentions in a hybrid sitting. The Bill became [an Act](#) on 14 July 2020.



# Dogs (Protection of Livestock) (Amendment) (Scotland) Bill

Bill Number: SP Bill 72

Introduced on: 14 May 2020

Introduced by: Emma Harper MSP (Members' Bill)

Passed: 24 March 2021

Royal Assent: 5 May 2021

## Passage of the Bill

The Bill was introduced in Parliament on 14 May 2021. The Rural Economy and Connectivity Committee was designated lead committee. The Bill was introduced by Emma Harper MSP as a Member's Bill. The [consultation documents for the Bill can be found on the Scottish Parliament website](#).

The [timetable for consideration of the Bill is available on the Scottish Parliament website](#).

## Purpose and objectives of the Bill

The [Dogs \(Protection of Livestock\) \(Amendment\) \(Scotland\) Bill](#) (as it was introduced) sought to amend the Dogs (Protection of Livestock) Act 1953 ('the 1953 Act') to:

- Introduce higher penalties for livestock worrying offences in the form of higher maximum penalties.
- Provide the Courts with order-making powers to restrict the rights of a person convicted of a livestock worrying offence in relation to owning a dog or their rights of access to agricultural land accompanied by a dog.
- Grant power to Scottish Ministers to authorise persons, bodies or organisations to appoint inspectors for the purpose of enforcement under this Bill.
- Provide greater investigation powers for such inspectors and the police with regard to seizing dogs suspected of having worried livestock for the purpose of obtaining evidence, and providing for powers of entry to seize a dog from premises.
- Amend the definitions in the 1953 Act, including expanding the definition of "livestock" to include additional farmed animals, and expanding the definition of "agricultural land" to include "raising of game birds".
- Amend the Civic Government (Scotland) Act 1982 to reflect amendments made to the 1953 Act.

A [SPICe briefing is available on the Bill](#) as it was introduced.

## Parliamentary consideration

The Parliament's [Rural Economy and Connectivity Committee](#) supported the general principles of the Bill but had some reservations about particular provisions.

The Committee highlighted a number of things in its [stage 1 report](#), including:

- Questions around how to address the issue of compensation for livestock owners,
- Questions around how the proposed disqualification orders would function,
- Its view that the member in charge should remove the provisions regarding appointing additional inspecting bodies, due to “a lack of clarity on key issues related to the inspecting bodies provisions” and “fundamental concerns about the principle of inspection bodies taking the lead in any circumstances in which a criminal offence of livestock worrying has taken place”.
- Questions surrounding the role of vets.
- Its view that the Committee was not persuaded that the powers of entry search and seizure without a warrant are not required.
- That awareness raising of new provisions will be essential to its effectiveness.
- That there is a need for better national collection of standardised data on livestock attacks (and other dog control incidents), and that it would like to see the Scottish Government taking this forward as part of its wider review of legislation on animal welfare.
- Questions around the exemption of hunting dogs (when acting in the course of the hunt) from the provisions in the bill.

[Stage 2 saw 27 amendments lodged](#) and some amendments agreed to. In terms of substantive changes, agreed amendments included:

- Raising the penalties further to bring the Bill into line with other animal welfare offences in the Animals and Wildlife (Penalties, Protections and Powers) Act 2020;
- Removing the provisions on a new power for Scottish Ministers to appoint inspectors to assist in enforcement;
- Provisions allowing a constable (or inspector) to access premises (other than domestic premises) without a warrant under certain circumstances was removed;
- “Woodland that is used for grazing” was included in the definition of “agricultural land”;

[Four amendments were lodged at stage 3](#). The amendments were all minor and technical.

The provisions in the Act come into force in November 2021, six months after the date of Royal Assent on 5 May 2021.

# Domestic Abuse (Scotland) Bill

Bill Number: SP Bill 8

Introduced on: 17 March 2017

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 1 February 2018

Royal Assent: 9 March 2018

## Passage of the Bill

The [Domestic Abuse \(Scotland\) Bill](#) was introduced in the Parliament in March 2017.

The Justice Committee was designated as lead committee for parliamentary consideration of the Bill. Its stage 1 report was published in September 2017, with the stage 1 debate taking place later the same month. The general principles of the Bill were agreed to following the debate.

During stage 2 scrutiny, in addition to the consideration of amendments, the Justice Committee took evidence on emergency barring orders.

The Bill was passed following the stage 3 parliamentary debate in February 2018 and became the [Domestic Abuse \(Scotland\) Act 2018](#) following Royal Assent in March 2018.

## Purpose and objectives of the Bill

The Bill as introduced contained provisions:

- creating a statutory offence of domestic abuse against a partner or ex-partner
- making changes to criminal procedure, evidence and sentencing in domestic abuse cases.

The new offence was intended to cover behaviour which was already criminal, as well as abuse which might not be captured by existing offences. In relation to the latter, it was intended that the new offence would help enable the effective prosecution of behaviour that is controlling, coercive and emotionally or psychologically abusive.

The reforms to criminal procedure, evidence and sentencing applied to cases involving the domestic abuse aggravator provided for in section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, as well as to prosecutions for the new offence set out in the Bill

## Parliamentary consideration

Stage 1 scrutiny by the Justice Committee disclosed broad support for the way in which the new offence was defined in the Bill as introduced. This was despite concerns expressed by some witnesses that it set the threshold for criminality too low.

The main elements of how the offence is defined were not changed during parliamentary

scrutiny. However, the Bill was amended to:

- extend the territorial reach of the offence
- expand the scope of an aggravation which may apply where the offence involves a child.

The proposed changes to criminal procedure, evidence and sentencing were generally welcomed. Much of the stage 1 evidence in this area related to non-harassment orders. The Bill, as introduced, included provisions requiring the courts to consider making non-harassment orders when sentencing offenders in domestic abuse cases. Whilst there was broad support for this change, some argued that further reform was needed. The Bill was amended at stage 2 so that a non-harassment order in a domestic abuse case, in addition to protecting the victim, could also cover children involved in the case. It was further amended at stage 3 to create a presumption in favour of imposing a non-harassment order.

Stage 2 amendments also added a provision extending an existing restriction on the use of bail, in cases where a person is prosecuted for a violent or sexual offence under solemn procedure, to include domestic abuse.

The Justice Committee considered the potential benefits of introducing emergency barring orders (EBOs) during its scrutiny of the Bill. Various forms of EBO are available in a number of countries. They are short-term orders designed to protect victims who may otherwise feel compelled to flee their homes. During stage 1, the Justice Committee received evidence arguing that the Bill should be amended to include provision for them in Scotland. This led to the Committee taking further evidence at stage 2. Although the Bill was not amended to include provision for EBOs, the Scottish Government did outline plans to consult on introducing some form of EBO.

The benefits of specialist domestic abuse courts were also debated during parliamentary scrutiny of the Bill. They exist in some parts of Scotland and may include a number of elements designed to support the effective prosecution of domestic abuse cases (eg specific training for key personnel and arrangements for the prioritisation of domestic abuse cases over other cases). Debate included consideration of whether more needs to be done to widen the coverage of such courts across the country.

# Domestic Abuse (Protection) (Scotland) Bill

Bill Number: SP Bill 84

Introduced on: 2 October 2020

Introduced by: Humza Yousaf MSP (Government Bill)

Passed: 17 March 2021

Royal Assent: 5 May 2021

## Passage of the Bill

The [Domestic Abuse \(Protection\) \(Scotland\) Bill](#) (SP Bill 84) was introduced in the Scottish Parliament on 2 October 2020. It was a Government Bill.

The Justice Committee ('the Committee') led on the scrutiny of the Bill at Stage 1. It held a total of three oral evidence sessions on the Bill in December 2020 and January 2021. This was a challenging timetable for a significant piece of legislation.

The Delegated Powers and Law Reform Committee reported on the delegated powers contained in the Bill (3 November 2020). The Finance and Constitution Committee issued a call for evidence on the Financial Memorandum for the Bill and [received two responses](#). This Committee agreed to take no further action in relation to the Bill.

The Justice Committee published its Stage 1 Report on the Bill on 21 January 2021. The Scottish Government [responded by letter on 26 January 2021](#). The Stage 1 debate took place on 28 January 2021.

Stage 2 amendments were considered by the Justice Committee on 23 February 2021.

[SPICe produced a briefing on the Bill in advance of Stage 3](#), including detailed considerations of the issues raised at Stage 1 and Stage 2 of the Bill.

The Stage 3 debate took place on 17 March 2021. The Bill received unanimous support.

The Bill (as amended) received Royal Assent on 5 May 2021 to become the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021 \(asp 16\)](#).

## Purpose and objectives of the Bill

Part 1 of the Bill, the main part of the Bill, introduced two new powers, which do not require the consent of a person at risk to be exercised:

- the power available to a senior police officer to impose a **Domestic Abuse Protection Notice (DAPN)** on a suspected perpetrator of abuse
- the power available to the civil court, on application by the police, to grant a **Domestic Abuse Protection Order (DAPO)** in relation to a perpetrator of abuse.

A DAPN and a DAPO can exclude the suspected perpetrator from a home and impose wider restrictions on contact.

The DAPN is intended to be very short-term in its effect, lasting until the court reaches a decision about whether to impose a DAPO (or an interim DAPO).

Part 2 of the Bill also introduced a new power available to social landlords relating to tenancies and domestic abuse.

The measures in the Bill have several policy aims:

- to protect a person at risk of domestic abuse in the immediate situation
- to create time for any further legal steps to be taken to ensure the longer-term safety of the person at risk
- to reduce the chances that the person at risk becomes homeless or feels that they, rather than the suspected perpetrator, must find somewhere new to live.

## **Provisions of the Bill**

The main provisions of the Bill (as introduced) are described below.

### ***The people affected by the new powers (section 1)***

**Section 1** set out who would be protected by a DAPN or a DAPO and who would be subject to that notice or order.

### ***Abusive behaviour (sections 2, 3, 4 and 8)***

**Sections 2 and 3** described what would constitute abusive behaviour, a term important in the context of a DAPN or DAPO.

### ***Domestic Abuse Protection Notices (sections 4-7)***

**Section 4** set out the proposed test which must be met before a DAPN could be made.

**Sections 5 and 6** set out the required content and legal effect of a DAPN.

Section 5 (in conjunction with section 11) proposed that a DAPN lasted until a DAPO or interim DAPO is made - or, if no such order is made, until the associated court hearing ended.

Section 7 said a person commits a criminal offence if they breach a DAPN, without reasonable excuse.

### ***Domestic Abuse Protection Orders (sections 8-16)***

**Section 8** set out who would be able to apply for a DAPO.

**Section 15** set out who can grant a DAPO, namely the local sheriff court, in civil (but not criminal) court proceedings.

**Section 8** also set out the test which the sheriff must apply before a DAPO can be made.

**Section 9** set out the proposed content and effect of a DAPO. **Section 9** also set the initial

duration of a DAPO (up to two months).

**Section 10** would allow the sheriff to make an interim DAPO if, on the balance of convenience, it is just to do so.

**Section 11** made provision about the initial court hearing to determine whether a DAPO or interim DAPO should be made, including in what time frame it must happen.

**Sections 12 to 14** set out the circumstances in which DAPOs - and interim DAPOs - could be varied, extended or terminated (discharged). The maximum permitted duration of a DAPO (plus any extensions) would be three months. For an interim DAPO, it would be three weeks.

**Section 16** said that breaching a DAPO, without reasonable excuse, would be a criminal offence.

### ***A new ground to end a tenancy where there has been abusive behaviour (section 18)***

Where there was abusive behaviour, **section 18** created a new ground under which social landlords could end a tenant's interest in a tenancy.

The new ground covered the situation where the suspected perpetrator was a sole tenant and the person at risk was another occupier. It also covered where the couple (or ex-couple) were joint tenants.

## **Parliamentary consideration**

### *The Stage 1 report*

In its [Stage 1 report](#), the Committee recommended that the general principles of the Bill were agreed to.

However, the Committee believed that further consultation was necessary with [Police Scotland](#) to address the organisation's concerns about the operational challenges in implementing this legislation effectively.

The Committee also said it was important that the powers in the Bill were proportionate and provided a balance between protecting those who were being abused with the rights of anyone being accused.

### *The Stage 1 debate*

During the [Stage 1 debate](#), members from all parties supported the general principles of the Bill. However, key themes from the Justice Committee's [Stage 1 report](#) featured strongly in the debate.

On the operational and resourcing challenges for the police, the Cabinet Secretary for Justice, Humza Yousaf MSP, said during the Stage 1 debate that:

- he was liaising with Police Scotland in relation to their concerns
- the Scottish Government was going to set up an 'implementation board' relating to the Bill, involving a range of organisations.

## *Stage 2 of the Bill*

In an alteration to the Bill as introduced, government amendments were passed so that section 1 of the Bill now requires the suspected perpetrator and the person at risk to live together for some or all of the time for Part 1 of the Bill to apply.

Following themes explored at Stage 1, other key issues at [Stage 2 of the Bill](#) included:

1. [the tests which must be satisfied before a Domestic Abuse Protection Notice \(DAPN\) or a Domestic Abuse Protection Order \(DAPO\) can be imposed](#)
2. [what the relationship should be between the DAPNs and DAPOs and other legal measures, such as court orders affecting children](#)
3. [for DAPOs, whether the person at risk's consent should be required before a DAPO can be imposed](#)
4. [aside from the specific issue of consent, how the views of adults and children are considered as part of the processes set out in Part 1 of the Bill](#)
5. [who should be able to apply for a DAPO, i.e. just the police or other agencies and individuals as well](#)
6. [how long a DAPO should last for once imposed](#)
7. [whether the Bill should contain a duty on the Scottish Government to report on Part 1 of the legislation's operation in practice](#)
8. [various points associated with the new power available to social landlords contained in Part 2 of the Bill.](#)

In some instances, the Cabinet Secretary agreed to work with the MSPs in question on alternative amendments (to those non-government amendments not passed or disagreed to at Stage 2) in advance of Stage 3. This was in respect of points 2, 5, 7 and some aspects of 8 above.

## *Stage 3 of the Bill*

In this section any references to individual provisions are to [those in the Bill as passed](#).

A Government amendment was passed which meant that, under section 8 of the Bill, a DAPO could be imposed by the court **without** the consent of the person at risk, reversing the policy position in the Bill as amended at Stage 2.

Non-Government amendments were also passed relating to Part 1 of the Bill, so that the provisions as amended:

- allow the Scottish Government, by regulations, to extend the power to apply for a DAPO to a local authority, a registered social landlord or any other person who the Scottish Ministers consider appropriate (section 16A)
- say that a court order relating to contact with a child or a child's residence does not limit the requirements or prohibitions that may be imposed in a DAPN or a DAPO (section 16B)



- require Scottish Ministers, after three years, to report on various aspects of the operation of the legislation and, furthermore, to lay this report before Parliament (section 16C).

Government amendments were passed relating to section 18 of the Bill, including to require the Scottish Government to make guidance on that provision.

# Edinburgh Bakers' Widows' Fund Bill

Bill Number: SP Bill 10

Introduced on: 20 March 2017

Promoted by: The trustees of the Widows' Scheme of the Incorporation of Bakers of the City of Edinburgh (Private Bill)

Passed: 21 November 2017

Royal Assent: 12 January 2018

## Passage of the Bill

The [Edinburgh Bakers' Widows' Fund Bill](#) was a private bill. This means that it benefits a private person or body rather than the general public. Private bills follow a different bill procedure from most of the bills considered by the Scottish Parliament.

A specific bill committee – the Edinburgh Bakers' Widows' Fund Bill Committee – was established to consider the Bill.

At Preliminary Stage, the committee considered the principles of the Bill and whether it should proceed as a private bill. Its Preliminary Stage Report recommended the continued passage of the Bill.

At Consideration Stage, the committee considered objections to the Bill. There were no objections, and no amendments were lodged.

At Final Stage, the full Parliament voted to pass the Bill without amendment.

## Purpose and objectives of the Bill

The Bill dealt with a fund for supporting widows, set up by the Incorporation of Bakers of the City of Edinburgh by Act of Parliament in 1813.

Due to the archaic nature of the fund, it had become increasingly difficult for the trustees to distribute funds in line with the legislative requirements. The purpose of the Bill was to enable the assets of the fund to be transferred to a charity with more modern objectives.

## Provisions of the Bill

The Bill made provision for:

- lump sum payments to be made to wives of members of the Incorporation of Bakers of the City of Edinburgh, to compensate them for claims they may have been able to make against the fund in the future
- the assets of the fund to be transferred to a specially-established charity
- the fund to be dissolved.

**Parliamentary consideration**

The Bill Committee took evidence from a trustee of the widows' fund and a solicitor supporting the trustees. The Committee accepted the need for the Bill and agreed that the treatment of potential beneficiaries of the fund was appropriate.

No objections from potential beneficiaries were received.

The full Parliament agreed to pass the Bill after a short debate.

# European Charter of Local Self-Government (Incorporation) (Scotland) Bill

Bill Number: SP Bill 70

Introduced on: 5 May 2020

Introduced by: Andy Wightman MSP (Members' Bill)

Passed: 23 March 2021

Royal Assent: N/A

## Passage of the Bill

The Local Government and Communities Committee considered the Bill at Stage 1. It published its [Stage 1 report](#) on 22 January 2021.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 4 December 2020.

The [Stage 1 debate](#) on the European Charter of Local Self-Government (Incorporation) (Scotland) Bill took place on 4 February 2021. The Scottish Parliament agreed unanimously to the general principles of the Bill.

The Local Government and Communities Committee considered the Bill at Stage 2 on 24 February 2021. [An amended version of the Bill](#) was published in November 2020.

Following the [Stage 3 debate](#) on 23 March 2021, the Bill was passed unanimously by the Parliament.

## Purpose and objectives of the Bill

The [Bill proposal](#) aimed to strengthen the status and standing of local government by incorporating the European Charter of Local Self-Government into Scots law.

The Charter commits signatories to a set of basic rules which seek to uphold the political, administrative and financial independence of local authorities through legislation and, where applicable, constitution. It also sets out that the charter applies to councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage. As a Council of Europe instrument, the Charter does not have a binding effect or a monitoring mechanism.

## Provisions of the Bill

The Bill:

- Places a duty on the Scottish Ministers to act compatibly with the Charter Articles.

- Places a duty on the Scottish Ministers to promote local self-government.
- Requires the courts to read and give effect to legislation, where possible, in a way that is compatible with the Charter Articles.
- Enables the Court of Session and UK Supreme Court to declare legislative provisions to be incompatible with the Charter Articles, and enables the Scottish Ministers to take remedial action, by regulations, in response to such declarations.
- Allows the courts to suspend the effect of a decision that the Scottish Ministers breached a duty imposed on them by the Bill, or remove or limit the retrospective effect of such a decision. This also applies where the court finds that subordinate legislation is incompatible and it is not possible to make a declaration of incompatibility.
- Requires each person introducing a Public Bill in the Parliament to make a statement about the extent to which, in their view, the Bill is compatible with the Charter Articles.

The [SPICe Stage 1 briefing](#) on the Bill sets out the provisions of the Bill as introduced in detail.

### **Parliamentary consideration**

The Local Government and Communities Committee considered the Bill at Stage 1. It published its [Stage 1 report](#) on 22 January 2021.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 4 December 2020.

The [Stage 1 debate](#) on the European Charter of Local Self-Government (Incorporation) (Scotland) Bill took place on 4 February 2021. The Scottish Parliament agreed unanimously to the general principles of the Bill.

The Local Government and Communities Committee considered the Bill at Stage 2 on 24 February 2021. An [amended version of the Bill](#) was published in November 2020.

All changes at Stage 2 were technical/clarifying amendments, and all passed without division. The [SPICe Stage 3 blog](#) summarises the passage of the Bill prior to Stage 3.

The Stage 3 amendments were also minor and technical. The Bill passed with 114 votes for, and 0 against/abstentions.

Following the [Stage 3 debate](#) on 23 March 2021, the Bill was passed unanimously by the Parliament.

### **Referral to the Supreme Court**

However, the Bill did not receive Royal Assent. This is because the UK Government Law Officers referred the Bill to the Supreme Court for consideration of whether the Bill would be outside the legislative competence of the Parliament. The hearing took place on 28 and 29 June 2021 and the Court [issued its judgement on 6 October 2021](#). The Court decided that certain sections of the Bill:

“ would modify section 28(7) of the Scotland Act and, for that reason, fall outside the competence of the Scottish Parliament.”

The Court explained that:

“ Section 28(7) of the Scotland Act preserves the unqualified power of the UK Parliament to make laws for Scotland. If any provision of an Act of the Scottish Parliament purports to modify section 28(7) of the Scotland Act, it will contravene section 29(2)(c) of that Act, read together with paragraph 4(1) of Schedule 4 to that Act, and will therefore fall outside the competence of the Scottish Parliament.”

In [a statement to the Parliament on 24 May 2022](#), John Swinney MSP, Deputy First Minister, stated that:

“ To address the judgment on the judicial remedies in both bills, we need to remove UK acts from the application of the interpretative obligation, the strike-down power and the incompatibility declarator power.”

And that:

“ On the European Charter of Local Self-Government (Incorporation) (Scotland) Bill, we will engage extensively with Mark Ruskell to explain the changes that we think are necessary and support him in taking his bill forward. Following that engagement, I will update the relevant parliamentary committees before amendments are lodged. We will liaise with the parliamentary authorities about the timescale for reconsideration stage, recognising that we need to make sufficient time to engage with the Parliament on the substance of our proposals. We will also engage with the United Kingdom Government, given the UK law officers’ power under the Scotland Act 1998 to refer a reconsidered bill to the Supreme Court.”

The Scottish Government further confirmed, in its [Programme for Government 2022-23](#), its intention to support the reconsideration of the Bill.

# Female Genital Mutilation (Protection and Guidance) (Scotland) Bill

Bill Number: SP Bill 47

Introduced on: 29 May 2019

Introduced by: Shirley-Anne Somerville MSP (Government Bill)

Passed: 19 March 2020

Royal Assent: 24 April 2020

## Passage of the Bill

The [Female Genital Mutilation \(Protection and Guidance\) \(Scotland\) Bill \(SP Bill 47\)](#) was introduced on 29 May 2019. The Equalities and Human Rights Committee was designated as lead committee. The Bill completed Stage 1 on 18 December 2019, Stage 2 on 23 January 2020 and was passed by the Parliament at Stage 3 on 19 March 2020.

## Purpose and objectives of the Bill

The Bill aimed to strengthen the legal protection for women and girls at risk of female genital mutilation (FGM).

## Provisions of the Bill

The Bill made provision for:

- FGM Protection Orders, a form of civil order that can impose conditions or requirements on a person, with the aim of protecting a person from FGM, safeguarding them from harm if FGM has already happened, or reducing the likelihood that FGM offences will happen. It will be a criminal offence to breach an FGM Protection Order.
- Statutory guidance on matters relating to FGM, as well as statutory guidance on FGM Protection Orders.

## Parliamentary consideration

There was broad overall support for strengthening existing protections for women and girls at risk of FGM.

The Equalities and Human Rights Committee ('the Committee') highlighted a number of issues in its Stage 1 report, some of which went beyond the Bill. For example, better ways to support women and professionals outside of maternity services to talk about FGM, and the need to ensure that training and guidance "is mindful of the ongoing need to minimise the risk of racialisation and stigmatisation".

There were two main areas where there was more extensive deliberation - on the

provision of support to women or girls at risk of FGM, and the provision of anonymity to women or girls at risk of FGM.

### *Provision of support in a FGM Protection Order*

The Committee heard evidence about the need for practical support to accompany an FGM Protection Order. It agreed with this, noting that FGM Protection Orders cannot work without additional support for individuals and families. The Committee asked the Scottish Government to consider this.

At Stage 2, Oliver Mundell lodged an amendment that a court ‘may’ include in a FGM Protection Order a requirement to provide any practical support to a protected person. The Minister for Older People and Equalities, Christina McKelvie MSP, argued that this was too prescriptive. Instead she would lodge an amendment at Stage 3 to provide that the courts may include a requirement in an order for a named public body or bodies to consider providing support. The Minister argued that the responsibility for support should lie with the public body and not the court.

The Committee supported Oliver Mundell’s amendment, with division.

At Stage 3, the Minister lodged amendments to allow the court to require a public body to consider what support is needed and then to provide that support when it is reasonably practicable to do so. In support of these amendments she said:

“ At stage 2, I said that I would lodge amendments to deliver on the committee’s aspiration in a sensible and balanced way. In doing so, I have sought to address stakeholder concerns that court-designed and directed support within FGM protection orders would be so precise and directive that it could risk removing the benefits of the professional assessment of need and tailored support. The assessment is best carried out by those who provide complex support packages daily.”

These amendments were supported without division.

### *Anonymity for victims of FGM*

The Bill as introduced did not provide any specific provision regarding anonymity for victims of FGM. However, it was a matter that the Scottish Government consulted on, as anonymity for victims of FGM in the rest of the UK had been provided for under the Serious Crime Act 2015.

The Committee strongly supported the principle of it, especially given that 75% of those responding to the consultation question agreed that there should be a provision for anonymity for FGM victims in the Bill. The Committee said that anonymity on request is a reasonable expectation for victims of FGM and asked the Scottish Government how this could be given.

At Stage 2, Oliver Mundell lodged an amendment to provide that victims of FGM, in relation to an FGM Protection Order, could request anonymity. A court would be obliged to make an order of anonymity unless there were exceptional reasons not to do so.

The Minister argued that courts already have powers at their disposal to make an order of anonymity and did not want to make law that runs counter to the Scottish justice system.

There was also concern from some members of the Committee that the amendment was



broad enough to also provide anonymity for perpetrators of FGM. However, there was an acknowledgment that this could be amended at Stage 3.

The Committee supported Oliver Mundell's amendment, with division.

At Stage 3, the Minister lodged amendments that would require the court to consider using the new power to make an anonymity order. The amendments would also leave the existing powers of the court untouched "to guard against any unforeseen circumstances...allowing the court to fall back on the existing powers if need be."

The Minister also gave reassurances that while the provision of anonymity could be used to apply to a perpetrator of FGM, the courts would only do this in order to protect the potential victim.

These amendments were supported without division.

At Stage 3, the Bill was passed with a vote of 84 For, 0 Against, and 0 Abstentions.

# Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

Bill Number: SP Bill 60

Introduced on: 26 November 2019

Introduced by: Jeane Freeman MSP (Government Bill)

Passed: 10 December 2020

Royal Assent: 20 January 2021

## Passage of the Bill

The Health and Sport Committee scrutinised the Bill at Stage 1. The Committee published its [Stage 1 report](#) on the Bill on 7 September 2020.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 31 January 2020. Due to COVID-19 there was a delay in the Stage 1 consideration.

The [Stage 1 debate](#) on the Bill took place on 1 October 2020.

The Health and Sport Committee considered Stage 2 amendments on 10 November 2020. An [amended version of the Bill](#) was published.

Following the [Stage 3 debate](#) on 10 December 2020, the Bill was passed and received [Royal Assent](#) on 20 January 2021.

More detail can be found on the [Bills page](#) on the Scottish Parliament website, the [SPICe briefing on the Bill](#) and the [SPICe blog](#) published before the Stage 3 debate.

## Purpose and objectives of the Bill

The Bill placed a duty on health boards to provide forensic medical services to victims of sexual offences (and victims of harmful sexual behaviour by children under the age of criminal responsibility). The Bill also made forensic medical examination available on a self-referral basis for people over the age of 16.

## Provisions of the Bill

The Bill required each area health board to provide:

- An examination service that provides forensic medical examinations services for people who report that they have been the victim of a sexual offence.
- A retention service for the storage of evidence collected during forensic medical examinations.

## Parliamentary consideration

The [Health and Sport Committee](#) was the lead committee for the Bill at Stage 1. The Committee supported the [general principles of the Bill at Stage 1](#) but made a number of recommendations. The [Scottish Government responded to the Committee's report on 25 September 2020](#). The [Stage 1 debate was held on 1 October 2020](#) and the Parliament agreed to the general principles of the Bill without division.

[At Stage 2, 32 amendments were lodged](#). Most of these were Scottish Government amendments. The Government amendments were all agreed to without division.

Three non-governmental amendments were lodged by Margaret Mitchell MSP. These amendments related to lowering the age of self-referral to 13, providing support to people aged between 13 and 15 and guidance for health boards about child protection measures and confidentiality. These amendments were disagreed to by division (For 2, Against 7, 0 Abstentions). [Stage 2 was completed on Tuesday 10 November](#).

Stage 3 scrutiny took place on 10 December 2020. The Parliament passed the Bill as amended (without division). All amendments were agreed without division apart from:

- Amendment 7 which was disagreed to. This amendment related to making self-referral available for people under the age of 16.
- Amendment 28 which was agreed to. This substituted the word sex for the word gender in the Victims and Witnesses (Scotland) Act 2014 – this gives victims the opportunity to request the sex (rather than gender) of the examiner carrying out a forensic medical examination.

# Forestry and Land Management (Scotland) Bill

Bill Number: SP Bill 11

Introduced on: 10 May 2017

Introduced by: Fergus Ewing MSP (Government Bill)

Passed: 20 March 2018

Royal Assent: 1 May 2018

## Passage of the Bill

The Rural Economy and Connectivity Committee scrutinised the Bill at Stage 1. It published its [Stage 1 report](#) on 6 October 2017.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 27 June 2017.

A reporter from the Environment Climate Change and Land Reform Committee attended Rural Economy and Connectivity Committee meetings at Stage 1 and reported back to the ECCLR Committee.

The [Stage 1 debate](#) on the Bill took place on 7 November 2017.

The Rural Economy and Connectivity Committee considered Stage 2 amendments on 6 and 13 December 2017. An [amended version of the Bill](#) was published on 14 December 2017.

Following the [Stage 3 debate](#) on 20 March 2018, the Bill was passed and received [Royal Assent](#) on 1 May 2018.

## Purpose and objectives of the Bill

According to the [Policy Memorandum](#) the following policy objectives are achieved through the Bill:

- Improved accountability, transparency and policy alignment with respect to governance of forestry in Scotland.
- Modernisation of the legislative framework to support, develop and regulate forestry.
- More effective and flexible use of Scotland's publicly-owned land.

## Provisions of the Bill

The Bill transfers the powers and duties of the Forestry Commissioners in Scotland to Scottish Ministers. It provides Scottish Ministers with a duty to promote sustainable forest management and publish a forestry strategy.

The Bill transfers responsibility for plant health to Scottish Ministers so that responsibility for all plant health in Scotland resides in one place.

The Bill widens the provisions currently available for management of forestry land. It includes provisions on the management of land for sustainable development. The Bill also sets out provisions for compulsory purchase and the delegation of management functions to community bodies.

The regulatory regime for felling trees is updated and becomes the responsibility of Scottish Ministers.

The Forestry Act 1967 is repealed for Scotland.

### **Parliamentary consideration**

The Rural Economy and Connectivity Committee published its [Stage 1 report](#) on 6 October 2017. It supported the general principles of the Bill at Stage 1, and made a number of recommendations for improvement and clarification. These included that:

- The Bill be amended to place a requirement on Scottish Ministers to review the Forestry Strategy every 5 years with a commitment to refresh the Strategy every 10 years.
- The Bill includes an overarching, high-level statement of ambition, setting out that modern forestry strategy and practices will reflect an integrated approach to land use, community interests and the environment.
- Planting targets and a commitment to appropriate levels of reforestation should be included in the Forestry Strategy.
- The Scottish Government gives consideration to extending the duty to promote sustainable forest management and sustainable development to all relevant public bodies.
- Amendments should be brought forward by the Scottish Government which provide a clear and easily understood distinction between afforested land and 'other' land.
- The Bill should be amended to remove the provision which allowed for the compulsory purchase of land by Scottish Ministers in relation to sustainable development (supported by the majority, but not all, of the Committee).
- Scottish Government should explore any overlap between the drafting of the Bill and the Community Empowerment Act 2015.
- All regulations brought forward by the Scottish Government in relation to felling and felling exemptions should be subject to the affirmative procedure.

The Committee considered Stage 2 amendments on 6 and 13 December 2017. An [amended version of the Bill](#) was published on 14 December 2017.

Key changes included:

- Provisions requiring the forestry strategy to include Scottish Ministers' objectives, priorities and policies with respect to the acquisition and disposal of land, and the production and supply of timber and other forest products.

- A new section added to require reporting on the forestry strategy.
- A duty to publish map of land managed by Scottish Ministers.
- More clarity on what land may be disposed of by Scottish Ministers under the Bill.
- New provisions related to Tree Preservation Orders.
- Provisions relating to registration of felling notices.
- A requirement that Scottish Ministers appoint a chief forester.

At the [Stage 3 debate](#) on 20 March 2018, further changes were made to the Bill. These included:

- That the forestry strategy must have regard to climate change, deer management and biodiversity policy.
- A duty to provide public information about forest holdings.
- Removal of the provision relating to compulsory purchase of land for the purpose of furthering sustainable development.
- New provisions related to the variation, suspension and revocation of felling permissions.
- New provisions related to stop notices, so that felling can be stopped in certain circumstances.
- New provisions on arrangements for carrying out forestry and land management functions, so that Ministers must bring forward plans to set up an executive agency or agencies to manage forest land.

The Bill was passed following the stage 3 debate and received [Royal Assent](#) on 1 May 2018.

# Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill

Bill Number: SP Bill 37

Introduced on: 26 June 2018

Introduced by: Angela Constance MSP (Government Bill)

Passed: 11 June 2019

Royal Assent: 18 July 2019

## Passage of the Bill

The Local Government and Communities Committee scrutinised the Bill at Stage 1. The Committee published its [Stage 1 report](#) on the Bill on 29 January 2019.

The Delegated Powers and Law Reform Committee [reported](#) on the delegated powers set out in the Bill on 28 November 2018.

The [Stage 1 debate](#) on the Bill took place on 20 February 2019.

The Local Government and Communities Committee considered Stage 2 amendments on [27 March](#) and [3 April 2019](#). An [amended version of the Bill](#) was published on 4 April 2019.

Following the [Stage 3 debate](#) on 11 June 2019, the Bill was passed and received [Royal Assent](#) on 18 July 2019.

## Purpose and objectives of the Bill

The Bill sets out a new target relating to the eradication of fuel poverty, as well as providing a revised definition of fuel poverty. Other provisions require the production of a fuel poverty strategy and related reporting requirements. The overall objective of the Bill is to provide a framework which focuses policy efforts on achieving a massive and sustained reduction in fuel poverty levels over the next twenty years. This is clearly an aspiration that has eluded successive devolved administrations since 1999.

In recent years, various expert groups have highlighted weaknesses in the way fuel poverty is defined. For example, the old definition categorised certain households as “fuel poor” when they may not have been struggling financially (they just had large, draughty and, usually, old houses). On the other hand, a high number of materially poor households may not have been considered fuel poor as their energy bills were only slightly below the definition’s threshold. As such, the old definition was not as effective as it could have been in helping design policies to tackle fuel poverty, and in monitoring the true impact of these policies.

The Scottish Government expects that the new definition will help ensure assistance from its fuel poverty programmes is targeted at those who need it most.

In 2002, the then Scottish Executive set a target to eradicate fuel poverty by 2016. This target was not met. Indeed, figures show that 649,000 households, 26.5% of all Scottish households, were still in fuel poverty in 2016 (under the old definition). The Scottish Government feels a new target is required to focus minds on achieving its policy aims, and the 2040 time frame provides sufficient time for it to implement a comprehensive and sustainable fuel poverty strategy.

## Provisions of the Bill

According to the [Policy Memorandum](#), the following policy objectives will be achieved through the Bill:

- A new long-term target that by the year 2040, no more than 5% of households in Scotland are in fuel poverty.
- A new fuel poverty definition which is:

A household is in fuel poverty if:

a) the fuel costs necessary for the home in which members of the household live to meet the conditions set out in subsection (2) of the Bill (heating homes to specified temperatures and meeting other reasonable fuel needs) are more than 10% of the household's adjusted net income (i.e. the income after deduction of housing costs), and

b) after deducting such fuel costs and the household's childcare costs (if any), the household's remaining adjusted net income is insufficient to maintain an acceptable standard of living for members of the household.

The Bill also includes a requirement for Scottish Ministers to publish a fuel poverty strategy and then publish a report every 5 years to update on progress towards the long term target and the plans for the next 5 years, and to report at the end of the target date.

## Parliamentary consideration

The Local Government and Communities Committee agreed the general principles of the Bill at Stage 1; however, it also asked for a number of changes to be made before Stage 2. These mainly pertained to how fuel poverty is measured in rural areas, the introduction of a separate extreme fuel poverty target and the introduction of statutory interim targets. The Committee also felt that the Bill should be more sensitive to regional/local disparities in fuel poverty rates which are masked by a single national target.

At Stage 2, the Committee discussed 104 amendments. These included the addition of three new interim targets to the Bill, all of which were agreed unanimously by the Committee. Likewise, the Government lodged amendments relating to targets for extreme fuel poverty and the fuel poverty gap. These were similarly agreed by the Committee. After some debate, the Committee also agreed to support an amendment requiring the 2040 target to be met in every local authority area.

Other amendments receiving majority support from the Committee included those on reducing reporting periods from 5 to 3 years as well as the establishment of an independent scrutiny body to provide robust and independent scrutiny of fuel poverty strategies and the progress made towards the 2040 and interim targets.



Stage 3 scrutiny took place on 6 June 2019 with the Parliament passing the Bill as amended (without division) on 11 June. A number of amendments were made at this final stage, specifically relating to the fuel poverty strategy and the periodic reports. As a result of these amendments there will be an emphasis on the four drivers of fuel poverty in each of the strategies and reports. Furthermore, amendments at this stage also set out the role, funding and composition of the new Scottish Fuel Poverty Advisory Panel.

# Gender Representation on Public Boards (Scotland) Bill

Bill Number: SP Bill 16

Introduced on: 15 June 2017

Introduced by: Angela Constance MSP (Government Bill)

Passed: 31 January 2018

Royal Assent: 9 March 2018

## Passage of the Bill

The Gender Representation on Public Boards (Scotland) Bill [SP Bill 16] was introduced on 15 June 2017. The Equalities and Human Rights Committee was designated as lead committee. The Bill completed stage 1 on 30 November 2017, stage 2 on 21 December 2017 and was passed by the Parliament at stage 3 on 31 January 2018.

## Purpose and objectives of the Bill

The Bill aims to improve the representation of women in non-executive positions on public boards, to ensure that women make up at least 50% of non-executive board members.

## Provisions of the Bill

The Bill introduces the 'gender representation objective' - a target that women should make up 50% of non-executive board membership. The objective applies to certain public bodies, colleges, and Higher Education Institutions. It also applies to Scottish Ministers as they appoint non-executive board members through the Public Appointments process.

The Bill also introduces positive action provisions. The 'appointing person', which for public authorities will be a Scottish Minister, will have a duty to give preference to a woman when making an appointment to a public board, but only in certain circumstances. Scottish Ministers must determine who is best qualified for a position. If there are two or more candidates, one of whom is a woman, and they are considered equally qualified, then preference must be given to the woman. This is often referred to as the 'tie-breaker' provision. However, preference may still be given to the candidate who is not a woman, if it can be justified because of a characteristic or situation particular to that candidate.

The appointing person and public authorities must also take steps to encourage women to apply for non-executive positions on public boards. Where the gender representation objective has not been achieved, steps must be taken to try and achieve it by 31 December 2022.

## Parliamentary consideration

There were some concerns that the Bill would mean that public appointments would no longer be made on merit. To this end, the two Conservative and Unionist Party members of

the Equalities and Human Rights Committee did not support the general principles of the Bill.

The other issues debated on the Bill were whether:

- More groups should be included, such as race and disability – the duty on public authorities and the appointing person, to take steps to encourage women to apply to become non-executive board members, was amended at stage 2. The amendment clarified that the duty does not prevent public authorities or the appointing person from taking steps to encourage people with other protected characteristics.
- The Bill is inclusive of trans women – to ensure that the Bill is inclusive of trans women, the definition of ‘woman’ was amended at stage 2. The Bill states that ‘woman’ includes those with the protected characteristic of gender reassignment, as defined in section 7 of the Equality Act 2010, who live as a woman and are proposing to undergo, are undergoing or have undergone a process for the purpose of becoming female. Not all trans women choose to apply for a gender recognition certificate. This amendment means that the Bill is inclusive of trans women who do not have a gender recognition certificate.
- Higher education institutions should be subject to the Bill – there were calls from some in the HEI sector that they should not be subject to the Bill. This was because the sector already has its own targets and standards on diversity, but also because it argued that higher education institutions are not part of the public sector, but autonomous non-profit institutions. This view was not supported by the Committee or the Scottish Government.
- There should be sanctions for non-compliance – a range of views were expressed regarding the need for sanctions. Some thought that sanctions should be in place to ensure compliance, while others thought sanctions might unnecessarily penalise public authorities. Instead, the Committee suggested that an annual report should be laid in the Parliament so that progress can be identified. An amendment was made at stage 2 requiring Scottish Ministers to lay reports on the operation of the Act at intervals of no more than two years.
- There should be published guidance on the Bill – it was recognised that there is existing guidance on how to increase diversity, but the Bill was amended at stage 2 to ensure that Scottish Ministers publish guidance on the operation of the Act.

At stage 3, the Bill was passed with a vote of 88 For, 28 Against, and 0 Abstentions. Conservative and Unionist Party Members voted against the Bill.

# Hate Crime and Public Order (Scotland) Bill

Bill Number: SP Bill 67

Introduced on: 23 April 2020

Introduced by: Humza Yousaf MSP (Government Bill)

Passed: 11 March 2021

Royal Assent: 23 April 2021

## Purpose of the Bill

The [Hate Crime and Public Order \(Scotland\) Bill](#), as introduced in April 2020, sought to modernise, consolidate and extend hate crime legislation. It dealt with the aggravation of more general offences by prejudice as well as specific hate crime offences.

Existing hate crime legislation consisted of:

- statutory aggravations covering the hate crime characteristics of race, religion, disability, sexual orientation and transgender identity
- offences relating to stirring up racial hatred
- an offence of racially aggravated harassment.

Proposed reforms in the Bill as introduced included:

- changes to hate crime characteristics (e.g. amending the definition of transgender identity and adding age)
- replacing the existing statutory hate crime aggravations with ones covering the amended/expanded list of hate crime characteristics in the Bill
- setting out new offences relating to stirring up hatred that would apply to all the hate crime characteristics in the Bill (existing offences in this area applied to race only).

## Parliamentary consideration

The Justice Committee, as lead committee for parliamentary scrutiny of the Bill, published its [Stage 1 report](#) on 10 December 2020.

Much of the debate on the Bill focused on how the proposed offences dealing with stirring up hatred might impact on the right of freedom of expression. This included consideration of what changes to the Bill may be needed to better protect that right. Commenting on this area, the Stage 1 report said:

“ The Committee notes the strongly held views that have been expressed in relation to this Bill, particularly as regards the stirring up offences. We welcome the changes that the Cabinet Secretary has signalled he will make to this part of the Bill. However, as our report makes clear, the Committee believes that further changes and greater clarity are still necessary, for example, to the understanding of what is meant by ‘abusive’ in the Bill, to the provisions on freedom of expression, and to the reasonableness defence. (para 388-389)”

Other significant areas of debate included whether sex should be added to the list of hate crime characteristics. The Bill did not do so but allowed the Scottish Government to add it at a later date by secondary legislation.

The Stage 1 debate on the Bill took place on 15 December, following which the general principles of the Bill were agreed to (for 91, against 29, abstentions 1).

Stage 2 included the agreement of amendments:

- requiring an intention to stir up hatred for the proposed offence applying to hate crime characteristics other than race
- expressly providing that an objective approach should be taken in applying the proposed stirring up offences (e.g. focusing on what a reasonable person would consider to be threatening or abusive rather than what a particular individual thought)
- removing proposed offences on the possession of inflammatory material
- bringing the existing offence on racially aggravated harassment into the Bill.

This was followed by publication of the [Bill as amended at Stage 2](#).

Stage 3 proceedings (final consideration) took place on 10 and 11 March 2021. Further amendments were agreed to, including ones expanding the scope of provisions expressly seeking to protect freedom of expression – to cover more of the hate crime characteristics.

Areas of debate where significant differences of view continued, included:

- whether further changes to the Bill at Stage 3 were sufficient to adequately protect freedom of expression
- whether it was right to leave a decision on adding sex to the list of hate crime characteristics covered by the Bill until a [Misogyny and Criminal Justice in Scotland Working Group](#) reported.

After debate, the Bill was passed (for 82, against 32, abstentions 4).

Two earlier briefings provide further information:

- [SPICe briefing on the Hate Crime and Public Order \(Scotland\) Bill as introduced](#)(September 2020)
- [SPICe briefing on the Hate Crime and Public Order \(Scotland\) Bill prior to stage 3](#)(March 2021)

The Bill received Royal Assent on [23 April 2021](#).

# Health and Care (Staffing) (Scotland) Bill

Bill Number: SP Bill 31B

Introduced on: 28 May 2018

Introduced by: Shona Robison MSP (Government Bill)

Passed: 02 May 2019

Royal Assent: 06 June 2019

## Passage of the Bill

This Scottish Government Bill was introduced by the Cabinet Secretary for Health and Sport, Shona Robison MSP, on 23 May 2018. The Health and Sport Committee was designated the lead committee on the Bill. The Committee issued a call for views on the general principles of the Bill which ran from 6 June to 1 August. A staff survey was also issued. The main themes to arise from the written submissions were included in the [SPICe briefing on the Bill](#).

The Committee took oral evidence on the Bill at its meetings on [11, 18, 25 September and 2 October](#). It also took evidence in private and held an informal session with NHS staff. The Committee published its [stage 1 report on 26 November 2018](#).

Consideration of amendments at stage 2 took place at the Committee meetings on [29 January](#) and [5 February 2019](#).

Following the [stage 3 debate](#) on 2 May 2019, the Bill was passed and received Royal Assent on 6 June 2019.

## Purpose and objectives of the Bill

The purpose of the Bill was to ensure the provision of appropriate staffing in health and care service settings. The Policy Memorandum states that this requires the right people, in the right place, with the right skills at the right time to ensure the best health and care outcomes. To further this purpose, the Bill sought to place the use of an existing, but enhanced, workforce planning method (tools) on a statutory footing. The use of the 'common staffing method' would be required in certain specified health settings. The Bill also enabled the development and validation of appropriate staff planning methods for other health and social care settings, initially for care homes.

The aim was to ensure safe and appropriate staffing using clear, evidence-based methodologies, and to create parity of legislation across health and social care settings.

The Bill also set out guiding principles for health and care staffing and staff planning to ensure safe and high-quality services while taking the views of service users and staff into account.

## Provisions of the Bill

The key provisions in the Bill included:

- Setting out a set of guiding principles to apply equally to health and social care staffing arrangements, taking into account people's needs, dignity, rights, views and ensuring that staff are allocated efficiently and effectively.
- Amending Section 12I of the National Health Service (Scotland) Act 1978 to create a duty to ensure appropriate staffing, while having regard to the guiding principles, working in such numbers as appropriate to provide high-quality health care and the health, wellbeing and safety of patients.
- A duty to follow a common staffing method using evidence-based methodologies.
- A duty on care service providers to ensure appropriate staffing, having regard to the nature of the care service, its size and its aims and objectives.
- The development of staffing methods would start with care homes for adults and would be developed by Social Care and Social Work Improvement Scotland (SCSWIS) – commonly known as the 'Care Inspectorate'.

### **Parliamentary consideration**

In its [Stage 1 Report](#), the Committee made a number of recommendations and observations on the Bills' provisions. The Committee concluded that the aim of the Bill was unobjectionable but it made suggestions on areas where improvements could be made, such as monitoring of compliance, real-time staffing pressures, the role of Ministers in national workforce planning to support the Bill's objectives, and the wellbeing of staff.

A [SPICe Briefing](#) outlines consideration of the bill prior to stage 3. The briefing also discussed the key amendments that were laid at stage 2, and which were and were not agreed to. Over stages 2 and 3, the key areas of debate included:

- outcomes focus for individuals, staff wellbeing and training
- the recognition of other health professionals, especially allied health professionals, in the context of multi-disciplinary working and teams
- the duties of commissioners of health and care services – IJBs and local authorities. Amendments sought to clarify responsibilities and accountabilities in the context of recruitment challenges
- strengthening compliance and reporting requirements in relation to the duties
- the responsibilities of Ministers in ensuring an adequate supply of staff
- introducing a duty to implement processes to assess and escalate real-time staffing issues and associated risks
- non-caseload holding senior charge nurses
- extending staff training and development beyond applying results of methodologies
- a new section placing a range of duties on NHS Healthcare Improvement Scotland in the monitoring and development of tools and methodologies to establish appropriate staffing requirements

- enhancing the rights of staff working in social care
- under Section 4(2) there is a new duty relating to limiting fees paid for agency staffing and reporting them when they exceed 150% of the full-time equivalent paid to an NHS employee doing the same job.



# Heat Networks (Scotland) Bill

Bill Number: SP Bill 64

Introduced on: 2 March 2020

Introduced by: Paul Wheelhouse MSP (Government Bill)

Passed: 23 February 2021

Royal Assent: 30 March 2021

## Passage of the Bill

The Economy, Energy and Fair Work Committee scrutinised the Bill at Stage 1 and published its [Stage 1 Report](#) on 17 November 2020.

The Delegated Powers and Law Reform Committee [reported on the delegated powers](#) set out in the Bill on 25 September 2020.

The [Stage 1](#) debate on the Heat Networks (Scotland) Bill took place on 3 December 2020.

The Economy, Energy and Fair Work Committee considered Stage 2 amendments on [26 January 2021](#), and an [amended version of the Bill](#) was published on 2 March 2020.

Following the [Stage 3](#) debate on 23 February 2021, the Bill was passed and received Royal Assent on 30 March 2021.

## Purpose and objectives of the Bill

The primary purpose of the Bill is to encourage greater use of heat networks in Scotland, which will help to reduce greenhouse gas emissions from homes and other buildings. The heat network sector is not currently regulated.

## Provisions of the Bill

The Bill puts key definitions, rules and regulations on heat networks in place, including:

- granting licenses – to be administered by Scottish Ministers or a designated licensing authority
- making applications – via a newly established heat network consent process
- designating and setting up heat network zones.

All public sector building owners will need to assess their buildings to check if they're suitable to connect to a heat network.

# Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill

Bill Number: SP Bill 21

Introduced on: 6 November 2017

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 6 June 2018

Royal Assent: 11 July 2018

## Passage of the Bill

The Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill [SP Bill 21] was introduced on 6 November 2017. The Equalities and Human Rights Committee was designated as lead committee. The Bill completed stage 1 on 18 April 2018, stage 2 on 17 May 2018, and was passed by the Parliament at stage 3 on 6 June 2018.

## Purpose and objectives of the Bill

The Bill aims to provide a form of redress against the discriminatory effect of convicting men for same-sex sexual offences in the past, for activity that is now legal.

## Provisions of the Bill

The Bill contains a provision stating that its purpose is to acknowledge the wrongfulness and discriminatory effect of past convictions for certain historical sexual offences which criminalised same-sex sexual activity between men that would now be legal. The Bill provides for two distinct but linked procedures by:

- pardoning those convicted of criminal offences for engaging in same-sex sexual activity which is now legal
- putting in place a system to enable a person with such a conviction to apply to have it “disregarded” so that information about that conviction held in records, generally maintained by Police Scotland, does not show up in a disclosure check.

## Parliamentary consideration

The First Minister issued an apology in the Scottish Parliament, when the Bill was introduced, “...for those laws and for the hurt and harm that they have caused so many people.” The apology was endorsed by other party leaders.

The Equalities and Human Rights Committee welcomed what they viewed as an improvement to a similar pardon and disregard scheme in England and Wales. In Scotland, the automatic pardon will apply to men living and deceased who were convicted for same-sex sexual offences, that would now be legal. Under the current system in England and Wales, the pardon is only automatic for men who died before the legislation

commenced. Men still living with such convictions in England and Wales would have to apply for a disregard to obtain a pardon.

The Committee also welcomed the broad definition of historical sexual offences, which includes offences relating to 'importuning'. These are instances where men were convicted of approaching, or 'chatting up', other men.

The Equalities and Human Rights Committee called on the Scottish Government to ensure that the Bill's provisions are widely publicised, including clarity on the distinction between a pardon and a disregard. The Committee also sought assurance that the application process for a disregard would be as straightforward as possible.

The Committee did have some concerns for the families of men who are now deceased and might wish to have an acknowledgement of the wrongful and discriminatory effect of the past conviction. An amendment at Stage 2 sought a 'letter of comfort' to be issued by the Scottish Government in such cases. The Scottish Government agreed to put in place such a scheme, but without putting it in the Bill.

The Committee also sought assurances on the provision of legal aid for individuals who wish to appeal to the courts where a disregard application is refused. During Stage 2, the Cabinet Secretary for Justice assured the Committee that civil legal aid will be available, subject to its eligibility requirements. The Cabinet Secretary also indicated that civil legal assistance by way of representation (ABWOR) would be made available to a person who wishes to appeal a decision to refuse an application for a disregard.

There was unanimous support for the Bill, and there were no amendments at Stage 3.

# Housing (Amendment) (Scotland) Bill

Bill Number: SP Bill 20

Introduced on: 04 September 2017

Introduced by: Angela Constance MSP (Government Bill)

Passed: 31 May 2018

Royal Assent: 06 July 2018

## Passage of the Bill

The Local Government and Communities Committee was designated as lead committee on the bill. The Bill was introduced on 4 September 2017. Stage 1 started on 29 November 2017. The Stage 1 report was published on 1 February 2018. The Stage 1 debate took place on 29 March 2018. Stage 2 started on 9 May 2018. The Stage 3 debate took place on 31 May 2018. Links to all the relevant bill documentation and Official Reports are available on [the Scottish Parliament website](#).

## Purpose and objectives of the Bill

The purpose of the Bill was to enable the Office for National Statistics (ONS) to reclassify Registered Social Landlords (RSLs) as private sector bodies for the purposes of the national accounts. As a result of a review by the ONS, the classification of RSLs in Scotland changed from the status of private sector bodies to public sector bodies. This revised status has implications for RSLs' borrowing powers, given that any borrowing by public bodies counts towards the Scottish Government's borrowing limits. The Scottish Government may have to impose controls on RSLs' borrowing powers. If RSLs' borrowing was restricted there would be a risk that the Scottish Government's target to deliver at least 50,000 affordable homes by 2021 would be adversely affected. The ONS makes its classification decisions based on international guidance. In considering whether bodies are public or private, one of the key factors is where control over the body lies. The decision to reclassify RSLs as public bodies was taken by the ONS because of certain powers the Scottish Housing Regulator ('the Regulator') has over RSLs.

## Provisions of the Bill

The Bill was a short technical bill comprising 11 sections. The provisions of the Bill had the general effect of removing, or reducing, certain powers that the Regulator has over RSLs. In particular, the Bill:

- narrowed the powers of the Regulator to appoint a manager to an RSL, and to remove, suspend and appoint officers of an RSL;
- removed the need for the Regulator's consent to: the disposal of land and housing assets by an RSL; any changes to the constitution of an RSL; and the voluntary winding-up, dissolution and restructuring of an RSL, while protecting tenants' rights to be consulted about certain changes;

- provided Scottish Ministers with regulation making powers to limit the influence that a local authority has over an RSL.

## **Parliamentary consideration**

### *Stage 1*

The Local Government and Communities Committee's Stage 1 Report was supportive of the Bill's general principles.

The Committee's report recommended changes in relation to the Scottish Ministers' regulation making powers as set out in sections 8 and 9 of the Bill. In particular, it recommended the introduction of a "sunset clause" so that these powers could be used only for a limited time after the Act came into force.

### *Stage 2*

Only one Scottish Government amendment was lodged (and passed) at Stage 2. The amendment reflected the recommendation made in the Stage 1 report. A sunset clause was introduced for section 8 and 9 of the Bill. This introduced a time limit of three years on the Scottish Ministers' powers to make regulations under these sections of the Bill.

### *Stage 3*

No amendments were lodged at Stage 3 and the Bill was passed unanimously with 144 votes For, none against and no abstentions.

# Human Tissue (Authorisation) (Scotland) Bill

Bill Number: SP Bill 32

Introduced on: 8 June 2018

Introduced by: Shona Robison MSP (Government Bill)

Passed: 11 June 2019

Royal Assent: 18 July 2019

## Passage of the Bill

The Health and Sport Committee scrutinised the Bill at Stage 1. The Committee published its [Stage 1 report](#) on the Bill on 1 February 2019. The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 6 November 2018. The [Stage 1 debate](#) on the Bill took place on 26 February 2019.

The Health and Sport Committee considered Stage 2 amendments on 7 May 2019. An [amended version of the Bill](#) was published.

Following the [Stage 3 debate](#) on 11 June 2019, the Bill was passed and received [Royal Assent](#) on 18 July 2019.

More detail can be found on the [Bills page](#) on the Scottish Parliament website, the [SPICe briefing on the Bill](#) and the [briefing published before Stage 3](#).

## Purpose and objectives of the Bill

The Bill contained proposals to introduce a system of 'deemed authorisation' for organ and tissue donation for transplantation (often known as 'presumed consent'). This means that when someone dies but they have not made their wishes on donation known, their consent to donation would be presumed unless their next of kin provided information that this was against their wishes.

The main aim of the Bill was to increase the organ donation rates and, as a consequence, the number of transplants carried out.

## Provisions of the Bill

The Bill had four parts. Part 2 of the Bill added to the existing duties of Scottish Ministers under the Human Tissue (Scotland) Act 2006 Act to:

- promote information and awareness about authorisation of transplantation and pre-death procedures;
- establish and maintain a register of information relating to decisions to authorise, or not authorise, donation.

Part 3 of the Bill included provisions which amended the 2006 Act in relation to:

- authorisation of removal and use of part of a body by deceased persons, including providing for “deemed authorisation” of organ and tissue donation for adults for the purposes of transplantation of common types of organ and tissue;
- provisions regarding authorisation by or on behalf of a child;
- a framework for authorisation for pre-death procedures in order to allow successful transplantation;
- duties to inquire into the views of the potential donor.

### **Parliamentary consideration**

The [Health and Sport Committee](#) was the lead committee for the Bill at Stage 1. The Committee supported the [general principles of the Bill at Stage 1](#) but made a number of recommendations. The [Scottish Government responded to the Committee's report on 21 February 2019](#). The [Stage 1 debate was held on 26 February 2019](#) and the Parliament agreed to the general principles of the Bill with a division (For 107, Against 1, Abstentions 2).

[The Health and Sport Committee considered the amendments lodged](#) at Stage 2. At Stage 2, [the main amendments](#) agreed to included a duty for Ministers to carry out a public awareness raising campaign at least annually, a duty for Ministers to promote regular opportunities for people to make their donation wishes known, allowing people to verbally withdraw their decision recorded in the organ donor register and an obligation for Ministers to review and report on the operation of the Act. [Stage 2 was completed on Tuesday 7 May 2019](#).

[Stage 3 scrutiny](#) took place on 11 June 2019. [Four amendments were lodged at Stage 3](#). These were concerned with refining three amendments agreed to at Stage 2, namely, the frequency with which the public campaigns should be carried out, a duty to promote opportunities for people to opt-in and the requirement to review and report on the operation of the Act. All the Stage 3 amendments were agreed to.

The Parliament passed the Bill as amended (with division) For 116, Against 3, Abstentions 2.

# Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill

Bill Number: SP Bill 36

Introduced on: 25 June 2018

Introduced by: Patrons of the Royal Incorporation of Hutchesons' Hospital in the City of Glasgow (Private Bill)

Passed: 25 April 2019

Royal Assent: 31 May 2019

## Passage of the Bill

The [Hutchesons' Hospital Transfer and Dissolution \(Scotland\) Bill](#) was a private bill. This means that it benefits a private person or body rather than the general public. Private bills follow a different procedure from most other bills considered by the Scottish Parliament.

A specific bill committee – the Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee – was established to consider the Bill.

The Preliminary Stage is the equivalent of Stage 1 consideration for public bills. The Committee published its [Preliminary Stage report](#) on 20 December 2018.

A [Preliminary Stage debate](#) was held on 20 February 2019.

Consideration Stage, where the Committee considers objections and amendments, took place on [6 March 2019](#).

The [Final Stage debate](#) took place in the Chamber on 25 April 2019. The Bill was passed and received royal assent on 31 May 2019.



# Islands (Scotland) Bill

Bill Number: SP Bill 15

Introduced on: 9 June 2017

Introduced by: Fergus Ewing MSP (Government Bill)

Passed: 30 May 2018

Royal Assent: 6 July 2018

## Passage of the Bill

The Rural Economy and Connectivity Committee scrutinised the Bill at Stage 1. Following widespread engagement and evidence taking both in the Parliament and on the islands themselves, it published its [Stage 1 report](#) on Monday 22 January 2018.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 1 November 2017.

The [Stage 1 debate](#) on the Islands (Scotland) Bill took place on 8 February 2018.

The Rural Economy and Connectivity Committee considered Stage 2 amendments on 21 and 28 March 2018, and [an amended version of the Bill](#) was published on 29 March 2018.

Following the [Stage 3 debate](#) on 30 May 2018, the Bill was passed and received [Royal Assent](#) on 6 July 2018.

## Purpose and objectives of the Bill

[According to the Scottish Government](#), the Bill:

“...introduces a number of measures to underpin the Government's objective of ensuring that there is a sustained focus across Government and the public sector to meet the needs of island communities both now and in the future.”

## Provisions of the Bill

The Bill focuses on provisions designed to strengthen and protect Scotland's island communities. Key provisions include:

1. The development of a National Islands Plan, which would set out the main objectives and strategy of the Scottish Government in relation to improving outcomes for island communities. Rather than set out a proposed plan, the Bill provides that, following further consultation, the first National Island Plan would be laid before the Scottish Parliament within 12 months of the date on which the Act comes into force.
2. The introduction of duties, placed upon Scottish Ministers and other relevant public bodies, to have regard to island communities in exercising their functions. Under the Bill, public authorities when introducing a new or revised policy, strategy or service, would have to prepare an island communities impact assessment when the impact on

island communities is likely to be different from the effect on other communities.

3. The protection of the Scottish parliamentary constituency boundary of Na h-Eileanan an Iar from variation.
4. The allowance of exceptions, for inhabited islands, to the standard three or four member ward rule for local government electoral wards.
5. The introduction of a regulation-making power for the Scottish Government to create a licensing scheme, following a request from a local authority, in relation to works in or under the sea in the coastal waters surrounding islands for up to 12 nautical miles.

## Parliamentary consideration

The Rural Economy and Connectivity Committee published its [Stage 1 report](#) on 22 January 2018. Although the Bill itself is short, the 'framework' nature of the Bill, coupled with the level of engagement and consultation carried out by the Committee, led to many recommendations being made. These cover both the Bill itself, and the mechanisms the Bill seeks to introduce.

The Committee supported the overall principles, and all sections, of the Bill, including the protection of the Scottish Parliamentary constituency boundary of Na h-Eileanan an Iar, and the principle of allowing the Boundary Commission for Scotland more flexibility in ward sizes in island communities.

The Committee considered Stage 2 amendments on 21 and 28 March 2018, and [an amended version of the Bill](#) was published on 29 March 2018.

Key changes included:

- the inclusion of uninhabited islands in the definition of an 'island community'
- the addition of an explicit definition of what is meant by 'an island authority'
- the inclusion of a high-level objective for a National Islands Plan
- the addition of a clause that means that a National Islands Plan must list those public authorities which will have duties under the new legislation
- the requirement that, when reporting on the National Islands Plan, Ministers must set out the steps that will be taken when an identified outcome has not improved within the reporting year
- the inclusion of a three-month time frame (after the end of the reporting year) for the laying of annual reports on the National Islands Plan before the Parliament
- the addition of the Local Government Boundary Commission for Scotland, all NHS boards, and integration joint boards to the list of public bodies with duties under the Act
- the inclusion of the requirement for public bodies to explain their reasoning in the event of an island communities impact assessment not being carried out
- the inclusion of the requirement that Scottish Ministers preparing an island communities impact assessment in respect of legislation should set out the financial

implications of steps taken to mitigate outcomes of the relevant legislation

- a revision meaning that an electoral ward which may be eligible to become a one or two member ward could be formed 'wholly or partly' of one or more inhabited islands (previously 'wholly or mainly')
- revisions to the definition of dredging activity
- the removal of the requirement for an island to fall wholly within a marine licensing area.

A number of amendments which sought to add further provisions or definitions to the Bill, along with a series of technical amendments, were not agreed to.

At the [Stage 3 debate](#) on 30 May 2018, further changes were made to the Bill. In addition to some wording changes, these included:

- provisions relating to specific aims of a National Islands Plan, including increasing population levels, environmental wellbeing, improving transport services, improving digital connectivity, reducing fuel poverty, ensuring effective management of the Crown Estate, and enhancing biosecurity
- a mechanism for review of decisions relating to island communities impact assessments;
- a duty of the Scottish Ministers to have regard to request for retrospective island communities impact assessment
- a scheme for requests by local authorities for devolution of functions, and for requests for additional powers
- a duty to consult island communities
- delegation of functions relating to regional marine plans
- reporting on the Act
- a Shetland mapping requirement, which stipulates that Scottish public authorities must, in any map of Scotland, display the Shetland Islands in a manner which accurately and proportionately represents their geographical location in relation to the rest of Scotland.

# Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill

Bill Number: SP Bill 22

Introduced on: 13 November 2017

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 17 May 2018

Royal Assent: 22 June 2018

## Passage of the Bill

The Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill was introduced on 13 November 2017. The Stage 1 debate took place on 6 March 2018, the Finance and Constitution Committee considered the Bill at Stage 2 on 25 April, and the Bill was passed by the Parliament on 7 May 2018.

## Purpose and objectives of the Bill

The policy objective of this Bill is to give retrospective effect to the amendments made to the Land and Buildings Transaction Tax (Scotland) Act 2013 ('the 2013 Act') by the Land and Buildings Transaction Tax (Additional Amount - Second Homes Main Residence Relief (Scotland) Order 2017.

The legislation will enable qualifying buyers, who have paid the additional amount of LBTT prior to the Order being made, to claim a repayment.

Although there is an Order (referred to above) already in place, primary legislation is required because retrospective provisions cannot be made by secondary legislation unless an express power to do so exists, which, in this case, it does not.

## Provisions of the Bill

In determining whether the Additional Dwelling Supplement (ADS) is chargeable, married couples, civil partners and cohabitants (those living as a married couple), along with their dependent children, are treated as a 'single economic unit'. This is for the purposes of reducing the risk of property being moved between individuals for tax avoidance purposes. So, for example, ADS would be chargeable where one spouse owns the existing marital home and the other spouse purchases another residential property.

ADS is not chargeable if the buyer is replacing his or her only or main residence. Before the 2017 Order came in, however, the additional amount was chargeable if spouses, civil partners or co-habitants were jointly buying a home to replace a home that was owned by only one of them. They were subject to the ADS if only one name was listed on the title deeds. This went against the policy intention of the Land and Buildings Transaction Tax

(Amendment) (Scotland) Act 2016 to treat married couples, those in a civil partnership and those living as if a married couple, as one economic unit for the purposes of ADS.

The 2017 Order amended the 2013 Act to provide relief from ADS for all qualifying future transactions where buyers entered into the contract to purchase a new main residence on or after 20 May 2017, and the effective date of the transaction was on or after 30 June 2017. The changes in the 2017 Order do not apply retrospectively.

This legislation gives retrospective effect to the 2017 Order. It allows buyers, not already covered by the Order, who are spouses, civil partners or cohabitants to reclaim ADS payments where the joint buyers replaced their main residence within 18 months before or after buying their current residence and the replaced residence was only owned by one of the couple, civil partner or cohabitant. This means that where extra tax has been paid in these situations it may be reclaimed.

The Bill applies to transactions where the contract for the transaction was entered into on or after 28 January 2016 (the date when the Bill for the 2016 Act on ADS was introduced in the Parliament) and for which the effective date (usually the date of settlement) was on or after 1 April 2016.

As mentioned above, the 2017 Order covers transactions entered into on or after 20 May 2017, with an effective date (usually the date of settlement) on or after 30 June 2017. The Bill and the costs outlined in the Financial Memorandum (FM) therefore, covers transactions where:

- the contract for the purchase transaction was entered into between 28 January 2016 and 19 May 2017 inclusive, or
- the effective date of the purchase transaction was a date between 1 April 2016 and 29 June 2017 inclusive.

### **Parliamentary consideration**

The Bill was passed by the Parliament without amendment.

# Limitation (Childhood Abuse)(Scotland) Bill

Bill Number: SP Bill 1

Introduced on: 16 November 2016

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 22 June 2017

Royal Assent: 28 July 2017

## Passage of the Bill

The [Limitation \(Childhood Abuse\)\(Scotland\) Bill](#) ('the Bill') was introduced in the Scottish Parliament on 16 November 2016 by the Scottish Government. [The Justice Committee](#), as lead committee, took Stage 1 oral evidence on the general principles of the Bill at meetings on [21 February](#), [28 February](#) and [14 March](#) 2017.

The [Justice Committee](#) published its [Stage 1 Report](#) on 20 April 2017 and the Scottish Government [responded](#) to this report on 25 April 2017. The Delegated Powers and Law Reform Committee considered the Bill at a meeting on [13 December 2016](#) and published its [report](#) on the delegated provisions in the Bill on 18 January 2017. The [Stage 1 debate](#) took place on 27 April 2017.

The [Justice Committee](#) considered amendments to the Bill at Stage 2 on [23 May 2017](#). The Stage 3 debate took place on [22 June 2017](#), after which the Bill was passed by Parliament. The Bill, as amended, received Royal Assent on 28 July 2017 to become the Limitation (Childhood Abuse)(Scotland) Act 2017 (asp 3).

## Purpose and objectives of the Bill

The overarching policy aim of the Bill is to improve access to justice for survivors of historical childhood abuse. The Bill represents one of a package of measures designed to improve the lives of survivors of historical childhood abuse in Scotland.

The Bill relates to a rule of civil court procedure known as 'time bar' or 'limitation of actions'. The current law is contained in the Prescription and Limitation (Scotland) Act 1973 ('the 1973 Act'). It provides that those individuals suing in the civil courts for damages for personal injuries generally have three years from the date of the injury or – as is often relevant to childhood abuse – their sixteenth birthday, in which to bring a court action. Thereafter they are usually prevented from doing so.

The Bill contains provisions which would remove the three year statutory time limit where the claim relates to childhood abuse.

## Provisions of the Bill

The Bill has three sections and only section 1 is substantive in policy terms. It makes

provision for four additional sections (sections 17A–D) to be inserted into the 1973 Act. The remaining statutory references in this note are to the new provisions of the 1973 Act.

Section 17A removes the three year limitation period.

Section 17B says that the removal of the three year limitation period (under section 17A) applies to abuse which occurred before or after the legislation comes into force.

However, a related area of law known as ‘prescription’ is not reformed by the Bill. Accordingly, if the abuse occurred prior to 26 September 1964, any legal obligations arising from the abuse will usually (although not always) have been extinguished. This greatly limits the Bill’s impact on survivors of abuse occurring before the aforementioned date.

Section 17C supplements section 17B. It makes specific provision to deal with the situation where there has been previous litigation which was concluded prior to the commencement of section 17A. It allows these court actions to be re-raised where the court ruled the case was time barred, or the case was ‘settled’ based on the reasonable belief that it would have been time barred.

Significantly, any sum of money paid to the victim as a financial settlement must not have exceeded his or her legal expenses associated with raising and settling the claim. There also must have been no previous consideration of the actual merits of the case.

Section 17D says that, notwithstanding the general rule set out in section 17A, a court may not allow a court action to proceed where the defender satisfies the court that certain specified conditions are met. These relate to a fair hearing for the person defending the action and the possibility that that person would be “substantially prejudiced” by the action proceeding.

### **Parliamentary consideration**

In its [Stage 1 Report](#), the Justice Committee expressed support for the removal of the three year limitation period for childhood abuse cases, having heard ‘powerful evidence’ that the current limitation regime has created an insurmountable barrier to access to justice for survivors of childhood abuse.

However, it cautioned that the Bill is not a panacea, and pursuing a civil action will not be the right solution for all survivors. It noted the position for claims where the abuse took place prior to 1964 and stressed that the Scottish Government must explore what other options for redress could be made available for this group.

The Committee also heard concerns about the potential financial and resource implications of the Bill, and said these required further consideration.

The [Stage 1 Report](#) also made a number of recommendations relating to the more detailed aspects of the Bill, including the definition of abuse and the provisions relating to previously raised cases.

At Stage 2, a Scottish Government amendment was passed which amended the definition of abuse to make it clear that it included abuse which took the form of neglect.

A non-government amendment in the name of Douglas Ross MSP (as he then was) was not agreed to. This amendment would have prevented the new regime taking effect unless

the Scottish Government had laid a report before the Parliament showing that sufficient and other resources had been made available to ensure that public bodies can meet their any obligations arising from this Act.

At Stage 3, after a robust debate, a similar amendment, in the name of Oliver Mundell MSP, was not agreed to.



# Management of Offenders (Scotland) Bill

Bill Number: SP Bill 27

Introduced on: 22 February 2018

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 25 June 2019

Royal Assent: 30 July 2019

## Purpose of the Bill

The [Management of Offenders \(Scotland\) Bill](#), as introduced in February 2018, set out reforms relating to:

- the electronic monitoring of offenders in the community – extending the potential for monitoring; both in terms of what other measures it can be combined with and the use of new technologies
- the disclosure of convictions – reducing the length of time most people with convictions must disclose them (eg when applying for work) and extending the maximum length of custodial sentence (from 30 months to 48 months) covered by rules limiting the need to disclose
- the Parole Board for Scotland – various changes to the composition, appointment, functions and governance of the Parole Board

## Parliamentary Consideration

The Justice Committee, as lead committee, took stage 1 evidence on the whole Bill at five meetings during April to June 2018. However, its stage 1 consideration was extended due to concerns arising about the use and enforcement of Home Detention Curfew (HDC)

Under HDC, an offender serves part of a custodial sentence in the community, subject to licence conditions and electronic monitoring. In May 2018 James Wright was convicted of murder. Prior to the offence, he had been released from prison on HDC. He breached this and was unlawfully at large at the time of the murder. Following the conviction, the Scottish Government asked HM Inspectorate of Constabulary in Scotland and HM Inspectorate of Prisons for Scotland to carry out reviews of the HDC regime. Both inspectorates reported in October 2018.

The Justice Committee took further stage 1 evidence, with a focus on HDC, during three committee meetings in November 2018 to January 2019. Its stage 1 report, recommending that the general principles of the Bill be agreed, was published in January 2019. Following the stage 1 debate in February, the general principles were agreed without a vote.

Proposed amendments to the Bill included ones arising from various issues covered in the above-mentioned inspectorate reports. One of those agreed provided for a new offence of

remaining unlawfully at large. The offence covers a range of situations, including where a person has failed to return to prison after being recalled for breach of HDC conditions.

Other key issues considered in light of the inspectorate reports, included the process of risk assessment undertaken prior to releasing a prisoner on HDC, and arrangements for monitoring prisoners following release. A Scottish Government amendment agreed at stage 3 requires the Scottish Ministers to publish an operating protocol covering such matters. In explaining the background to the amendment, the Cabinet Secretary for Justice noted that his amendment:

“was lodged in response to an amendment that Margaret Mitchell lodged at stage 2, which proposed that statutory HDC guidance should be produced and laid before the Parliament. As I said at stage 2, I am sympathetic to the intent behind that amendment, and I am grateful to the convener, Daniel Johnson and Liam Kerr for working with us on an approach that I hope satisfies them and provides what they were looking for.” (col 69)

The Bill as introduced included reforms seeking to extend the maximum length of custodial sentence covered by current rules limiting the need to disclose convictions. To this, Scottish Government amendments agreed at stage 2 added provision for a new process under which people with convictions resulting in sentences of more than 48 months (but not life) may also benefit from such rules. Unlike the standard provisions, which apply without the convicted person having to submit any form of application, the process would involve application to a reviewer. The Scottish Ministers will have the power to set out how this will operate in regulations.

In relation to the provisions of the Bill dealing with the Parole Board, amendments agreed during the passage of the Bill broadened somewhat the range of reforms to cover the system governing parole more generally.

Following the stage 3 debate on 25 June 2019, the Bill was passed by 82 votes to 26. Conservative members voted against the Bill, raising various concerns during the final debate (eg that amendments agreed in relation to electronic monitoring did not go far enough in protecting the public).

# Non-Domestic Rates (Scotland) Bill

Bill Number: SP Bill 44

Introduced on: 25 March 2019

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 5 February 2020

Royal Assent: 11 March 2020

## Passage of the Bill

The Local Government and Communities Committee considered the Bill at Stage 1. It published its [Stage 1 report](#) on 4 October 2019.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 26 June 2019.

The [Stage 1 debate](#) on the Non-Domestic Rates (Scotland) Bill took place on 10 October 2019. The Scottish Parliament agreed to the general principles of the Bill, with 97 votes in favour, six abstentions and no votes against.

The Local Government and Communities Committee considered the Bill at Stage 2 on 27 November and 4 December 2019. An [amended version of the Bill](#) was published on 5 December 2019.

Following the [Stage 3 debate](#) on 5 February 2020, the Bill was passed and received [Royal Assent](#) on 11 March 2020.

## Purpose and objectives of the Bill

The [policy memorandum](#) for the Bill sets out that the policy objectives of the Bill as introduced were to:

- Deliver a Non-Domestic Rates system designed to better support business growth and long-term investment and reflect changing marketplaces.
- Improve ratepayers' experience of the rating system and administration of the system.
- Increase fairness and ensure a level playing field amongst ratepayers by reforming rate reliefs and tackling known avoidance measures.

## Provisions of the Bill

The [SPICe Stage 1 briefing](#) on the Bill sets out the provisions of the Bill as introduced in detail.

The focus of these provisions was enacting the recommendations of the [Barclay Review](#) of Non-Domestic Rates which required primary legislation, and on improving the administration of the tax system.

## Parliamentary consideration

The Local Government and Communities Committee published its [Stage 1 report](#) on Friday 4 October 2019. Although the Bill itself is short, the 'framework' nature of the Bill, coupled with the level of engagement and consultation carried out by the Committee, led to a large number of recommendations being made. These covered both the Bill itself, and the mechanisms the Bill sought to introduce.

The Committee supported the general principles of the Bill, and in general suggested that the provisions were a "step in the right direction", but it also made a number of recommendations. These included calls for further measures/changes to the Bill and calls for clarification.

The Local Government and Communities Committee considered the Bill at Stage 2 on 27 November and 4 December 2019. One hundred amendments were discussed, with 63 being agreed to, and an [amended version of the Bill](#) was published on 5 December 2019.

Details of the amendments discussed and made can be found in the [SPICe Stage 3 briefing](#) on the Bill.

At the [Stage 3 debate](#) on 4 February 2020, further changes were made to the Bill. In addition to some technical and procedural amendments, and wording changes, these included:

- Provisions relating to requirements for further consultation during the drafting of regulations.
- Specifying that ministers may, by regulation, make provision requiring that lands and heritages other than dwellings be entered in the valuation roll.
- The removal of Section 4A of the Bill as Amended at Stage 2, which had been a Stage 2 addition relating to the inclusion of privately-owned student halls of residence.
- The removal of Section 13C of the Bill, which had been added at Stage 2 (as [Amendment 9](#)).
- An amendment clarifying the time that is allowed to respond to an assessor information notice.

# Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill

Bill Number: SP Bill 19

Introduced on: 21 June 2017

Introduced by: James Kelly MSP (Members' Bill)

Passed: 15 March 2018

Royal Assent: 19 April 2018

## Introduction

On 27 July 2016, James Kelly MSP lodged a proposal for a Members' Bill which sought to repeal, in its entirety, the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 ("the 2012 Act").

Mr Kelly also published a [consultation](#) on his bill which closed on 23 October 2016. Mr Kelly proposed the repeal of the 2012 Act on the basis that the legislation was flawed on several levels including its illiberal nature; its failure to tackle sectarianism and the existence of other charges which police and prosecutors could use to tackle the behaviour in question.

## Passage of the Bill

The Justice Committee was designated as lead committee in consideration of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill ("the Repeal Bill"). The Justice Committee conducted [six evidence sessions at stage 1 of the Bill between October and December 2017](#).

At its meeting on 16 January 2018, the Justice Committee agreed the general principles of the Repeal Bill by division. The Committee published its [stage 1 report on the Bill on 18 January 2018](#). Stage 2 was completed on 27 February 2018 and the Bill was passed on 15 March 2018. The Bill received Royal Assent on 19 April 2018.

## Purpose and objectives of the Bill

The Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill sought to repeal, in its entirety, the 2012 Act.

## Provisions of the Bill

Section 1 of the Repeal Bill states simply that "The 2012 Act is repealed".

## Parliamentary consideration

Consideration was given as to how the Repeal Bill would deal with people charged under the 2012 Act but not yet prosecuted, or whose cases had not yet been concluded when the repeal of the 2012 Act took place.

The Member's stated priority was to end what he regarded as the injustices of the 2012 Act as quickly as possible. On that basis, the starting point for the Member was that there should be no further convictions for Section 1 or Section 6 offences from the date on which the repeal of those offences takes effect. The effect would be that no further prosecutions would be brought, and that ongoing prosecutions would be abandoned, at least insofar as they relate to offences under the 2012 Act.

Accordingly, despite the default position at section 17 of the Interpretation and Legislative Reform (Scotland) Act 2010, on the date when the legislation comes into force:

- (a) no person can be convicted of or found to have committed a relevant offence (sections 1 and 6 of the 2012 Act), and
- (b) no penalty may be imposed on a person in respect of such an offence of which that person was convicted prior to the legislation coming into force.

# Period Products (Free Provision) (Scotland) Bill

Bill Number: SP Bill 45

Introduced on: 23 April 2019

Introduced by: Monica Lennon MSP (Members' Bill)

Passed: 24 November 2020

Royal Assent: 12 January 2021

## Passage of the Bill

The Local Government and Communities Committee considered the Bill at Stage 1. It published its [Stage 1 report](#) on 5 February 2020.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 19 December 2019.

The [Stage 1 debate](#) on the Period Products (Free Provision) (Scotland) Bill took place on 25 February 2020. The Scottish Parliament agreed to the general principles of the Bill, with 112 votes in favour, one abstention and no votes against.

The Local Government and Communities Committee considered the Bill at Stage 2 on 28 October 2020. An [amended version of the Bill](#) was published in November 2020.

Following the [Stage 3 debate](#) on 24 November 2020, the Bill was passed and received [Royal Assent](#) on 12 January 2021.

## Purpose and objectives of the Bill

The [Bill proposal](#) sought to ensure that all those who menstruate are able to access sanitary products during menstruation, at no cost, as and when they are required.

## Provisions of the Bill

The Bill as introduced aimed to tackle three main issues - period poverty, period stigma, and the effects of periods on education.

To do this, it would have:

- Placed a duty on Scottish Ministers to ensure that period products are made available free of charge on a universal basis.
- Required education providers to make period products available free of charge in on-site toilets.
- Enabled Scottish Ministers to place a duty on other specified public service bodies to provide free period products.

The [SPICe Stage 1 briefing](#) on the Bill sets out the provisions of the Bill as introduced in detail.

### **Parliamentary consideration**

The Local Government and Communities Committee considered the Bill at Stage 1. It published its [Stage 1 report](#) on 5 February 2020. In this, it stated that whilst it supported the intentions the Bill, more clarity was needed on the provisions set out, particularly around the financial implications. For this reason, the Committee did not support the general principles of the Bill.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 19 December 2019.

The [Stage 1 debate](#) took place in the Chamber on 25 February 2020. The general principles of the Bill were agreed to at Stage 1, with 112 votes for, none against, and one abstention

The Bill was considered at Stage 2 by the Local Government and Communities Committee on [28 October 2020](#). There were 26 amendments considered by the Committee – 22 were agreed without division, 3 were withdrawn or not moved, and one was disagreed to by division. The resulting draft created a more simplified Bill.

Details of the amendments discussed and made can be found in the [SPICe Stage 3 Blog](#) on the Bill.

At the [Stage 3 debate](#) on 24 November 2020. 11 Amendments were lodged, none of which made significant further changes to the Bill (See the [Marshalled List](#) for details). Seven of these amendments were passed without division. Three were withdrawn (8, 10 and 11), and one was not moved (9).



# Planning (Scotland) Bill

Bill Number: SP Bill 23

Introduced on: 4 December 2017

Introduced by: Angela Constance MSP (Government Bill)

Passed: 20 June 2019

Royal Assent: 25 July 2019

## Passage of the Bill

The Local Government and Communities Committee was designated as lead committee on the Bill. The passage of the Bill is summarised below.

- **Bill introduced:** 4 December 2017
- **Stage 1:** Started 28 February 2018. Stage 1 Report published 11 May 2018. Stage 1 Debate 29 May 2018
- **Stage 2:** First meeting 12 September 2018. Last meeting 14 November 2018.
- **Stage 3 debate:** 18, 19 and 20 June 2019.

Links to all the relevant bill documentation and Official Reports are available on the [Scottish Parliament website here](#).

## Purpose and objectives of the Bill

The purpose of the Bill was to update the operation of the Scottish planning system, with a focus on delivering development, empowering communities, strengthening the role of planning in housing delivery, reducing complexity, and improving transparency and trust in the system.

## Provisions of the Bill

The most significant changes to the Scottish planning system introduced by the Bill are outlined below.

### *The National Planning Framework*

The content and status of the National Planning Framework (NPF) is significantly expanded. The main changes include:

- The scope of the NPF will be extended to include national planning policy, building on its current role as the spatial expression of other Scottish Government strategies. In practice this means that national planning policy, currently set out in the Scottish Planning Policy, will in future be set out in the NPF.
- The NPF will become a formal part of every development plan, sitting alongside the

local development plan, meaning that policies and proposals set out in the Framework must be considered by decision makers when considering applications for planning permission.

- The duration of the NPF is increased from five to 10 years.
- House building targets, currently assessed by local authorities using national guidance and set out in local or strategic development plans, will in future be calculated by the Scottish Government and set out in the NPF.

### ***Development planning***

- A statutory purpose of planning, linked only to the NPF and development planning, is established. That is “to manage the development and use of land in the long-term public interest,” with the long-term public interest being defined as anything which “contributes to sustainable development, or achieves the national outcomes (within the meaning of Part 1 of the Community Empowerment (Scotland) Act 2015)”.
- Strategic Development Plans and Strategic Development Planning authorities are to be abolished, meaning “the development plan” describes the policies and proposals set out in the NPF and local development plan.
- Planning authorities, acting individually or jointly, will instead be required to prepare and adopt a regional spatial strategy. Regional spatial strategy groupings will be voluntary and self-assembled with individual strategies tailored to reflect local and regional circumstances. While regional spatial strategies will not form part of the development plan, Scottish Ministers and planning authorities should have regard to them when preparing the NPF or a local development plan.
- The duration of a local development plan is increased from five to 10 years.
- Supplementary guidance, which adds detail to policies and proposals set out in the local development plan, will no longer have development plan status, although it will still be a consideration in planning decisions.
- Community bodies can prepare local place plans, which planning authorities must consider when drafting a local development plan.
- Planning authorities will be required to publish an open space strategy and a forestry and woodland strategy.

### ***Development management***

- Short-term let control areas are to be introduced, allowing local authorities to require planning permission for the change of use of a home to a short-term holiday let within designated zones.
- The “agent of change” principle is introduced, shifting the duty for the installation of noise mitigation measures from the owners of existing noise generating developments (particularly live music venues) from venue owners to the developers of the new properties.
- Certain large non-domestic developments must include a changing places standard accessible toilet.

- Relevant MSPs, MPs and councillors must be notified by a planning authority when it receives an application for a major development.
- Scottish Ministers must produce regulations establishing how planning authorities consider the potential health effects of applications for national or major developments.

### ***Enforcement***

- Maximum fines for failing to comply with various planning enforcement notices are increased.
- Planning authorities are to be given powers to seek charging orders to secure the payment of costs incurred in undertaking works set out in an enforcement notice that have not been carried out by the land owner or occupier

### ***Miscellaneous***

- Every planning authority must appoint a chief planning officer to advise the authority on the carrying out of its planning functions.
- A member of a planning authority (Councillor) who has not completed training on planning matters, specified by Scottish Ministers, cannot undertake any statutory functions of that authority.
- Planning authorities will be required to produce annual performance reports.
- Scottish Ministers can appoint a national planning improvement co-ordinator.
- Scottish Ministers can issue guidance on the promotion and use of mediation in planning matters.
- Scottish Ministers will have the power, through Regulation, to introduce an infrastructure levy.

## **Parliamentary consideration**

### ***Stage 1***

The [Local Government and Communities Committee's Stage 1 Report](#) was supportive of the Bill's general principles.

The Committee's report recommended the introduction of a statutory purpose for the planning system, greater public involvement in planning, the provision of additional financial/technical support for community engagement, additional funding for the planning system, more robust planning enforcement and mechanisms to deliver the infrastructure needed to support development.

### ***Stage 2***

The Local Government and Communities Committee considered over 300 amendments to the Bill at Stage 2, which were debated over seven meetings. Amendments focused on almost all parts of the legislation underpinning the operation of the Scottish planning system. Significant amendments agreed at Stage 2 covered issues including the purpose of planning, UN sustainable development goals, local place plans, culturally significant

zones, short-term lets, brownfield land, Ministerial power of call-in, training requirements for decision makers, performance of planning authorities and the creation of a chief planning officer post at planning authority level.

### ***Stage 3***

Over 200 amendments were lodged at Stage 3 which ranged across all parts of the Bill. These amendments were considered over three meetings of the Parliament. Several of the amendments agreed removed changes made at Stage 2, e.g., bringing short-term lets within the definition of “development”.

The Bill was passed with 78 votes for, 26 against and no abstentions.

# Pow of Inchaffray Drainage Commission (Scotland) Bill

Bill Number: SP Bill 9

Introduced on: 17 March 2017

Introduced by: The Pow of Inchaffray Commissioners (Private Bill)

Passed: 13 December 2018

Royal Assent: 17 January 2019

## Background

The Pow of Inchaffray is a drainage ditch in Strathearn, Scotland. Together with its ten main tributaries, the Pow is the equivalent of 13.7 miles long.

## Passage of the Bill

The [Pow of Inchaffray Drainage Commission \(Scotland\) Bill](#) ('the Bill') was introduced in the Scottish Parliament on 17 March 2017. It was a Private Bill promoted by the Pow of Inchaffray Commissioners, who oversee management and maintenance of the Pow. The Bill was introduced under procedures set out in [Rule 9A of the Parliament's Standard Orders](#) and its [Guidance on Private Bills](#).

Every Private Bill is subject to a 60-day objection period beginning immediately after introduction. In this case, the objection period ran from 18 March 2017 to 16 May 2017 and [three objections were lodged](#).

The [Pow of Inchaffray Drainage Commission \(Scotland\) Bill Committee](#) ('the Committee') was established on 19 May 2017 (under [Standing Orders Rule 9A.5](#)).

The Committee's role at Preliminary Stage was to consider and report on the general principles of the Bill and several other issues, including whether the Bill should proceed as a Private Bill. The Committee considered the Bill at this stage at meetings in May, June, September and December 2017.

The Committee published its [Preliminary Stage Report](#) on 3 November 2017. The [Preliminary Stage debate](#) then took place on 16 November 2017.

The Committee's role at Consideration Stage was to consider the detail of the Bill, including the objections received and the amendments lodged. Fifteen amendments were lodged in total at this stage, all by the Convener of the Committee on behalf of the Promoters. Amendment 9 was an important amendment, relating to the land plans showing the benefited land. It was the subject of its own 60-day objection period, running until 20 August 2018. Two admissible objections were received to amendment 9.

The Committee's meetings at Consideration Stage took place over the latter part of 2017 and throughout 2018. There were nine meetings in total. The Committee published its

[Consideration Stage Report](#) on 24 May 2018 and its [Second Consideration Stage Report](#) on 28 September 2018. All amendments at Consideration Stage were agreed to at [a meeting on 24 October 2018](#).

The Final Stage, as its name suggests, involves final consideration of a Private Bill and a decision whether to pass or reject it. The [Final Stage debate](#) took place on 13 December 2018. The Bill was passed, with further minor, technical amendments agreed to.

The Bill, as amended, received Royal Assent on 17 January 2019 to become the [Pow of Inchaffray Drainage Commission \(Scotland\) Act 2019](#) (asp 2).

### **Purpose and objectives of the Bill**

Prior to this legislation, the Pow and the land benefiting from the Pow ('the benefited land') were regulated by the Pow of Inchaffray Drainage Act 1846 ('the 1846 Act').

The Promoters of the Bill said there were three main reasons why a Private Bill was needed:

- The construction of houses on land benefiting from the Pow in recent years (notably the Balgowan estate). This meant there needed to be a new mechanism for sharing costs and for these owners to be represented on the Commission.
- The legislation needed to be modernised and simplified.
- No public body was prepared to take over the functions of the Commission.

### **Provisions of the Bill**

The Bill did the following:

- it said the Commission established by the 1846 Act continues and takes the legal form of a 'body corporate' (section 1)
- it set out the Commission's powers and functions, including the number of Commissioners (sections 1 and 2; schedule 1)
- it provided the procedures for the appointment of the Commissioners and their terms of office (sections 4 and 5; schedule 2)
- it defined the Pow and the extent of the benefited land (section 3)
- it made provision for meetings, including how decisions are made at those meetings (sections 6, 7 and 9; schedule 3)
- it set out how revenue will be collected, how much and from whom (sections 10-14 and schedules 4 and 5)
- it gave extensive powers to the Commission to access the benefited land (section 17)
- it provided a mechanism for the Commission to recover debts through the courts (sections 21 and 22)
- it repealed the 1846 Act (section 26).

## **Parliamentary consideration**

### ***Preliminary Stage***

At the Preliminary Stage, the Committee considered a variety of issues. These included whether there needed to be more Commissioners representing the section of the Pow where the Balgowan estate is located. In addition, the Committee debated whether this estate benefited from the Pow. (The Committee was ultimately satisfied that it did).

The Committee also looked at the circumstances in which Commissioners could be dismissed, suggesting that owners' rights needed to be strengthened in this regard.

The Committee explored the proposed system for calculating owners' annual payments, especially where there was a large plot with a small house on it. It was concerned about the lack of an owners' right of appeal in relation to the setting of the annual budget for the Pow.

The Committee also looked at the accessibility and transparency of the land plans (which set out the benefited land) and the Register of Heritors (which list the owners who are obliged to pay towards the upkeep of the Pow). Here the Committee was considering the information available to a prospective purchaser of a property on the benefited land.

A number of these issues were flagged by the Committee as the subject of possible amendments at Consideration Stage.

### ***Consideration Stage***

The Committee considered the three objections lodged during the initial objection period, taking oral evidence from one of the objectors. The 4 objections related to the appropriateness of the annual charge on owners and how it was determined. The Committee rejected two of the objections in full and partially upheld a third objection, on the need for a right of appeal in relation to the setting of the annual budget for the Pow.

Consideration Stage was unexpectedly protracted, as a new and fundamental issue arose at this stage. This was raised by a private individual via written submissions to the Committee. It related to the accuracy of the land plans, which, as noted above, define what land is benefited by the Pow. The Promoters accepted that the original plans were inaccurate and submitted new plans. These brought both new agricultural and residential properties within the scope of the benefited land for the first time.

An amendment to the Bill was lodged by the Convener (on behalf of the Promoters) which referred to the new land plans (amendment 9) and, as noted above, there was a further 60-day objection period relating to that amendment. Of the two admissible objections received, one was partially upheld by the Committee (but not in a way that prevented the amendment from being ultimately agreed to by the Committee).

The remaining amendments agreed to at Consideration Stage addressed issues which the Committee had first considered at the Preliminary Stage. In summary, key amendments:

- allowed three Commissioners for the Balgowan section of the Pow
- allowed a total of nine Commissioners
- changed the quorum required for Commission meetings to five

- ensured that a majority of owners in each section of the Pow could dismiss a Commissioner for that section
- clarified that a Commissioner must cease to hold office if they cease to be an owner in the benefited land
- required the publication of the land plans
- required the publication of the Register of Heritors
- created a new appeal right for an individual owner and for a group of owners

This last amendment was a particularly significant amendment in policy terms.



# Pre-release Access to Official Statistics (Scotland) Bill

Bill Number: SP Bill 81

Introduced on: 8 September 2020

Introduced by: Gordon Lindhurst MSP (on behalf of Economy, Energy and Fair Work Committee) (Committee Bill)

Passed: 4 March 2021

Royal Assent: 21 April 2021

## Passage of the Bill

The Bill was introduced on 8 September 2020 by Gordon Lindhurst MSP, as Convener of the Economy, Energy and Fair Work Committee.

The Committee looked at pre-release access (PRA) – the practice of allowing Scottish ministers and advisers sight of official statistics before publication - during its 2017 [inquiry on economic data](#). It published [its report for the committee Bill on PRA](#) in 2019 and this called for a reduction in the use of PRA. The report's publication had followed [extensive correspondence](#) between the Committee and the Scottish Government on this matter.

The timetable for consideration of the Bill is [available on the Parliament's website](#).

## Purpose and objectives of the Bill

The Bill proposed to further restrict what is known as “pre-release access” to certain official statistics. The Bill’s restrictions on pre-release access were limited to official statistics on Scotland’s gross domestic product (GDP) and retail sales, and to some other economic statistics; it does not affect other, non-economic, official statistics.

## Provisions of the Bill

The Bill amends the Statistics and Registration Service Act 2007 and limits how Scottish Ministers authorise pre-release access to two specific types of official statistics – those on Scotland’s gross domestic product (GDP) and those on Scottish retail sales. The Bill changes the law so that all economic statistics produced by the Scottish Government can only be shared with ministers 1 day before they are published. PRA for GDP and retail sales would then be reduced to zero after 2 years.

## Parliamentary consideration

The Bill was one of only three committee bills introduced during Session 5. The other two were introduced by the Standards, Procedures and Public Appointments Committee.

The Economy, Jobs and Fair Work Committee’s decision to pursue the legislative route was not a unanimous one. Rather it resulted from a vote, with 5 Committee members

voting for the introduction of a Committee Bill, and 4 voting against.

During its [inquiry on economic data](#) the Committee had received views on PRA, so a separate call for views for the Bill was not deemed necessary. On 19 September 2019 [there was a debate](#) on the Committee Bill proposal, as [contained in the Committee's report](#). The Motion was agreed to, after division, with 58 For, 0 Against and 48 Abstentions.

This was followed by the [Stage 1 debate on the 12 November 2020](#), with the vote on the general principles of the Bill passing with 60 votes, 2 Against and 54 Abstentions.

Unusually, there were no amendments lodged at either Stage 2 or Stage 3. Following a [final debate on 4 March 2021](#), the Bill passed with 62 voting For, 0 Against and 56 Abstentions.

# Prescription (Scotland) Bill

Bill Number: SP Bill 26

Introduced on: 8 February 2018

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 8 November 2018

Royal Assent: 18 December 2018

## Passage of the Bill

The [Prescription \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 8 February 2018 by the Scottish Government.

Prescription (specifically 'negative prescription') sets time limits after which legal obligations and associated rights will be extinguished. Although a technical area of law, it affects a wide range of different policy areas.

The [Delegated Powers and Law Reform Committee](#) (DPLRC) conducted Stage 1 scrutiny of the Bill at meetings in March, April and May 2018.

The [Finance and Constitution Committee](#) considered the [Financial Memorandum](#) to the Bill. It issued a call for evidence, however, on receiving only one response, from South Lanarkshire Council, the Committee agreed not to undertake any further consideration of the Bill. In addition to its role as lead committee in Stage 1 scrutiny, the DPLRC also considered the delegated powers contained in the Bill.

The DPLRC published its [Stage 1 report on](#) 14 June 2018 (including paras 295 – 298 on the delegated powers in the Bill). The [Stage 1 debate](#) took place on 27 June 2018. The Scottish Government responded to the Stage 1 Report in [a letter to the Convener of the DPLRC](#), dated 21 June 2018.

The DPLRC considered amendments to the Bill at [Stage 2](#) on 25 September 2018. The [Stage 3 debate](#) took place on 8 December 2018. The Bill, as amended, received Royal Assent on 18 December 2018 to become the [Prescription \(Scotland\) Act 2018](#) (asp 15).

## Purpose and objectives of the Bill

The purpose of the Bill was to implement the recommendations of the [Scottish Law Commission](#) (SLC) in its 2017 [Report on Prescription](#). The SLC is the statutory body that makes recommendations on law reform to Scottish Ministers.

The Bill aimed to make a series of changes to the current legislation, the [Prescription and Limitation \(Scotland\) Act 1973](#).

There are two main types of (negative) prescription – five year prescription and twenty year prescription. The Bill aimed to make changes to the parts of the Act dealing with both types of prescription.

The Bill did not contain a comprehensive package of reforms to the law of prescription. Rather, the aim was to address specific issues which have caused, or might otherwise have caused, difficulty in practice.

## **Provisions of the Bill**

Sections 1 to 3 extended the scope of obligations covered by five year prescription. In particular, section 3 created the general rule that statutory obligations to pay money would be subject to five year prescription.

However, there were still exceptions (listed in section 3) which would remain within the scope of twenty year prescription. These included the obligation to pay council tax and the obligation to pay back (reserved) social security benefits (if you have previously been paid too much).

Section 5, a key provision, related to the obligation to pay damages. It set out a new test determining when five year prescription starts in this context. The test was a substitute for one set out in a controversial 2014 UK Supreme Court case ([David T Morrison & Co Limited v ICL Plastics Ltd](#)).

Sections 6 and 7 provide that the running of the twenty year period would no longer be able to be interrupted, for example by raising court proceedings. However, there would be the possibility of an extension to twenty year prescription to allow litigation, which has started, to finish.

Section 8 changed the start point of twenty year prescription in relation to the obligation to pay damages. In some circumstances, this benefited those defending court actions.

Section 13 made it possible, in some circumstances, to agree by contract (once only) to extend the five year prescription for a period of up to one year. This type of agreement is referred to as a 'standstill agreement'.

## **Parliamentary consideration**

When witnesses gave evidence to the DPLRC at Stage 1, three issues attracted most attention:

- how prescription should work in relation to the obligation to pay council tax and the obligation to pay back overpayments of (reserved) social security benefits (section 3 of the Bill)
- the new test in section 5 relating to the obligation to pay damages. The new test was generally welcomed by those giving evidence
- section 13 of the Bill, relating to standstill agreements. Some who gave evidence at Stage 1 welcomed the proposed flexibility here. Others were concerned about the economically weaker person in any contract.

The main topics covered during the Stage 1 debate were, again, section 3 of the Bill and, to a lesser extent, the new test in section 5. More generally, there was comment on the nature of the SLC's consultation, with the issue being whether it had reached those in the social welfare sector.

At both Stages 2 and 3 the main area of controversy which remained was how prescription

should work in relation to council tax and (reserved) social security benefits (section 3 of the Bill). The policy debate focused on whether twenty year or five year prescription was appropriate for these types of obligation.

If passed, opposition amendments would have made the obligation to pay council tax, and to pay back overpayments of reserved benefits, subject to five year prescription. Ultimately though, they remained subject to twenty year prescription in the Bill as passed.

# Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill

Bill Number: SP Bill 58

Introduced on: 10 October 2019

Introduced by: Daniel Johnson MSP (Members' Bill)

Passed: 19 January 2021

Royal Assent: 24 February 2021

## Purpose of the Bill

The [Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Bill](#), as introduced in October 2019, contained provisions:

- creating a new statutory offence of assaulting, threatening, abusing, obstructing or hindering a retail worker
- allowing for the aggravation of that offence where the retail worker is seeking to enforce a statutory age restriction (e.g. the restriction on selling alcohol to young people).

It was argued that the Bill would increase the protection for workers in the retail sector by, for example:

- helping to increase awareness of the physical and verbal abuse faced by retail workers
- encouraging action to tackle such behaviour, including reporting to the police
- facilitating the collection of data on offences against retail workers.

## Parliamentary consideration

The Economy, Energy and Fair Work Committee, as lead committee, published its Stage 1 report on 30 June 2020. It expressed support for the general principles of the Bill whilst also highlighting concerns that had been raised during scrutiny.

Those concerns included questions over whether the 'obstructing and hindering' elements of the proposed offence would cover behaviour which is not serious enough to justify criminal sanctions. This was one of the reasons why the Scottish Government did not support the Bill when it was first introduced.

However, the Scottish Government expressed a willingness to discuss ways of addressing its concerns with Daniel Johnson and, following the Stage 1 debate, the general principles

of the Bill were agreed without a vote.

The Bill was amended at Stage 2 to remove references to ‘obstructing and hindering’ in the proposed offence. This left an offence of assaulting, threatening or abusing a retail worker. Such behaviour may also be prosecuted under existing common law and statutory offences which are not restricted to specific classes of victim (e.g. common law assault and the statutory offence of threatening or abusive behaviour).

The provisions of the Bill creating an aggravation of the new offence where the retail worker is seeking to enforce a statutory age restriction were not amended at Stage 2.

The Bill was not amended at Stage 3 and, following debate, was passed unanimously.

Two earlier briefings provide further information:

- [SPICe briefing on the Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Bill as introduced](#) (February 2020)
- [SPICe briefing on the Protection of Workers \(Retail and Age-restricted Goods and Services\) \(Scotland\) Bill prior to stage 3](#) (December 2020)

The Bill received Royal Assent on [24 February 2021](#).

# Railway Policing (Scotland) Bill

Bill Number: SP Bill 2

Introduced on: 8 December 2016

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 27 June 2017

Royal Assent: 1 August 2017

## Passage of the Bill

The Railway Policing (Scotland) Bill was introduced in the Scottish Parliament on 8 December 2016 by the Cabinet Secretary for Justice, Michael Matheson MSP.

The Justice Committee was designated lead committee on the Bill and issued a [call for evidence](#) on the general principles of the Bill which closed on 31 January 2017. In response, the Committee received 50 responses.

The Committee took oral evidence on the Bill at its meetings on [7](#), [14](#), [21](#) and [28](#) March and published its [stage 1 report](#) on 28 April 2017. Consideration of the Bill at stage 1 concluded with the [stage 1 debate](#) on 9 May 2017. Consideration of amendments at stage 2 took place at the Committee meeting on [30 May 2017](#) and following the [stage 3 debate](#) on 27 June 2017, the Bill was passed and received Royal Assent on 1 August 2017.

## Purpose and objectives of the Bill

The Policy Memorandum states that the policy objective of the Bill is:

“ ...to pave the way for the integration of railway policing into the Police Service of Scotland (Police Scotland) by (a) providing the Scottish Police Authority (SPA) and Police Scotland with new powers in relation to the policing of railways and railway property and (b) removing powers in relation to such policing in Scotland from the British Transport Police Force (BTP) and the British Transport Police Authority (BTPA) ”

In essence, the Bill is the first step of a major integration programme which will require a substantial amount of subordinate legislation both at the Scottish Parliament and at Westminster.

## Provisions of the Bill

The provisions in the Bill confer powers on Police Scotland and the Scottish Police Authority (SPA) in preparation for the integration of the British Transport Police (BTP) in Scotland into Police Scotland. Specifically, the Bill:

- enables the SPA to enter into railway policing agreements with railway operators to provide for policing in respect of the railways and railway property



- creates an obligation on the SPA to set up a formal mechanism for it and the Chief Constable to engage regularly with railway operators about railway policing
- confers a power on constables of Police Scotland to enter specified railway property
- removes functions conferred on the British Transport Police Authority and constables of the BTP in or as regards Scotland.

### **Parliamentary consideration**

A substantial majority of the written and oral evidence received during the Committee's Stage 1 scrutiny of the Bill focussed on matters surrounding the intention and possible implications of integrating railway policing into Police Scotland, rather than on the specific provisions contained within the Bill which were, essentially, enabling provisions.

Issues which raised significant concern amongst stakeholders focussed on alternative ways of policing the railways in Scotland without moving to full integration; how British Transport Police (BTP) officers would be integrated into Police Scotland should they wish to transfer; the possibility that many BTP officers would not transfer creating difficulties in terms of retention and having specialised officers to police the railways in Scotland; training for Police Scotland officers; and the terms and conditions for those officers who did choose to transfer.

A majority of the Justice Committee supported the general principles of the Bill while a minority of the Committee supported an alternative approach to devolved railway policing.

A [number of amendments](#) were brought forward at stage 2 of the Bill. The only substantive amendment which was agreed to at stage 2 was one brought forward by John Finnie MSP concerning a limitation on the redeployment of constables.

# Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill

Bill Number: SP Bill 79

Introduced on: 13 August 2020

Introduced by: John Swinney MSP (Government Bill)

Passed: 11 March 2021

Royal Assent: 23 April 2021

## Passage of the Bill

[The Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Bill](#) (the Bill) is a Scottish Government Bill which was introduced in the Scottish Parliament on 13 August 2020

The Bill was considered by the Education and Skills Committee as lead committee (the Committee) which took Stage 1 evidence at meetings on 30 September 2020, 7 October 2020, 28 October 2020 and 4 November 2020. [The Stage 1 Report was published on 9 December 2020](#) and the Stage 1 Debate took place on 17 December 2020.

The Committee also heard further evidence at Stage 2 of the Bill on 27 January 2021..

The Committee considered Stage 2 amendments to the Bill at meetings on 10 February 2021 and 17 February 2021 and [the Bill as amended was published](#).

The Stage 3 debate took place on 11 March 2021. The Bill received Royal Assent on 23 April 2021 to become the [Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Act 2021](#) (the Act).

## Purpose and objectives of the Bill

The Bill proposed:

- setting up a time-limited scheme to provide financial redress to survivors of historical abuse in care in Scotland or, in some circumstances, their next of kin
- establishing a Non-Departmental Public Body to be called Redress Scotland to deliver independent decision-making on applications for financial redress
- providing eligible survivors of abuse with access to non-financial redress, including emotional and psychological support.

One of the key proposals was that public authorities and voluntary organisations who were responsible for abused children in the past would pay in to the scheme.

The Bill did not, however, require these bodies to contribute. Instead, the Bill aimed at incentivising organisations to do so. It did this by giving the Scottish Government the

power to establish which bodies are offering a "fair and meaningful financial contribution" to the scheme. Those that are considered to have provided a "fair and meaningful financial contribution" to the scheme (scheme contributors) will benefit from a so-called "waiver procedure" which will mean that they will not be able to be sued in court by survivors of abuse who have accepted redress payments.

## Provisions of the Bill

The main provisions of the Bill as introduced included rules on:

- the operation of the redress scheme including the setting up of Redress Scotland and the "fair and meaningful financial contribution" (Part 2 of the Bill)
- the key concepts in the Bill (for example definitions of "abuse", "relevant care setting" etc.) and eligibility for payments (Part 3 of the Bill)
- the application process and payments which Redress Scotland can make (including levels of payment and the waiver procedure) (Part 4)
- support to survivors of abuse (Part 5)
- reporting obligations on bodies contributing to the redress scheme and obligations to provide apologies (Part 6).

Further details can be found in [the Policy Memorandum to the Bill](#), the [Committee's Stage 1 Report](#) and the [SPICe Bill Briefing](#).

## Parliamentary consideration

The Bill was subject to a number of amendments at Stage 2, including:

- the introduction of the principle that applicants and potential applicants are to be treated "with dignity, respect and compassion" by those involved with the redress scheme (section 11A)
- giving the Scottish Ministers the power to remove an organisation from the list of scheme contributors where the organisation has failed to make the financial contribution agreed to (section 13A)
- removal of section 15 of the Bill which would have allowed the Scottish Ministers to make regulations permitting charities to use "restricted funds" to pay into the scheme (these are charitable funds which can only be used for a particular purpose specified by the donor)
- extending the application period for applications for redress to the longer of either five years from the point the Act comes into force or two years from the point where the Scottish child abuse inquiry has published its final report. The Scottish Ministers must also carry out a review of whether this period should be extended (section 31 of the Act)
- the introduction of a legal presumption that any information provided by the applicant in respect of the application is true and accurate to the best of the applicant's knowledge and belief (section 34(2A))
- an increase to the maximum level of redress payment from £80,000 to £100,000

(section 38)

- increasing the time period in which applicants can accept an offer of a redress payment from twelve weeks to six months (section 47)
- giving applicants for redress the right to have access to any evidence obtained by Redress Scotland in determining their application with the exception of information that would be likely to identify any person other than the applicant, or which would contravene data protection legislation – the aim being to ensure that applicants are able to access the full picture of their time in care as children (section 78A)
- the requirement on the Scottish Government to set up a forum for survivors (section 93A). The Scottish Government had committed to do this in the Policy Memorandum, but this commitment was not a statutory one in the Bill itself.

Stage 3 amendments included:

- the introduction of a new provision (section 9 of the Act) aimed at improving the information and guidance on the redress scheme which will be available to survivors
- the introduction of an obligation on scheme contributors to acknowledge the wrongfulness of, and the harm caused by, the historical child abuse when making contributions to the scheme (section 14(1)(c) of the Act)
- the introduction of a requirement on the Scottish Ministers to consider the “sustainability” of an organisation’s services when determining whether a proposed contribution to the scheme is a “fair and meaningful financial contribution” (section 15(2)(b)(ii)).

Various amendments proposing changes to the waiver procedure were not agreed to at Stage 3. The Parliament did, however, agree to amend the Bill at Stage 3 so that the Scottish Ministers are under an obligation to lay a report before the Scottish Parliament on the operation of the waiver procedure 18 months after the waiver procedure comes into force. This report has to include an assessment of the impact of the waiver on applications for redress payments and the effectiveness of the waiver in encouraging bodies to become scheme contributors (see section 48 of the Act).

# Referendums (Scotland) Bill

Bill Number: SP Bill 46

Introduced on: 28 May 2019

Introduced by: Michael Russell MSP (Government Bill)

Passed: 19 December 2019

Royal Assent: 29 January 2020

## Passage of the Bill

The Bill's passage through Parliament was made on an accelerated timetable. It was introduced in Parliament on 28 May 2019 with the [Finance and Constitution Committee](#) designated as lead Committee. The Delegated Powers and Law Reform Committee also considered the Bill.

Stage 1 commenced on 26 June 2019 and the Committee published its [stage 1 report](#) on 31 October 2019. The [stage 1 debate](#) was held on 7 November 2019. Stage 2 took place on [27 November 2019](#) and [4 December 2019](#). The Bill was passed on 19 December 2019 following its [stage 3 debate](#).

## Purpose and objectives of the Bill

The Bill proposed a legislative framework for referendums held in Scotland under an Act of the Scottish Parliament. The framework sets out:

- the franchise and arrangements for voting;
- the conduct of the poll and counts; and
- campaign rules.

The Bill's stated policy objective, set out in the policy memorandum, was *"to put in place a generic framework for referendums that provides technical arrangements which can be applied for specific referendums"*.

As introduced, the Bill provided, at section 1, a power for Scottish Ministers to call a referendum by secondary legislation.

The Bill also provided for referendum questions and the Electoral Commission's role in question testing.

## Parliamentary consideration

At stage 1 there was significant focus and debate on two issues. The power for Ministers to provide for referendums by secondary legislation and question testing and the role of the Electoral Commission in this.

Power to provide for referendums: As introduced, section 1 of the Bill provided a power for

Scottish Ministers to call a referendum by secondary legislation. The evidence given to the Finance and Constitution Committee was that this power was unusual and unparalleled in other countries.

The view of the [Institute for Government](#) in its written evidence, for example, was that:

“ clause 1 of the bill, which enables ministers to make provision for referendums by regulation, be removed and future referendums be enabled by primary, not secondary legislation”

[Dr Alan Renwick](#) of the Constitution Unit at UCL, [wrote](#) that:

“ A power to call a referendum on any subject by regulations would be highly unusual. In fact, I have found no well-functioning parliamentary democracy that gives Ministers blanket authority to call a referendum by secondary legislation.”

In its [stage 1 report](#) the Finance and Constitution Committee recommended unanimously that the Bill *“be amended so that referendums on constitutional issues must require primary legislation and that all other referendums will ordinarily require primary legislation.”*

The Parliament’s [Delegated Powers and Law Reform Committee stage 1 report](#) on the Bill concluded that *“the Bill should be amended at Stage 2 to provide clear criteria for whether future referenda should be provided for by either primary or secondary legislation. While the formation of this criteria will require further discussion, the Committee recommends that a question put in a referendum which requires an Order made under the delegated power in section 30 of the Scotland Act 1998, as well as questions about significant moral issues, should require primary legislation.”*

Referendum Questions: As introduced, the Bill contained provision at section 3(7) for Ministers to specify in subordinate legislation the wording of any question in a referendum without consulting the Electoral Commission if the Commission has *“previously published a report setting out their views as to the intelligibility of the question or statement or recommended the wording of the question or statement.”*

The Scottish Government’s position was that questions should not have to be tested again where they have been previously used and are familiar to voters.

[Prof Toby James told the Committee](#) that *“the Electoral Commission should be fully involved”* stating that he *“cannot see any advantage in limiting its role or the time that it has available to do that.”*

In its [written evidence](#) to the Committee, the [Electoral Commission](#) stated that it:

“ firmly recommends that it must be required to provide views and advice to the Scottish Parliament on the wording of any referendum question included in legislation under this proposed framework, regardless of whether we have previously published our views on the proposed wording.”

In an [evidence session with the Committee on 18 September 2019](#), the Electoral Commission argued that question testing was important, regardless of whether the question has been used before, as *“contexts can change. The context might not have changed, but we will not know that until we do the question testing, whereupon we will give our advice.”*

The Committee's stage 1 report recommended that *"the Cabinet Secretary recognises the weight of evidence...in favour of the Electoral Commission testing a previously used referendum question and must come to an agreement, based on this evidence, with the Electoral Commission, prior to Stage 2."*

There were two very significant changes to the Bill at stage 2. The first was to remove the power for Ministers to call a referendum by secondary legislation.

Adam Tomkins MSP brought three amendments on this issue at stage 2. Amendment 1 omitted section 1 in its entirety, instead replacing it with a provision that any referendum would need to be called under an Act of the Scottish Parliament. Amendments 76 and 77 provided alternatives and specified that a referendum on a constitutional or moral issue would require primary legislation.

Amendment 1 was supported by the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP. In his [contribution to stage 2](#) proceedings on the amendment, Mr Russell explained that *as he "set out in the stage 1 debate, I have accepted the argument that most referendums should be triggered by primary legislation."*

Amendment 1 was unanimously accepted by the Committee. Amendment 76 was withdrawn and amendment 77 was not moved. The result being that a referendum must be called under an Act of the Scottish Parliament (primary legislation).

The second significant change at stage 2 was to specify a minimum referendum period of 10 weeks.

The issue of question testing and the role of the Electoral Commission was the most fiercely debated issue at stage 2.

On 21 November, [the Cabinet Secretary for Government Business and Constitutional Relations wrote to the Convener of the Finance and Constitution Committee](#), Bruce Crawford MSP, about discussions with the Electoral Commission on referendum questions.

The letter explained that the Cabinet Secretary had lodged amendments at stage 2 (amendments 90, 91 and 92) which *"would limit the use of any previously tested question to the lifetime of the Parliament which approved it"*.

Amendment 92 also allowed for the Parliament to decide to extend the validity period of a question to a second Parliamentary term without further testing.

The [Electoral Commission also issued a briefing](#) ahead of stage 2.

Adam Tomkins MSP lodged amendment 79 which provided a role for the Electoral Commission in testing all referendum question, even if they have been used in a previous referendum.

Adam Tomkins argued that the Scottish Government had failed to come to an agreement with the Electoral Commission and that his amendment 79 was the only one which sufficiently addressed the concerns of the Committee in light of its recommendation at stage 1. Moving the amendment, he said:

“ The amendment gives effect to the overwhelming force of the evidence that we received at stage 1, and to the views of the Electoral Commission at stages 1 and 2. The issue can always be revisited at stage 3, but my amendment is the only course available to the committee today that gives effect to our unanimous recommendation at paragraph 72 of our stage 1 report.”

Mr Tomkins went on to say that whilst he welcomed *“the constructive engagement between Mr Russell’s office and the Electoral Commission... the fact that that engagement has not yet led to an agreement between the Government and the Electoral Commission about the issue.”*

The Cabinet Secretary urged members of the Committee to oppose amendment 79 and instead support his amendments, stating that:

“ Taken together, my amendments would mean that a referendum question on which the Electoral Commission had previously reported would have a limited life...in the case of the question that was cast in 2014, it would have already expired. A decision about whether a question could be reused would be for the Parliament to make and would require the input of the Electoral Commission.”

Conservative and Labour members of the Committee supported amendment 79, but the amendment was not agreed to, with SNP and Green members opposing the change. The Committee did accept the Cabinet Secretary’s amendments 90, 91 and 92 on division. The Committee split on the same party lines, with SNP and Green members supporting the Cabinet Secretary’s amendments and Labour and Conservative members opposing them.

The result being that a question need not to be retested by the Electoral Commission if it is being used within the ‘validity period’ as defined in section3(8). This is the session of the Scottish Parliament in which the proposed date of the referendum falls, or if the Scottish Parliament agrees, the session of the Parliament in which the proposed date of the referendum falls and the proceeding session.

There were also a number of technical amendments agreed which dealt with administrative issues such as applications for emergency proxy votes. The Committee also had detailed discussion on how campaigning is regulated online, prompted by Patrick Harvie’s amendment 83. The Government introduced amendments 35, 36 and 38.

The Bill’s stage 3 debate was held on 19 December 2019. 25 amendments were lodged.

Question testing was revisited with the Scottish Government lodging amendments to require the Electoral Commission to report to the Parliament on any question tested rather than to Ministers. These amendments were agreed to.

Adam Tomkins MSP lodged amendment 3 which sought to ensure that the Electoral Commission tested every question. The Conservatives, Labour and the Liberal Democrats supported this amendment. The SNP, Greens and independent MSP Mark McDonald voted against the amendment and it was therefore not agreed to.

The Referendums (Scotland) Bill was passed by 68 votes to 54 with 2 abstentions. The SNP, Green party and Mark McDonald MSP voted for the Bill. The Conservatives, majority of Labour MSPs and the Liberal Democrats voted against the Bill. Two Labour members - Neil Findlay MSP and Monica Lennon MSP - abstained on the vote.



# Scottish Biometrics Commissioner Bill

Bill Number: SP Bill 48

Introduced on: 30 May 2019

Introduced by: Humza Yousaf MSP (Government Bill)

Passed: 10 March 2020

Royal Assent: 20 April 2020

## Passage of the Bill

The [Scottish Biometrics Commissioner Bill](#) was introduced in the Scottish Parliament by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 30 May 2019. The Bill was introduced following a significant amount of work which had been previously undertaken to explore the benefits of enhanced independent oversight in relation to biometrics

The Parliament's Justice Committee was designated as lead committee on the Bill, and following the usual parliamentary consideration over three Stages, the Bill was passed on 10 March 2020.

## Purpose and objectives of the Bill

The policy objective of the Bill was to support and promote the adoption of lawful, effective and ethical practices in relation to the collection, use, retention and disposal of biometric data in the context of policing and criminal justice.

## Provisions of the Bill

The Bill sought to achieve the policy objective by establishing the post of a Scottish Biometrics Commissioner ("the Commissioner"). The primary role of the Commissioner would be to provide independent oversight in relation to the collection, retention, use and disposal of biometric data by police bodies. The oversight would comprise:

- reviewing law, policy and practice in relation to biometric data
- promoting public awareness of the powers and duties of police bodies as regards biometric data
- preparing and promoting the use of a relevant Code of Practice.

The Bill, as introduced, provided that the oversight would apply to Police Scotland and the Scottish Police Authority, the latter being responsible for the provision of forensic services to the police in Scotland. During scrutiny of the Bill, that oversight was extended to include the Police Investigation and Review Commissioner (PIRC).

As such, the Scottish Biometrics Commissioner's general function is to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes by:

- the Police Service of Scotland
- (b) the Scottish Police Authority
- (c) the Police Investigations and Review Commissioner.

Following the Stage 3 debate in Parliament, the Bill was passed unanimously, by a vote of 110 for, 0 against, and 0 abstentions.

# Scottish Crown Estate Bill

Bill Number: SP Bill 24

Introduced on: 24 January 2018

Introduced by: Roseanna Cunningham MSP (Government Bill)

Passed: 21 November 2018

Royal Assent: 15 January 2019

## Passage of the Bill

The Environment, Climate Change and Land Reform Committee was designated as lead committee on the bill. The passage of the Bill is summarised below.

<b>Bill introduced</b>	24 January 2018
<b>Stage 1</b>	<p>Started 19 June 2018.</p> <p>Stage 1 Report from Delegated Powers and Law Reform Committee published 21 March 2018</p> <p>Stage 1 Report from Environment, Climate Change and Land Reform Committee published 29 May 2018</p> <p>Stage 1 Debate 19 June 2018</p>
<b>Stage 2</b>	Commenced 18 September 2018
<b>Stage 3 debate</b>	21 November 2018

Links to all the relevant bill documentation and Official Reports are available on the [Scottish Parliament website](#) including a detailed analysis of the Bill in a [SPICe Briefing](#).

## Purpose and objectives of the Bill

The Crown Estate is a collection of property, rights and interests. It is owned by the Monarch in right of the Crown and in Scotland constitutes a diverse and extensive range of assets including:

- 37,000 hectares of rural land.
- Salmon fishing rights on many Scottish rivers.
- Around half the foreshore around Scotland.
- Leasing of virtually all seabed out to 12 nautical miles.
- The rights to offshore renewable energy and gas and carbon storage out to 200 nautical miles.
- Retail and office units on George Street Edinburgh.

The Crown Estate Commissioners had previously managed these assets under the Crown

Estate Act 1961. Management of the Crown Estate in Scotland was devolved in 2017 and this Bill was created to make provision about that how it is to be managed.

As the [Explanatory Notes](#) describe:

“ The Bill makes provision for changes in the management of the Scottish Crown Estate including the duties on management and charging for the assets. The Bill both provides the mechanism to change the manager of an asset (or part of an asset) and sets out the regulatory framework within which all managers, irrespective of the size of the asset managed, must operate.”

This means that the Scottish Crown Estate Bill sets the framework for the long-term management of the Crown Estate Scotland.

## **Provisions of the Bill**

The Bill contains 45 sections in 4 Parts, and two schedules. The Bill identifies:

- who can become a manager of a Crown Estate asset
- how management can be devolved within Scotland
- what the remit of the new managers could be.

This gives managers powers and duties for these assets, including:

- planning
- reporting
- accounting.

The Bill sets out how to change the management of the Scottish Crown Estate assets.

- Part 1 changes the name of Crown Estate Scotland (Interim Management).
- Part 2 sets out definitions and the mechanisms by which the management of the Scottish Crown Estate assets can be changed.
- Part 3 makes provision about the management of Scottish Crown Estate assets, including provision about managers' powers and duties in relation to the assets and provision about planning, reporting and accounting by managers.
- Part 4 makes general provision about regulations, ancillary provision, consequential and minor modifications, interpretation, commencement and the short title.
- Schedule 1 makes modification of certain enactments in light of the change in name of Crown Estate Scotland (Interim Management).
- Schedule 2 makes consequential and minor modifications of other legislation.

## **Stage 1**

The Environment, Climate Change and Land Reform Committee's [Stage 1 Report](#) was 'broadly supportive' of the Bill's general principles, it made a number of recommendations in relation to the drafting of the Bill and in relation to what is included, and what is to be left

to further regulation and guidance. The Environment, Climate Change and Land Reform Committee also agreed with the recommendations of the Delegated Powers and Law Reform (DPLR) Committee in its own [Stage 1 Report](#). The general principles were agreed to by the Parliament on 19 June 2018.

## Stage 2

There were 44 amendments to the Bill proposed at Stage 2, primarily a mixture of Government amendments, and from Andy Wightman MSP, with others from Mark Ruskell MSP and Liam McArthur MSP.

Amendments were made across the provisions of the Bill, and whilst many were agreed to, others opened the door for conversation between opposition members and the Government ahead of Stage 3. One interesting amendment introduced the topic of the harvesting of wild kelp – this was not something on which the committee had taken evidence at Stage 1, nonetheless an amendment was successful. Other amendments prompted discussion about the definition of ‘sustainable development’ and whether that needed strengthened in legislation. The Bill as amended at Stage 2 was [published online](#).

## Stage 3

There were 47 amendments proposed at Stage 3, more than were proposed at Stage 2. The opening statement from the Cabinet Secretary for Environment, Climate Change and Land Reform included reference to a commitment to “a review of the regulatory regime for all kelp harvesting activity in Scotland”.

As regards the substantive content of the Bill, amendments were proposed by both the Scottish Government, and the range of opposition parties. At conclusion, the bill was passed unanimously, with 119 for, and no members abstaining or voting against. The bill as passed 3 [was published online](#).

# Scottish Elections (Franchise and Representation) Bill

Bill Number: SP Bill 51

Introduced on: 20 June 2019

Introduced by: John Swinney MSP (Government Bill)

Passed: 20 February 2020

Royal Assent: 1 April 2020

## Passage of the Bill

The Bill was introduced in Parliament on 20 June 2019. The Standards, Procedures and Public Appointments Committee was designated lead committee.

The [timetable for consideration of the Bill is available on the Scottish Parliament website](#).

[Section 11](#) of the [Scotland Act 2016](#) provides that a super majority (two-thirds of the total number of MSPs) is required for legislation on certain matters. Those matters include “the persons entitled to vote as electors at an election for membership of the Parliament”. As such, the Bill was subject to a super majority requirement at stage 3.

## Purpose and objectives of the Bill

The Bill set out a number of changes to the electoral franchise (who is allowed to vote) and candidacy (who can stand for election) for Scottish elections. “Scottish elections” are those which are used to elect MSPs to the Scottish Parliament and councillors to Scotland’s local authorities.

The [Scotland Act 2016](#) devolved powers over elections to the Scottish Parliament and the franchise for local government elections.

The [Scottish Government’s 2018-19 Programme for Government](#) included a commitment to introduce an Electoral Franchise Bill.

Key provisions in the Bill included:

- extending the electoral franchise for Scottish Parliament and local government elections to include all those with a legal right to live in Scotland;
- extending candidacy rights for Scottish Parliament and local government elections for foreign nationals, and
- giving prisoners on sentences under 12 months the right to vote.

A [full SPICe briefing for the Bill](#) is available.

## Parliamentary consideration

Prisoner voting was one of the key issues during the Bill's consideration. A number of amendments were lodged on the issue at stage 2 and at stage 3. Details of these amendments are available in a [SPICe spotlight blog](#).

There was also significant debate on whether individuals seeking asylum but whose claim is undetermined should be enfranchised.

Another area of consideration was whether the candidacy age should be reduced to 16, in line with the voting age for Scottish elections.

These issues are discussed in more detail in [a SPICe spotlight blog](#) which considered the Bill ahead of stage 3.

# Scottish Elections (Reform) Bill

Bill Number: SP Bill 51

Introduced on: 2 September 2019

Introduced by: Michael Russell MSP (Government Bill)

Passed: 3 June 2020

Royal Assent: 8 July 2020

## Passage of the Bill

The Bill was introduced in Parliament on 2 September 2019. The Standards, Procedures and Public Appointments Committee was designated lead committee.

The [timetable for consideration of the Bill is available on the Scottish Parliament website](#).

## Purpose and objectives of the Bill

The [Scottish Elections \(Reform\) Bill](#) set out changes to electoral law for Scottish Parliament and local government elections in Scotland. Key provisions included:

- changing term lengths from four to five years for the Scottish Parliament and local government;
- allowing two and five member council wards in addition to three and four member wards;
- prohibiting voting more than once at local authority elections; and
- enabling electronic voting for local authority elections.

Under the Scotland Act 2016 the Scottish Parliament and Government have powers and responsibilities relating to elections to the Scottish Parliament. These complement their existing responsibilities for local government elections. The [Scottish Government's 2018/19 Programme for Government](#) included a commitment to introduce an Electoral Reform Bill.

A [full SPICe briefing for the Bill](#) is available.

## Parliamentary consideration

The Parliament's [Standards Procedures and Public Appointments Committee](#) supported the four key proposals of the Bill.

The Committee concluded in its [stage 1 report](#) that “the balance of evidence supports a move to five year terms for both” Scottish Parliament and local elections in Scotland and favoured the proposed change to make it an offence to vote more than once in local government elections held on the same day.



Likewise, the Committee supported the proposal to allow two and five member electoral wards at council level. The Committee did, however, flag concerns around the impact that two member wards could have on proportionality, and recommended that they only be used in “very exceptional circumstances such as remoter rural areas.”

Stage 2 saw a number of technical amendments agreed to. One issue to return for debate at stage 2 was the matter of two member wards. Mark Ruskell MSP argued for the provision to allow two member wards (other than for island communities) to be removed from the Bill.

Sixteen amendments were lodged at stage 3 with all but one being Government amendments which were largely technical.

These issues are discussed in more detail in [a SPICe spotlight blog](#) which considered the Bill ahead of stage 3.

# Scottish General Election (Coronavirus) Bill

Bill Number: SP Bill 86

Introduced on: 16 November 2020

Introduced by: Michael Russell MSP (Government Bill)

Passed: 23 December 2020

Royal Assent: 31 January 2021

## Passage of the Bill

The [Scottish General Election \(Coronavirus\) Bill](#) was introduced on 16 November 2020 in light of the public health emergency created by the coronavirus (COVID-19) pandemic. The Bill was considered by the Parliament on an accelerated timetable.

The Bill made arrangements so that the general election to the Scottish Parliament could be held on Thursday 6 May 2021 as scheduled in spite of the coronavirus (COVID-19) public health emergency. The Bill did not seek to make long-term changes to electoral law.

The [timetable for consideration of the Bill is available on the Scottish Parliament website](#).

## Purpose and objectives of the Bill

The key provisions in the Bill provided for the following:

- bringing forward the deadline for postal vote applications
- giving a power to Scottish Ministers so that they may provide, by regulations, for an all-postal election to be held
- changing the dissolution date of the Scottish Parliament to 5 May 2021, or the day immediately before any delayed poll
- allowing Scottish Ministers to make regulations to hold polling over multiple days
- making arrangements for the first meeting of the new Parliament and the election of a new Presiding Officer
- giving a power to the Presiding Officer of the Scottish Parliament to postpone the 2021 election by up to 6 months in certain circumstances and allow for the same measures as set out above to apply if the election is postponed.

A [full SPICe briefing for the Bill](#) is available.

## Parliamentary consideration

The Parliament's [Standards Procedures and Public Appointments Committee](#) was

appointed lead committee for the Bill.

Due to the accelerated timetable the Committee held evidence sessions on the Bill with four panels in one day.

[Twenty seven amendments](#) were lodged at stage 2. The Standards, Procedures and Public Appointments Committee considered the Bill at stage 2 at its [meeting on 17 December 2020](#).

At stage 2 key issues included:

- the postal vote deadline and information about the number of postal voters
- an all postal vote election
- polling on additional days
- powers of the Parliament's Presiding Officer.

These issues are discussed in more detail in [a SPICe spotlight blog](#) which considered the Bill ahead of stage 3.

Four amendments were lodged at stage 3. Three of the amendments were agreed to and one, in the name of Anas Sarwar MSP, was withdrawn.

# Scottish National Investment Bank Bill

Bill Number: SP Bill 43

Introduced on: 27 February 2019

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 21 January 2020

Royal Assent: 25 February 2020

## Passage of the Bill

The Economy, Energy and Fair Work Committee scrutinised the Bill at Stage 1. It published its [Stage 1 report](#) on 4 July 2019.

The Delegated Powers and Law Reform Committee [reported that it was content with the delegated powers provisions](#) in the Bill on 27 March 2019.

The Stage 1 debate on the Bill took place on 29 September 2019.

The Economy, Energy and Fair Work Committee [considered the Bill at Stage 2](#) on 19 November 2019.

Following the Stage 3 debate on 21 January 2020, the Bill was passed and received [Royal Assent](#) on 25 February 2020.

## Purpose and objectives of the Bill

The Bill provided a framework for the establishment of the Scottish National Investment Bank (the Bank). It set out the purpose, objects, ownership and governance of the Bank.

The Bill described the relevant powers of the Bank in broad terms but left a lot of the detail to the Articles of Association (that is to say the constitution of the Bank as a plc). The Bill did not confer any powers in itself, rather it set out what the Bank's Articles of Association would have to say about its powers.

According to the [Policy Memorandum that accompanied the Bill](#), the Bank would have an aim of boosting Scotland's economic performance and realise the Scottish Government's ambitions for the economy by providing patient capital to finance growth.

## Provisions of the Bill

The Bill placed a duty on Scottish Ministers to establish the Scottish National Investment Bank, as a public limited company, and provided powers to capitalise the Bank. The Bill placed a duty on the Scottish Ministers to provide the Bank with its Articles of Association. It also mandated what was to be in the Articles and the circumstances in which certain provisions could be modified.

The Bill made provision for:

- the annual reporting and performance review (every five years) of the Bank
- the Articles of Association to provide that the Bank must prepare and update a balanced scorecard document
- the Articles of Association to provide direction for the appointment and tenure of directors
- Scottish Ministers to appoint an advisory group to provide them with advice on the Bank's objectives, conduct and performance
- a fair work direction with which the Bank must comply
- powers to capitalise and finance.

The Bill gave Scottish Ministers the power to set the direction of the Bank by the setting of strategic missions.

### **Parliamentary consideration**

The Economy, Energy and Fair Work Committee published its Stage 1 report on 4 July 2019. The [Economy Committee's Stage 1 report](#) recommended that the general principles of the Bill be agreed to. However, the Committee highlighted a number of areas where they would have liked to see further consideration from the Scottish Government. These included:

- consideration of how the importance of non-financial returns could be anchored in the Bill
- better indication of how the Bank's financial and non-financial returns were to be evaluated and whether and how the balanced scorecard would feature
- reflection on the wording used for the objects of the Bank as set out in section 2 of the Bill and how that matched with the vision set out in the Implementation Plan and elsewhere
- consideration of how the Parliament should be consulted on and able to meaningfully inform the process by which the Bank's missions were formulated and refined – and the mechanism by which that might be achieved
- consideration of how the Advisory Group could be reflected in the Bill and clarification that its role is to advise Scottish Ministers as the sole shareholder of the Bank
- clarification of the approach to stimulating demand and how this was to be resourced.

The Committee considered the Bill at Stage 2 on 19 November 2019. Following the completion of Stage 2 an [amended version of the Bill was published](#). Details on the key changes at Stage 2 were detailed in the '[Scottish National Investment Bank Bill: consideration prior to Stage 3](#)' briefing.

At the [Stage 3 debate on 21 January 2020](#), additional amendments were agreed to. These included: the Bank having ethical investment standards, explicit reference to third sector bodies, the Articles of Association providing for a gender equality strategy, minor modifications to the process for Scottish Ministers to set the strategic missions for the Bank and how the Parliament is informed of these, and the need for the Bank to have an

equal pay review from time to time.

The Bill was passed following the Stage 3 debate and received Royal Assent on 25 February 2020.

# Scottish Parliamentary Standards (Sexual Harassment and Complaints Process) Bill

Bill Number: SP Bill 85

Introduced on: 13 November 2020

Introduced by: Bill Kidd MSP (on behalf of the Standards, Procedures and Public Appointments Committee) (Committee Bill)

Passed: 4 March 2021

Royal Assent: 21 April 2021

## Passage of the Bill

The Committee Bill was introduced in Parliament on 13 November 2020 by Bill Kidd MSP, as Convener of the Standards, Procedures and Public Appointments Committee.

The Bill's introduction followed the Standards, Procedures and Public Appointment Committee's [inquiry on sexual harassment and inappropriate conduct](#) (December 2017-June 2018), the results of the [Parliament's survey on sexual harassment](#) and the [report of the Parliament's Joint Working Group on Sexual Harassment and Sexist Behaviour](#).

The SPPA Committee published its [proposal for a Committee Bill](#) on 23 June 2020.

The [timetable for consideration of the Bill](#) is available on the [Scottish Parliament website](#).

## Purpose and objectives of the Bill

The Bill proposed two key changes in relation to how complaints of historic sexual harassment are dealt with in regard to MSPs' staff.

1. Extending the remit of the Standards Commissioner so that the Commissioner can investigate reports of historic sexual harassment made by MSP staff where their complaint is against their employing MSP. In allowing for historic complaints, the Bill provides that a complaint can be made against a person who is no longer an MSP so long as the matter being alleged took place whilst the individual was a member of the Scottish Parliament.
2. Removing the one-year time limit on the investigation of historic complaints.

The Bill gives effect to these provisions by amending the [Scottish Parliamentary Standards Commissioner Act 2002](#).

A [full explanation of the Bill](#) can be found on SPICe spotlight.

## Parliamentary consideration

Once introduced, the passage of a Committee Bill differs from that of a Government Bill.

[Rule 9.15 of the Standing Orders](#) sets out the rules for Committee Bills.

All stages of the Bill were taken by a Committee of the whole Parliament.

No amendments were lodged at stage 2 or stage 3.



# Scottish Parliament (Assistance for Political Parties) Bill

Bill Number: SP Bill 78

Introduced on: 24 June 2020

Introduced by: Bill Kidd MSP (on behalf of the Standards, Procedures and Public Appointments Committee) (Committee Bill)

Passed: 2 February 2021

Royal Assent: 22 March 2021

## Passage of the Bill

The Bill was introduced in Parliament on 24 June 2020 by Bill Kidd MSP, as Convener of the Standards, Procedures and Public Appointments Committee.

The Parliamentary Bureau had invited the SPPA Committee to propose and introduce a Committee Bill in this area.

The SPPA Committee published its [proposal for a Committee Bill - Scottish Parliament \(Assistance for Political Parties\) Bill](#) on 5 February 2020.

The [timetable for consideration of the Bill](#) is available on the [Scottish Parliament website](#).

## Purpose and objectives of the Bill

The Bill proposed to bring responsibility for setting the terms of funding to registered political parties (often referred to as 'Short money') within the responsibility of the Scottish Parliamentary Corporate Body (SPCB). The Bill did this by transferring responsibility for setting the terms of the scheme from Scottish Ministers to the SPCB.

## Parliamentary consideration

Once introduced, the passage of a Committee Bill differs from that of a Government Bill. [Rule 9.15 of the Standing Orders](#) sets out the rules for Committee Bills.

All stages of the Bill were taken by a Committee of the whole Parliament.

No amendments were lodged at stage 2 or stage 3.

# Seat Belts in School Transport (Scotland) Bill

Bill Number: SP Bill 7

Introduced on: 28 February 2017

Introduced by: Gillian Martin MSP (Members' Bill)

Passed: 9 November 2017

Royal Assent: 18 December 2017

## Passage of the Bill

The Rural Economy and Connectivity Committee was designated as lead committee on the bill. The passage of the Bill is summarised below.

<b>Bill introduced</b>	28 February 2017
<b>Stage 1</b>	<p>Started 8 March 2017.</p> <p>Stage 1 Report published 12 May 2017</p> <p>Stage 1 Debate 23 May 2017</p>
<b>Stage 2</b>	28 June 2017
<b>Stage 3 debate</b>	9 November 2017

Links to all the relevant bill documentation and Official Reports are available on the [Scottish Parliament website here](#).

## Purpose and objectives of the Bill

The purpose of the Bill was to place a duty on every school authority (including the managers of grant maintained schools and proprietors of independent schools) to ensure that a seat belt is fitted to every passenger seat in every motor vehicle used to provide a dedicated school transport service.

## Provisions of the Bill

This was a short Bill, with only six sections. As described above, the Bill placed a duty on school authorities to ensure that a seat belt is fitted to every passenger seat in every motor vehicle used to provide a dedicated school transport service. It also required every school authority to produce a compliance statement, setting out the steps it has taken to comply with this duty. The statement should be published as soon as practicable following the end of first year during which the duty is in force, and annually thereafter. The remaining provisions of the Bill define the terms used and other minor technical matters.

## Stage 1

The Rural Economy and Connectivity Committee's [Stage 1 Report](#) was supportive of the Bill's general principles. It also suggested that:

- The provisions of the Bill be extended to cover vehicles used to provide school excursions and trips, as well as travel between home and school.
- The Scottish Government provide practical and financial support to young people, schools, and bus operators to support the implementation of the Bill.

## **Stage 2**

There were only seven amendments to the Bill proposed at Stage 2. Four were introduced by the promoter and, in line with the recommendations of the Rural Economy and Connectivity Committee's Stage 1 Report, extended the provisions of the Bill to cover school trips and excursions. These were agreed unanimously. Two amendments introduced by Rhoda Grant MSP, which would have required the Scottish Government to issue guidance to school authorities setting out expectations for the wearing of seat belts on school transport. One amendment was withdrawn and the other not moved after concerns about implementation were raised by committee members and the Minister for Transport. The final amendment, aligning the dates that the requirements of the Bill would apply to school transport for primary and secondary pupils, was agreed to following a division.

## **Stage 3**

Eight amendments were considered at Stage 3, most of which were minor and technical. There were three substantive amendments, one of which allowed school transport services for secondary pupils provided under contracts that had already been agreed between operators and school authorities to operate without seat belts until 31 August 2021. The other two substantive amendments required school authorities to promote and assess seat belt wearing on school transport and the Scottish Government to publish guidance to school authorities on this promotion assessment. All amendments were agreed.

# Social Security Administration and Tribunal Membership (Scotland) Bill

Bill Number: SP Bill 68

Introduced on: 27 April 2020

Introduced by: Shirley-Anne Somerville MSP (Government Bill)

Passed: 29 September 2020

Royal Assent: 10 November 2020

## Passage of the Bill

The [Bill](#) had a truncated parliamentary timetable. The Scottish Government explained that the bill was urgent so that the Government could introduce a new social security benefit, the Scottish Child Payment (SCP), by the end of 2020.

“ In order to launch SCP in such a timescale the Bill may need to secure Royal Assent and be commenced by early November, and this in turn requires the Bill to complete its parliamentary passage by the end of September ([Cabinet Secretary letter dated 1 May 2020](#))”

The Social Security Committee held a single evidence session at Stage 1, on [21 May](#), hearing from stakeholders and the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville MSP, on the same day.

The Committee reported on [9 June](#) and the Stage 1 debate was held on 24 June 2020.

Stage 2 was on [10 September](#). 16 of the [18 amendments lodged](#) were Government amendments, and all these passed.

Following the [Stage 3 debate on 29 September](#), the Bill was passed with only four amendments (all Scottish Government amendments) and received Royal Assent on 10 November 2020.

## Purpose and objectives of the Bill

The main purpose of the Bill was to ensure that provisions on investigations and fraud could apply to the Scottish Child Payment at its launch at the end of 2020. The Bill also included a number of disparate provisions making amendments to the framework legislation on Scottish Social Security – the Social Security (Scotland) Act 2018 (the 2018 Act).

## Provisions of the Bill

[On introduction](#) this short Bill sought to make a range of relatively minor changes to the [Social Security \(Scotland\) Act 2018](#) and allow judges from other jurisdictions to sit on Scottish tribunals:

- **Appointees:** Ministers can appoint a person to receive benefit payments on someone else's behalf if the claimant is a child or, if an adult, the claimant agrees to the appointment. (Section 1)
- **Non-disclosure of health information:** Health information can be withheld from a claimant where it is judged that revealing the information would be harmful. (Section 2)
- **Top-up benefits:** Regulations that create 'top-up' benefits can include provisions on offences and investigations. This applies to the Scottish Child Payment, which started in February 2021. (Sections 3 to 6)
- **Terminal illness:** Medical professionals other than doctors can confirm that a person is terminally ill for the purpose of 'fast tracking' their benefit claim. (Section 7)
- **Tribunals:** Judges from other jurisdictions can be appointed on a temporary basis to sit on Scottish tribunals including those dealing with Social Security Scotland benefits. (Sections 8 and 9)

Additions were made at Stages 2 and 3, discussed below.

### **Parliamentary consideration**

Despite the very short period for parliamentary consideration, there were still changes made as a result.

### ***Appointees***

In its Stage 1 report, the Social Security Committee supported the general principles of the Bill but, in doing so, noted stakeholder concerns about a lack of safeguards for the appointee system, potentially leaving it open to abuse and failing to comply with European Convention of Human Rights. The Committee asked for guidance to be statutory.

At Stage 2, the Scottish Government redrafted the appointee provisions to include:

- a duty to prepare and consult on guidelines
- a requirement that, when an appointee is made for an adult, an 'appropriate person' (to be defined in regulations) certifies that: "the individual has not been subject to any undue influence in agreeing to the appointment"
- provisions on who can request an appointment be made or ended
- a right to apply to the First-tier Tribunal for Scotland for a review of certain decisions.

### ***Jurisdiction of tribunal for money owed to Social Security Scotland***

The 2018 Act provided for regulations to be made to "transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed."

In [response to the Committee's Stage 1 report](#), the Scottish Government noted that such as change 'was not to be taken lightly' and

"We therefore intend to carry out a public consultation to ascertain which level of

competence and jurisdiction should be transferred. The Scottish Government intends to carry out this consultation this year. We are currently developing the evidence base which will inform this consultation. This is, of course, dependent on the wider and ongoing impacts of COVID-19.”

The Bill as passed includes a requirement to consult the President of the Court of Session, the President of the Scottish Tribunals and the sheriffs principal on this matter before April 2021.

### ***Top-up of reserved benefits***

In its Stage 1 report, the Committee supported the Child Poverty Action Group’s suggestion that the duty to inform people about possible eligibility for other benefits, as provided in section 53 of the 2018 Act, should be extended to include top-up benefits. This addition was made as a Government Stage 2 amendment to the Bill.

[At Stage 3](#), a Government amendment introduced a duty requiring annual uprating of the Scottish Child Payment (SCP) in line with inflation. While there had been a policy intention to uprate the SCP, this amendment made it a statutory requirement.

### ***Power to suspend payment of benefits***

During Stage 1, stakeholders argued that there was a gap in the 2018 Act, in that it did not allow benefit payments to be suspended.

For example, when someone enters a care home, they are no longer entitled to full disability benefits. If their benefit is suspended, rather than ended, then they or their carers do not lose entitlement to linked benefits – such as carer’s allowance.

At Stages 2 and 3, Government amendments provided for regulations which would allow benefits to be suspended. [At Stage 2](#), the Cabinet Secretary set out that this could occur:

“ one, where a client does not provide necessary information required to ensure on-going entitlement; two, where payment should not be paid to a third party acting on a client’s behalf because of concerns raised about potential financial abuse; and three, where a client requests that their benefit is suspended because they do not have access to their bank account.”

She reassured the Committee that:

“ suspending payment of social security benefits will be used only as a last resort, and only when we have explored all other alternatives.”

The regulations can also allow the value of benefits to be set at £0 in certain circumstances. The Cabinet Secretary told the Committee that these provisions:

“ will allow payment of specific types of on-going devolved assistance to be more quickly and easily restarted when an individual is no longer resident in a specific place, such as a care home, hospital or legal detention.”

# Social Security (Scotland) Bill

Bill Number: SP Bill 18

Introduced on: 20 June 2017

Introduced by: Angela Constance MSP (Government Bill)

Passed: 25 April 2018

Royal Assent: 01 June 2018

## Passage of the Bill

The Social Security (Scotland) Bill ("the bill") was introduced in the Scottish Parliament on 20 June 2017. [SPICe briefing SB17-57](#) explains the provisions of the bill at introduction. The Social Security Committee was the lead Committee and took evidence at Stage 1 over 7 meetings from September to November 2017. The Stage 1 debate was held on 19 December 2017. There were 109 amendments made to the bill at Stage 2, which took place over four meetings in February and March 2018. [SPICe briefing SB18-25](#) describes the key issues arising at Stage 1 and amendments at Stage 2. There were 122 amendments made at Stage 3 following which the bill was passed on [25 April 2018](#).

## Purpose and objectives of the Bill

The bill sets out principles and a general framework for Scottish social security following the devolution of certain social security benefits in the Scotland Act 2016. It establishes a Scottish Commission on Social Security to provide independent oversight and requires a Charter to be prepared based on the statutory principles. The detail of each type of assistance will be established through regulations.

The Bill, as passed, sets out broad eligibility criteria for nine types of assistance which are covered by the principles, the charter and provisions to promote take-up. Section 23 defines Carer's, cold-spell heating, winter heating, disability, early years, employment-injury, funeral expense, housing and short-term assistance and top-ups to reserved benefits as the Scottish social security system.

The general framework for determining entitlement, making applications, challenging decisions, recovering over payments and offences for these types of assistance is also set out in Part 2.

Outwith this general framework, the bill also provides for:

- Top-ups to reserved benefits to be made by regulations (Part 3)
- A temporary supplement to Carer's Allowance (Part 3)
- Discretionary Housing Payments (Part 5)
- A requirement that Ministers introduce regulations to enable Universal Credit payments to be split between couples (Part 6) (n.b. the Scottish Government do not

intend to commence this section - see discussion below).

Of these additional provisions, top-ups are covered by the principles and charter but the other benefits are not. None of these are covered by the appeals, overpayments and offences provisions set out in Part 2.

### **Parliamentary consideration**

The main areas of debate were:

- how to ensure adequate scrutiny of social security, given that it will largely be legislated for by regulations rather than primary legislation
- which additional over-arching principles were required
- how to promote take-up of benefits – in particular through provision of information, advice and advocacy.

Some of the other issues discussed included:

- how best to make provision for those who are terminally ill to receive disability assistance
- whether it was necessary to have a two-stage process when challenging a decision. (The bill requires someone to get a redetermination by the agency before they can appeal)
- whether provisions for recovery of over payments and offences strike the right balance between preventing fraud and not penalising genuine mistakes.

At Stage 3 there were 122 successful amendments to the bill and 9 unsuccessful amendments. These are listed in the [minutes for the Stage 3 debate](#).

The following summarises the main changes at Stage 3. Unless otherwise specified references are to the Act rather than the bill, and official report references are to [Stage 3 on 25 April 2018](#).



# Solicitors in the Supreme Courts of Scotland (Amendment) Bill

Bill Number: SP Bill 55

Introduced on: 26 September 2019

Introduced by: Society of Solicitors in the Supreme Courts of Scotland (Private Bill)

Passed: 3 December 2020

Royal Assent: 20 January 2021

## Passage of the Bill

The [Solicitors in the Supreme Courts of Scotland \(Amendment\) Bill](#) (the Bill) is a Private Bill which was introduced in the Scottish Parliament on 26 September 2019 by the Society of Solicitors in the Supreme Courts of Scotland ("the Promoter").

The Bill was considered by the [Solicitors in the Supreme Courts of Scotland \(Amendment\) Bill Committee](#) (the Committee) which took Preliminary Stage evidence from the Promoters at its meeting on 17 December 2019.

The Preliminary Stage Debate took place on 19 August 2020.

The Committee considered amendments to the Bill at the Consideration Stage on 7 September 2020. [The Bill, as amended, was published thereafter.](#)

The Final Stage debate took place on 3 December 2020 (no Final Stage amendments were lodged). The Bill received Royal Assent on 20 January 2021 to become [the Solicitors in the Supreme Courts of Scotland \(Amendment\) Act 2021](#).

## Purpose and objectives of the Bill

The [Bill](#) is a Private Bill which aims at amending and modernising the private legislation which provides the legal framework for the Society of Solicitors in the Supreme Courts of Scotland (SSC Society) - a body formed in 1784 to represent solicitors practising in and around Scotland's supreme courts in Edinburgh.

## Provisions of the Bill

The main changes in the Bill included:

- updating the rules on marriage and partnership so that the SSC Society's Widows' and Orphans' Fund can provide annuities to a wider group of people
- giving the SSC Society the powers to close the fund either completely or to new members
- giving the SSC Society the power to create new forms of membership

- giving the SSC Society the power to wind itself up.

Further details can be found in [the SPICe Bill Briefing](#) and in [the Committee's Preliminary Stage Report](#).

### **Parliamentary consideration**

The Bill was of a relatively technical nature and parliamentary consideration reflected this. A number of minor amendments were made at the Consideration Stage (for details see the Committee's consideration of these amendments on [7 September 2020](#)).

# South of Scotland Enterprise Bill

Bill Number: SP Bill 41

Introduced on: 24 October 2018

Introduced by: Fergus Ewing MSP (Government Bill)

Passed: 5 June 2019

Royal Assent: 12 July 2019

## Passage of the Bill

The South of Scotland Enterprise Bill was introduced on 24 October 2018 as a Government Bill.

The Rural Economy and Connectivity Committee considered the Bill at Stage 1, with its first evidence session held on 28 November 2018. Further evidence-taking took place throughout that winter, including two informal workshops organised in Dumfries and Galashiels to hear the views of local communities and businesses.

The [Delegated Powers and Law Reform \(DPLR\) Committee published a report on its scrutiny of the delegated powers provisions of the Bill on 23 January 2019](#). The Finance and Constitution Committee did not report on the Financial Memorandum.

The [Rural Economy and Connectivity Committee published its report on Stage 1 of the Bill on 4 March 2019](#), with [the Scottish Government responding later that month](#). The Stage 1 debate took place on 26 March 2019 and the Parliament agreed unanimously to the general principles of the Bill.

The Rural Economy and Connectivity Committee considered Stage 2 amendments to the Bill on 8 May and 15 May 2019.

The Stage 3 debate took place on 5 June 2019, and the Bill was passed unanimously. It received Royal Assent on 12 July 2019 and became the South of Scotland Enterprise Act 2019.

## Purpose and objectives of the Bill

The Bill aimed to create a new enterprise agency as a non-departmental public body, with the goal of supporting the economic and social development of the South of Scotland (defined in the Bill as the combined Scottish Borders and Dumfries and Galloway local authority areas). Previously the area had been within the Scottish Enterprise area. However, the Scottish Government felt that the South of Scotland faced a number of economic and social challenges quite different from those faced by the central belt. Over recent years the South has experienced:

- an ageing population with an out-migration of young people
- relatively low levels of productivity and GDP growth

- transport and digital connectivity challenges
- higher concentrations of low-paying, lower-skilled sectors
- a number of "fragile" communities across the region
- relatively low levels of private sector investment and research and development.

With the Highlands and Islands region experiencing very similar challenges, it was felt that an agency like Highlands and Islands Enterprise was needed for the South of Scotland.

### **Provisions of the Bill**

Sections 1 to 4 of the Bill establish a South of Scotland enterprise agency. As a “body corporate” the agency requires its own legal personality with its own board, chief executive and other employees. Section 5 set out the high level aims of the body. Sections 6 and 7 include the requirement for a plan setting out how the new agency intends to achieve its list of aims, and Section 8 to 16 set out various operational and accountability matters.

MSPs of all parties supported the Bill throughout the legislative process. Amendments made during Stage 2 aimed to strengthen provisions relating to board membership, as well as broadening the body’s social and environmental remits. For example, the Bill was amended to include the explicit aim of increasing the region’s working-age population, whilst another amendment put a duty on the new body to support community ownership of land and other assets.

# Tied Pubs (Scotland) Bill

Bill Number: SP Bill 62

Introduced on: 3 February 2020

Introduced by: Neil Bibby MSP (Members' Bill)

Passed: 23 March 2021

Royal Assent: 5 May 2021

## Passage of the Bill

The Economy, Energy and Fair Work Committee considered the Bill at Stage 1. It published its [Stage 1 report on 11 November 2020](#).

The [Delegated Powers and Law Reform Committee reported on the Bill on 11 March 2020](#), and recommended that regulations under section 1 (which require Scottish Ministers to produce a pubs code) should be subject to a form of super-affirmative procedure rather than the affirmative procedure.

The Stage 1 debate on the Bill took place on 26 November 2020.

The Economy, Energy and Fair Work Committee considered Stage 2 amendments on 23 February and 2 March 2021.

Following the Stage 3 debate on 23 March 2021, the Bill was passed and received Royal Assent on 5 May 2021.

## Purpose and objectives of the Bill

According to the [Policy Memorandum](#) the policy objective of the Bill is to improve the position of tied pubs tenants by requiring the establishment of a Scottish Pubs Code to govern the relationship between pub-owning businesses and their tied tenants and ensuring the appointment of a Scottish Pubs Code Adjudicator to apply the code.

## Provisions of the Bill

The Bill requires that Scottish Ministers establish a Scottish Pubs Code and a Scottish Pubs Code Adjudicator. The Bill does not set out a draft code, but does include a number of requirements to guide Scottish Ministers in creating this code. The code must include:

- Provisions relating to a market rent only lease option; pub-owning businesses must offer to enter into a market rent only lease with any tenant who requests that offer. Stage 2 amendments mean that the pubs code can specify limited circumstances where a pub owning business does not have to offer a market rent only option.
- Circumstances where a pub-owning business must enter into a guest beer agreement with a tied pub tenant, which would allow the tenant to sell to their customers at least one beer chosen by the tenant, at a price of their choosing.

- The right for pub-owning businesses (PoBs) and tenants the right to refer any dispute about the Scottish pubs code to arbitration.

## **Parliamentary consideration**

The Economy, Energy and Fair Work Committee published its Stage 1 report on 11 November 2020. It did not support the general principles of the Bill at Stage 1, citing concerns at the lack of comprehensive and transparent data on the position of tied pub tenants compared to the rest of the pub sector. The report also made several recommendations for improvement and clarification, should the Bill progress. These recommendations included:

- That a threshold for pub owning businesses in scope of the pubs code should be considered.
- That the appointment of an impartial adjudicator is essential to the successful implementation of the Bill.
- That the appeals process should be amended at Stage 2 to reflect the concerns of the Scottish Courts and Tribunals Service.
- That the Scottish Government should work with the pub industry and the Scottish Pubs Governing Body to better advertise the existing voluntary code, should the Bill not progress.

The Committee considered Stage 2 amendments on 23 February and 2 March 2021. Following the completion of Stage 2 an amended version of the Bill was published.

Key changes included:

- An extension to the deadline for implementing the pubs code following Royal Assent from one year to two.
- Amendments to allow the pubs code to include some circumstances where a market rent only lease cannot be requested.
- Changes to the appeals process to allow pub owning companies to appeal against the imposition or amount of a levy, and to change the venue for appeals to the Court of Session.
- A six month time limit for refers to arbitration, and changes to the arbitration process so that the arbitrator can allocate some of the costs to tenants as well as pub owning companies.

[SPICe published a short briefing setting out the detail of changes at Stage 2.](#)

At the [Stage 3 debate on 23 March 2021](#), the only additional amendments agreed to was a relatively technical amendment to the Bill to correct a drafting error.

# Transport (Scotland) Bill

Bill Number: SP Bill 33

Introduced on: 8 June 2018

Introduced by: Derek Mackay MSP (Government Bill)

Passed: 10 October 2019

Royal Assent: 15 November 2019

## Passage of the Bill

The Rural Economy and Connectivity Committee was designated as lead committee on the bill. The passage of the Bill is summarised below.

<b>Bill introduced</b>	8 June 2018
<b>Stage 1</b>	<p>Started 29 June 2018</p> <p>Stage 1 Report published 7 March 2019</p> <p>Stage 1 Debate 4 April 2019</p>
<b>Stage 2</b>	22 and 29 May 2019 and 5, 12, 19 and 26 June 2019
<b>Stage 3 debate</b>	9 and 10 October 2019

Links to all the relevant bill documentation and Official Reports are available on [the Scottish Parliament website here](#).

## Purpose and objectives of the Bill

The [Policy Memorandum](#) which accompanied the Bill described its purpose as to:

“...ensure Scotland’s transport network operates with greater efficiency, better accessibility and with improved air quality in its towns and cities. The legislative measures will help to empower Scotland’s local authorities and establish consistent standards to make transport easier, cleaner and smarter than ever before, therefore supporting the Scottish Government’s aspirations to deliver a safe, efficient, cost-effective and sustainable transport system for the benefit of the people of Scotland.”

## Provisions of the Bill

The Transport (Scotland) Bill, as introduced, included provisions that would apply across seven distinct topics:

**Low emission zones:** Provide the legislative framework allowing local authorities to introduce Low Emission Zones (LEZs), which make it an offence for drivers to enter a defined Zone with a vehicle which does not meet specified emissions requirements.

**Bus services:** Replaces the lightly used Bus Quality Partnership and unused Bus Quality Contract provisions of the Transport (Scotland) Act 2001 with new Bus Service Improvement Partnership and local bus service franchising powers. Clarifies existing

legislation to specifically allow local authorities to create municipal bus companies and provide local bus services. It also makes provision for improving bus service information available to passengers, and for information to be provided to local transport authorities when bus services are deregistered.

**Smart ticketing:** The Bill would give Scottish Ministers the power to specify a technical standard for smart ticketing operations across Scotland and establish a National Smart Ticketing Advisory Board. It would also amend existing local authorities and regional transport partnership powers to establish integrated public transport ticketing schemes, to require these to include smart ticketing arrangements.

**Parking:** The Bill would introduce a national prohibition on pavement parking and double parking, subject to a number of exemptions.

**Road works:** The Bill would clarify the status of the Scottish Road Works Commissioner, grant them powers to inspect road works and take enforcement action in certain circumstances. It would also remove legislative duplication in this area and strengthen requirements on safety at road work sites, qualifications of road works operatives and supervisors and requirements around road works reinstatements.

**Regional Transport Partnerships:** The Bill would allow Regional Transport Partnerships to hold and operate capital funds, renewal and repair funds and insurance funds in a similar way to councils and the power to borrow and lend money and to operate a loan fund.

**Scottish Canals board:** The Bill would amend the Transport Act 1962 to increase the membership of the British Waterways Board from "a chairman, a vice chairman and between one and four other members" to "a chairman, a vice chairman and at least 4 but no more than 9 other members".

## Stage 1

The Rural Economy and Connectivity Committee's [Stage 1 Report](#) supported the general principles of the Bill. Given the broad scope of the Bill, the Committee's recommendations extend to 12 pages meaning they cannot be summarised in any detail. However, key recommendations included:

- There needs to be consistency across Scottish Low Emission Zones, including consistent signage and exemptions.
- The ability of local authorities and Regional Transport Partnerships to use the bus provisions in the Bill are likely to be limited due to a lack of available finance and expertise.
- The smart ticketing provisions lack ambition and are unlikely to deliver a step change in smart and integrated ticketing provision.
- The Bill should be amended at Stage 2 to introduce a prohibition on parking across dropped kerbs and formal crossing points (but not at residential driveways).
- The Scottish Government should consider how road work inspection and enforcement can be further improved on the ground.
- The Committee were concerned that proposals allowing local authorities to introduce



a Workplace Parking Levy would be introduced by the Scottish Government at Stage 2, after the general principles of the Bill would have been considered by Parliament.

## **Stage 2**

The Rural Economy and Connectivity Committee considered more than 300 amendments to the Bill at Stage 2, covering a very wide range of issues. However, consideration was largely dominated by amendments introduced by John Finnie MSP, and supported by the Scottish Government, which would grant local authorities a discretionary power to introduce a Workplace Parking Levy. These amendments were agreed to after two additional evidence sessions were held, where views were gathered from stakeholders with an interest in workplace parking matters and researchers involved in assessing the UK's only operational Workplace Parking Levy scheme in Nottingham.

## **Stage 3**

The Parliament considered almost 180 amendments to the Bill at Stage 3. Again, debate was largely focussed on the Workplace Parking Levy proposals and, to a lesser extent, on the role of the public sector in the provision and regulation of local bus services.

The Bill was passed following a division, the result of which was: For 56, Against 29, Abstentions 18.

# UEFA European Championship (Scotland) Bill

Bill Number: SP Bill 54

Introduced on: 24 September 2019

Introduced by: Fiona Hyslop MSP (Government Bill)

Passed: 17 December 2019

Royal Assent: 23 January 2020

## Passage of the Bill

The Culture, Tourism, Europe and External Affairs Committee scrutinised the Bill and Stage 1. It published its [Stage 1 report](#) on 1 November 2019.

The Delegated Powers and Law Reform Committee [reported that it was content with the delegated powers provisions in the Bill](#) on 3 October 2019.

The Stage 1 debate on the Bill took place on 5 November 2019.

The Culture, Tourism, Europe and External Affairs Committee considered the Bill at Stage 2 on 28 November 2019.

Following the Stage 3 debate on 17 December 2019, the Bill was passed and received Royal Assent on 23 January 2020.

## Purpose and objectives of the Bill

According to the [Policy Memorandum](#) the following policy objectives would be achieved through the Bill:

- prohibit the unauthorised sale of Championship tickets in excess of face value or with a view to making a profit
- prohibit unauthorised street trading within an event zone when the zone is in operation
- prohibit unauthorised advertising within an event zone when the zone is in operation
- create criminal offences for unauthorised ticket touting, street trading and advertising
- provide for the designation of enforcement officers empowered to enforce the advertising, street trading and ticket touting offences, and make it a criminal offence to obstruct them in their duties
- provide that Glasgow City Council must publish guidance on the advertising and trading restrictions, and that Glasgow City Council must offer affected street traders alternative trading arrangements during the times when the trading offence applies

- automatically repeal the Act from the statute book on 31 December 2020.

## **Provisions of the Bill**

The Bill covered four main areas: ticket touting, street trading, advertising and enforcement.

The Bill as introduced would create a criminal offence to tout a championship ticket at above face value, or with a view to making a profit. This offence will cover transactions in person or by electronic means. The offence will cover transactions taking place outside of Scotland, and covers tickets for all matches that are part of the 2020 Championships. The fine may be up to £5,000.

The Bill restricts street trading to UEFA-approved vendors in the three event zones during their hours of operation. This is a requirement for all host cities.

Similar to the regulations on street trading, advertising within event zones will be restricted during their hours of operation. Advertising revenue is also used to offset the need for a public subsidy, and UEFA also aims to protect the high standards of the games by restricting clutter and preventing inappropriate advertising. These restrictions will apply to traditional forms of advertising such as billboards, but also more novel approaches such as handing out free t-shirts.

The Bill creates four new offences, an offence for breaching each of the three areas of regulation set out above, and additionally an offence for obstructing the work of an enforcement officer.

## **Parliamentary consideration**

The Culture, Tourism, Europe and External Affairs Committee published its Stage 1 report on 1 November 2019. It supported the general principles of the Bill, and made a number of recommendations for improvement and clarification. These recommendations included:

- That the Scottish Government consider amendments to the special exemption from ticket touting offered to UEFA, and suggested that any offence should apply to all.
- That charitable organisations be exempt from the ticket touting offence.
- That charity collections and buckers be exempt from the street trading offence.
- That the Scottish Government should consult on and publicise the detail of the advertising regulations.
- That the Scottish Government bring forward amendments to explicitly state that enforcement officers will all be local authority members of staff within trading standards and consumer protection roles and drawn from Glasgow City Council in the first instance and potentially from other local authorities.
- That the powers granted to enforcement officers to seek assistance from other persons are wide ranging and should be clarified, and that a requirement should be added to notify Police Scotland in advance of seeking assistance.
- That the Scottish Government and Glasgow City Council should consult with local community groups, residents or organisations representing football fans.

The Committee considered the Bill at Stage 2 on 28 November 2019. Following the completion of Stage 2 an amended version of the Bill was published.

Key changes included:

- Clarifying the powers available to enforcement officers, including powers to enter premises and to recruit assistance from third parties.
- Introducing an exemption to the ticket touting rules where the ticket is being sold as part of a charity auction.
- Minor clarifications to the rights and responsibilities of UEFA and Glasgow City Council

At the Stage 3 debate on 17 December 2019, additional amendments were agreed to which clarified that an officer must not authorise an enforcement officer to use force in relation to the powers of the Bill.

The Bill was passed following the Stage 3 debate and received Royal Assent on 23 January 2020.

### **COVID-19 and amendment**

On 17 March 2020, in response to the COVID-19 pandemic, UEFA announced that the 2020 tournament would be delayed by one year. [The Scottish Government included changes in the Coronavirus \(Scotland\) \(No2\) Bill](#):

- The “Championship” is amended so that it may take place in a year other than 2020.
- The “Championship period” is amended to be a period of not more than 42 days, ending not later than 31 December 2022.
- The repeal date is changed from 31 December 2020 to 31 December 2022.
- An exception to the ticket touting offence, where an auction of a match ticket is conducted by a charity, or a person other than a charity and the proceeds are donated to a charity based in the UK or EU, was changed to remove the geographic limitation due to concerns this was not compliant with the European Convention on Human Rights.

# UK Withdrawal from the European Union (Continuity) Bill

Bill Number: SP Bill 77

Introduced on: 18 June 2020

Introduced by: Michael Russell MSP (Government Bill)

Passed: 22 December 2020

Royal Assent: 29 January 2021

## Passage of the Bill

The [UK Withdrawal from the European Union \(Continuity\) Bill](#) was introduced in the Scottish Parliament on 18 June 2020.

Following introduction, the Finance and Constitution Committee, the Environment, Climate Change and Land Reform Committee and the Delegated Powers and Law Reform Committee took evidence on the Bill. The Finance and Constitution Committee [focused on Parts 1 and 3 of the Bill and reported on 7 October 2020](#) in which it supported the general principles of the Bill. The Environment, Climate Change and Land Reform Committee [focused on Part 2 of the Bill and reported on 22 September 2020](#) in which it supported the general principles of the Bill whilst highlighting a number of serious concerns about some specific content. The Delegated Powers and Law Reform Committee focused on the delegated powers conferred proposed in the Bill. The Committee [published its Stage 1 report on 25 September 2020](#).

The [Stage 1 debate for the Bill took place on 29 October 2020](#) with the general principles of the Bill passed by 87 votes to 27 votes.

As with Stage 1, Stage 2 of the Bill was undertaken by both the Finance and Constitution Committee and the Environment, Climate Change and Land Reform Committee. The Finance and Constitution Committee focused on proposed amendments to Part 1 of the Bill at its [meeting on 25 November 2020](#). The Environment, Climate Change and Land Reform Committee considered amendments to Part 2 of the Bill at its [meeting on 24 November 2020](#).

Stage 3 of the Bill took place on 22 December 2020 followed by the Stage 3 Debate. Parliament passed the Bill by 90 votes to 29 votes.

The Bill received Royal Assent on 29 January 2021.

## Purpose and objectives of the Bill

Part 1 of the Bill provided for the introduction of a power (in section 1(1)) to enable Scottish Ministers to continue to keep devolved law aligned with EU law so far as appropriate following the UK's exit from the European Union.

Part 2 of the Bill provided for the introduction of guiding environmental principles into Scots law and the formation of Environmental Standards Scotland (ESS), and its functions and powers.

## **Provisions of the Bill**

### **Part 1**

Part 1 of the Bill was concerned with continued alignment with EU law following the end of the implementation period (i.e. the point at which Scotland as part of the UK no longer needed to comply with EU law).

Section 1 of the Bill provided Scottish Ministers with powers to make provision corresponding to EU law. This provision would allow Scottish Ministers to make regulations ensuring that in desired policy areas Scots law continued to align with EU law following the end of the implementation period.

Section 2 detailed the limitations on the use of the power provided in section 1(1).

Section 3 provided for a time limit on the use of the power set out in section 1(1). Section 3(1) provided that the Scottish Ministers' power to regulate expired ten years from the date it came into force. Subsection (2) provided that Scottish Ministers may, on a rolling basis, extend that 10-year period by periods of up to five years. Any extension would require regulations to be laid in the Scottish Parliament subject to the affirmative procedure. No limit was placed on the number of times the power could be renewed for further five year periods.

Section 4 set out how regulations made under the power in section 1(1) were to be scrutinised at the Scottish Parliament.

Sections 5 provided that Scottish Ministers must make explanatory statements to accompany instruments or draft instruments made under section 1(1) when they were laid. Section 6 provides for the type of statements required to be made and sets out what the statements should address.

Section 7(1) required Scottish Ministers to prepare and lay before the Scottish Parliament a report explaining how the section 1(1) power had been used during the twelve months 'reporting period'.

### **Part 2**

EU environmental law is underpinned by a number of principles, drawn from the European treaties, and the bill provided for these to be introduced explicitly into Scots law. These guiding principles on the environment were set out in Section 9 of the Bill. These are:

- (a) the precautionary principle as it relates to the environment,
- (b) that preventative action should be taken to avert environmental damage,
- (c) that environmental damage should as a priority be rectified at source,
- (d) that the polluter should pay.

Section 10 required Scottish Ministers to "have regard to" the guiding principles on the environment when developing policies, including proposals for legislation. Section 10 also

placed the same duty on Ministers of the Crown when creating policies and proposals for legislation as far as they extended to Scotland.

Section 11 extended the duty to have regard to the guiding principles to a 'responsible authority' - as defined in section 2 of the Environmental Assessment (Scotland) Act 2005. This definition includes all elements of the public sector from central and local government, across the range of public bodies and to those private persons or bodies which perform functions of a public character.

Section 12 set out that those acting under section 10 and 11 must apply the duty with a view to "protecting and improving the environment", and "contributing to sustainable development".

Part 2, Chapter 2 established a new public body called Environmental Standards Scotland (ESS) and in Gaelic, Ìrean Àrainneachdail na h-Alba. ESS was to have operational independence of Scottish Ministers and was designed to provide "continuity of environmental governance" as the EU's regime fell away following EU exit.

The functions of ESS were set out in Section 16, these were to:

- **Monitor** - ESS is to monitor public authorities' compliance with environmental law, the effectiveness of environmental law, and how environmental law is implemented and applied.
- **Investigate** - ESS is to investigate any matter concerning whether a public authority is failing (or has failed) to comply with environmental law, as well as any matter concerning the effectiveness of environmental law or how it is (or has been) implemented or applied.
- **Take action** - ESS may take appropriate action to secure a public authority's compliance with environmental law, and to secure improvement in the effectiveness of environmental law or in how it is implemented or applied. The ways in which it may take action are set out in Powers and duties.

Section 19 created a duty on public authorities to co-operate with ESS.

The Bill also provided ESS with three enforcement powers designed to ensure compliance with, and effectiveness of, environmental law:

- Information notice - a 'backstop' power for ESS's investigations
- Compliance notice - for use in instances of regulatory failure
- Improvement report - to address systemic failures.

## Parliamentary consideration

During the Bill's consideration at Stage 1, the two Committees scrutinising the Bill made a number of recommendations.

Focused on Part 1 of the Bill, the Finance and Constitution Committee highlighted a number of areas where it believed the Bill could be amended. These included that the use of the 'keeping pace' power should not be entirely at the discretion of Scottish Ministers and that there needs to be much greater clarity on how Ministers propose to use the power.

The Committee also recommended that the Bill should be amended to require the Scottish Government to provide guidance setting out the criteria which will apply to the use of the 'keeping pace' power. The Committee recommended that guidance should also clearly set out how the keeping pace power will interact with other sources of regulation which will impact on people and businesses in Scotland. This should, the Committee concluded, include the impact of trade deals, common frameworks and the operation of the UK internal market.

Other issues highlighted in the Committee's report included:

- How the keeping pace power will actually be used and specifically whether the extent of the secondary powers in the Bill are appropriate.
- The extent to which the keeping pace power may be subject to statutory and non-statutory constraints such as the UK Internal Market Bill and common frameworks.
- The resources required to monitor EU legislative developments and to scrutinise the Scottish Ministers' use of the keeping pace power.
- The sunset clause provision in the Bill

Focused on Part 2 of the Bill, the Environment, Climate Change and Land Reform Committee identified a number of serious concerns - including around the role of environmental principles and the functions, powers and independence of the new 'watchdog' Environmental Standards Scotland (ESS).

Stage 2 consideration was split between the Finance and Constitution Committee (Part 1 of the Bill) and the Environment, Climate Change and Law Reform Committee (Part 2). The Finance and Constitution Committee agreed a number of amendments at Stage 2. These focussed on:

- Duration of the section 1 power (section 3 of the Bill) was reduced to an initial six years and a maximum overall timeframe of ten years.
- Policy statement on the section 1(1) power (new section 4A of the Bill) placed a requirement on Scottish Ministers to set out to Parliament how it intended to make decisions about use of the keeping pace power.
- Explanatory statements (section 6 of the Bill) were amended to require the Scottish Government to set out how proposed regulations made using the section 1(1) power might impact human rights and whether there were financial implications of any new regulations. A further amendment required Scottish Ministers to report to Parliament as to whether they had consulted local authorities where appropriate and set out the details of that consultation.
- Reports relating to the exercise of the section 1(1) power (section 7 of the Bill) was amended to place requirements on Scottish Ministers to set out how they intended to use the keeping pace power during the reporting period alongside reporting on any use of the power under section 1(1) that had been considered, or was being considered, by the Scottish Ministers during the reporting period.
- The reporting period was amended from twelve months to six months. However, this was changed by amendment again at Stage 3 back to twelve month reporting periods.



An amendment proposing a new section to the Bill setting out that the purpose of the Bill was to maintain alignment with EU law primarily in 6 policy areas was withdrawn. However, a similar amendment was agreed during Stage 3 which introduced a new Section 1A set out that the purpose of section 1(1) was, among other things, to contribute towards maintaining and advancing standards in relation to the following matters:

- environmental protection
- animal health and welfare
- plant health
- equality, non-discrimination and human rights
- social protection.

A number of amendments were laid seeking to introduce a system to include pre-laying scrutiny of regulations by way of a sift mechanism. The proposed sift mechanism would have allowed the Parliament to seek a different procedure (from negative or affirmative to a form of super affirmative) for considering secondary legislation introduced under the keeping pace power. The sift would also have allowed the Parliament to object to the provision being made by regulations. In effect, this would require Scottish Ministers to introduce primary legislation if they wished to pursue their proposal. The proposed amendments were all rejected.

The Environment, Climate Change and Land Reform Committee also agreed a number of amendments during its Stage 2 consideration of Part 2 of the Bill. These focused on:

- **Addition of the integration principle** - A new section 9 (1) (za) was added to the Bill meaning that guiding principles on the environment also included "the principle that protecting the environment should be integrated into the making of policies".
- **Removal of regulation-making powers in relation to the principles** - An amendment was agreed which had the effect of removing from Scottish Ministers the power to make regulations to exclude further matters from the duty to have regard to the guiding principles (existing exclusions are policies and proposals relating to national defence or civil emergency, finance or budgets).
- **Definition of the environment** - An amendment was agreed which expanded the definition of 'environment' in section 12 of the Bill (which relates to fulfilment of duties regarding the guiding principles) to include "wild animal and plant life and the habitats of wild animal and plant life". The term "animal and plant life" is further defined as including any living organisms. A new section 40 (3) (b) was also added to the Bill to expand the definition of environment in Chapter 2 of Part 2 of the Bill (on environmental governance) to include wild animal and plant life and the habitats of wild animal and plant life. This mirrored the amendment made to the definition of the environment as it relates to the guiding principles on the environment in the Bill as described above.
- **Confidentiality of ESS proceedings and disclosure of information** - Amendments were made to provisions in relation to disclosure of information by ESS (section 36), simplifying the confidentiality provisions and removing a restriction on the disclosure of information by third parties.

- **Appointment of members to ESS - expertise required** - Schedule 1, paragraph 2 (2A) was added to the Bill. This required that in appointing members to ESS, the Scottish Ministers must have regard, among other things, to the desirability of ensuring that the membership of ESS as a whole has expertise or experience in: law (including international law) relating to the natural environment, environmental science, environmental policy, and investigatory and enforcement proceedings.
- **Removal of appointed members - requirement to consult chair of ESS** - Schedule 1, paragraph (5) (2A) was added to the Bill via an amendment to require that where Scottish Ministers propose to give a member of ESS, other than the chair, notice that they are to be removed, they must first consult with the chair of ESS.
- **ESS functions in relation to international law** - The Bill tasked ESS with, amongst other things, monitoring the "effectiveness of environmental law". Amendments were made to the Bill to expand the definition of this term to explicitly include the contribution of environmental law to "the implementation of any international obligation of the United Kingdom relating to environmental protection" (see section 39(9)(b) of the Bill as amended).

The amendments to Part 1 of the Bill made at Stage 3 focused on the addition of a section setting out the purpose of the keeping pace power (as described above) and a change to the reporting period back to twelve months from six months which had been amended into the Bill at Stage 2. Amendments were also made which placed greater requirements on Scottish Ministers to report to Parliament about how they intend to use the keeping pace power, along with setting out the process under which Scottish Ministers should report to Parliament on these issues.

The main amendments made to the Bill at Stage 3 centred on Part 2 of the Bill. The amendments focused on:

- Placing Scotland's environmental policy strategy on a statutory footing.
- Inclusion of functions in relation to climate change in the remit of Environmental Standards Scotland.
- Placing a duty on Environmental Standards Scotland to consult on further improvements to environmental governance in particular to include provisions on reviewing the effectiveness of the governance arrangements that will be put in place by the bill, including in relation to access to environmental justice.

Following the [Stage 3 debate](#), the Bill was passed by the Scottish Parliament on 22 December 2020 by 90 votes to 29 votes. The Bill received Royal Assent on 29 January 2021.

# UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill

Bill Number: SP Bill 28

Introduced on: 27 February 2018 [SP Bill 28]

Introduced by: Michael Russell MSP (Government Bill)

Passed: 21 March 2018

Withdrawn: 10 March 2022

## Passage of the Bill

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill (SP Bill 28) was introduced in the Scottish Parliament on 27 February 2018.

The Bill was considered by the Parliament using the emergency bill procedure. The reason for using the emergency procedure was because the Scottish Government wanted to ensure that the Continuity Bill completed its parliamentary passage and become law before the UK Parliament's European Union Withdrawal Bill did. As a result, Parliament considered the Bill as follows:

- Stage 1 on Wednesday 7 March 2018
- Stage 2 on Tuesday 13 and Wednesday 14 March 2018
- Stage 3 on Wednesday 21 March 2018.

Although the Bill completed its parliamentary progress on 21 March 2018, it was never granted Royal Assent. This is because during the four-week period following the passing of the Bill, the Attorney General and the Advocate General for Scotland referred the Bill to the Supreme Court for a ruling on whether the Bill was within the Scottish Parliament's legislative competence. As discussed below, the Supreme Court found that elements of the Bill fell out-with the competence of the Scottish Parliament.

On 10 March 2022 the Bill was withdrawn.

## Purpose and objectives of the Bill

The purpose of the Bill was to ensure that when the UK left the European Union, Scots law continued to function seamlessly without any interruptions or gaps. To achieve this, the Bill proposed three main things:

- to retain in domestic law EU law currently operating in devolved areas
- to give the Scottish Ministers the powers needed to ensure that devolved law continued to operate effectively after UK withdrawal
- to give the Scottish Ministers the power to, where appropriate, ensure that Scotland's

devolved laws keeps pace after UK withdrawal with developments in EU law.

## Provisions of the Bill

The Bill set out to ensure continuity of Scots law on the day the UK left the European Union. The Scottish Government sought to ensure that by adopting a similar approach to the UK Parliament's European Union Withdrawal Bill, it should mean there would be consistency between the way devolved and reserved law was dealt with.

Part 2 of the Bill aimed to ensure that EU law was saved in Scots law after the UK had left the EU. Sections 2 to 5 of the Bill sought to ensure that EU law already incorporated in Scots law continued to apply after Brexit. It replicated the provisions in clauses 2 and 3 of the European Union (Withdrawal) Bill.

Section 5 of the Legal Continuity Bill incorporated the European Charter of Fundamental Rights into Scots law as it applied to devolved matters. The Charter was not incorporated into UK law by the European Union Withdrawal Bill so this provision was to ensure the Charter continued to apply in devolved areas after EU exit.

Sections 6 to 9 of the Bill provided for exceptions to the saving of EU law provided for in sections 2 to 5.

Section 10 of the Bill set out how EU law retained by the Bill and copied into Scots law was to be interpreted after the UK left the EU.

Part 3 of the Bill set out the main powers in the Bill's provisions which related to UK withdrawal, and which gave Scottish Ministers powers to make secondary legislation.

Section 11 of the Bill provided powers to Scottish Ministers to make regulations to deal with deficiencies in retained (devolved) EU law as a result of EU exit. Section 12 provided powers to Scottish Ministers to make regulations to ensure compliance with the UK's international obligations in devolved areas.

Section 13 of the Bill provided powers to Scottish Ministers to make regulations to ensure that, where appropriate Scots law in devolved areas could continue to keep pace with EU law after the UK left the European Union.

Under proposals in the UK Parliament's European Union Withdrawal Bill, UK Ministers' powers extended to devolved competences. This meant UK Ministers would have the power to make changes to law in devolved areas without any formal mechanism for accountability to the Scottish Parliament. These powers remained in the European Union (Withdrawal) Act. Section 17 of the Legal Continuity Bill provided for a default procedural requirement under which UK Ministers would have been required to obtain the consent of the Scottish Ministers before they made, confirmed or approved secondary legislation relating to devolved matters which modified, or would modify, any retained (devolved) EU law.

The [SPICe Briefing published on the Bill](#) provides more details on each of these provisions.

## Parliamentary consideration

As a result of the Parliament's agreement that the Bill be considered as an emergency bill, each stage of the Bill was to be held on consecutive Wednesdays during March 2018.

During the debate (on 1 March 2018) about whether to treat the Bill as an emergency bill, concerns about the use of the emergency procedure were raised by Conservative, Labour and Liberal Democrat members. A particular area of concern surrounded the proposal that Stage 2 of the Bill would be taken by a Committee of the whole Parliament, rather than being considered by a Scottish Parliament committee or committees. As a result, Parliament agreed without division that the Finance and Constitution Committee be designated as the lead committee, and that the Culture, Tourism, Europe and External Relations Committee be designated as a secondary committee, in consideration of the Bill. As a result, [Stage 2 was held on 13 and 14 March 2018 during two meetings of the Finance and Constitution Committee](#) held in the Scottish Parliament chamber.

The [Stage 1 debate for the Bill](#) was held on 7 March 2018. Following the debate, the general principles of the Bill were agreed to by 94 votes to 30.

The [key amendments made to the Bill](#) at Stage 2 were as follows:

- New Sections 9A and 9B placed requirements on Scottish Ministers to ensure more opportunity for the Scottish Parliament to scrutinise any secondary legislation introduced by Scottish Ministers using powers in the Bill. The requirements included the need to allow 60 days between laying regulations in the Scottish Parliament and the regulations coming into force. Scottish Ministers were also required to consult about their proposals such persons as they considered appropriate ahead of making any regulations using powers under the Bill.
- The power in Section 13 to make regulations to ensure that, where appropriate Scots law in devolved areas could continue to keep pace with EU law after the UK left the European Union was amended to ensure it could not be used to establish a Scottish public authority. In addition, a sunset clause was placed on this power so it expired three years after the date on which the UK left the EU. A further amendment allowed Scottish Ministers to make a regulation to extend the power for two further one year periods but the Bill stated the power could not be extended by regulations to last for more than five years in total.
- New sections 10A and 10B required Scottish Ministers to report to Parliament four times a year on how many deficiencies in retained (devolved) EU law have been identified, how many regulations under the continuity power are expected to be laid before the Scottish Parliament, and how many regulations under the continuity power have been made.
- Finally, new Section 14A introduced additional scrutiny of regulations made under powers conferred on Scottish Ministers in the Bill. These measures introduced a role for Scottish Parliament committees in determining what the appropriate scrutiny procedure should be for a proposed instrument or draft instrument. This approach was recognised as a “sift”.

The main amendments to the [Bill at Stage 3](#) related to the continuity power conferred on Scottish Ministers to allow Scots Law to keep pace with EU law. New Section 13A placed a requirement on Scottish Ministers to provide an annual report to the Scottish Parliament setting out how the keeping pace power had been used.

New Section 13B placed a requirement on Scottish Ministers to have regard to the guiding principles on the environment and animal welfare when considering whether to use the powers conferred on them in the Bill. Section 13B set out the guiding principles on the

environment and animal welfare as:

- (a) the precautionary principle as it relates to the environment
- (b) that preventative action should be taken to avert environmental damage
- (c) that environmental damage should as a priority be rectified at source
- (d) that the polluter should pay
- (e) that regard must be had to the welfare requirements of animals as sentient beings.

Following the Stage 3 debate, the [Bill was passed by 95 votes to 32 votes on 21 March 2018](#).

### **The Supreme Court**

During the four-week period following the passing of the Bill, the UK Government's Attorney General and the Advocate General for Scotland referred the Bill to the Supreme Court for a ruling on whether the Bill was within the Scottish Parliament's legislative competence. The Supreme Court found that elements of the Bill fell out-with the competence of the Scottish Parliament.

Specifically, the Supreme Court found that Section 17 of the Continuity Bill which would have placed a requirement on UK Ministers to seek Scottish Ministers' consent to UK secondary legislation which modified retained EU law relating in part or in full to devolved matters would not be within the legislative competence of the Scottish Parliament.

The Court also adjudged that a number of the Continuity Bill's provisions would modify the European Union (Withdrawal) Act and therefore would not be within legislative competence if the Continuity Bill were to receive Royal Assent. Details of these specific provisions are included in the [SPICe briefing on the Supreme Court judgement](#).

Rather than asking the Scottish Parliament to reconsider the Bill in light of the Supreme Court ruling, the Scottish Government asked Parliament to agree the Bill should be withdrawn. This was [agreed by the Scottish Parliament on 10 March 2022](#).

A number of provisions included in this Bill in relation to preparing EU law for EU exit where included in the European Union (Withdrawal) Act whilst the proposals in relation to seeking to ensure Scots Law continues to keep pace with EU law where included in the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act](#).

# United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

Bill Number: SP Bill 80

Introduced on: 1 September 2020

Introduced by: John Swinney MSP (Government Bill)

Passed: 16 March 2021

Royal Assent: N/A

## Passage of the Bill

The [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) (SP Bill 80) was introduced on 1 September 2020. The Equalities and Human Rights Committee ('the Committee') was designated as lead committee. The Bill completed Stage 1 on 19 January 2021, Stage 2 on 11 February 2021, and was passed by the Parliament at Stage 3 on 16 March 2021.

## Purpose and objectives of the Bill

The main purpose of the Bill is to incorporate the UN Convention on the Rights of the Child (UNCRC) and the two optional protocols into Scots law.

The UNCRC is an international treaty setting out the rights that children and young people are entitled to.

As it is an international treaty, the UNCRC doesn't give individuals legal rights in UK courts. The Bill changes this by incorporating these rights into Scots law. This means that public authorities, including Scottish Ministers, will be legally obliged to respect children's rights, and that individuals will be able to challenge public authorities in the courts for breaches of their rights.

## Provisions of the Bill

The Bill (as introduced) included provisions to:

- incorporate the UNCRC into Scots law so far as possible within the Scottish Parliament's powers. The incorporated provisions are defined in the schedule of the Bill as the 'UNCRC requirements'
- make it unlawful for public authorities to act in a way which is incompatible with UNCRC requirements
- give children, young people, and their representatives the power to go to court to enforce their rights
- give the Children's Commissioner power to take legal action in relation to children's

## rights

- require Scottish Ministers to make a Children's Rights Scheme setting out arrangements for them to comply with the UNCRC requirements, to be reviewed and reported on annually
- require listed public authorities to report on their compliance with the UNCRC requirements every three years; this replaces an existing duty in the Children and Young People (Scotland) Act 2014
- place a legal duty on Scottish Ministers to carry out and publish a child rights and wellbeing impact assessment on all Scottish Parliament bills, and most secondary legislation
- place a legal duty on a member of the Scottish Government in charge of a bill to make a written statement on the bill's compatibility with UNCRC requirements when the bill is introduced in the Scottish Parliament
- require new and old legislation to be read wherever possible in a way that is compatible with the UNCRC requirements; where this is not possible:
  - courts will be able to 'strike down' old incompatible legislation (being legislation which pre-dates the Bill), meaning that it no longer forms part of Scots law; or,
  - make a declaration that new legislation (being legislation which post-dates the Bill) is incompatible with the UNCRC
- set up court procedures to address questions about the compatibility of legislation or public bodies' actions with the UNCRC requirements
- enable the Scottish Government to change the law, by regulation, to cure incompatibilities with the UNCRC requirements.

## Parliamentary consideration

### Stage 1

The Committee received around 150 written submissions on the Bill, about 100 of which were from a range of organisations in the public and third sector.

Nearly all the respondents supported the objective of the Bill, to incorporate the UNCRC into Scots law.

The Committee unanimously approved the General Principles of the Bill at Stage 1. Based on the evidence received, its Stage 1 report highlighted a number of areas where the Bill could be strengthened, and recommended that amendments should be introduced at Stage 2 to achieve this.

### Stage 2

#### *Interpretation of UNCRC requirements*

Section 4 of the Bill sets out that a court or tribunal 'may' take into account the texts of the UNCRC and the two optional protocols that have not been incorporated, when determining a question in connection with UNCRC requirements. This is because some of the UNCRC



text, for example, the preamble, is not included in the Bill's schedule. The Committee recommended in its Stage 1 report that this be changed to 'must'. At Stage 2, the word 'may' was replaced with 'must'.

The Scottish Government also added additional materials for courts and tribunals to take account of, including General Comments and concluding observations made by the United Nations Committee on the Rights of the Child.

### *Meaning of a public authority*

The definition of a public authority is based on the definition set out in the Human Rights Act 1998. The Committee heard that this is being interpreted by the courts in a way that would be contrary to the spirit of the Bill (for example, where public functions are outsourced to private companies). The Committee recommended in the Stage 1 report that the Scottish Government consider how to tighten up the definition.

Mary Fee MSP lodged an amendment that defines a public authority as "all public bodies who have functions in relation to the care of a child". Maree Todd MSP, Minister for Childcare and Early Years, on behalf of the Scottish Government, argued that this was unnecessary as this is already achieved by the existing definition of public authority. Mary Fee's amendment was agreed to.

The Scottish Government lodged an amendment to ensure that anyone undertaking a function under a contract, or other arrangements, with a public authority will have a duty not to act incompatibly with UNCRC requirements. This amendment was agreed to.

### *Effective remedies*

In its Stage 1 report, the Committee stated that it was not clear that the Bill does enough to ensure that the remedies that can be provided by courts and tribunals will be effective in practice. For example, will the remedies focus on what a child or young person might want, or tell public authorities to make changes for the benefit of other rights holders in future?

The Committee recommended amendments to define and ensure an effective remedy, and to require courts and tribunals to ask for the child's views on an effective remedy in each case.

The Bill was amended to ensure that any relief or remedy granted by the court or tribunal must be 'effective'. A further amendment was agreed to ensure that where a court or tribunal is considering what remedy to grant, the child is given the opportunity to express their views in relation to the effectiveness of that remedy.

### *New powers for the Scottish Human Rights Commission*

The Bill gives the Children and Young People's Commissioner Scotland the power to bring court proceedings or to intervene in existing court proceedings where a public authority is alleged to have acted in a way which is incompatible with UNCRC requirements.

The Scottish Government brought forward several amendments to give the Scottish Human Rights Commission the same powers as the Children and Young People's Commissioner Scotland. These were agreed to.

### *Children's Rights Scheme*

The Bill requires Scottish Ministers to publish a Children's Rights Scheme (the Scheme) to report on compliance with the UNCRC requirements. The Committee heard calls for the provisions in the Scheme to be strengthened.

While the Bill as introduced stated that the Scheme "may" include certain arrangements around children's rights, stakeholders called for this to be changed to "must". At Stage 2, the word 'may' was replaced with 'must'.

There were also calls for additional content in the Scheme to be included on the face of the Bill. Amendments were lodged by Mary Fee MSP to include children who have protected characteristics and vulnerable groups; and by the Minister to include child friendly complaints handling procedures, and to prepare and publish child rights and wellbeing impact assessments. These were all agreed to.

The Bill requires various reports to be published, such as the Scheme. The Committee heard that for children to participate, reports need to be available in child friendly language. Amendments were agreed to requiring these reports to be published in child friendly formats.

### *Reporting duties on listed public authorities*

The Bill requires listed public authorities to publish a report every three years on actions taken to ensure compliance with UNCRC requirements. This replaces existing duties in the Children and Young People (Scotland) Act 2014. The Committee recommended that the Bill be amended to include future actions which public authorities have identified for the coming three-year reporting period.

The Bill was amended so that, at the end of each three-year reporting period, public authorities publish a report that includes their plans to meet UNCRC requirements and the steps they will take to realise children's rights.

### *Commencement*

A key issue for many stakeholders was the lack of a commencement date in the Bill. The main provision in the Bill enabled Scottish Ministers to set the commencement date by regulation. The Committee's Stage 1 report recommended that the Bill commence six months after Royal Assent.

The Scottish Government lodged an amendment to make the Bill commence 12 months after Royal Assent, arguing that public authorities need time to get the implementation right. Alex Cole-Hamilton MSP lodged an amendment to make the Bill commence six months after Royal Assent, arguing that public authorities were prepared as they already have UNCRC reporting duties under the Children and Young People (Scotland) Act 2014.

The Bill was amended to make the Bill commence six months after Royal Assent.

## **Stage 3**

At Stage 3, the Scottish Government reversed some of the amendments made at Stage 2.

### *Interpretation of UNCRC requirements*

The Deputy First Minister and Cabinet Secretary for Education and Skills, John Swinney MSP, argued that the amendment at Stage 2 risked placing a disproportionate burden on

litigants and the courts, and could delay the achievement of effective remedies for breaches of children's and young people's rights. Therefore, the courts and tribunals 'may', rather than 'must' take into account the texts of the UNCRC and the two optional protocols that have not been incorporated, as well as General Comments and concluding observations made by the United Nations Committee on the Rights of the Child.

### *Meaning of a public authority*

The Scottish Government reversed the Stage 2 amendment that specified public authorities include "all public bodies who have functions in relation to the care of a child." They argued that this Stage 2 amendment was too restrictive and such functions were already captured by the wording of section 6 prior to the amendment.

### *Guidance*

The Bill was amended to require Scottish Ministers to issue guidance to support the implementation and operation of Part 2 of the Bill. A similar amendment was lodged at Stage 2, but had been withdrawn.

### *Children's Rights Scheme*

There were a range of amendments to strengthen the Children's Rights Scheme.

At Stage 2 a provision was added to ensure that the Scheme includes children who have protected characteristics and vulnerable groups. The language of this was replaced at Stage 3 to apply to children whose rights are at risk or not being fulfilled. The government argued that it would have the same effect as the Stage 2 amendment, but with clearer wording, which had the support of stakeholders.

### *Reporting duty on the Scottish Parliamentary Corporate Body*

The Bill was amended to require the Scottish Parliamentary Corporate Body to publish an annual report outlining how the work of the Parliament has met the requirements of the Bill.

### *Compatibility statements*

The bill, on introduction, requires Scottish Ministers to make a compatibility statement in relation to Scottish Government bills on the extent to which the provisions are compatible with UNCRC requirements. At Stage 3 this provision was extended to require that all public bills include a compatibility statement.

### *Legislative competence*

Section 19 would require that certain types of legislation (whenever made) must, so far as possible, be interpreted and given effect in a way that is compatible with the UNCRC requirements. This includes Acts of the UK Parliament and Acts of the Scottish Parliament.

The Bill requires new and old legislation to be read wherever possible in a way that is compatible with the UNCRC requirements. Where this is not possible (sections 20 and 21):

- courts will be able to 'strike down' old incompatible legislation (being legislation which pre-dates the Bill), meaning that it no longer forms part of Scots law; or,
- make a declaration that new legislation (being legislation which post-dates the Bill) is

incompatible with the UNCRC.

Sections 20 and 21 also apply to Acts of the UK Parliament and Acts of the Scottish Parliament.

Alexander Stewart MSP lodged a group of ‘probing’ amendments. These questioned whether the Scottish Government had the legislative competence to include Acts of the UK Parliament.

The Deputy First Minister said he was “perplexed” by the probing amendments, given that he had received a letter from the UK Government which requested that Westminster legislation be removed from the scope of sections 19-21. The Deputy First Minister had replied to the Secretary of State for Scotland saying “we would do no such thing”, and described the ‘probing’ amendments as “menacing”.

The Deputy First Minister argued that the amendments would remove protections that fall within the competence of the Scottish Parliament, including all pre-devolution legislation over which competence has been transferred.

The amendments were withdrawn.

### *Commencement*

The Scottish Government made further amendments on the commencement of the Bill. The aim is to build flexibility into the Bill, to enable Scottish Ministers to commence some provisions by regulation before the rest are commenced. This does not affect the overall timetable of the Bill coming into force six months after Royal Assent.

At Stage 3, the Bill was passed unanimously.

### ***Referral to the Supreme Court***

However, the Bill did not receive Royal Assent because the UK Government referred the Bill to the Supreme Court over its legislative competence. The hearing took place on 28 and 29 June 2021.

The [Supreme Court judgment](#) was issued on 6 October 2021.

There is no dispute about the Scottish Parliament’s decision to incorporate the UNCRC into Scots law.

However, the Court unanimously agreed that four provisions of the Bill would be outside the legislative competence of the Scottish Parliament.

The Court said that section 28(7) of the Scotland Act 1998 preserves an unqualified power that the UK Parliament can make laws for Scotland. Any provision in a Scottish Act that aims to modify section 28(7) would contravene the Scotland Act, under section 29(2)(c) and Schedule 4 paragraph 4(1), and therefore be outside the legislative competence of the Scottish Parliament.

It was agreed that three provisions of the UNCRC Bill would modify section 28(7):

declaration would affect the power of the UK Parliament to legislate for Scotland; that it would impose pressure on the UK Parliament to amend or repeal an Act to remove the incompatibility. It would also make it difficult for public authorities to continue to implement

the relevant Act, and could result in the Scottish Ministers adopting regulations to amend or repeal the relevant Act.

The fourth provision considered to be outside the legislative competence of the Scottish Parliament was section 6 of the Bill.

Section 6 would make it unlawful for any public authority to act in a way that is not compatible with the UNCRC. It was not disputed that section 6 is outside the legislative competence of the Scottish Parliament. However, the Scottish Government argued that the provision could be interpreted by the courts on a case-by-case basis. The Court said that the way the provision is drafted means it could apply to UK authorities working in reserved areas and that it should not be left to courts to decide. It therefore goes beyond the legislative competence of the Scottish Parliament.

This means the Bill cannot receive Royal Assent in its current form. The Scottish Government could propose that the Bill be reconsidered in amended form, which would need the agreement of the Scottish Parliament.

The [Scottish Government has confirmed](#) that it is committed to incorporating the UNCRC into Scots law.

# University of St Andrews (Degrees in Medicine and Dentistry) Bill

Bill Number: SP Bill 82

Introduced on: 29 September 2020

Introduced by: Jeane Freeman MSP (Government Bill)

Passed: 10 March 2021

Royal Assent: 23 April 2021

## Passage of the Bill

The Health and Sport Committee scrutinised the Bill at Stage 1. The Committee published its [Stage 1 report](#) on the Bill on 20 January 2021.

The [Stage 1 debate](#) on the Bill took place on 26 January 2021.

The Health and Sport Committee considered [Stage 2 on 23 February 2021](#). No amendments were lodged.

No amendments were lodged at Stage 3. [The Stage 3 debate](#) was held on 10 March 2021 and the Bill was passed. It received [Royal Assent](#) on 3 April 2021.

More detail can be found on the [Bills page](#) on the Scottish Parliament website, the [SPICe briefing on the Bill](#).

## Purpose and objectives of the Bill

The Bill aimed to remove a legislative prohibition preventing the University of St. Andrews from holding qualifying examinations and awarding degrees in medicine and dentistry.

The Policy Memorandum noted that the prohibition is unfair, anti-competitive and no longer serves a purpose. Therefore, in removing the prohibition, the Bill creates a fairer higher education sector and enables all of Scotland's institutions to maximise the options and opportunities they offer to students in Scotland.

## Provisions of the Bill

The Bill aimed to remove the legal prohibition by repealing paragraph 17 of schedule 6 of the [Universities \(Scotland\) Act 1966](#).

It contained 3 sections:

- Section 1 repealed the prohibition against granting degrees in medicine and dentistry;
- Sections 2-3 contained provisions on commencement and the short title.

## Parliamentary consideration

The [Health and Sport Committee](#) was the lead committee for the Bill at Stage 1. The Committee supported the [general principles of the Bill at Stage 1](#). The [Stage 1 debate was held on 26 January 2021](#) and the Parliament agreed to the general principles of the Bill without division.

[At Stage 2, no amendments were lodged.](#)

[Stage 3 scrutiny took place on 10 March 2021](#). No Stage 3 amendments were lodged. The Parliament passed the Bill (without division).

# Vulnerable Witnesses (Criminal Evidence)(Scotland) Bill

Bill Number: SP Bill 34

Introduced on: 12 June 2018

Introduced by: Michael Matheson MSP (Government Bill)

Passed: 9 May 2019

Royal Assent: 13 June 2019

## Purpose of the Bill

The Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill, as introduced in June 2018, set out reforms relating to the use of special measures for vulnerable witnesses in criminal cases.

Existing statutory provisions allow for the use of various special measures with the aim of assisting vulnerable witnesses in giving their evidence (eg allowing a witness to give evidence from outside the courtroom by way of a live video link). The existing definition of vulnerable witness includes:

- child witnesses (under the age of 18)
- complainers in cases involving a sexual offence, human trafficking, domestic abuse or stalking (referred to as deemed vulnerable witnesses).

Another of the existing special measures allows evidence provided in advance to be used as the evidence of the vulnerable witness at the trial. This may be in the form of a prior statement or a video recording taken during special proceedings before a commissioner (a sheriff or High Court judge).

The Bill set out reforms aimed at streamlining arrangements for the use of special measures and improving processes for pre-recording evidence. Most notably, it set out a rule applying to child witnesses involved in certain very serious cases, which would generally require the court to make provision for all of the child's evidence to be given in advance of the trial. The Scottish Government would have the power to extend the application of the rule by regulations. This could involve extending it to cases involving other serious offences and/or adult vulnerable witnesses.

## Parliamentary consideration

The Justice Committee was designated as lead committee for parliamentary consideration of the Bill. Its stage 1 report, recommending that the general principles of the Bill be approved, was published in January 2019.

The stage 1 report welcomed the proposed rule on taking a child's evidence in advance of trial, whilst noting that the rights of the accused must also be safeguarded. It expressed



support for adding domestic abuse to the list of offences covered by the rule. An amendment giving effect to this was agreed at stage 2. The stage 1 report also indicated support for provisions allowing for the extension of the rule to adult deemed vulnerable witnesses.

The stage 1 debate took place in February 2019, following which the general principles of the Bill were agreed without the need for a vote.

Proposed amendments considered during stage 2 included ones seeking to create a statutory requirement to review and report on the impact of the reforms. They were not agreed to, but the Government offered to work with interested members on an alternative amendment in advance of stage 3. A relevant amendment was subsequently agreed at stage 3.

A significant part of the Justice Committee's work during scrutiny of the Bill involved consideration of what additional steps might be taken to improve the way in which vulnerable witnesses are dealt with. It took evidence on the use, in other countries, of Barnahus (or child's house) systems for child witnesses.

Barnahus systems bring a range of relevant services together in a childfriendly environment (eg criminal investigation, child protection and support services). By doing so, they seek to ensure that a child receives necessary support whilst providing evidence which can later be used in court. Such systems may involve a child being questioned by a single specialist interviewer, with other relevant professionals (eg defence lawyer) observing from another room.

The Justice Committee expressed support for the adoption of this type of system in Scotland. It acknowledged that adopting an approach where a defence lawyer does not directly question the witness would involve a significant shift in current legal culture, and thus should be approached as part of a longer-term vision. It recommended the taking of more immediate steps to adopt other elements of Barnahus. During stage 3, the Minister for Community Safety stated that:

“ As the cabinet secretary has said to the Parliament throughout the passage of the Bill, a Scottish version of the Barnahus concept is the Scottish Government's intended destination and the Bill is an important initial step towards that destination. We are committed to making progress towards a truly trauma-informed, recovery-focused response to child victims.”

Following the stage 3 debate in May 2019, the Bill was passed unanimously.

# Wild Animals in Travelling Circuses (Scotland) Bill

Bill Number: SP Bill 12

Introduced on: 10th May 2017

Introduced by: Roseanna Cunningham MSP (Government Bill)

Passed: 20th December 2017

Royal Assent: 24th January 2018

## Passage of the Bill

The [Wild Animals in Travelling Circuses \(Scotland\) Bill](#) was introduced in the Parliament on 10 May 2017 and the Environment, Climate Change and Land Reform (ECCLR) Committee was designated as lead committee. The Committee's consideration of the general principles of the Bill was carried out between 23 May and 19 September 2017, with its Stage 1 report published on 22 September 2017. Stage 1 proceedings were concluded with a Parliamentary debate on 5 October 2017.

The ECCLR Committee carried out Stage 2 proceedings between 21 October and 31 November 2017. The Stage 3 debate was held on 12 December 2017 and the Bill received Royal Assent on 24 January 2018, becoming the Wild Animals in Travelling Circuses (Scotland) Act 2018.

## Purpose and objectives of the Bill

The stated policy objective of the Bill was to prohibit on ethical grounds the use of any wild animal in a travelling circus in Scotland.

## Provisions of the Bill

The main provisions of the Bill were to:

- Make it an offence for a circus operator to cause or permit a wild animal to be used in a travelling circus.
- Define 'wild animal' as a vertebrate, other than man, which is not commonly domesticated in the British Islands.
- Define the terms 'circus operator' and 'travelling circus'.
- Make both an organization and any responsible individual whose consent, connivance or neglect results in a wild animal being used in a travelling circus.

## Parliamentary consideration

Stage 1 scrutiny was carried out by the ECCLR Committee, during which it concluded that, while the policy intentions behind the Bill were important, the provisions as drafted were at

risk of both not fully addressing the issues intended, and of capturing performances it was not intended to capture.

In particular, the Committee considered the following matters to have been problematic:

- The policy decision to introduce the Bill on ethical grounds relating specifically to travelling circuses, which were considered by the Scottish Government to be distinct from welfare grounds. The Committee considered that there was 'evidence which would support a welfare based approach'. The Committee were unconvinced by the Scottish Government's assertion that its ethical objections – the impact on respect for animals, the impact of travelling environments and the ethical costs and benefits - did not apply to other types of animal performance or display. It recommended that the use of wild animals in static circuses should be included in proposed Scottish Government work on wider measures to modernize legislation on performing animals.
- The proposed definitions of 'travelling circus', 'wild animal', 'circus' and 'circus operator'. The Committee felt that the 'recourse to court challenge in order to clarify definitions' was an inappropriate approach'.
- The proposed enforcement powers, which the Committee felt 'could go further'.

Although the Committee commended the general principles of the Bill to the Parliament, it stressed that it believed the legislation would only achieve its purpose if the Scottish Government implemented all the recommendations in the Committee's Stage 1 report.

At Stage 2 the following matters were considered:

- What constitutes an offence under section 1.
- The meaning of 'wild animal' under section 2, and the insertion of a new power for Scottish Ministers to specify whether animals are wild or not.
- The meaning of 'circus' and 'travelling circus' under section 3, and the insertion of a provision creating a new power for Ministers to describe what is, or is not, a travelling circus.

Section 1 of the Bill was amended to clarify that an offence is committed 'in relation to a travelling circus only if it is transported' to a place 'where it is used in the travelling circus.'

The definition of 'travelling circus' was amended to clarify that:

- travel may be regular or irregular
- it does not include circuses which travel for the purpose of 'relocation to new fixed base'.

A new section 3A was inserted into the Bill (now Section 4 of the Act), giving Ministers the power to specify which kinds of animals are or are not to be considered 'wild' for the purposes of this legislation.

A new section 3B (now Section 5 of the Act) was also inserted, which makes provision, in the same way as new section 3A, for Ministers to 'describe a particular type of undertaking, act, entertainment or similar thing that' is or is not to be regarded as a travelling circus.

No amendments were proposed at [Stage 3](#), and the Bill was passed with 112 votes for, none against, and no abstentions.

# Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill

Bill Number: SP Bill 13

Introduced on: 18 March 2017

Introduced by: Trustees of the Writers to the Signet Dependants' Annuity Fund (Private Bill)

Passed: 14 December 2017

Royal Assent: 18 January 2018

## Passage of the Bill

The Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill (the Bill) is a Private Bill which was introduced in the Scottish Parliament on 18 March 2017 by the Trustees of the Writers to the Signet Dependants' Annuity Fund.

The Bill was considered by the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill Committee (the Committee) which took Preliminary Stage evidence at its meeting on [20 September 2017](#).

The Preliminary Stage Debate took place on [9 November 2017](#).

The Committee considered amendments to the Bill at the Consideration Stage on [22 November 2017](#) and the Bill, as amended, was published on [23 November 2017](#).

The Final Stage debate took place on [14 December 2017](#). The Bill received Royal Assent on 18 January 2018 to become the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Act 2018.

## Purpose and objectives of the Bill

The Bill is a Private Bill which deals with a fund for dependants of members of the WS Society (an independent association of solicitors) which is based on primary legislation. The Bill is aimed at updating this primary legislation.

## Provisions of the Bill

The Bill considers that two aspects of the legislation governing the fund need updating. It proposed:

- removing the requirement that the 'collector' (i.e. administrator) of the fund is also a contributor to the fund. The aim is to widen the pool of persons eligible to be a collector
- amending the definition of 'actuary' in the legislation to reflect the merger of the Faculty of Actuaries in Scotland and the Institute of Actuaries in 2011.

Further details can be found in this [SPICe Briefing](#).

### **Parliamentary consideration**

The Bill was of a technical nature and parliamentary consideration reflected this. Only [one amendment](#) was made at the Consideration Stage.

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