



Scottish Government  
Riaghaltas na h-Alba  
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# BILL HANDBOOK

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This Handbook is aimed at Scottish Government policy officials who will be involved in the development and parliamentary passage of Government Bills, or who may have to engage with non-Government Bills.

If you think the Handbook needs to be amended please contact the Parliament and Legislation Unit.

Any queries about the Bill Handbook should be directed to:

[Redacted]  
Parliament and Legislation Unit

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## INTRODUCTION

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The Bill Handbook is best used as a reference document. It contains guidance on key features of the Bill process from beginning to end and provides a basic route map which should enable you to navigate your way through the legislative process.

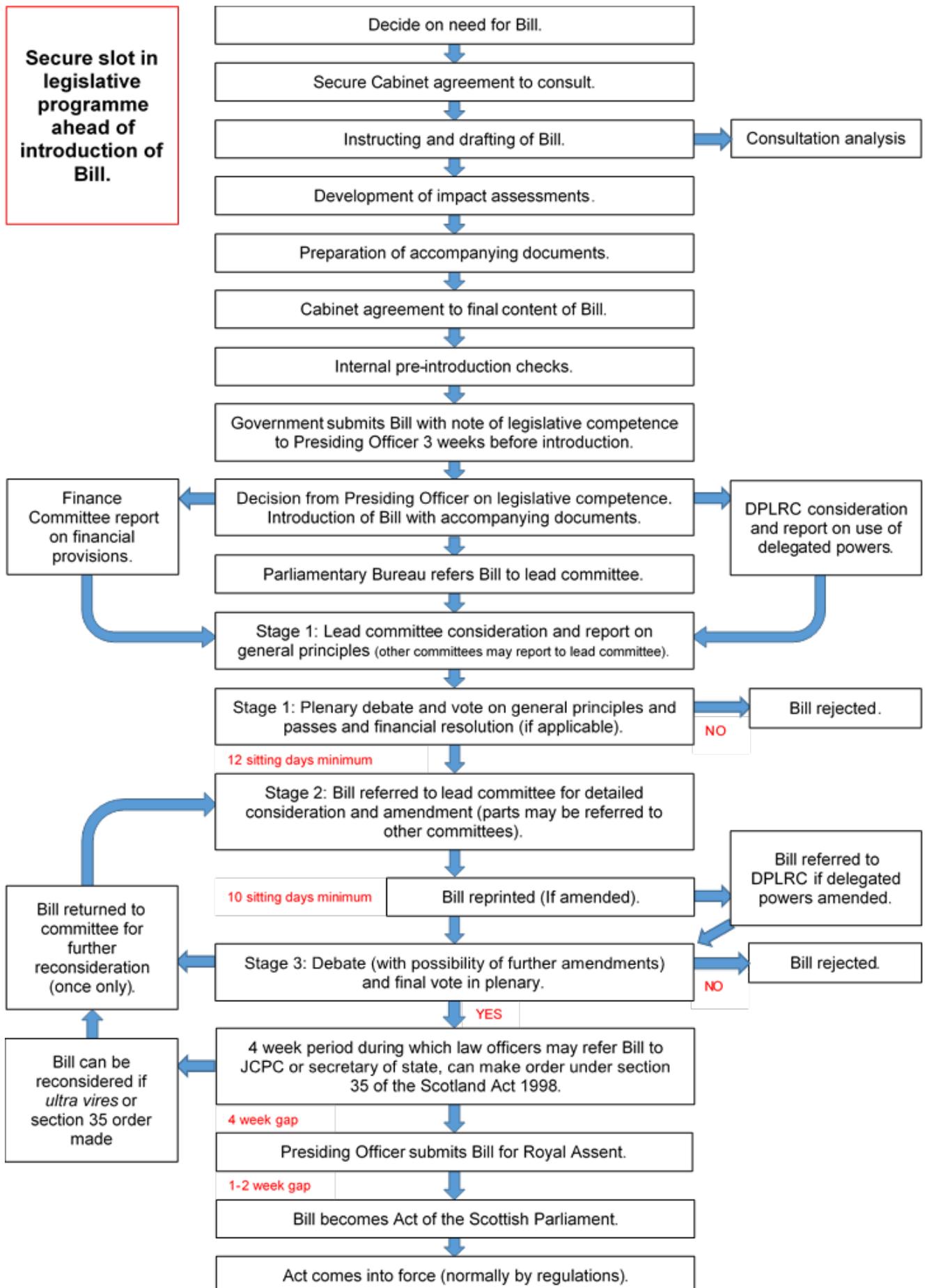
The Bill Handbook contains a lot of information, some of it detailed and some of it technical, and for anyone who has not done a Bill before it may be difficult to digest without wider context. Associated easier read summaries, flowcharts, and general guidance can be found on the relevant [PLU eRDM files](#) and Bill Teams may also wish to refer to these. The Handbook should also be read in conjunction with other relevant material, such as the Scottish Parliament Standing Orders and specific internal guidance notes (for example, in relation to the Bill Management Meeting process).

Bill Teams may also find it helpful to get an initial overview of the Bill process by speaking to other people. Parliament and Legislation Unit (PLU) aim to have an introductory meeting with new Bill Teams to talk through key features of the legislative process. Bill Teams will also find it helpful to speak to their Scottish Government Legal Directorate (SGLD) and Parliamentary Counsel Office (PCO) contacts, as well as previous Bill Teams. PLU can help signpost you to the best people to speak to.

The Bill Handbook is supplemented by other forms of training for Bill Teams. PLU provides an annual series of Bill Team seminars. The purpose of these seminars is to provide a forum at which Bill Teams can find out more information about specific aspects of the Bill process (for example, conducting a consultation, or completing Impact Assessments, or instructing a Bill). These seminars will typically be led by experienced Bill Teams members, with input from SGLD and PCO. If the timing of these seminars does not fit in with the timetable for your Bill, PLU will be happy to consider arranging a bespoke seminar to fit your needs.

The Bill Handbook deals primarily with standard Government Bills. Chapter 15 provides information on other types of Government Bill which can arise and chapter 16 offers background on Non-Government Bills.

# 1. SUMMARY OF THE BILL PROCESS



## 2. COLLECTIVE AGREEMENT TO PROCEED WITH A BILL

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### Summary

The Scottish Government operates under the principle of collective responsibility. This means that all decisions reached by the Scottish Ministers, individually or collectively, are binding on all members of the Government. Collective agreement via Cabinet or its sub-committees is required for decisions which have significant and/or cross-cutting implications. This requirement applies to a number of aspects of the Bill process.

**Key issues** for Bill Teams to focus on are:

- Obtaining a slot in the overall legislative programme
- Securing collective agreement to:
  - consult on the policy proposals intended for the Bill
  - the final content of the Bill on introduction
  - any significant changes to the content of the Bill during its passage

### 2.1 Development and agreement of the annual Legislative Programme

The Scottish Government's legislative programme of Bills is announced annually in September. Each legislative "year" runs from the September in which a programme is announced until summer recess in the following year. The next legislative programme is announced after that summer recess and so on. Note that Bills do not fall at the end of each legislative year and will remain in Parliament until their Stage 3 scrutiny has concluded (or the Bill is withdrawn) or until Parliament dissolves for the next election to the Scottish Parliament (at which point any Bills which have not completed their parliamentary passage will fall).

Development of each annual legislative programme is managed centrally at Ministerial level by the Minister for Parliamentary Business (MfPB), and at official level by the Parliament and Legislation Unit (PLU). You should ensure that PLU are given the opportunity to comment on any draft submissions which relate to the Bill process or timetabling matters, and that all Bill-related submissions are copied to MfPB, [Redacted].

Government Bills can only be introduced to the Scottish Parliament if Cabinet has agreed that legislation should be brought forward, and if a Bill has secured a slot in the annual legislative programme. MfPB leads the preparation of each annual legislative programme.

The Bute House Agreement, which came into effect on 31 August 2021, is an agreement between the Scottish Government and the Scottish Green Party Parliamentary Group (SGP). The agreement is in two parts: the Cooperation

Agreement, which sets out how the SG and SGP will work together and the Shared Policy Programme, which outlines policy positions and commitments that both SG and SGP agree should be delivered. The Cooperation Agreement requires the Scottish Government to consult the Green Group on its annual bill programme and on any bill (for example, government bills required to address an urgent issue or to establish a government position on any non-government bill (members', committee, or private) brought forward outwith the annual legislative programme cycle. Parliament and Legislation Unit (PLU) will co-ordinate consultation with the Green Group on the government's overall approach to the annual legislative programme but policy leads remain responsible for ensuring appropriate consultation is undertaken on their individual bills.

The process for preparation of each annual legislative programme is as follows:

- Each autumn PLU seeks updates from Directorates about their potential requirements for future Bills
- That is followed by a series of commissions or bilateral meetings between MfPB and Ministers to discuss individual portfolio priorities
- The Minister for Parliamentary Business will also commission a separate consultation with the Green Group on the development of each annual legislative programme
- MfPB will use these parallel commissions to produce a draft legislative programme of about 12 Bills (except for the final legislative programme of each session, which typically comprises about six Bills). This draft programme will seek to balance progress with manifesto commitments, internal Scottish Government resource, parliamentary committee capacity, portfolio balance, topical and urgent issues, and the potential for in-year additions in response to events
- A draft annual legislative programme is then formally considered by the Cabinet Sub-Committee on Legislation (CSCL) which consists of the DFM, MfPB, Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights and the Lord Advocate
- The agreed programme is announced as part of the Programme for Government each September

**It is essential that as soon as you become aware that you may need to take forward a Bill, you alert PLU** to this possibility so that it can be considered within the context of the overall legislative programme. You will firstly be asked to complete a Bill bid template which sets out what the Bill is intended to do, why it is needed and any handling or legal issues which will arise. You can find that template [here](#). At the same time, we will ask you to complete the Bill timetable template, more information on which can be found in the next chapter.

## **2.2 Cabinet Approvals**

As noted in the summary, the Scottish Government operates under the principle of collective responsibility. The Bill process engages collective agreement and responsibility given the impact of Bills on the statute book, the

interests of other portfolios (including the Law Officers) and their parliamentary and stakeholder profile. Depending on the significance of the issue, collective agreement can be obtained from Cabinet or the Cabinet Sub-Committee on Legislation. You should speak to PLU and the Cabinet Secretariat who can provide advice on which route is most appropriate to your needs, and on the timescales and process for securing collective agreement. The only two exceptions to collective responsibility are some responsibilities conferred on the First Minister alone and the Lord Advocate's functions as head of the systems of criminal prosecution and investigation of deaths in Scotland; neither of these exceptions are likely to impact on the process for gaining collective agreement for most Bills.

There are four key points in the Bill process where collective agreement is required, as summarised below.

#### 2.2.1 Public Commitments to Legislate

Section 3.3 of the Scottish Ministerial Code makes clear that "Ministers should not give undertakings either within or outside the Parliament to introduce primary legislation on any issue without the prior agreement of the Cabinet". It is essential that you make your Minister aware of this requirement if you are providing advice on the potential requirement for a Bill.

#### 2.2.2 Consultation on Bill Proposals

All consultations which might result in the requirement for primary legislation must be agreed collectively so that other portfolio Ministers and the Law Officers can consider the proposal for their respective interests. This requirement applies even if you are unsure if primary legislation may ultimately be progressed.

#### 2.2.3 Final Content of Bills for introduction

In the lead up to the introduction of a Bill, the lead Minister(s) must secure collective agreement to the final content of their Bill.

#### 2.2.4 Significant Variations to the Content of a Bill

If changes to the policy content of the Bill previously approved by Cabinet need to be made then you may require to secure collective agreement again. This is most likely to occur during the parliamentary passage of a Bill in response to opposition amendments or potential amendments. You should speak to PLU at an early point if you think a significant change to the content of your Bill may be required, and PLU can provide advice on whether further collective agreement is required.

### **2.3 Further information on the Cabinet process and the Cabinet Sub-Committee on Legislation**

The remit and membership of the Cabinet Sub-Committee on Legislation (CSCL) has been updated at this [link](#) to reflect the Cooperation Agreement. Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights is now a member of CSCL, along with the Deputy First Minister (Chair), the Minister for Parliamentary Business and the Lord Advocate.

The CSCL meets monthly to review delivery of government legislation. The CSCL continues to take papers to agree the government's collective position on some Bill-related consultations, the final policy for some bills, LCMs and non-government bills.

Cabinet Secretariat provide secretariat support to Cabinet and CSCL and work closely with PLU on Bill-related matters. You can find further information on the Cabinet process, including templates and guidance on the preparation of Cabinet papers, [here](#).

## 3. TIMETABLING

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### Summary

Bill Teams are expected to provide on-going assurance that their Bill is being delivered to its agreed timetable.

Disciplined project management and careful timetabling is essential for successful delivery of a Bill. A key supporting tool is the standard Bill timetable template which all Bill Teams are required to complete and maintain.

**Key issues** for Bill Teams to focus on:

- Agreeing a target introduction date for the Bill with PLU
- Developing a full timetable with input from PLU, SGLD and PCO
- Ensuring delivery of key milestones to target dates
- Identifying and flagging any significant risks to delivery

### 3.1 Purpose of the Bill timetable template

All Bill Teams are required to develop and maintain a Bill timetable. The current version of the template sets out over 60 key steps for the passage of a Bill. The steps span from the identification of the potential need for a Bill through to Royal Assent and commencement.

The timetable template can be viewed [here](#). The first tab on the template sets out the milestones for which target dates will need to be developed. The second tab on the template, labelled “notes for completion”, provides guidance on issues which need to be taken into account in developing target dates.

### 3.2 Developing your Bill timetable

PLU will schedule an initial conversation with all new Bill Teams to help develop an initial Bill timetable. This conversation will focus on the potential introduction date of the Bill to ensure that it can be accommodated within the wider legislative programme. Once a provisional introduction date has been identified, PLU will help Bill Teams work backwards from that date to develop provisional dates for the major milestones in the development of the Bill, and forwards from the introduction date to develop provisional dates for the Bill’s parliamentary passage.

The provisional Bill timetable should then be developed further in consultation with Scottish Government Legal Directorate (SGLD) and Parliamentary Counsel Office (PCO). SGLD and PCO will have a particular interest in the amount of time which will be allocated to the development of policy instructions, legal instructions, and the drafting of the Bill.

The Bute House Agreement, which came into effect on 31 August, is an agreement between the Scottish Government and the Scottish Green Party Parliamentary Group (SGP). The commitment to cooperate and collaborate with the Green Group applies across the broadest range of government responsibilities, with a small number of exceptions [link]. This commitment means that early and constructive engagement with the Green Group needs to be built in to planning for all relevant matters of policy and delivery. New Bill teams will need to consider if the Bill covers a topic(s) in the agreement, is in the list of excluded matters or is neither of those categories. Further information on working with the Scottish Green Party can be found at this [link](#).

### **3.3 Securing approval of your Bill timetable**

PLU will review the full timetable which Bill Teams develop with input from SGLD and PCO. Once PLU have agreed to the proposed finalised timetable, it will be sent to the Minister for Parliamentary Business (MfPB) and the lead Minister for the Bill seeking their formal approval.

### **3.4 Updating your Bill timetable**

Bill Teams should keep their timetable under continual review. Along with a monitoring report which summarises progress with the Bill, PLU will commission fortnightly requests for updated timetables from all Bill Teams in order to maintain a current and accurate central overview of the overall legislative programme. Timings in individual Bill timetables can be varied locally as long as it is agreed by all concerned (including SGLD and PCO) and as long as the changes do not have a significant impact on any major milestones. Any significant changes should be proactively flagged to PLU. The introduction date for a Bill cannot be altered without the agreement of PLU and MfPB.

### **3.5 Consequences of Missing timetable deadlines**

Delivery of a Bill to its agreed timetable is extremely important and is kept under continual review by PLU. Bill Teams should ensure they have a clear understanding of what is involved in delivering each step in a timetable and have a clear plan for achieving this.

Any slippage in delivery of a Bill can have potentially significant implications. It may put at risk implementation of the policy which the Bill will deliver, as it cannot be assumed that any time lost in the development of a Bill can be made up later. Individual Bills also need to fit into a wider legislative programme, and, in turn, the plans of other Bill teams. Slippage of one Bill can result in the timetable of a different Bill being adversely effected and on delivery of the wider legislative programme. Bill Teams should be aware that the SGLD and PCO members of the Bill Team will be managing a range of other responsibilities, including concurrent work on other Bills. Slippage of the development of your Bill can create significant challenges for SGLD and PCO workload management.

It is therefore crucial that any potential delays to the development of a Bill are identified as early as possible. If a significant risk to delivery of a key

milestone is identified, you should contact PLU in the first instance who will provide guidance and support on next steps.

If a significant variation to a Bill timetable is required, and particularly of an introduction date, that will need to be approved by MfPB. If the variation cannot be accommodated because of wider programme issues, the Bill may lose its slot or the Bill Team may be invited to take the steps necessary to secure delivery of the Bill to its original timetable.

### **3.6 Discussion of the Bill timetable with parliamentary clerks**

Once the Bill has been introduced in Parliament, the timetable is no longer within the gift of the Government to control the dates of Parliamentary Stages 1 and 2 although Stage 3 is generally proposed by Government.

The process below describes each step for deciding the dates for each of the Stages:

#### *Overview of the discussion of the Bill timetable with parliamentary clerks*

Post-introduction, the process of agreeing key bill milestones for the parliamentary stages is led by the MfPB's office who will consult with the Bill team and PLU colleagues. However, it is normal for Bill teams to have early discussions with committee clerks regarding the Bill, approach to scrutiny and Government's preferred timetable. Clerks are interested in timetabling, as the scrutiny of the Bill will require to be scheduled alongside other committee business. It is important for Bill teams not to agree to any dates, instead deferring to PLU and MfPB's office. If there is any doubt here as to what can and cannot be said it is best to discuss with the PLU and/or the MfPB's office in advance of any discussions. PLU should always be invited to attend early meetings with committee clerks and particularly where timetabling is discussed given their responsibility for management of the overall programme of Bills.

#### *Agreeing a timetable for the parliamentary stages in practice*

**IBMM/OBMM/MBMM** - Bill management meetings involve discussion on timetabling, leading up to the MBMM where the MfPB will take a view on the timetable for the individual Bill, set in the context of his responsibilities for the whole legislative programme.

**Stage 1 deadline:** The aim here is for the MfPB's office to agree a specific Stage 1 deadline (i.e. a specific date and not a month) for the completion of the Stage 1 process with the Bill team and the lead committee ahead of the Parliamentary Bureau's agreement, which completes this step. Once the Bill is introduced the MfPB's Private Office will double check with the Bill team and the PLU that the date agreed to at the MBMM for the Stage 1 process remains valid. The Bill team should ensure that any dates are acceptable to SGLD and PCO colleagues. To note that although the deadline refers to the completion of the process and not the Stage 1 debate, it can usually be assumed that that the debate will take place earlier in the week of the

deadline. It is therefore important that Bill teams also communicate directly with the lead Minister/SpAds ahead of agreeing a Stage 1 deadline to ensure time is held in the Minister's diary to lead a debate that week. The exact date for the Stage 1 debate will be determined by the MfPB and will be subject to the agreement of both Cabinet and the Parliamentary Bureau (the MfPB's office will obtain this agreement). The MfPB Private Office will send an email to Private Offices once a debate date has tentatively added to the schedule followed by the formal commission once agreed. Bill teams should again communicate directly with the lead Minister/SpAds to confirm the Stage 1 debate date.

**Stage 2 deadline:** Much like the above Stage 1 deadline process, the MfPB's office will lead on the process of getting a deadline agreed with internal colleagues followed by the lead committee, and then the Parliamentary Bureau. For their part the Bill team will need to consider the expected volume of amendments and how many sessions the committee is expected to require to complete Stage 2. This is then fed back to the MfPB's office so they can agree a deadline for the whole of Stage 2 with the lead committee and in turn the Parliamentary Bureau. Typically any deadline will add one week onto the expected number of committee sessions i.e. if the committee is expected to need two sessions then the deadline will allow for a third session, for contingency purposes.

**Stage 3:** Again, MFPB's office leads on this but as this stage is taken in the chamber there is not committee involvement. MfPB's office will schedule Stage 3 with reference to the Bill timetable so if the Bill team needs to offer any further input they should deal directly with MfPB's office but be sure to sight the PLU as well in case they need to offer any advice to MfPB or his office. Although subject to agreement by both Cabinet and the Parliamentary Bureau this stage is generally the easier of the three stages to schedule but key considerations will include the volume of amendments and the schedule for implementation and the Bill team's views on such matters will be important.

## 4. LEGISLATIVE PROGRAMME ASSURANCE AND OVERSIGHT

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### Summary

The primary legislation programme is an important and high profile corporate activity which attracts significant political and stakeholder interest. Responsibility for development and delivery of each Bill in the programme is the responsibility of individual Directorates, supported by central oversight. To support central oversight a proportionate but robust assurance process has been put in place which is supported by senior management and Ministers.

**Key issues** for Bill Teams to focus on:

- Understanding the role of PLU and MfPB
- Establishing your local project management structure
- Familiarising yourself with the formal Bill Management Meeting process
- Providing fortnightly updates on progress

### 4.1 Parliament and Legislation Unit and the Minister for Parliamentary Business

Parliament and Legislation Unit (PLU) sits within Cabinet, Parliament and Governance Division and is responsible for oversight and coordination of the Scottish Government's various legislative programmes. PLU's role is to ensure that there is a centrally risk-assessed and accurate picture of current and future legislative activity which Ministers can respond to and to ensure that policy, legal and drafting resources are matched to future legislative requirements. PLU works with Bill Teams to understand the specific dynamic of their Bill and uses this information to develop an overall picture of the Bill programme. It is therefore essential that PLU is copied into all formal Bill submissions and kept sighted on emerging risks and issues.

Portfolio Ministers are ultimately responsible for the policy contained in Bills and stakeholder engagement. The Minister for Parliamentary Business (MfPB) is responsible for oversight and coordination of the Scottish Government's various legislative programmes at Ministerial level. MfPB supports lead Ministers on the handling of Bills during their parliamentary passage. MfPB is also the government Minister responsible for the scheduling of all business in the Parliament and obtaining the agreement of the Parliamentary Bureau. For this reason, if you have a specific date in mind for any stage of your Bill (e.g. stage 3 needs to be completed by a certain date for implementation purposes), then it is essential that this is brought to the attention of PLU and [MfPB's office](#) so that this can be taken into account in Bill timetabling and parliamentary scheduling.

MfPB attends Cabinet to offer analysis of current activity across the Bill programme. MfPB also represents the Scottish Government's interests on the [Parliamentary Bureau](#). MfPB engages regularly with Ministerial colleagues, backbenchers, opposition Business Managers, the Presiding Officer, committee conveners and others on all aspects of the Bill process. In order to ensure that he can discharge these functions effectively it is essential that PLU (who provide support to MfPB on these functions) and his Private Office are copied into all formal Bill submissions and kept sighted on emerging risks and issues.

#### **4.2 Bill Team project management**

Bill Teams are responsible for putting in place robust but proportionate local project management structures which provide corporate assurance that the Bill is being managed properly and risks identified and assessed. Most Bill Teams find it useful to put in place regular meetings with the Bill's SGLD and PCO representatives and other key internal stakeholders. PLU should be copied the papers for those meetings, and should have a standing invite to attend. PLU can provide examples of project management structures put in place by previous Bill Teams. Further information on risk management can be found in Saltire [here](#).

#### **4.3 Formal Bill management meetings**

Every Government Bill is required to go through at least three formal pre-introduction Bill Management Meetings. These are used to assess the viability of the Bill proposal, progress with its development, and anticipated parliamentary handling risks and issues.

##### 4.3.1 Initial Bill Management Meeting (IBMM)

The IBMM is an official's only meeting which takes place early in the development of a Bill. Its purpose is to check timetabling, resourcing, clarity of purpose, and to identify emerging issues. PLU will arrange for this meeting to be set up.

##### 4.3.2 Officials Bill Management Meeting (OBMM)

The OBMM is an officials only meeting which takes place about a month before a Bill is due to be sent to the Presiding Officer for its pre-introduction checks. The purpose of the meeting is to test the Bill's readiness for introduction and to consider potential parliamentary handling risks and issues. PLU will arrange for this meeting to be set up.

##### 4.3.3 Ministerial Bill Management Meeting (MBMM)

The MBMM is a ministerially-led meeting which takes place about a fortnight after the OBMM. The meeting is chaired by MfPB with the Lord Advocate and Cabinet Secretary or Minister in charge of the Bill also in attendance. The purpose of the meeting is to enable Ministers and officials to collectively discuss the Bill's readiness for introduction and to consider potential parliamentary handling issues. The MBMM will focus on any key issues which were identified at the preceding OBMM. MfPB's office will arrange for this meeting to be set up. Key officials will be invited to attend the MBMM but the number of attendees will be kept to a minimum. In line with the updated remit

of CSCL members may attend MBMMs. The only exception is where Bills relate to an excluded matter, for which Green Ministers should not be sighted and will not be invited to attend.

#### 4.3.4 Guidance materials on Bill Management Meetings

Bill Management Meetings are an important part of the Bill programme corporate assurance process and to get maximum value from them it is important that they are prepared for appropriately. PLU will invite Bill Teams to complete a briefing template ahead of each meeting. Templates for these briefings can be found [here](#), and more detailed guidance on the Bill Management Meeting process, can be found [here](#). SGLD will provide bespoke briefing for the Law Officers in advance of the MBMM.

In relation to the SG/SGP Cooperation Agreement (Bute House Agreement), new Bill teams must ensure early and constructive engagement with the Green Group is built into all relevant aspects of policy and delivery. Further information on working with the Scottish Green Party can be found at this [link](#).

In addition to any Ministers having the opportunity to comment on issues relating to their own portfolio, Green Ministers should be able to raise any issues or implications that a Bill may raise in terms of the operation of the Cooperation Agreement. The only exception is where papers relate to an excluded matter, for which Green Ministers should not be sighted. On the OBMM and MBMM briefings, Bill teams should confirm

- if the Bill relates a topic in the agreement and what engagement with the Green Group has taken place or is planned on the Bill proposals; or
- if it is in the list of excluded matters.

#### **4.4 Fortnightly monitoring reports and Bill timetable updates**

As noted in the previous chapter, PLU will commission fortnightly requests for updated timetables and a monitoring report return from Bill Teams. The monitoring report should be developed in conjunction with SGLD and PCO, and covers issues such as key activity in the next period, stakeholder views, risks and issues etc. The template for the monitoring report can be found [here](#).

## 5. TRAINING, GUIDANCE AND SUPPORT

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### Summary

Bills are complex projects and may span many years from inception to completion.

A variety of training, guidance and support materials are available to support Bill Teams. This can be supplemented by ad hoc training and support where necessary and Bill Teams should contact PLU to discuss any specific needs.

**Key issues** for Bill Teams to focus on:

- Participating in the Bill seminar series
- Discussing your training needs with PLU

### 5.1 PLU eRDM Folders

The Parliament and Legislation Unit (PLU) maintain a range of materials which support the formal advice set out in this Bill Handbook on eRDM. There you can find additional forms of guidance (e.g. on the Bill Management Meeting process), to templates (e.g. Bill Monitoring Reports), to examples of documentation produced by previous Bill teams, and to information on key processes and procedure related to the Bill process (e.g. the Scottish Ministerial Code). There are two separate files which Bill Teams can access:

- [Guidance and Training](#)
- [Templates and Examples](#)

Please ensure that you do not edit, or delete, any of these files. If you need to use a template, please download a copy first before filling it out.

### 5.2 Bill seminar series

PLU runs an annual series of Bill Team seminars providing a forum for Bill Teams to obtain information about specific aspects of the Bill process. These seminars will typically be led by an experienced member of a previous Bill Team, with input from SGLD and PCO to offer legal and drafting perspectives. If the timing of these seminars does not fit in with the timetable for your Bill, PLU will be happy to consider arranging a bespoke seminar to fit your needs.

The current seminar progress is:

- Seminar 1 – Introduction to Bills
- Seminar 2 – Internal engagement
- Seminar 3 – External engagement
- Seminar 4 – Impact Assessments
- Seminar 5 – Instructions and accompanying documents
- Seminar 6 – Policy-proofing

- Seminar 7 – Parliamentary Stages
- Seminar 8 – Minister for Parliamentary Business

PCO also offer Stage 2 training for their Bill teams (see chapter 13.4).

### **5.3 Parliamentary guidance notes**

PLU produces Parliamentary Guidance Notes which explain different features of parliamentary activity, procedure and interaction with reference to the Government's interests. Bill Teams may find it useful to refer to these notes when engaging with the Parliament during the development and parliamentary passage of their Bill.

The full set of Parliamentary Guidance Notes can be found [here](#). The topics covered are as follows:

- Accessing the Parliament
- Laying documents in the Parliament
- Committee Liaison Officers
- Contacts with MSPs and SPICe
- Cross Party Groups
- Handling of Parliamentary Questions
- Parliamentary Liaison Officers
- Public petitions system
- The Parliamentary Bureau
- Government business in Parliament
- SG official evidence to committees
- Government guidance on the Parliament's lobbying register
- Free votes in Parliament
- Recall of Parliament

### **5.4 Other materials**

#### **5.4.1 Scottish Parliament Standing Orders**

The Scottish Parliament Standing Orders set out the rules which govern the Bill process and Bill Teams should make sure they are familiar with their requirements. For example, the Standing Orders set out minimum gaps between stages of the Bill process and when amendments must be lodged. Note that in some cases conventions have been established which place requirements on the Government over and above what is set out in the Standing Orders. For example, the Standing Orders specify that there is a minimum clear 10 sitting day gap between the conclusion of Stage 2 and the beginning of Stage 3 but the Government has agreed to a convention that it will not normally schedule Stage 3 to take place until a minimum of 14 clear sitting days have passed since the conclusion of Stage 2. These conventions are covered in the relevant chapters of this Handbook. If you have any doubts about the Standing Orders requirements in general, or about specific requirements and conventions, you should speak to PLU or your PCO contact.

You can access the Standing Orders [here](#). The main chapter of interest to Bill Teams is chapter 9.

#### 5.4.2 Scottish Parliament guidance on the Bill process

The Scottish Parliament also produces helpful general guidance on the Bill process. This guidance provides a layperson's interpretation of the Standing Orders requirements, visual representations of the Bill process and technical guidance on specific aspects of the Bill process (e.g. on the form which amendments must take if they are to be accepted as admissible). The guidance can be found [here](#).

#### 5.4.3 Guidance for instructing counsel: common legislative solutions

Parliamentary Counsel Office have published guidance to help Bill teams develop policy and prepare instructions in respect of a range of commonly recurring situations that require legislation. The guidance may be found [here](#).

#### 5.4.4 Scottish Parliament TV

Bill team members are required to support portfolio ministers when they promote Bills in the Parliament. This will involve Bill scrutiny by both parliamentary committees and in the Chamber. To assist colleagues in getting a feel for what it is like to appear before a committee, Bill teams may find it helpful to view previous sessions on [Watch now | Scottish Parliament TV](#).

Bill teams should get in touch with PLU if they require any support.

## 6. KEY PEOPLE IN THE BILL PROCESS

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### Summary

Developing a Bill requires creating positive relationships and collaborative working with colleagues throughout the organisation and beyond. This section provides an overview of roles and responsibilities in the Bill process.

**Key issues** for Bill Teams to focus on:

- Identifying your key internal and external stakeholders and building relationships with them
- Establishing good working arrangements with SGLD and PCO at an early point
- Identifying the project management arrangements that best suit the needs of your Bill

### 6.1 Minister for Parliamentary Business and Parliament and Legislation Unit

See chapter 4.1 for information on the role of the Minister for Parliamentary Business (MfPB), his Private Office, and Parliament and Legislation Unit (PLU).

### 6.2 The core Bill Team

The core Bill team is usually understood to be the policy official(s) who have overall responsibility for delivering the Bill. Small Bill teams will typically have two or three people who are responsible for all policy development and all aspects of the project management of a Bill. Larger Bill teams may have a core team who are responsible mainly for planning and co-ordinating delivery of the Bill, with policy development work typically owned by different policy teams spread across the Scottish Government.

Bill Teams of all sizes will encounter the following general tasks:

- **Project planning** – The Bill Team is responsible for: (i) overall management of the Bill project; (ii) ensuring Ministers' policy intentions are reflected in the Bill; (iii) creating or managing key documents; (iv) ensuring all key tasks are completed to time; (v) providing leadership to the wider Bill Team; (vi) tracking the Bill's parliamentary passage; and (vii) oversight of stakeholder engagement and communications.
- **Policy development** – The Bill Team is responsible for developing and maintaining the policy rationale and narrative for the Bill.
- **Instructing the Bill** – The Bill Team is responsible for providing SGLD with a clear set of instructions explaining

what the Bill is intended to achieve. SGLD will provide legal analysis of those policy instructions and, working with the Bill Team, prepare legal instructions for PCO. As draft provisions start to emerge, PCO will refine and develop the provisions in collaboration with the Bill team and SGLD so that the Bill correctly delivers the policy. It is important that the Bill team understand how provisions work and the underlying legal principles.

- **Stakeholder engagement/Communications** – The Bill Team is responsible for managing internal communications about the Bill, working closely with all of the key internal stakeholders described in this chapter. The Bill Team is also responsible for developing and maintaining an external stakeholder engagement and communications plan, which should be developed with input from Comms colleagues.
- **Administration** – The Bill Team is responsible for the general administration of Bill working, maintaining distribution lists, maintaining contact details, filing and general logistical support.
- **Documentation** – The Bill Team is responsible for managing the production of a wide range of documents, including Cabinet papers, briefing, Bill accompanying documents, Impact Assessments, notes on amendments, policy instructions, etc.
- **Finance** – The Bill Team is responsible for ensuring that a robust picture of the financial consequences of the Bill is developed, and that funding arrangements are put in place to cover any new expenditure.
- **Parliamentary Handling** – The Bill Team is responsible for thinking ahead to issues which might arise during the parliamentary passage of a Bill, and for developing options for mitigation.

There is no standard skills profile for Bill team members; in establishing their team, managers should consider what skills and capacity are already available within the Division to undertake these tasks, and what gaps need to be filled. It is preferable to have at least one member of the core Bill team who has previous Bill experience; failing that, experience with secondary legislation and Parliamentary procedures is helpful.

### **6.3 The extended Bill Team**

The extended Bill team is usually understood to be the core Bill Team plus the SGLD and PCO representatives who are working directly on the Bill. Small Bills may have one or two core SGLD and PCO representatives who work on

all aspects of the Bill, and larger Bills may involve a range of SGLD and PCO representatives who work on different aspects of the Bill. It is important that your SGLD and PCO contacts are copied into all communications on your Bill, and given the opportunity to comment on any submissions being prepared about the Bill and invited to attend all relevant meetings.

Most Bill teams find it helpful to put in place a regular project meeting with their SGLD and PCO representatives to agree ways of working, to take stock of progress and to provide a forum for discussion of risks and issues.

### 6.3.1 Scottish Government Legal Directorate (SGLD)

A Bill Team's key internal relationship is with SGLD. Your SGLD contact will be responsible for advising on all legal issues arising from the Bill, and for turning the Bill Team's policy instructions into legal instructions.

**Key functions of your SGLD contact are:**

- **Policy-proofing** - Your SGLD contact should be involved from the outset in the development of the policy and rationale for the Bill so that any potential legal difficulties can be identified at an early stage. This includes the important preliminary question of whether a Bill is legally necessary, or whether the policy wanted might be delivered by other means, such as existing powers in secondary legislation.
- **Development of legal instructions** - Your SGLD contact will provide PCO with legal drafting instructions, which will be based on the Bill Team's policy instructions. Your SGLD contact will also liaise with the Legal Secretariat to the Lord Advocate (LSLA) to test legislative competence or other significant legal issues ahead of introduction.
- **Input to the development of key documentation** – Your SGLD contact should be given the opportunity to input to all key documentation relating to the Bill. This includes consultation material, submissions, Cabinet papers, Accompanying Documents, Impact Assessment, press releases etc.
- **Advice on legislative competence** - Your SGLD contact is also responsible for sending a note on legislative competence to the Scottish Law Officers (the Lord Advocate and Solicitor General) ahead of introduction for their confirmation that they are content that the Bill is fully within the Scottish Parliament's competence. This note is also shared with the Office of the Solicitor to the Scottish Parliament and, usually, with the Office of the Advocate General (the Law Officer on Scots law in the UK Government).

Further information on the role of SGLD in the Bill process is contained in the SGLD Bill guidance which the SGLD contact working on your Bill can provide access to.

### 6.3.2 Parliamentary Counsel Office

Government Bills are drafted by PCO on the basis of the legal instructions prepared by SGLD. PCO will also, where applicable, draft Government amendments to Bills and a Financial Resolution. PCO are experts in parliamentary procedure and can provide advice on all aspects of the process. Where any parliamentary procedures give rise to handling or novel issues you should always consult PLU in addition to PCO.

From an early stage, PCO colleagues working on a Bill should be kept informed of significant developments in the policy and of progress in preparing the policy and legal instructions. Throughout the process, there is likely to be a sequence of provisional drafts, comments, exchanges and further instruction until the Bill is ready for introduction. Initial contacts will generally be via SGLD; at later stages policy officials may deal directly with PCO colleagues, but SGLD should always be copied in or included in meetings, or apprised of the outcome of discussions as early as possible.

PCO have produced a drafting manual (called “*Drafting Matters!*”) which provides guidance and advice on the approach PCO take to common drafting issues. This can be viewed [here](#). They have also published guidance to help Bill teams develop policy and prepare instructions in respect of a range of commonly recurring situations that require legislation. That guidance may be found [here](#).

### 6.4 Other Policy Officials

If you are part of a small Bill team which is responsible for the policy as well as the project management of the Bill you may not need to put in place formal structures for engaging with other policy officials. However, even in that scenario it will remain important that you ensure that any other part of the Scottish Government which has an interest in the policy of your Bill is aware of what you intend to do and has an opportunity to contribute their perspective. You should also be aware of issues that stakeholders may wish to see added to the Bill, and alert relevant policy teams to the possibility of non-Government amendments.

If your Bill cuts across policy areas out with your direct responsibility you will need to co-ordinate the input of those who are responsible for the policy. Given the pace of Bill work and the often inflexible deadlines (particularly once the Bill is in Parliament) it will be important that you have a system in place for managing this input, and for communicating clearly what you need from colleagues. If this is the case, you will need to look at the systems you use to facilitate this process.

Remember that, although the core Bill Team’s principal focus will be on the Bill, that will not be the case for other policy leads. It is important that you are clear in advance about the input you will need, and that you are reasonable with deadlines where possible.

## **6.5 Ministers and Private Office**

Bill teams should ensure they develop and maintain good relationships with their lead Minister and Private Office. Bill teams should be prepared to continuously update Ministers on the progress of the Bill and issues that arise in the process. Key issues for Bill Teams to consider are:

- respecting deadlines
- keeping the Private Office and the Minister up to date
- ensuring the Minister has the time and opportunity to contribute to key policy decisions, and
- being aware that other priorities and business will be competing for Ministerial time

Bill Teams should work with Private Office to ensure they understand their Minister's briefing and working practice preferences.

## **6.6 First Minister's Policy and Delivery Unit**

The First Minister's policy and delivery unit (FMPDU) provides policy advice directly to the FM, and it works strategically with teams across the Scottish Government to help deliver the Programme for Government.

## **6.7 Special Advisers**

Special advisers (SPADs) provide political advice to the First Minister and Scottish Cabinet across all portfolio areas. They work closely with Ministers, Directorates and outside stakeholders to provide accurate and up to date information to help deliver the Scottish Government's goals. It is therefore important for Bill Teams to keep the appropriate SPAD informed when developing a new policy to ensure that the political dimension can be factored into your work.

In relation to the SG/SGP Cooperation Agreement (Bute House Agreement), two Green minister and two special advisers were appointed which covers zero carbon buildings, active travel and tenants' rights and green skills, circular economy and biodiversity portfolios. The terms of these appointments are the same as with all other special advisers – they are appointed by the First Minister and report to the First Minister's Chief of Staff. They should be copied into all material going to their respective minister and consulted as you would with any other special adviser.

However, you also need to consider how and when to consult with the wider group. Contact the Green special advisers, via the special advisers' private office, for advice if required. Further information can be found at this [link](#).

## **6.8 Law Officers and Legal Secretariat to the Lord Advocate**

The Lord Advocate and the Solicitor General for Scotland are the Scottish Government's Law Officers. The Legal Secretariat to the Lord Advocate (LSLA) supports the Scottish Law Officers in their government and civil law activities. The Lord Advocate has specific responsibilities under the Scotland Act 1998, in particular concerning the legislative competence of Scottish Parliament primary legislation.

The Law Officers need to be kept fully informed about new Bills. They are responsible for the Government's overall legal position and so it is important that they are sufficiently briefed. The Legal Secretariat to the Lord Advocate (LSLA) are able to advise about the Law Officers' interests as the Bill progresses. During the Bill's development, your SGLD contact will offer advice on any potential legal difficulties that arise and will involve the Law Officers if necessary.

The Lord Advocate is also the head of the systems of criminal prosecution and investigation of deaths in Scotland and with the support of the Crown Office and Procurator Fiscal Service, exercises those functions independently of any other person. The LSLA works with the Crown Office and Procurator Fiscal Service to ensure this boundary is observed.

Further information on the Lord Advocate's dual roles can be found in Saltire [here](#) and in the Guidance Note on the Role of the Lord Advocate and Law Officers [here](#).

### **6.9 Working with the Crown Office and Procurator Fiscal Service (COPFS)**

The Scottish Ministers collectively (including the Law Officers) have responsibility for the law and policy on crime, criminal justice and criminal procedure. The Lord Advocate is also the independent head of the systems of criminal prosecution and investigation of deaths (CPID) in Scotland. In this role she is assisted by officials from COPFS. When developing new legislation, which may have an impact on the criminal justice system, for example because it creates new offences, consideration should be given to consulting with COPFS officials. As well as having an impact on the work of COPFS, such policies will be more effective if they take into account matters on which COPFS staff have relevant expertise.

COPFS staff make CPID decisions independently of the Scottish Government and in the public interest. Although COPFS staff are civil servants, COPFS is not a department of the Scottish Government.

In the preparation of policy and consultations and when reviewing legislation, in connection with the investigation and prosecution of crime (including Bill provisions which create new crimes) or the investigation of deaths, Scottish Government officials (including SGLD) should liaise with COPFS officials early in the process, within the parameters of the Civil Service Code, in order to ensure the views of COPFS staff are considered. Likewise, lead policy Ministers can and should liaise freely with the Law Officers about the formulation of government policy, consultations and reviewing legislation within the parameters of the Scottish Ministerial Code. The critical points to remember are that:

- no influence may be exerted by the Scottish Government (or any other person) regarding a decision of the Lord Advocate in her capacity as head of the systems of criminal prosecution and investigation of deaths;

- operational decisions are exclusively for the Lord Advocate assisted by her officials in COPFS; and
- respect for that demarcation must be reflected appropriately in Scottish Government publications and other public statements.

Because the Lord Advocate and Solicitor General are Scottish Ministers, there should be no conflict between the positions of:

- COPFS and Scottish Government officials; or
- the Lord Advocate, exercising her retained functions including those concerning CPID, and Scottish Ministers.

If there is a difference between the views of COPFS and policy officials on a particular issue, that difference will, ultimately, require to be resolved at Ministerial level. If SGLD and COPFS disagree on a point of law that will, ultimately, be resolved by the Opinion of the Lord Advocate.

Further information on working with the Law Officers is contained in the SGLD Bill guidance which the SGLD contact working on your Bill can provide access to.

## **6.10 Communications**

Good communication can help build trust, shift attitudes and change behaviours. It is therefore intrinsic to the Bill process.

Communications (Comms) colleagues can provide strategic advice about how good communication can support your Bill, from stakeholder engagement to media handling.

You should engage with the relevant Comms team at an early stage in the Bill's development. This is usually the Comms team that supports your lead Minister.

The Bill Team should provide to Comms colleagues:

- a timeline of key milestones, including parliamentary dates
- key lines, facts and figures and background information
- insight into likely stakeholder support and criticism
- timely updates on any forthcoming developments such as controversial debates, announcements or Government amendments, and
- contact telephone numbers in case of urgent enquiries

Bill Team colleagues can expect Comms colleagues to:

- provide strategic communications advice to the Bill Team and Ministers
- attending pre-introduction Bill Management Meetings as appropriate
- devise, deliver and evaluate a media handling plan
- take an evidence-based approach to media management to ensure the most effective channels and tactics are being used at the right time to reach target audiences. This may or may not be a news release

- lead on creating relevant content for priority social and broadcast media; and
- respond to media queries, with input from the Bill team and others as appropriate.

### **6.11 Finance**

The Bill Team’s consultation should include the potential costs or benefits of the Bill. The Bill Team should seek advice from relevant areas of expertise, including their Finance Business Partner (or equivalent) and Analytical Services Division. This engagement is key to the development of the Financial Memorandum in respect of your Bill (which is one of the accompanying documents required under the Standing Orders).

Financial Memorandums offer the Parliament the best possible information on the costs (and benefits) arising from proposed legislation. Estimates of the costs and benefits of a Bill are therefore required under the Parliament’s Standing Orders regardless of budgetary considerations. PCO can advise on the specific requirements that must be met under the Standing Orders.

Bill Teams must clear draft their Financial Memorandum with their Finance Business Partner and PCO before the draft Bill and other accompanying documents are submitted for approval to Ministers. The Financial Memorandum is also subject to separate special clearance by the Cabinet Secretary with responsibility for finance. The Finance Programme Management Structure can be found at this [link](#).

### **6.12 Committee Liaison Officers**

Committee Liaison Officers (CLOs) are the main link between the committee clerks and the Government. The Bill Team leader will be expected to develop good relations with the relevant clerk, and it will therefore be useful to involve CLOs in any engagement with clerks, as they will have established good links with the respective clerks.

Further information on the role of CLOs can be found [here](#). The current list of CLOs can be found [here](#).

### **6.13 Parliamentary Bureau**

The Parliamentary Bureau consists of representatives of all political parties or groups in the Scottish Parliament with 5 or more MSPs and is chaired by the Presiding Officer. MfPB is the Government’s member of the Bureau. In relation to Bills, the main roles of the Parliamentary Bureau are:

- referring Bills on introduction to the lead committee or, where the subject matter spans several committees, submitting a motion to the Parliament to designate a lead committee
- organising the business programme of the Parliament, including the timetable for consideration of Bills by the Parliament and its committees, and
- determining the order of amendments for consideration at Stage 2 – if the Parliament does not decide otherwise on a motion of the

Parliamentary Bureau, amendments are disposed of in the order in which the provisions to which they relate arise in the Bill

More information on the Parliamentary Bureau can be found [here](#).

#### **6.14 Committee Conveners**

Each parliamentary committee has a convener who chairs the committee meetings. It is the role of the convener to facilitate debate and allow the committee to reach a consensus, whilst acknowledging that members will hold differences of opinions. Conveners are also responsible, with support from clerks, for ensuring that proceedings take place in accordance with the Standing Orders.

Information on each committee, as well as a list of committee members, can be found on the Scottish Parliament's website [here](#).

#### **6.15 Committee Clerks**

Committee clerks are responsible for the administrative and procedural support for committee meetings. They prepare committee meeting papers, produce committee minutes, provide the committee with procedural advice, manage inquiries, respond to correspondence and liaise with contacts regarding the work of the committee.

Bill teams should ensure they engage with committee clerks throughout a Bill's parliamentary passage and develop good relationships with them. An informal meeting between the Bill Team and committee clerks is usually arranged shortly before a Bill's introduction.

Committee membership and lead clerking details can be found [here](#).

## 7. CONSULTATION AND STAKEHOLDER ENGAGEMENT

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### Summary

Rigorous consultation and stakeholder engagement is vital in the development of a Bill. This will ensure those with an interest in, or who will be impacted by, the proposed legislation will be able to provide their views. It will also provide the Parliament with confidence that the policy effect of the Bill has been thoroughly tested.

**Key issues** for Bill Teams to focus on:

- Planning your approach to consultation and stakeholder engagement with input from Comms and others
- Ensuring your timetable can accommodate your consultation plans
- Considering whether there would be benefit in more than one consultation, and whether there should be consultation on a draft Bill

### 7.1 Establishing a clear purpose and narrative for the Bill

Every Government Bill needs to have a clear policy purpose and narrative.

It is important that Bill teams can articulate what the purpose of their Bill is early on so the Government can explain why legislation is needed. Having a clear purpose will further provide focus to those involved in its development. Examples of clear policy objectives for Bills can be viewed in the Programme for Government publications by filtering [Publication types: Strategy/Plan and Topic: Programme for Government](#); and in the Policy Memoranda for Bills on the [Scottish Parliament's website](#).

Having a clear purpose for a Bill will also help with development of the Bill's strategic narrative. This will ultimately be an explanation of why the Bill is required and how it will contribute to the Government's wider strategic objectives, such as those outlined in the [National Performance Framework](#).

Having a clear strategic narrative about the Bill will help:

- explain why legislation is being progressed
- explain what its implications are, and
- address potential criticisms or concerns

If building on work from an independent report, it is important for Bill teams to perform due diligence to establish the extent of the stakeholder engagement reflected in the report. It may not always be the case that all interested stakeholders have been sighted.

For further information on developing a clear purpose and narrative for a Bill, it is advised that you engage with Comms colleagues from the relevant portfolio area.

Bill teams can anticipate that they and their Minister will be pressed on the Bill's purpose and narrative during formal Bill Management Meetings (see chapter 4.3 for further information).

## **7.2 Public descriptions of the content of the Bill**

As set out in chapter 2, collective agreement is required at four key points in the Bill process – when a Bill is added to the legislative programme; before consultation on the Bill; when finalising the policy content of the Bill; and when significant revisions are made to the Bill after initial Cabinet approval. These collective agreement processes set the parameters for what should be said publicly about what the Bill will do, and it is important that no commitments are given to what the Bill will do on any sensitive or cross-cutting issues ahead of collective agreement being achieved. Any queries about the parameters of what can be said about the content of a Bill at different points should be directed to Comms and PLU.

There are additional restrictions about what can be said during the 3-week period (see chapter 12 for further information) when the Bill is sent to the parliamentary authorities for pre-introduction checks. No reference should be made to the fact that the Bill has been submitted to the parliamentary authorities, and any public description of what the Bill does should go no further than what has been said previously in the public domain. Again, any queries about the parameters of what can be said about the content of a Bill at different points should be directed to Comms and PLU.

## **7.3 Stakeholder engagement**

Stakeholder engagement is a crucial aspect of the development of a Bill and its parliamentary management. Bill teams are expected to engage with stakeholders throughout the Bill process to ensure that their views and concerns are understood and can be taken into account. This is important, particularly in the context of minority government, because the Parliament's reaction to a Bill will be partly dependent on how meaningfully the Government has engaged with stakeholders and chosen to deal with their concerns.

Bill teams should ensure they engage with Comms colleagues on the development of a media handling and stakeholder engagement plan early on in the Bill's development. Bill teams can anticipate that they and their Minister will be pressed on their stakeholder engagement plans during formal Bill Management Meetings (see chapter 4.3 for further information).

## **7.4 Consultation**

It is normally expected that a formal consultation process will be conducted as part of the Bill's development. The extent to which key stakeholders and those who will be impacted by the Bill have had the opportunity to contribute their views will be a key interest of the Parliament when the Bill is introduced.

As noted in chapter 6.3, it is important to involve SGLD and PCO in the consultation process, especially when agreeing the scope of the consultation

and when drafting a written consultation document. In particular, SGLD will offer advice on the limits to the legislative competence of the Scottish Parliament to avoid Ministers consulting on a matter which cannot be given effect to by the Scottish Parliament. PCO are likely to comment on anything that may limit the options on how to draft a particular legislative proposition e.g. by avoiding consulting on a specific form of words to appear in the legislation.

As noted in chapter 2.2.2, all Bill-related consultations engage the requirement for collective agreement and must be agreed by Cabinet or CSCL. Cabinet Secretariat will advise on which method is appropriate in the circumstances. Guidance for developing a Cabinet paper can be found on [Saltire](#). Guidance for developing a consultation process can be found [here](#).

Bill teams should note work being undertaken in the context of [Open Government](#), where the Government intends to engage with the Parliament on improving the consultation process. Such activity is part of a system-wide reform to provide a framework for effective and proportionate citizen involvement in the work of Government in Scotland.

It is for the lead Minister, on advice from Bill Teams, to determine the level and form of consultation necessary on a particular Bill, subject to Cabinet approval. In doing so the Bill Team should have regard to the people most impacted by the Bill and ensure that they have appropriate opportunity to provide views.

Written consultation is only one of a number of consultation methods that can constitute a consultation process. There may be some Bills (e.g. emergency Bills) where a formal written consultation is not appropriate. One of the key considerations is to consider how stakeholders and the Parliament will react to whatever consultation is conducted. Ultimately, if the Parliament considers that the consultation process has been inadequate, it has the option either of rejecting the Bill at Stage 1 or, at Stage 3, of remitting the Bill back to the lead committee for further consultation.

Bill Teams should be aware that a consultation process cannot give a quantitative indication of the public's view on a matter and should not be analysed in this way. The consultation process will highlight a range of views and the reasoning behind those views from the self-selected group who have decided to take part in the consultation process. The range of views will help in drafting the Bill.

When determining what form of consultation should take place, Bill teams should bear in mind the following factors:

- whether the legislation will contain new policy provisions
- what representations have already been received on the issue from external organisations and individuals
- whether material already exists (either within government or in the public domain) which provides an indication of external views
- that wide ranging consultation should lead to better legislation, and

- what work has already been undertaken on the matter by Parliament

#### 7.4.1 Consultation resources

Below are some links to useful guidance regarding consultations:

- [Scottish Government Consultation Guidance](#)
- [Citizen Space Guidance](#)
- [Scottish Government Consultation Hub](#)
- [Writing Style Guidance](#)

Other useful resources:

- [The Gunning Principles](#)
- [The Consultation Institute](#)
- The Participation Framework (to be finalised)
- Analysis can be done either in-house or contracted out. Your local analytical team will be able to help you to scope your consultation, draft consultation questions, and identify an appropriate approach to analysing the results.

#### 7.4.2 Examples of consultation good practice

Below are examples of good practice:

- [A Deposit Return Scheme for Scotland](#)
  - Table of contents with clear language for each section
  - Images breaking down complex content
  - Drop downs with additional relevant information
- [Supporting Disabled Children, Young People and their Families](#)
  - British Sign Language video
  - Easy Read version
  - Clear sections
  - Respond in British Sign Language option

### **7.5 Multiple consultations and consulting on a draft Bill**

The Bill timetable template (see chapter 3 for further information) anticipates that Bill teams may wish to carry out more than one consultation. If your timetable allows for it, carrying out more than one consultation has the advantage of enabling stakeholder views to be tested on different features of policy. For example, and analogous to the Green Paper/White Paper model followed at Westminster, Bill teams may see an advantage in consulting first on broad policy options before conducting a second consultation on points of detail.

It is often advantageous to consult on a draft Bill in addition to or instead of a consultation on broad policy proposals. Consulting on a draft Bill enables stakeholders to see precisely how a Bill is intended to operate and to offer views on the practical application of legislation. However there are potential issues if stakeholders focus on the detail of legislative drafting rather than the broad policy of the Bill. If you are minded to consult on a draft Bill, it is important that sufficient time is built into your timetable, and that the feasibility of developing a draft Bill is discussed with SGLD and PCO. It will also be

important to have a policy narrative accompanying the draft Bill to explain the purpose and effect of the draft legislation to stakeholders.

#### **7.6 Further advice on consultations**

For help through the consultation process, please contact the [Digital Engagement Team](#).

Where consultation responses have been contract-out, Bill teams should also perform a light touch analysis in addition to the formal analysed product being received. Bill teams may also wish to prepare an easy read analysis of the consultation where possible.

## 8. POLICY-PROOFING AND IMPACT ASSESSMENTS

### Summary

To ensure that Bills can operate effectively in the wider policy and regulatory framework into which they will be introduced, it is important that the impact of the policy changes they will deliver is assessed. This chapter introduces the various impact assessments (IAs) that have been developed to help with this task, along with other topics which should be considered when policy-proofing a Bill.

**Key issues** for Bill Teams to focus on:

- Understanding the range of IAs which need to be addressed
- Understanding the different policy-proofing topics which need to be considered in developing a Bill

### 8.1 Impact Assessments

IAs are an important tool in stress-testing the policy purpose and impact of a Bill. The earlier and more rigorously these IAs are conducted, the better the policy analysis that Bill Teams will have to inform the development of their Bill.

Bill Teams should ensure that they are familiar with all of the different IAs which need to be completed, including their purpose, reporting requirements and statutory basis. It is worth noting that a SEA can, and often should, be formally screened out especially where exemptions exist for financial or budgetary plans, those relating to civil defence and for single schools. It is also not necessary for consultations to be accompanied by partial impact assessments, but including partial impact assessments can help stakeholders engage with the purpose and consequences of the legislation and consultation responses can help inform final IAs.

Further advice on conducting IAs can be obtained from the relevant IA owner. PLU run an introductory seminar (see chapter 5.2) on IAs which Bill Teams may find useful as a means of understanding the basic purpose of individual IAs and how they relate to each other. These Bill seminar slides can be found [here](#).

#### 8.1.1 Summary of individual impact assessments

Impact Assessment	Summary and Guidance
<b>Business and Regulatory Impact Assessment (BRIA)</b> (Administrative)	The BRIA helps to assess the likely costs, benefits and risks that a Bill may have on the public, private or third sector.  It is best practice to always complete an impact assessment as part of your policy making process

	<p>but if you don't think you need to carry out a BRIA you should advise your minister and get ministerial agreement.</p> <p>Guidance can be viewed <a href="#">here</a>.</p> <p>Lead contact: <a href="mailto:BetterRegulation@gov.scot">BetterRegulation@gov.scot</a></p>
<p><b>Child Rights and Wellbeing Impact Assessment (CRWIA)</b> (Ministerial duty)</p>	<p>The CRWIA is used to identify, research, analyse and record the impact of a Bill on children's human rights and wellbeing.</p> <p>Fulfilling ministerial commitment under the 'Progressing the Human Rights of Children in Scotland Action Plan (2021-24)'</p> <p>There is no explicit requirement to complete a CRWIA under the Children and Young People (Scotland) Act 2014.</p> <p>Fulfilling a ministerial commitment under the 'Progressing the Human Rights of Children in Scotland Action Plan (2021-24)'</p> <p>Once the United Nations Convention on the Rights of the Child (UNCRC) is incorporated into Scots Law, the CRWIA will become a legal duty.</p> <p>Guidance can be viewed <a href="#">here</a>.</p> <p>Lead contact: <a href="mailto:ChildrensRightsandParticipation@gov.scot">ChildrensRightsandParticipation@gov.scot</a></p>
<p><b>Data Protection Impact Assessment (DPIA)</b> (Statutory requirement)</p>	<p>Bill Teams may need to complete a DPIA in order to consider the Bill's impact on personal data and privacy.</p> <p>From May 2018 it is a legal requirement to carry out a DPIA for certain types of processing (eg processing special category data on a large scale, or any other processing that is likely to result in a high risk to individuals. If your DPIA identifies a high risk that you cannot mitigate, you must consult the Information Commissioner's Office.</p> <p>Guidance can be viewed <a href="#">here</a>.</p> <p>Lead contact: <a href="mailto:dpa@gov.scot">dpa@gov.scot</a> - While the mailbox will still be monitored where possible, please log</p>

	<p>an iFix call in place of emailing the data protection mailbox. This can be done <a href="#">here</a>. Alternatively, you can find the offering under 'Services' in iFix.</p>
<p><b>Digital</b> (Administrative)</p>	<p>There is not a formal Digital Impact Assessment.</p> <p>Bill Teams, SGLD and PCO are asked to consider how their Bill can be 'future proofed' in light of upcoming changes to technology. For further advice on this, Bill Team colleagues should contact the Digital Policy and Strategy Unit.</p> <p>Lead contact: [Redacted] (Ext [Redacted])</p>
<p><b>Equality Impact Assessment (EQIA)</b> (Statutory requirement)</p>	<p>The EQIA allows Bill Teams to consider equality issues as a Bill is developed. In particular, the process identifies the impact of the Bill on people who share certain protected characteristics under the Equality Act 2010, such as disability, sex, race, and religion or belief.</p> <p>Assessing the impact of policies or practice against the needs in the Public Sector Equality Duty is known as carrying out an Equality Impact Assessment (EQIA). It's required by law - see section 5 of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.</p> <p>Guidance can be viewed <a href="#">here</a>.</p> <p>A Bill's impact on equal opportunities must also be mentioned in the Policy Memorandum.</p> <p>Lead contact: <a href="mailto:MainstreamingEquality@gov.scot">MainstreamingEquality@gov.scot</a></p>
<p><b>Fairer Scotland Duty (FSD)</b> (Statutory requirement)</p>	<p>The Fairer Scotland Duty (FSD) is a statutory requirement under Part 1 of the Equality Act 2010.</p> <p>The FSD allows Bill Teams to assess how they can reduce inequalities of outcome caused by socioeconomic disadvantage when developing a Bill. The duty came into force in Scotland from April 2018 and requires Scottish Ministers (and named public bodies) to actively consider what more can be done to reduce the 'inequalities of outcome' caused by 'socio-economic disadvantage' when making 'strategic decisions'.</p>

	<p>If the policy/programme/decision is not strategic, there is no formal requirement for a Fairer Scotland assessment. If however you are in doubt, an assessment is advised to be carried out, and constitutes good practice in policymaking.</p> <p>Guidance can be viewed <a href="#">here</a>.</p> <p>Lead contact: [Redacted] (Ext [Redacted]) or [Redacted] (Ext [Redacted])</p>
<p><b>Human Rights (Administrative)</b></p>	<p>There is not a formal Human Rights Impact Assessment although some Bill Teams have completed one if their Bill is very large and relevant to human rights.</p> <p>A Bill's impact on human rights must be mentioned in the Policy Memorandum.</p> <p>Bill Teams are encouraged to contact the Human Rights Team if they have any queries regarding human rights. The Human Rights Team also offer training on human rights.</p> <p>Lead contact: <a href="mailto:humanrights@gov.scot">humanrights@gov.scot</a></p>
<p><b>Island Community Impact Assessment (ICIA)</b> (Statutory requirement)</p>	<p>An Island Community Impact Assessment (ICIA) is about testing any new policy, strategy or service which is likely to have an effect on an island community which is significantly different from the effect on other communities. This became a legal duty on 23 December 2020 under the <a href="#">Islands (Scotland) Act 2018</a>.</p> <p>The key task is to identify the likely impact on island communities and to foster good relations of any proposed policy.</p> <p>A Bill's impact on island communities must also be mentioned in the Policy Memorandum.</p> <p>Bill Teams are encouraged to contact the Local Government Policy and Relationships Unit if they have any queries regarding impact on islands.</p> <p>Guidance can be viewed <a href="#">here</a>.</p>

	Lead contact: [Redacted] (Ext [Redacted])
<p><b>Strategic Environmental Assessment (SEA)</b> (Statutory requirement)</p>	<p>The SEA ensures consideration has been given to avoiding or reducing significant adverse effects on the environment and looking for opportunities to enhance it.</p> <p>Bill teams need to consider what Section of the Environmental Assessment (Scotland) Act 2005 the Bill falls under, whether Section 5(3) or Section 5(4).</p> <p>Strategic Environmental Assessment (SEA) can help support the consideration of the environment by avoiding or reducing significant adverse effects, while looking for opportunities to enhance positive effects.</p> <p>Bill teams must carefully consider what Section of the Environmental Assessment (Scotland) Act 2005 their Bill falls under. This can either be Section 5(3) or Section 5(4), unless it is a financial or budgetary plan or serves national defence or civil emergency or for single schools, all of which are automatically exempt. Most plans within the Scottish Government fall within the wide scope of the 2005 Act. If you are aware what section a Bill falls within you can also better gauge what preparatory steps you need to follow. A plan that is likely to have either significant positive or negative environmental effects, will need to prepare a SEA. Whereas if environmental effects are likely to be minimal, you may be able to use pre-screening to gain a self-exemption however this is dependent on what Section of the 2005 Act the Bill qualifies under. For some plans with no significant environmental effects the minimum may be screening.</p> <p>Section 14 of the UK Withdrawal from the European Union (Continuity) Scotland Act 2021 places a duty on Ministers to have due regard to the guiding principles on the environment. In practice officials can use the SEA process to demonstrate how they have met this requirement, whether through the SEA pre-screening process, SEA screening, or – in circumstances where an SEA is required – through the SEA Environmental Report.</p>

	<p>A Bill's impact on sustainable development must also be mentioned in the Policy Memorandum.</p> <p>Guidance can be viewed <a href="#">here</a>.</p> <p>Lead contact: <a href="mailto:Sea.gateway@gov.scot">Sea.gateway@gov.scot</a>, [Redacted] or [Redacted], Senior Policy Manager on x[Redacted]</p>
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### 8.1.2 Publication of impact assessments

The Scottish Government has committed to publishing impact assessments when a Bill is published (i.e. the day after its formal introduction to the Parliament). Bill Teams should provide the Clerk to the lead committee scrutinising the Bill with links to the location of the published IAs. The IAs should also be referenced, where relevant, in the Policy Memorandum and Financial Memorandum which accompany the Bill.

## **8.2 Policy-proofing**

### 8.2.1 GDPR – consulting the Information Commissioner's Office

If legislation is being prepared which relates to the processing of personal data, regulation 36(4) of the GDPR requires consultation with the Information Commissioner's Office (ICO). [Guidance](#) is available from SGLD or PLU on how to engage with the ICO on this issue.

### 8.2.2 Offences, Penalties and Powers of Entry

All provisions creating new offences, altering penalties for existing offences or dealing with powers of entry should be considered against the terms of the Scottish Government's [Guidance on Offences, Penalties and Powers of Entry in Legislation](#). The provisions should also be drawn to the attention of the Criminal Law, Practice and Licensing Unit in the Criminal Justice Division at as early a stage of formulation as possible. The Criminal Law, Practice and Licensing Unit will provide guidance on the terms of any new offence and on the suitability of the proposed penalty. You should also refer the draft provisions to the Crown Office and Procurator Fiscal Service (COPFS) Policy Unit for comments as appropriate. Care should be taken when basing policy on previous legislation, since there have been a number of significant court and justice system reforms in recent years.

You should also contact Disclosure Scotland policy colleagues ([DSPolicyTeam@disclosurescotland.gsi.gov.uk](mailto:DSPolicyTeam@disclosurescotland.gsi.gov.uk)) to make them aware of your new offence so that it can be recorded and to allow proper consideration of the disclosure requirements for this offence when a higher level disclosure is required. Further information can be found in the Scottish Government's [Guidance on Offences, Penalties and Powers of Entry in Legislation](#).

### 8.2.3 Civil Jurisdiction and Procedures and Tribunals

The Courts, Tribunals, Judicial Appointments Policy and Central Authority Unit should be consulted on any legislation which may have implications for the

Scottish Courts or which raise questions of civil jurisdiction and procedure in civil proceedings. The Team should also be consulted in connection with proposals to change the law of evidence, in either civil or criminal proceedings. Proposed provisions for inclusion in a Bill should be drawn to the attention of the Unit at as early a stage of formulation as possible.

In certain circumstances it may be desirable for there to be consultation with the Lord President (the head of the judiciary in Scotland), Sheriffs Principal and/or the Sheriffs' Association about the legislative proposals. While the Bill team would normally undertake such consultation, the Courts and Tribunals Policy Unit should be consulted on whether such consultation is appropriate or necessary and how it should be undertaken. For example, in certain circumstances, it may be desirable for the consultation with the judiciary to be undertaken by a Minister or, if consulting with the Lord President, by a Law Officer.

The effect of some Bills will be that new Rules of Court will be required or existing Rules of Court will require amendment. The need for such provision will be considered by the Scottish Civil Justice Council (SCJC). Bill Teams should contact the SCJC for further advice and guidance on any requirement for Rules of Court. Bill Teams should also inform the Tribunals and Administrative Justice Policy Unit of the potential for Civil Rules of Court. Bill Teams should bear in mind that time may be required to allow Rules of Court to be in place when an Act comes into force.

Similarly, where proposed Bill provisions would potentially impact on tribunals (devolved or reserved), early engagement with the Courts, Tribunals and Judicial Appointments Policy and Central Authority Unit is required. They can provide guidance, for example, on the kinds of disputes suitable for determination by a tribunal, the merits of a tribunal versus other options (e.g. reference to a court or to mediation) and the process and costs of creating a new or extending an existing tribunal jurisdiction. They will also be able to advise you on the key stakeholders you would need to engage with in developing your proposals (e.g. Scottish Courts and Tribunals Service, the Lord President and the President of the Scottish Tribunals).

#### 8.2.4 Public Bodies

The Public Bodies Unit (PBU) should be consulted at an early stage on any proposal for legislation which has implications for public bodies, including a proposal which affects appointments to public bodies or which seeks to set up a new public body or to abolish an existing body. PBU can provide input and advice on issues such as proposed governance arrangements for new public bodies, the implications of schedules to Acts which list certain public bodies for particular purposes, and engagement with public bodies on proposed legislation that will affect them. If the legislation refers to a particular public body, the relevant SG policy team which provides sponsorship oversight, Finance Team and Solicitors must be made aware of the legislation at an early stage.

Primary legislation to establish a new public body that will fall within the remit of the Commissioner for Ethical Standards in Public Life in Scotland

(CESPLS) should, on introduction to the Parliament, be accompanied by an Order made under section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the 2003 Act). This Order (which is subject to affirmative resolution) will provide that the office or body, to be created, is to be treated, during the Bill's passage through Parliament, for the purposes of or in connection with any appointment to the office or body, as if it were one of the specified authorities under the 2003 Act. The Bill should include provision to add the new body to schedule 2 of the 2003 Act, this schedule being the list of specified authorities that fall within the remit of the CESPLS.

The practical effect of this measure is to ensure that an appointments process for the body's first board can be commenced as soon as the Order has been approved. In considering the need for this additional legislation, Bill Teams must bear in mind that an appointments round will typically take about 6 months from the invitation to apply through to the actual appointments. Further advice on the public appointments process and the requirements of the 2003 Act can be obtained from the Public Appointments Team.

Bill Teams should also consider the implications of the Public Services Reform (Scotland) Act 2010. This makes provision:

- for the transfer and delegation of the functions of public bodies
- for the publication of information on expenditure and certain other matters by certain public bodies
- about the exercise of scrutiny functions by certain bodies, including provision in respect of the involvement of users of scrutinised services, co-operation and joint inspections, and
- in relation to complaints-handling procedures of listed authorities.

The Bill should include provision to add the new body to the appropriate schedules of other public bodies' legislation. Advice should be obtained from the Public Bodies Unit.

Legislation which contains definitions or lists of public bodies which may need to be amended includes:

- the House of Commons Disqualification Act 1975 and the Scottish Parliament (Disqualification) Order 1999
- legislation on maladministration
- the Ethical Standards in Public Life etc. (Scotland) Act 2000, schedule 3 – contact Local Governance Division
- the Freedom of Information (Scotland) Act 2002 – contact the Freedom of Information Unit
- the Equality Act 2010 - contact the Equality Unit, DG Communities
- the Public Appointments and Public Bodies etc. (Scotland) Act 2003, schedule 2 – contact the Public Appointments team in HR Resourcing
- the Public Services Reform (Scotland) Act 2010 – schedules 5, 6, 7, 8, 19 and 20 – contact the Public Bodies Policy Division
- Gender Representation on Public Boards (Scotland) Act 2018 – schedule 1.

### 8.2.5 Freedom of Information

Schedule 1 of the Freedom of Information (Scotland) Act 2002 lists all the Scottish public authorities which are subject to the provisions of the Act. If your Bill will amend that schedule in any way, either by adding a new public body or deleting from it one which is no longer in existence, the FOI Unit must be informed.

### 8.2.6 Charities

Charities exist in all corners of our society and it is highly likely that any policy changes will affect them. It is important for Bill teams to consider whether their Bill will have an impact on charities as early into the Bill process as possible.

Unlike businesses or the wider third sector beyond charities, charities are subject to additional rules set out in charity law. These need to be factored in when assessing the impact of new legislation on charities. The Office of the Scottish Charity Regulator (OSCR) can help you with this. OSCR works closely with the Charity Law and Volunteering Team in the Third Sector Unit in the Scottish Government. They regularly collaborate with a variety of SG teams to ensure that policies and new legislation are fit for charities and compatible with charity law. All charities have basic legal duties, such as annual reporting to OSCR. If you are working with or funding charities in the context of proposed legislation, be aware of the need to make sure their register entry is accurate, their annual accounts are up to date and they provide information to the public as required by charity law. More information can be found [here](#).

### 8.2.7 Civil Enforcement

All provisions concerning the use of diligence for the enforcement of civil obligations or for the civil enforcement of a criminal or administrative penalty should be drawn to the attention of the Civil Law and Legal System Division at as early a stage of formulation as possible. Criminal Justice Division will provide guidance on the suitability of the proposed use.

### 8.2.8 Disqualification from Membership of UK Parliament and Devolved Administrations

Policy implemented by primary legislation frequently leads to changes to the public body landscape across the UK, either in terms of the creation, abolition or alteration of public bodies. This in turn leads to changes in respect of office-holders operating within those bodies. When such changes arise legislation will also make provision for the appointment of the office-holder and their functions or responsibilities.

One issue that needs to be considered is whether there are any roles that should disqualify an individual *from* appointment as the statutory office-holder. Relevant provision is routinely included on the face of the establishing statute. A further related policy decision arises in terms of whether any office-holder should be disqualified from becoming a member of the House of Commons or the Scottish Parliament.

In all such cases where Bill teams seek to give effect to any disqualification, it is recommended that advice should be sought from PLU ([Redacted], Ext [Redacted]).

#### 8.2.9 Maladministration

Where a Bill proposes to create a public body, Bill teams should consider whether the body should be subject to the jurisdiction of the Scottish Public Services Ombudsman (SPSO). The SPSO's role is to consider complaints from members of the public of injustice or hardship arising from maladministration or service failure on the part of public authorities. If it is considered that a proposed body will have dealings with members of the public then provision should normally be made in the establishing legislation to amend Part 2 of schedule 2 of the Scottish Public Services Ombudsman Act 2002 to insert a reference to the new body.

Further, where it is proposed to alter the functions of an existing body, consideration should be given to whether SPSO coverage remains or becomes relevant. Finally, where a body is to be abolished, consideration should be given to whether any existing reference to the body in the Scottish Public Services Ombudsman Act 2002 needs to be removed.

Such action will ensure that the SPSO's investigatory remit is kept up to date without the need for separate "housekeeping" orders to be promoted under the Scottish Public Services Ombudsman Act 2002 and, in so doing, make best use of valuable parliamentary time.

Further advice on these matters can be obtained from Civil Law and Legal System Division who should, in any event, be informed of any intention to amend the 2002 Act.

## 9. LEGAL ISSUES

### Summary

The fundamental purpose of a Bill is to change the law. A range of legal issues need to be taken into account. SGLD will provide Bill teams with support on all legal aspects of their Bill but it is important that Bill teams familiarise themselves with the key issues which might arise.

**Key issues** for Bill Teams to focus on:

- Understanding the limitations of legislative competence and the points in the legislative process at which it is a critical issue
- Identifying any EU issues or international obligations which need to be taken into account in developing the Bill
- Addressing any complicating factors such as retrospection and hybridity
- Developing a plan for the commencement of the Bill once it becomes an Act
- Developing a coherent plan for the framework of any delegated powers provided for in the Bill
- Identifying whether issues around Crown application and/or Crown consent require to be addressed
- Identifying whether any pre- or post-Bill Scotland Act Orders will be required to ensure that the policy framework can operate effectively

### 9.1 Legislative Competence

The limitations upon the legislative competence of the Scottish Parliament are set out in section 29(2) of the Scotland Act 1998, as amended by the Scotland Acts of 2012 and 2016. The main limitations are that a provision in an Act of the Scottish Parliament is outside legislative competence if:

- it relates to the reserved matters (provided for in Schedule 5 to the Act)
- it is in breach of the restrictions in Schedule 4 to the Act
- it is incompatible with European Union law or
- it is incompatible with any of the European Convention on Human Rights (ECHR) rights

SGLD advises policy leads on matters relating to the Scotland Act, where relevant.

#### 9.1.1 Statement of competence when Bill introduced to the Scottish Parliament

Section 31(1) of the Scotland Act 1998 requires the lead Minister (which for these purposes means the Cabinet Secretary), when seeking to introduce a Government Bill in the Parliament, to state that, in their view, the provisions of the Bill would be within the legislative competence of the Scottish Parliament.

In practice, and in line with section 3.4 of the [Scottish Ministerial Code](#), the Scottish Law Officers must clear that statement before it is made. This process of securing the Scottish Law Officers' approval will be handled by SGLD in the run up to the introduction of a Bill. Any potentially significant legislative competence issues should have been flagged up at a much earlier point in the development of the Bill, and brought to the attention of Cabinet when seeking its agreement to the final content of the Bill. If a Bill team considers that its Bill may give rise to significant legislative competence issues, this should also be brought to the attention of PLU as soon as possible.

The Presiding Officer will also give a statement setting out their view on whether the Bill is within the legislative competence of the Scottish Parliament. The Presiding Officer performs this function in relation to all types of Bill (e.g. Members' Bills and Committee Bills) and not just Government Bills. The Presiding Officer's view can be positive or negative. If it is negative, it will outline which specific provisions of the Bill are considered to be out with the competence of the Parliament. A negative statement by the Presiding Officer does not stop a Bill from being introduced or from completing its parliamentary passage. This situation arose in relation to the UK Withdrawal from the European Union (Scotland) Bill.

#### 9.1.2 Legislative competence issues during the parliamentary passage of a Bill

There is no formal role for the Presiding Officer or other office holder of the Scottish Parliament to vet the competence of amendments to Bills and it is therefore possible that amendments to Bills can be lodged and passed which would take the Bill out with the competence of the Scottish Parliament. In such scenarios it will be essential that the Government develop a strategy for avoiding such amendments being passed, or securing their alteration if passed, to avoid the Bill being referred to the Supreme Court following the Bill being passed. Your SGLD contact will take a key role in this issue, engaging with the Scottish Law Officers as appropriate.

#### 9.1.3 Potential for referral to Supreme Court before Royal Assent

Under section 33 of the Scotland Act 1998, once a Bill has been passed, there is a four-week period during which the Advocate General for Scotland or the Attorney General (Law Officers in the UK Government) or the Lord Advocate (one of the Scottish Law Officers) may refer the question of whether the Bill, or any provision of it, would be within legislative competence to the UK Supreme Court (UKSC). Under section 32, the Presiding Officer may not submit the Bill for Royal Assent while a Law Officer is entitled to make such a reference, while the UKSC is considering the matter, or if the UKSC has decided that the Bill or any provision in it would not be within legislative competence. The Lord Advocate has not referred a Government Bill to the UKSC under section 33. However, such a referral might be made if, for example, a non-government amendment had been passed at Stage 3 which the Government considered to be outside competence.

## 9.2 Super-majority procedure

The Scotland Act 2016 expanded the legislative competence of the Scottish Parliament and the Scottish Ministers in relation to the operation of Scottish Parliament elections. It also provided for a super-majority procedure to be applied to proposed electoral legislation concerning:

- the persons entitled to vote as electors at an election for membership of the Parliament;
- the system by which members of the Parliament are returned;
- the number of constituencies, regions or any equivalent electoral area; and
- the number of members to be returned for each constituency, region or equivalent electoral area

Any such provision can only pass at Stage 3 if it has at least a two-thirds majority of the total number of seats for members of the Parliament (i.e. subject to the super-majority procedure and requiring 86 votes in favour). The Presiding Officer will decide on whether any provisions of a Bill are subject to a super-majority procedure after all amendments have been considered and voted on at Stage 3. Paragraph 13.5.3 provides further information on the Super-Majority Procedure.

Once a Bill is introduced, you will need to consider whether any provision proposed for your Bill would trigger the need for a super-majority vote in Parliament. A letter should be sent to the lead Committee Convener to confirm whether the Bill contains any provision deemed as 'protected subject matter'.

### 9.2.1 The process

- Parliamentary Bureau will decide which committee will be designated as the lead committee
- On the day following the allocation of the lead Committee for a Bill, the MfPB writes a letter to the relevant lead Committee Convener (copied to the lead Minister) to confirm whether the Bill contains any provision deemed as 'protected subject matter'
- This is set out the Bill timetable completion notes: Template - Bill Development - Bill Timetable (A26859864) at Step 37 & 43

### 9.2.2 Who needs to prepare the letter

- Bill teams should complete the Super-Majority Letter template which can be found [here](#)
- You don't need to put a reference on the letter if you don't have one
- Bill teams will receive formal confirmation from PLU of the lead Committee that the Bill has been allocated to, once it has been agreed by the Parliamentary Bureau
- The letter can then be sent to the Minister for Parliamentary Business Private Office to send to the relevant Committee Convener to set out the Scottish Government's view on whether the Bill triggers super-majority procedure

- Send a draft of your letter to PLU before it is issued to MfPB.

Further information on how the internal and parliamentary procedures apply to consideration of super-majority matters can be obtained from your SGLD contact who will have access to the legal Billskill Note “Super-Majority Procedure” and can share and discuss this with you. Bill teams should, in particular, familiarise themselves with the requirement to prepare a letter for MfPB to send to the relevant Committee Convener. The letter can be sent once Bill teams receive formal confirmation from PLU of the lead Committee the Bill has been allocated to, once it has been agreed by the Parliamentary Bureau, to set out the Scottish Government’s view on whether the Bill triggers super-majority procedure.

### **9.3 EU Implications**

Bill Teams should liaise with their SGLD contact on whether any aspects of EU law will impact on the policy or drafting of or parliamentary process for the Bill.

#### 9.3.1 Technical standards

Consideration should be given to whether the Bill should be notified to the European Commission as a draft technical regulation under Directive (EU) 2015/1535. It is recommended that delegated powers are taken so that the notifiable measures are regulations under the Bill rather than the Bill itself.

#### 9.3.2 State Aid

EU-related considerations are also in play in respect of EU State Aid law, for example when it is Bill policy to create or modify tax reliefs.

### **9.4 International Obligations**

Compliance by Acts of the Scottish Parliament with the international obligations of the UK is, with the exception of EU obligations and incorporated ECHR rights, not strictly a limitation upon the legislative competence of the Scottish Parliament. However, the Scottish Ministerial Code notes the overarching duty on Ministers to comply with international law and treaty obligations. Further, under section 35 of the Scotland Act 1998, the UK Government has powers by order to prevent the Presiding Officer from submitting a Bill for Royal Assent where the Secretary of State has reasonable grounds to believe that provisions in the Bill would be incompatible with any international obligations. International obligations for the purpose of this power are defined as excluding obligations under EU law and incorporated ECHR rights.

Your SGLD contact can help establish whether or not the proposed new legislation causes any breach of international obligations. Europe Division holds a list of past treaties and conventions that outline areas of international (non-EU) law which may contain obligations of relevance to devolved areas. This is updated annually in conjunction with the Foreign and Commonwealth Office and it is important that Bill Teams, at an early stage in the proceedings, ensure that their Bill does not breach any of these obligations.

## **9.5 Retrospection**

Retrospective legislation is generally defined as legislation which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. Legislation with retrospective effect can result in those who are affected arguing that they would not have proceeded with the past transaction, action or event if they had known the applicable law would be altered in the future.

Retrospection can therefore undermine the rule of law and cause unfairness. Where it is proposed that any provision in a Bill is to apply retrospectively, this must be brought to the attention of the Scottish Law Officers so that they can consider its legality and propriety. An important part of this consideration will be whether or not the retrospective provision is compliant (and therefore within the competence of the Scottish Parliament) with Article 7 of the European Convention on Human Rights which requires that:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

There is a general public interest in the law not being changed retrospectively and the Law Officers will consider if that general interest is outweighed in the particular circumstances of the Bill by a competing public interest justifying retrospective legislation.

## **9.6 Hybrid Bills**

Rule 9C.1.1 of the Standing Orders specifies that a Hybrid Bill is a Public Bill which adversely affects a particular private interest of an individual or body in a manner different to the private interests of other individuals or bodies of the same category or class. The defining feature of the Hybrid Bills procedure is that individuals or bodies who may be disadvantaged by the Bill are entitled to lodge objections and their objections must be considered by the lead committee. This process could have significant timetabling implications for a Bill and the implications of a hybridity designation need to be carefully considered before a decision is taken to proceed.

Further information on Hybrid Bills is set out in chapter 15 on “Other types of Government Bills”.

## **9.7 Commencement**

In order for the content of a Bill to have effect once it has secured Royal Assent, its provisions must be commenced. In general, all Bills are commenced by regulations made under the relevant (then) Act, with the exception of the formal sections dealing with commencement, short title and extent which should come into force on the day after Royal Assent.

### **9.7.1 Avoiding specific commencement dates on the face of the Bill**

Bill Teams should generally avoid specifying on the face of a Bill specific dates for when substantive sections will come into force. This is because it will normally not be possible, during the passage of the Bill, to determine when Royal Assent will be granted and therefore any specific date for commencement which is written into the Bill may not be achievable. Arrangements for referral of Bills to the UK Supreme Court (see chapter 9.1.3 above) also work against the legitimacy of specifying commencement dates on the face of the Bill.

Even in those exceptional circumstances where a fixed commencement date needs to be included in a Bill, it is likely that commencement will be stated to occur on whichever is the later of the day after Royal Assent or the preferred fixed date. This guards against the risk that Royal Assent is not obtained to the Scottish Government's preferred timetable.

#### 9.7.2 Time period between Stage 3 and Royal Assent being granted

The average time period between Stage 3 proceedings being completed and Royal Assent being granted is five and a half weeks. This period includes the 4 weeks which the Law Officers and Secretary of State are allowed for consideration of whether the Bill should be referred to the Supreme Court and the time it takes for the Bill to be sent to, and returned from, the Palace. As set out in 9.7.4 it is possible, in certain circumstances, to expedite Royal Assent.

#### 9.7.3 Convention on when sections of a Bill will be commenced

There is a convention that the substantive sections of a Bill will not be commenced until at least two months following Royal Assent. The purpose of this rule is to ensure that those affected by the Bill have reasonable opportunity to acquaint themselves with its final form and to prepare for its coming into force. As set out in 9.7.5 it is possible, in certain circumstances, to expedite commencement.

This two month period does not apply to Consolidation Acts and Statute Law Revision Acts, for which a minimum period of three months between Royal Assent and the earliest commencement date should be observed. It is recommended that Consolidation Acts should also be expressed to commence by commencement regulations just in case there are questions that are referred in connection with such Bills. Statute Law Repeals Acts normally come into force on the day after Royal Assent.

Budget Acts have to come into force on the 1 April each year, this often means they're fully in force within 2 months of getting Royal Assent. The practice, agreed with LSLA, is not to obtain CSCL clearance for "early commencement" (within 2 months of Royal Assent) as the provisions of a Budget Act fall into the non-substantive category (where the Act can commence earlier). Non-substantive means that the provisions are not changing substantive law (i.e. the law that directly bears on citizens' rights and obligations) in ways which might require members of the public to need time to adjust their behaviour in advance of the new law commencing.

#### 9.7.4 Expediting Royal Assent

It may be possible, in exceptional circumstances, to obtain the agreement of the UK Law Officers, the Lord Advocate and the Secretary of State to make an early declaration to the Presiding Officer that they do not intend to refer the Bill to the Supreme Court after it has completed its parliamentary passage. Bill teams will require to obtain CSCL approval to make an approach seeking early declarations, and to ensure that LSLA, the Office of the Secretary of State for Scotland and the Office of the Advocate General are made aware of any such proposal at the outset. Expediting of Royal Assent is only likely to be agreed to deal with an emergency situation. Similarly, restrictions apply in relation to seeking the Palace's agreement to expedite the formal granting of Royal Assent once it has been confirmed that the Law Officers and Secretary of State do not intend to make a referral to the Supreme Court. In all cases, it is essential that you alert PLU as soon as you become aware of the potential requirement to expedite Royal Assent.

#### 9.7.5 Expediting commencement

CSCL approval must be sought to waive the two month period between Royal Assent and the commencement of substantive sections. This will be agreed only in exceptional circumstances and you should alert PLU as soon as you become aware of a potential requirement to seek expedited commencement.

#### 9.7.6 Parliamentary scrutiny of commencement regulations

Commencement regulations are laid in Parliament but are not normally subject to formal parliamentary procedure. This means that they will be scrutinised by the Delegated Powers and Law Reform Committee (DPLRC), who may comment on the regulations but the regulations do not require parliamentary approval and neither are they subject to annulment.

Bill teams should ensure that they develop a clear commencement strategy for their Bill. It is generally better to avoid multiple commencement regulations at short intervals.

### **9.8 Delegated Powers**

Most Bills will contain powers for Ministers to make subordinate legislation.

With input from SGLD and PCO, Bill teams should consider carefully the following:

- the appropriate balance between including provision on the face of the Bill and taking powers which enable that provision to be made through subsequent subordinate legislation, and
- which procedure (affirmative or negative) should apply to those powers

All subordinate legislation powers, and the procedure applied to them, need to be described and justified in the Delegated Powers Memorandum which accompanies the Bill. Although procedure does not apply to them in the same way, the Memorandum must also comment upon any provision conferring

power on the Scottish Ministers to issue any directions, guidance or code of practice.

#### 9.8.1 The framework established by the Interpretation and Legislative Reform (Scotland) Act 2010 (ILRA)

Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 sets the legal framework for parliamentary scrutiny of subordinate legislation. In summary, it provides for subordinate legislation to be subject to one of three forms of scrutiny:

- The **affirmative procedure** requires formal approval of the draft instrument in plenary. Affirmative procedure instruments cannot come into force until the Parliament has approved the instrument.
- The **negative procedure** requires that legislation which has been made (signed) is subject to annulment by the Parliament for a period of 40 days after laying. The provision takes effect on the coming into force date specified in the instrument, unless the Parliament passes a motion to annul the instrument.
- **Laid, no procedure**, under which the instrument is laid but does not require approval and cannot be annulled.

Provision is also made in the 2010 Act about the laying of, and failures to lay, instruments in accordance with the terms of the Act.

Whilst it remains open for Bills to propose other types of scrutiny procedure, these three core procedures provided for in the 2010 Act are adopted in the vast majority of cases.

#### 9.8.2 Issues to take into account in framing delegated powers

One of the principal issues that should have a bearing on whether delegated powers are taken is frequency of amendment. Delegated powers may be more appropriate than provision on the face of the Bill where the provisions are subject to frequent amendment and the use of primary legislation to make those amendments is disproportionate. Examples of this include lists of bodies, fees, qualifications, etc. However, the importance of the matter is also a key concern, as where something is significant then it may be appropriate for it to be set out on the face of the Bill even if a power also needs to be taken to amend that provision by regulations.

Affirmative procedure is the more stringent in terms of process, timing and parliamentary control. The degree of control should reflect the policy importance of the provision. Although other factors can also come into play (and SGLD and PCO will be able to advise you when that is the case).

As subordinate legislation cannot normally be amended by the Parliament (it can only be approved or rejected as a whole), the Parliament will be unable to change the detail in the way that it would if the material were contained, say, in a schedule to the Bill.

The Scottish Parliament is reluctant to delegate powers for use later by a Minister unless there are strong arguments of practicability in favour of delegation. The Minister responsible for the Bill must be prepared to justify their request that powers be given to them under a Bill and to explain how they will use the powers. Subordinate legislation powers should therefore not be used to avoid policy development on the basis that it will be worked out later and after the Bill has been passed.

In cases where a Bill unavoidably contains a wide range of delegated powers, which might result in it being described as a “framework” Bill, Bill teams can anticipate that the DPLRC will take a keen interest in why the Bill has been structured in that way and how the powers will be used. It is recommended that Bill teams consider whether proactive engagement with the DPLRC to set out the rationale for that approach would be beneficial. A recent example of a framework Bill where that proactive engagement was undertaken is the Social Security (Scotland) Act 2018.

### 9.8.3 Super-Affirmative Procedure

The Parliament may propose that a “super-affirmative” procedure be applied to a delegated power in the Bill. Essentially, this is a procedure that involves ‘bolt-on’ measures in addition to what is normally required by the affirmative procedure (e.g. a mandatory period of consultation on a draft SSI).

The Government’s position is that in the vast majority of cases, the framework established by ILRA should be sufficient and that affirmative procedure will be appropriate for any significant delegated powers. If you are contemplating the creation of a super-affirmative procedure you should contact PLU to discuss your approach further so that the justification for the approach and its wider legislative implications can be considered.

### 9.8.5 Further information on subordinate legislation

PLU maintains guidance on the operation of subordinate legislation procedure in the Scottish Parliament and this can be obtained [here](#).

## **9.9 Crown Application**

Government policy is that the Crown should in general be subject to regulatory requirements and enforcement arrangements on the same basis as others, except where there is a legitimate reason for exemption, for example on grounds of national security.

Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”) provided a new default provision for Scottish legislation whereby the Crown will now be bound by the terms of an Act of the Scottish Parliament or SSI, unless the provision expressly exempts it. This section also abolished the common law rule that the Crown could be bound by the terms of an Act of the Scottish Parliament or SSI by necessary implication. The position as to which Westminster Acts (and instruments made under them) bind the Crown remains unaffected by the provisions in section 20.

Enforcement action in the courts should, however, be confined to seeking a declarator of non-compliance and should stop short of exposing the Crown to criminal prosecution.

Section 40 of the Scotland Act 1998 makes provision that, in proceedings against the Parliament, courts may only make declarators and may not make orders for suspension, interdict etc. However, the effect of this section may be modified by an Act of the Scottish Parliament. Care should therefore be taken in considering the application of any Bill to the Parliament itself, or to the Scottish Parliamentary Corporate Body.

As a result of the effect of section 20(1) of ILRA, policy colleagues should decide whether or not a given Act of the Scottish Parliament should in fact apply to the Crown. As part of the bill process, SGLD may therefore be required to advise policy on the matter of Crown application. This may be challenging as questions of Crown application might seem arcane to non-lawyers, despite their practical (and constitutional) importance. Even so, SGLD should be clear that it is for policy to decide whether to recommend that Ministers should dis-apply any part of a bill to the Crown.

The decision on Crown application will need to be made before introduction, and oftentimes the default position applies at that time. That decision may require to be revisited during the passage of a bill however, particularly if Crown consent is required.

### **9.10 Crown consent**

Rule 9.11 of the Standing Orders, which reflects the requirements of paragraph 7 of Schedule 3 to the Scotland Act 1998, states that:

“Where a Bill contains provisions, or is amended so as to include provisions, which would, if the Bill were a Bill for an Act of the United Kingdom Parliament, require the consent of Her Majesty, the Prince and Steward of Scotland or the Duke of Cornwall, the Parliament shall not debate any question whether the Bill is passed or approved unless such consent to those provisions has been signified by a member of the Scottish Government during proceedings on the Bill at a meeting of the Parliament.”

This means that the UK Parliament rules on Crown consent effectively apply to Bills of the Scottish Parliament.

#### **9.10.1 Establishing the need for Crown consent**

The question of whether or not Crown consent is necessary is one which SGLD must consider in conjunction with PCO prior to the Bill being introduced and as early as reasonably possible in the Bill process. The ultimate determination on whether Crown consent applies is made by the Presiding Officer.

The consent of the Queen must be obtained where a Bill affects, directly or by implication, the prerogative, hereditary revenues or the personal property or interests of the Crown. It is not required for provisions affecting the Queen's servants (e.g. Ministers of the Crown or the Armed Forces) or property belonging to them as Her servants (e.g. the land or property of a Government Department, or of the Scottish Administration).

A provision of a Bill affects the prerogative if, for example, it alters the terms of appointments or abolishes offices or bodies corporate which come within the prerogative. The hereditary revenues of the Crown are the revenues and lands held by the Queen in right of the Crown, e.g. *ultimus haeres*, treasure trove and *bona vacantia*. The Queen's private estates, e.g. Balmoral, are the main examples of the Queen's personal property and early attention is particularly required if the Queen's private estates are to be affected. The instructions for a Bill should contain a clear statement as to whether or not any of the aforementioned rights or interests of the Crown are to be affected.

#### 9.10.2 Process for obtaining Crown consent

Ideally, the question should be given initial consideration at consultation stage and, if it is thought possible that Crown Consent will be required, a copy of the consultation paper should be sent to the Private Secretary to The Queen and/or the Private Secretary to The Prince of Wales, as appropriate.

Where it is anticipated that Crown consent will be required, SGLD will engage with the Queen's Solicitor in Scotland to discuss the implications of the relevant provision. Further information on the process and examples can be found the SGLD Billskill note on Crown application and Crown consent

The Scottish Government would also normally be expected to seek consent, on the request of the Member in charge, where a Member's Bill required consent, and on the request of the committee convener where a Committee Bill required consent. Chapter 16 provides information on Non-Government Bills and detailed advice on handling in relation to Members' Bills in the PLU Member's Bill Guidance Note.

The formal request for Crown consent takes the form of a letter prepared by policy colleagues in a Bill Team. The First Minister's Principal Private Secretary writes to Her Majesty's Private Secretary enclosing 3 copies of the Bill and asking him or her to ascertain whether the provisions in the Bill which affect the Crown are acceptable to Her Majesty. (In exceptional circumstances, the letter can be sent by a senior official dealing with the Bill, provided that it explains the need to depart from normal practice).

The appropriate timing for this will vary depending upon why the need for Crown consent arises, and you should discuss this with PCO. Consent is occasionally sought in advance of the Bill's introduction where it is fundamental to the purpose of the Bill or where the point in question is unlikely to change, but it is more usual to obtain consent in advance of Stage 3, so that amendments made at Stage 2 can be taken into account without consent needing to be sought twice. However, regardless of when consent is to be

signified, the matter should be raised in plenty of time. The Palace has stressed the need to allow time for comments, particularly where the Crown is involved in its personal as distinct from its official capacity. Her Majesty should always be given 14 days to respond to a request for consent.

Where the Queen's interest is affected, the letter to Her Majesty's Private Secretary should:

- begin with a sentence stating that the writer has been asked by the First Minister to approach the Private Secretary with a view to obtaining Her Majesty's consent to the application of provisions of the Bill to Her Majesty's private estates or hereditary revenues, or whatever the case may be
- include a brief summary of the contents of the Bill, explaining why it is thought Her Majesty's prerogative or interests are affected and, where appropriate, make reference to the particular sections affecting Her Majesty's interest

The Queen's Private Secretary will arrange for copies to be sent to other Royal Private Secretaries. A copy of the letter, along with the draft Bill, should be sent to the Queen's Solicitor in Scotland and, where appropriate, to the Chief Executive of Crown Estate Scotland. If the draft Bill is not yet finalised at this point, the latest version should be sent in the interim and the final draft sent as soon as available. If, after consent has been obtained, the contents of the Bill affecting the rights of the Crown are altered materially, further consent may have to be sought.

The specific consent of the Prince of Wales, as Prince and Steward of Scotland, or as Duke of Cornwall, must also be obtained where a Bill affects his interest. The need to obtain his consent arises very infrequently. The same considerations apply as in relation to The Queen's consent: the letter asking whether the relevant provisions are acceptable to The Prince of Wales is sent by the First Minister's Private Secretary to the Private Secretary to The Prince of Wales.

The Bill Team will receive, through the First Minister's Private Office, a copy of the reply from the Palace (an example can be found [here](#)).

#### 9.10.3 Signifying Crown consent during the parliamentary passage of the Bill

Once obtained, Crown consent requires to be signified by the Minister in charge (i.e. Cabinet Secretary) of the Bill, during proceedings on the Bill at a meeting of the Parliament, either at Stage 1 or Stage 3 proceedings (i.e. at a stage when the Bill is being considered by the whole Parliament). This is done at Stage 1 only when the matter is central to the Bill in question. Otherwise, Stage 3 would be the appropriate time.

Where the need for Crown Consent arises during the passage of a Bill, as a result of an amendment, consent will have to be signified at Stage 3. The Cabinet Secretary must signify Crown consent at the beginning of the Stage 3 debate to comply with Standing Order Rule 9.11. In these circumstances it is expected that the Cabinet Secretary would signify Crown consent during the

opening speech. However, should it be necessary for a Minister to open the debate, the Bill team should contact the Private Secretary/MfPB to make arrangements with the Parliament so that the Presiding Officer will invite the Cabinet Secretary to deal with Crown consent before the Stage 3 debate is opened. See, for example, the beginning of the Stage 3 debate on the Tobacco and Primary Medical Services (Scotland) Bill.

#### 9.10.4 Form of signification of Crown consent

The form of signification of Crown consent is as follows:

##### **Queen's consent only:**

“For the purposes of Rule 9.11 of the Standing Orders, I wish to advise the Parliament that Her Majesty, having been informed of the purport of the [ ] Bill, has consented to place Her Prerogative and interests, so far as they are affected by the Bill, at the disposal of the Parliament for the purposes of the Bill.”

##### **Queen's and Prince's consent:**

“For the purposes of Rule 9.11 of the Standing Orders, I wish to advise the Parliament that Her Majesty and The Prince of Wales, as Prince and Steward of Scotland, have been informed of the purport of the [ ] Bill. Her Majesty has consented to place Her Prerogative and both Her Majesty and The Prince of Wales have consented to place their interests, so far as they are affected by the Bill, at the disposal of the Parliament for the purposes of the Bill.”

It is unlikely that circumstances will arise where only Prince's consent will be required. Bill teams should also note that a reference to the Duke of Cornwall may have to be inserted in the above alternative letter, either in place of or in addition to the Prince and Steward of Scotland if Duchy of Cornwall interests are being affected.

#### **9.11 Scotland Act Orders**

In certain circumstances it may prove necessary to make orders under powers in the Scotland Act 1998 (as amended) to enable or complete the legislative frameworks anticipated in Scottish Bills. Such orders are commonly referred to as 'Scotland Act Orders' (SAOs).

It may be the case that Ministers' ambitions cannot be delivered within current legislative competence. If that is the case it is open to the Scottish Government to pursue with the UK Government the making of an order under **section 30** of the Scotland Act to alter the extent of devolved competence.

The most commonly associated SAO arising in connection with Scottish Bills are **section 104 Orders**. Such orders enables Her Majesty or a Minister of the Crown, subject to proceedings at Westminster only, to make provision which is considered necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament or by various classes of subordinate legislation. However, in practice, a section 104 Order has only ever been made by a Minister of the Crown.

To be effective, an ASP may require consequential provision to be made to the law relating to reserved matters or the law elsewhere in the UK, such as, for example, to make cross-border provisions for prisoners.

It may also be necessary to provide for the enforcement of provisions of an ASP in the rest of the UK where this may be necessary or desirable to maintain a coherent scheme of enforcement throughout the UK. An example might be legislation making the conditions of Scottish fishing licenses enforceable as a matter of English law.

The other frequently used SAO is a **section 126(8)(b)**. These, known as the Scottish Administration (Offices) Orders, can be used when a Bill creates a new public office and the policy is for the office-holder to have civil service status (the civil service is a reserved matter).

#### 9.11.1 Types of Scotland Act Order

Your **SGLD** contact can guide you as to whether any of the different types of SAOs might be relevant to the Bill and, should a SAO be required, you should liaise with PLU as early as possible on timetabling and handling.

#### 9.11.2 Process for obtaining a Scotland Act Order

It is important to bear in mind that, with the exception of Orders made under s15 of the Act, SAOs are UK Government Orders, laid before the Westminster Parliament (and sometimes also the Scottish Parliament). Therefore they may only proceed to the extent the desired policy is acceptable to UK Ministers. SAOs are programme managed jointly by the Office of the Secretary of State for Scotland (OSSS) and by PLU. **The possible need for SAOs should be explored with SGLD and PLU as early as possible in the development of the Bill project** and throughout the journey of the SAO, which can take at least 12 months from initial agreement of the policy with UK Government to fruition.

Where SAOs have been requested - or are likely to be requested - this should be referenced in the Policy Memorandum for the Bill. Where SAOs deliver an important aspect of Bill policy it may be helpful to obtain UK Ministers' "agreement in principle" to the Scotland Act Order ahead of the Stage 1 debate, failing which, in time for the Stage 3 debate. Bill teams should engage with Office of the Secretary of State for Scotland (OSSS) once a Bill is introduced for thoughts on potential reserved/cross-border matters.

Notwithstanding that UK Government officials formally lead on the making, laying and parliamentary passage of SAOs at Westminster, SG policy officials are required to complete a policy summary, draw up detailed policy instructions and thereafter advise Whitehall counterparts on Bill policy, including reviewing relevant submissions and Explanatory Memoranda. PLU and SGLD will work closely with policy leads on delivery of their desired Order, particularly where SGLD lead on its drafting. Officials working on Scotland Act Orders may find it helpful to save PLU's [overview of guidance, templates and examples](#) for use throughout the process.



## 10. INSTRUCTING THE BILL

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### Summary

One of the key tasks in the Bill process is to instruct the content of the Bill. The point at which this task starts will depend on a number of factors, the core factor being the extent to which policy aims or policy direction have been determined or are capable of being influenced by consultation or stakeholder engagement. Bill Teams should discuss with their SGLD and PCO contacts the optimal time for the drafting of policy instructions and ensure this is reflected in the Bill timetable.

**Key issues** for Bill Teams to focus on are:

- Understanding the different roles played by the Bill Team, SGLD, and PCO in the drafting of a Bill
- Understanding what issues policy instructions need to cover
- Developing an agreed way of working with SGLD and PCO on the development of policy instructions
- Understanding the iterative process of instructions and drafting
- Becoming familiar with the key structural aspects of Bills and the wider policy frameworks within which the Bill may require to operate

### 10.1 Policy Instructions

Policy instructions are the beginning of the drafting process. Policy instructions are developed by the Bill Team and provide SGLD with the information they need to develop legal instructions for the drafting of the Bill by PCO.

#### 10.1.1 What policy instructions should contain

Subject to what you agree with your SGLD contact, the instructions should normally set out:

- background to the proposals, what it is that they are intended to achieve and whether there are any existing precedents for the preferred approach - what is the problem or issue, what will the policy do in order to change this problem or issue, why legislation is necessary to do that and whether it has been done in this way before
- as much policy background detail as possible - it is important not to assume that your SGLD contact will have prior knowledge of your policy area
- analyses being done on impact assessments and other policy-proofing work - impact assessments can help evidence the proportionality of policy propositions and proofing the Bill against future legal challenge, for example challenges on the basis there has been insufficient consideration of equality or data protection impacts

- identification of need for repeal or amendment of existing legislation - Bill teams will often be able to help SGLD and PCO by identifying repeals and amendments that are necessary in consequence of their Bill. Bill teams may find [legislation.gov.uk](https://legislation.gov.uk) useful in doing this, as references to particular bodies etc. which may occur throughout the statute book can be searched for and identified

### 10.1.2 Agreeing an approach with SGLD

Policy instructions vary in their length and complexity depending upon the particular policy proposals. In some cases, SGLD may be able to instruct PCO without the need for very much in the way of specific policy instructions. This may be the case for matters of court processes or consequential amendments to existing legislation where SGLD holds expertise for the organisation. In other cases, SGLD may require a considerable amount of detail to be thought about and set out before being able to take the process forward - for example, where your policy involves technical or scientific detail and your business area holds the organisational expertise.

For that reason, it is essential to have an early discussion with your SGLD contact about their preferred way of working, and their preferred format for receiving instructions.

The process of instructing and developing the policy of a Bill rarely ends with the sending of the policy instructions to the solicitor - these often turn out to be just the first draft of the policy instructions. Indeed, you may wish to send them to your solicitor in draft in the first instance.

You should expect your SGLD contact to raise further questions to inform or clarify their consideration of the policy requirements. This is an inherent and necessary aspect of the instruction process, the scope of which will be largely dictated by the policy environment. 'Unpacking' potential issues or problems at this stage is central to proofing the effectiveness and development of the legal framework intended to be delivered via your Bill. These exchanges can also help to identify and in turn prepare for issues or arguments that could arise during the scrutiny of the Bill during its parliamentary passage.

You and your SGLD contact/s may consider it appropriate to also hold face to face meetings to assist the development of policy instructions. This enables a more organic and discursive approach which can:

- minimise the need for written exchanges
- offer more focussed and direct consideration of key or complex policy issues
- address any misunderstandings at source
- accelerate the instruction process
- help to develop communication, relationships and identity within the Bill Team

### 10.1.3 Examples of policy instructions

Bill teams should ask their SGLD contact for examples of previous policy instructions which they consider to be examples of good practice. Some previous instructions can be found [here](#).

### **10.2 Legal Instructions**

It is for SGLD to instruct PCO to draft the Bill in accordance with the Bill Team's policy instructions. Except in the case of very short Bills, the drafting instructions are usually divided into parts dealing with a particular policy proposal or part of it (e.g. the scope of an intended licensing scheme; the establishment and status of office-holders; an enforcement regime). Each part of the drafting instructions describes briefly the policy proposal, the background and existing law, and then contains a detailed description of what is proposed for the content of the Bill. This should reflect the discussions which the Bill team have had with their SGLD contact on the detailed development of the policy and, ordinarily, Bill Teams should get the opportunity to comment on the legal instructions.

The legal instructions will also contain any proposals for consequential amendments (i.e. where another piece of legislation will need to be amended as a consequence of your Bill), any repeals of earlier legislation, any transitional or savings provisions, and what is proposed for commencement of the Bill's provisions. Under no circumstances should legal advice be shared outwith the Scottish Government. Read more about the rules on providing legal advice to Green ministers [here](#).

PCO have published guidance on instructing counsel in certain commonly occurring types of legislation. This can be viewed [here](#).

### **10.3 Drafting the Bill**

#### 10.3.1 The iterative drafting process

The initial legal drafting instructions from SGLD to PCO are only the starting point in drafting a Bill. On the basis of the instructions from SGLD, PCO produces a first draft, which may be of a complete Bill or of particular provisions.

PCO's drafts are sent to SGLD, usually with a commentary on the drafts and questions on specific points of principle or detail, known as an "A minute". These minutes will be numbered sequentially so that each item of correspondence can be clearly identified.

The drafts are subjected to critical line-by-line examination by the Bill team and other officials, with that process coordinated by the Bill team. SGLD will also analyse and discuss comments with the Bill team and prepare further instructions for PCO on the basis of that. These comments are then relayed to PCO by SGLD, in a response known as a "B minute" – also sequentially numbered. PCO prepares revised drafts, which are discussed and further revised as necessary until an agreed draft Bill is achieved. Again, it is the

responsibility of the Bill team with assistance from SGLD to be satisfied that the draft achieves the policy. PCO will normally provide fresh prints of draft provisions at each round. Once drafting changes have been agreed, a new print of the provisions, or a draft Bill, can usually be produced quickly.

#### 10.3.2 “j numbers”

During the iterative drafting of a Bill, PCO will give each section and schedule a unique “j number”, which will remain with it until the Bill is in its final form for introduction – it is usually easier to refer to sections by their “j number” as the section number may change from print to print as material is added, deleted or reorganised.

#### 10.3.3 The importance of hitting milestones in the instruction process

It is important that Bill teams have a clear understanding of the time required to draft a Bill. If the delivery of policy instructions to SGLD or legal instructions to PCO is delayed, it is difficult for that lost time to be made up. Given the importance which is attached to all Bills being introduced to their timetable this can put significant pressure on SGLD and PCO workload. Bill teams should therefore attach high priority to the instructions process and flag any potential problems to SGLD and PCO at an early point.

As in the context of the preparation of policy instructions, it may prove helpful to hold meetings with SGLD and PCO during the drafting phase. This could assist consideration of complex issues and/or help to identify any difficulties in meeting the agreed timescales for progressing the Bill and necessary remedial activity.

#### 10.3.4 Sharing draft provisions or Bills

For pre-introduction prints, PCO provides a draft which can be shared with internal stakeholders by the Bill team as required. Where there is a desire to share draft provisions or Bills with external stakeholders, this must be cleared with PLU, PCO and SGLD and then the lead Minister.

### **10.4 Structural aspects of Bills**

#### 10.4.1 Form of Bills

A Bill may not be introduced unless it is in proper form. The Presiding Officer determines the “proper form” of Bills. PCO is responsible for ensuring that a Bill is in proper form. Further information can be found in the [Parliament’s Bill Guidance](#).

#### 10.4.2 The Long and Short Titles of a Bill

Every Bill has a long title and a short title.

The long title is set out at the beginning of the Bill and begins “An Act of the Scottish Parliament to...”. It is a summary of what the Bill does. The long title tends to be drafted by PCO once the content of the Bill becomes clearer. The long title can be amended during the Bill’s parliamentary passage to reflect new material added to the Bill by amendment.

The short title is set out at the top of the Bill and in the running header. It is also provided for in the text of the Bill itself, usually in the final section of the Bill. The short title provision is usually in the form “The short title of this Act is the Example (Scotland) Act 2020”. (The year is that in which Royal Assent is expected to be given.) The short title can also be amended during the Bill’s parliamentary passage.

The Presiding Officer’s recommendations on the content of Bills indicate that the text of a Bill, including the short title, should be in “neutral terms and should not contain material intended to promote or justify the policy behind the Bill”. Titles such as “Improvements in Health Bill” or “Better Farming Bill” are unlikely to be accepted by the parliamentary authorities.

Similarly, to assist users of the legislation, the short title of a Bill should include “(Scotland)” unless the link with Scotland is already clear (e.g. the Scottish Elections (Franchise and Representation) Bill). This helps users to identify that the legislation is an Act of the Scottish Parliament, rather than of the UK Parliament, and should avoid the possibility of having two Acts with identical titles if, say, both Parliaments were to pass Education Acts in the same year.

A Bill often acquires a working title in the early stages of policy development. Where there is a strong desire for a particular form of words to be used it is important to alert PCO so that they can advise on whether the proposed title will reflect the content of the Bill and conform to the requirements of neutrality. PCO may suggest alternatives if necessary.

Both the short and long titles are discussed in the letter which PCO sends to the Parliament with the draft Bill 3 weeks before introduction. This gives the Parliament the opportunity to comment, in particular on whether the titles are consistent with the determination on proper form and the recommendations on the content of Bills.

#### 10.4.3 The Scope of a Bill

The Standing Orders provide that an amendment to a Bill is not admissible if it is not relevant to the Bill or the provisions of the Bill which it would amend. The effect of this rule on admissibility of amendments is reflected in the concept of the “scope” of a Bill.

The “scope” of a Bill is what the Bill is about and helps determine whether any amendment is relevant to it. The scope of a Bill is determined by its content when it is introduced. The long title must reflect that content, and so is a guide to the Bill’s scope, but does not determine it. So an amendment to the Bill at Stage 2 or 3 may be within the scope of the Bill (i.e. relevant to the Bill) but out with the long title, necessitating an amendment to the long title.

Scope is one of the matters which PCO discusses with the parliamentary authorities before the Bill is introduced, so it is important that PCO is aware of any further matters which the Government proposes to add to the Bill by way of amendments, or any desire to have a narrowly focused Bill. Either situation

could affect the drafting of the provisions of the Bill as well as the long title. Determining a Bill's scope and its effect on amendments is a difficult matter and PCO will be happy to offer advice in relation to your Bill if scope is a sensitive handling issue, as it sometimes can be.

As a rule of thumb, it is unlikely to be possible to add an additional topic or purpose to a one-purpose bill or to a two-purpose Bill by amendment during the parliamentary passage of a Bill; but it may be possible within the rules on relevance to add a purpose to a Bill which has three or more purposes.

Generally speaking, each 'limb' of the long title describes a distinct topic or purpose. In practice, most Bills which contain several topics or purposes have a common theme, e.g. education, transport, in which case amendments may be permitted only if they fall within the theme of the Bill.

## 11. ACCOMPANYING DOCUMENTS

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### Summary

Rule 9.3 of the Standing Orders requires that a number of documents must be submitted with the Bill on introduction. These are collectively termed “Accompanying Documents” and Bill teams should ensure they are familiar with the requirements for preparing them.

**Key documents** for Bill Teams to focus on:

- Policy Memorandum
- Explanatory Notes
- Financial Memorandum
- Delegated Powers Memorandum, and
- Auditor General’s Report (in rare cases)

### 11.1 Templates for accompanying documentation

Templates for the accompanying documents have been prepared by the Parliament for use by Bill Teams and they are available, in MS Word, under *File – New – Shared – Acc docs*. It is important that these templates are used and that the guidance they contain is followed. If the clerks in the Parliament’s Legislation Team have to reformat material, this may result in a delay to the introduction of the Bill.

It is best practice to save the documents regularly and to have a system for version control as the templates are developed, particularly because the documents are subject to revision at various points by a number of different people.

### 11.2 Policy Memorandum

**Rule 9.3.3** of the Standing Orders requires that each Government Bill on introduction is accompanied by a “Policy Memorandum” which sets out:

- (a) the policy objectives of the Bill
- (b) whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the Bill was adopted
- (c) the consultation, if any, which was undertaken on those objectives and the ways of meeting them (or on the detail of the Bill where the consultation contained a draft Bill), along with a summary of the outcome of that consultation, and
- (d) an assessment of the effects, if any, of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and any other matter which the Scottish Ministers consider relevant

Bill Teams should ensure that due attention is given to the sections, obtaining input from the relevant policy owners within the Scottish Government.

Consistent feedback from the parliamentary clerks is that these sections often lack the level of detail which parliamentarians seek.

### 11.3 Explanatory Notes

**Rule 9.3.2A** of the Standing Orders requires that each Government Bill on Introduction is accompanied by Explanatory Notes which:

“summarise objectively what each of the provisions of the Bill does and give other information necessary or expedient to explain the effect of the Bill”.

The format of such notes varies depending on the size of the Bill, but normally includes section by section analysis.

The Explanatory Notes should be drafted by the Bill Team and cleared by SGLD. PCO should also be given an opportunity to comment on the draft Notes after they have been cleared by SGLD. In some cases, PCO may undertake the drafting of the Explanatory Notes as part of an ongoing pilot exercise and, if this is the case, it will be agreed at the start of the Bill process.

### 11.4 Financial Memorandum

**Rule 9.3.2** of the Standing Orders requires that:

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates. The Financial Memorandum must distinguish separately such costs as would fall upon—

- (a) the Scottish Administration;
- (b) local authorities; and
- (c) other bodies, individuals and businesses.”

It is essential that the preparation of the Financial Memorandum begins at a very early stage in the Bill process. Financial Memoranda are required so that the Parliament can have the best possible information about the costs and/or savings arising from proposed legislation. Estimates of costs and savings are therefore required regardless of budgetary considerations such as costs being absorbed within existing budgets. Estimates should be comprehensive and the level of detail should be sufficient to enable the Parliament to come to a view on their robustness. Costings should be provided on both a gross and a net basis. Details of any anticipated savings on existing costs and any related income should be provided. Bill Teams working on tax, employability or social security Bills should contact the Scottish Fiscal Commission (SFC), at

[info@fiscalcommission.scot](mailto:info@fiscalcommission.scot) to discuss their Financial Memoranda at the Bill planning stage. Almost all costings of tax receipts and social security expenditure into and out of the Scottish Consolidated Fund, affected by Bill policy proposals, should be carried out by the SFC. Non-public information on policy can be shared with the SFC to inform discussions on the Financial Memoranda.

Detailed guidance on the preparation and clearance of Financial Memoranda is included in [Scottish Public Finance Manual - Guidance Note 2009/01](#). The Bill Team is responsible for preparing the Memorandum in accordance with this guidance and for clearing it with the portfolio Finance Team before the draft Bill and accompanying documents are submitted to Ministers for approval. The Financial Memorandum is also subject to special separate clearance by the Cabinet Secretary with responsibility for finance.

You can find an example of building up costs at this [link](#).

### 11.5 Delegated Powers Memorandum

A change to the Standing Order was made to the Delegated Powers Memorandum and Emergency Bills ([Motion S5M-24391](#), SP Paper 987). From the 12 May 2021 the Delegated Powers Memorandum has the same status as the other accompanying documents required on the introduction of a public or hybrid bill. As delegated powers can be used to make significant provision, the SPPA Committee considered that it was important that they are fully scrutinised. The provision of a delegated powers memorandum as an accompanying document will enable that scrutiny from the point at which the bill is introduced, as well as ensuring that the delegated powers memorandum has the same status as other accompanying documents.

**“Rule 9.4A** Memorandum on delegated powers has been deleted.

The memorandum enables the Government to justify the need for taking powers and to explain its reasoning for the choice of parliamentary procedure.

The form of the memorandum will vary to an extent depending on the nature of the Bill and the scope of the delegated powers conferred by it. But the memorandum must, in relation to each power, cover each of the matters set out in Rule 9.3 paragraphs 3B (a) to (c) of Rule 9.4A.1 (as set out above). It is suggested that a separate entry should be used for each power and cover each of those matters. The standard approach is for the following analysis to be set out for each delegated power in the Bill:

- Who the power is conferred on
- How the power is to be exercised (e.g. guidance, direction, regulations etc.)
- Which parliamentary procedure will it be subject to
- An analysis of what the provision does

- A description of the reasons for taking the power
- A description of the reasons for the choice of parliamentary procedure

The Scottish Government has agreed that subordinate legislation which amends primary legislation should normally be subject to affirmative procedure. However, there may be occasions where this would be unnecessarily burdensome or restrictive and so a less onerous procedure may be justified. The Government has agreed that, in such circumstances, it will provide an explanation for the choice of procedure in the memorandum.

#### 11.5.1 Provision of drafts of regulations to be made under powers in the Bill

If your Bill contains significant or controversial regulation-making powers the DPLRC may request that draft regulations be prepared during the Bill's parliamentary passage. This type of request is becoming increasingly rare, but Bill teams should bear it in mind when planning for the parliamentary passage of their Bill.

#### 11.5.2 Timing of lodging the Delegated Powers Memorandum

The Scottish Government undertakes to provide the Scottish Parliament's Legislation Team with the Delegated Powers Memorandum at least 1 week before the Bill's introduction date (and so the Memorandum does not have to be submitted for the 3-week pre-introductory period). The Parliament's Legislation Team will scrutinise the Memorandum to ensure it conforms to the provisions of rule 9.4A. The Memorandum will be published and submitted to the DPLRC on the day of introduction.

The Memorandum is prepared by the Bill Team and needs to be cleared with SGLD, PCO and the lead Minister. Bill Teams should ensure they build into their timetable sufficient time for this. PCO will arrange for the Memorandum to be sent to the Scottish Parliament. PCO also provide the final version of the Memorandum to the DPLRC Clerk.

### **11.6 Auditor General's Report**

An Auditor General's report is required only where a Bill charges expenditure on the Scottish Consolidated Fund (as opposed to providing for expenditure to be payable out of the SCF). Such expenditure charged on the SCF is not subject to the annual Budget Act approval by the Parliament. If the Bill puts a charge on the Scottish Consolidated Fund (SCF), thereby bypassing Parliamentary approval for expenditure, it must be accompanied on introduction by a report from the Auditor General for Scotland.

Charges on the Fund are very unusual and proposals to establish one should be treated with extreme caution. Any proposal to include such a charge must be discussed with your Finance Business Partner as early as possible. A charge requires money to be taken from the Fund without prior approval of the Parliament in a Budget Act or similar legislation. (An example would be the payment of judges' salaries). Thus, by agreeing to a charge, the Parliament would be relinquishing its right to approve expenditure, which would have to be "top sliced" from the Scottish Government's Budget. There is no "charge" if

a Bill is to be funded from the SCF, but actual payment requires the authority of a Budget Act.

In the rare cases where there is to be a charge on the Fund, the Bill Team should liaise with Finance to approach the Auditor General at the earliest possible opportunity. The Auditor General's report should be sent direct to the Parliament and it is up to the Bill Team to ensure that it will be available in time.

### **11.7 Supplementary or revised Memoranda**

A revised or supplementary Explanatory Notes, Financial Memorandum and Delegated Powers Memorandum will need to be produced if a Bill is amended in a relevant way at Stage 2. Further information can be found in chapter 13. The Explanatory Notes are again amended after Royal Assent, for final publication as the Explanatory Notes to the Act (further information can be found in Chapter 14).

## 12. PREPARING FOR INTRODUCTION

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### Summary

The lead up to introduction of a Bill is a particularly busy time when a range of tasks need to be completed and clearances obtained. Bill Teams should ensure that they have a clear understanding of the tasks that require to be addressed, and that they provide early warning to those people who might be asked to clear material at short notice.

**Key issues** for Bill Teams to keep under review:

- Understanding the purpose and format of Bill Management Meetings
- Identifying all of the documentation which needs to be completed, and understanding when it will need to be published
- Securing approvals for introduction of the Bill

### 12.1 Bill Management Meetings

In the lead up to introduction, each Bill goes through an Officials Bill Management Meeting and a Ministerial Bill Management Meeting to test the readiness of the Bill for introduction and to consider what issues might arise during its parliamentary passage. Further information on the Bill Management Meeting process is set out in chapter 4.

### 12.2 Engaging with lead committee clerks

The role of the lead committee clerks is discussed in chapter 6. Bill teams should contact the clerk to the committee which is expected to lead on scrutiny of the Bill at Stage 1 in the period leading up to introduction of the Bill. This engagement usually starts around about the time of the Bill Management Meeting process, but may begin earlier if the clerks express a particular interest in the Bill and the potential impact that scrutiny of the Bill may have on the committee's work programme. Early engagement with clerks should focus on the rationale for the Bill and issues which the clerks may wish to consider ahead of the Bill's introduction. Any queries from clerks about the timetable for a Bill should be referred to PLU.

Bill Teams may also find it useful to have introductory meetings with the clerks to the Finance and Public Administration Committee, the Delegated Powers and Law Reform Committee and SPICe, and it is increasingly common for the Parliament to arrange introductory meetings at which all relevant interests will be in attendance.

PLU can provide further advice on engaging with committees before introduction as can the relevant [Committee Liaison Officer](#).

### 12.3 Ministerial approval of the Bill pack

Before a Bill can be introduced, it must go through a number of Ministerial approvals as described below. It is essential that Bill Teams factor in enough

time to secure these clearances, and you may wish to check clearance timetables with Private Offices. All Ministerial clearance submissions should be copied to PLU and MfPB.

#### 12.3.1 Lead Minister Approval of Bill pack

The lead Minister for a Bill must approve a near final version of the Bill pack before the Bill is submitted to the Presiding Officer for the 3-week pre-introduction checks. The Bill pack includes the Bill and its Accompanying Documents. Any outstanding issues which need to be addressed before the Bill's submission to the Presiding Officer should be highlighted. Clearance should also be sought on the basis that minor refinements are likely to be made prior to introduction (e.g. in response to comments received from the Parliament's officials during the 3-week period). The Delegated Powers Memo can be sent with other accompanying documents or cleared with the lead Minister before being sent to the Clerks 1 week before introduction.

The lead Minister must also approve the Impact Assessments associated with the Bill before introduction, but no later than 1 week ahead of introduction. These should be published on the relevant part of the Scottish Government's website the day after the Bill's introduction, and links provided to the clerk to the lead committee.

#### 12.3.2 Financial Memorandum approval by Cabinet Secretary for Finance

Before the Bill is submitted to the Presiding Officer, Bill Teams must seek formal approval of the Financial Memorandum from the Cabinet Secretary with responsibility for finance. Some Bill teams seek this approval in the same submission used to seek the lead Minister's approval of the Bill pack, but it can be sought separately.

#### 12.3.3 First Minister Approval of the Bill pack

After Bill Teams have gained approval from their lead Minister and the Cabinet Secretary with responsibility for finance, they must finally gain approval of the Bill Pack from the First Minister (a minimum of 5 working days) before the Bill and Accompanying Documents are submitted to the Presiding Officer. If final revisions are still being made to the Bill at this stage, these should be highlighted in the submission. The exception to this is Budget Bills which, unlike conventional Bills, include content which is standard from year to year. Although FM sign-off is not required for Budget Bills, the FM should be sighted each year [on details included in a suitably focussed submission].

### **12.4 Significant policy change after final Cabinet approval**

As set out in chapter 2, if the final draft of a Bill is significantly different from the policy parameters previously agreed by Cabinet, policy approval may have to be sought again. If this is the case, Bill Teams should notify PLU to discuss whether further approval is required, and whether further approval should be secured from Cabinet or CSCL.

## **12.5 Submission to the Presiding Officer (3-week pre-introduction scrutiny)**

Section 31(2) of the Scotland Act 1998, and Standing Order Rule 9.3.1, requires the Presiding Officer, on or before the introduction of a Bill, to decide whether or not in his or her view the provisions of the Bill would be within the legislative competence of the Parliament.

Formal arrangements, as set out in a memorandum of understanding between the Government and the Parliament, have been made with the Parliament for the draft Bill and accompanying documents to be submitted in confidence by PCO to the Head of Chamber Office 3 weeks ahead of the intended introduction date. PCO aim to alert the Parliament's Directorate of Legal Services around 2 weeks ahead of the 3-week period of the impending submission of the Bill.

Where the 3 week period falls wholly or partially in recess, or includes days when the Office of the Clerk to the Parliament is closed, the default position is that the pre-introduction period will be extended accordingly.

Along with the draft Bill, PCO will send to the Parliament, in confidence –

- a note by PCO on the scope of the Bill, financial matters, Crown consent, long and short titles and other matters concerning its parliamentary handling
- a note listing the provisions of the Bill which confer powers to make subordinate legislation
- the latest draft of the Explanatory Notes, Financial Memorandum and Policy Memorandum, and
- the SGLD note setting out the Government's views as to why it is thought that the Bill is within the legislative competence of the Parliament – this note is sent to assist the Solicitors in the Legal Services Office in giving advice to the Presiding Officer as to whether the Bill is within competence and will enable the Presiding Officer to reach a view which is informed by the Government's reasoning but which does not simply rely on it

There is very limited opportunity to make changes to the Bill or its accompanying documentation once it is submitted for the 3-week period.

In general:

- Ideally, no substantial changes to the text of the Bill should be made during the 3-week period ("substantial" meaning other than minor corrections of style, structure, punctuation etc)
- Normally, no amendments can be made after the point in the 3-week period at which PCO gives version control to the Parliament (apart from typographic changes and punctuation which the Parliament agrees to make), and
- If, exceptionally, the need for some vital amendment is identified in week 3, PCO will consult the Parliament as to whether making the

amendment would delay the Presiding Officer's statement beyond the proposed introduction date

The arrangements made with the Parliament note that the Government will respect the Parliament's exclusive right to publish Bills and accompanying documents. A draft Bill in the near final form in which it has been submitted for the 3-week pre-introduction consideration will not therefore be published or made publicly available by the Government other than in exceptional circumstances. Where such circumstances apply, PLU, SGLD and PCO should be given an opportunity to comment. In all cases, the advance approval of the Minister for Parliamentary Business must be obtained, and PLU, SGLD and PCO should be copied into drafts.

It is most likely that the clerks in Parliament's Legislation team will offer comments on whether they consider the accompanying documents meet the requirements of the Standing Orders. Where such comments are offered, Bill Teams should consider them, in conjunction with SGLD and PCO, with a view to reaching agreement with the parliamentary authorities.

Occasionally it may be that the documents are referred to in litigation, in the same way that the Official Report is under the *Pepper v Hart* rule (see chapter 13). The Policy Memorandum has also been relied upon by the courts to assist in ascertaining the intention behind the legislation (e.g. in the minimum unit pricing case the Supreme Court referred extensively to the policy memorandum; *Scotch Whisky Association and others (Appellants) v The Lord Advocate and another (Respondents)* 2017 UKSC 76); and to enable them to ensure that the legislation was construed within competence (e.g., *Flynn & Ors v HMA – Privy Council* 18 March 2004 in respect of the Convention Rights Compliance (Scotland) Act 2001). So it is important for those producing the accompanying documents to make sure that these documents do not mislead as to the purpose and effect of provisions, and not to include material which seems to take the law further than the Bill (or any Act being referred to) does.

## **12.6 Scottish Law Officer view on legislative competence**

Section 31(1) of the Scotland Act 1998 requires a member of the Scottish Government in charge of the Bill, on or before the introduction of the Bill, to give a statement that, in their view, the provisions of the Bill would be within the legislative competence of the Parliament.

Before such a statement is given, the Scottish Law Officers must be asked to confirm that the provisions of the Bill would be within the legislative competence of the Parliament.

This reference will be made to the Scottish Law Officers by the SGLD solicitor immediately after the Bill has been submitted to the parliamentary authorities for its 3-week pre-introduction checks. SGLD will usually request that the Law Officers be in a position to give their opinion at least one week before the proposed date of introduction of the Bill. Any significant amendments made to the Bill during that time will be drawn to their attention by SGLD. The usual

rule, as set out in the Scottish Ministerial Code that prevents the Government from divulging whether or not the Scottish Law Officers provided legal advice does not apply in relation to Bills introduced in the Parliament because it is acknowledged publicly that the Law Officers advise on the legislative competence of Government Bills.

It is, however, stressed that what is being sought from the Scottish Law Officers at this late stage is merely confirmation of the legal view previously taken that the Bill is within the legislative competence of the Parliament. If there is any question as to whether a provision in the Bill is within that competence, then the opinion of the Scottish Law Officers should have been sought at a much earlier stage during the preparation of the Bill. There is further guidance available for SGLD solicitors in a Billskill note re interaction with the Scottish Law Officers during the 3-week period.

### **12.7 Formal agreement to introduce from Minister for Parliamentary Business**

After the Bill has been submitted to the Presiding Officer, the formal agreement of the Minister for Parliamentary Business should be sought before the formal introduction of the Bill to the Parliament. This should start roughly 1 week before introduction.

To obtain this agreement, the lead Minister in charge of the Bill must send an 'Agreement to Introduce' minute to MfPB which should also be copied to the First Minister, Deputy First Minister, Lord Advocate and PLU. The minute should also be copied to any other Ministers with a portfolio interest in the Bill.

A template for drafting this minute can be found [here](#).

### **12.8 Signing of Bill by lead Minister**

Rule 9.2.4 requires that a Bill must, before introduction, be signed by the member introducing it. The rule also permits (but does not require) the Bill to be signed at this stage by any other member or members who support the Bill.

A Government Bill should normally be introduced by the member of the Scottish Government (i.e. Cabinet Secretary) with policy responsibility for the subject matter of the Bill. Accordingly, the Cabinet Secretary should sign as the member introducing the Bill. The junior Minister in the relevant portfolio may also sign as a supporter.

The junior Minister should normally also be designated as an "additional member in charge" under Rule 9.2A.1(b) – this is in case illness or emergency means that the Cabinet Secretary is unable to conduct parliamentary proceedings as it is only the member or additional member in charge who can lodge the Stage 1 and Stage 3 motions for a Bill.

The Bill should not be signed by the Cabinet Secretary until it is in final form. PCO obtain a signing copy from the clerks before notifying the Bill team when the Bill is in final form and providing a copy for signature. It is then for the Bill

team to get the Bill to the relevant Ministers for signature and to return it to PCO. The time available for signature, and availability of Ministers, may limit the number of signatures which can be collected – lack of a signature (other than that of the member in charge) should not delay introduction. The Bill team should arrange a signing slot with the relevant private office or offices well in advance.

Where there is a change of Cabinet Secretary, provided the Cabinet Secretary subsequently appointed assumes responsibility for the subject matter of the Bill, no further action is required. The new Cabinet Secretary is automatically the member in charge of the Bill. Where the junior Minister changes, it will be necessary to formally designate the new junior Minister as the additional member-in-charge. A simple minute of designation signed by the Cabinet Secretary can be prepared by PCO for submission to the Parliament.

### **12.9 Lodging Bill pack with Parliament for introduction**

The final versions of the accompanying documents are lodged by PCO with the Parliament.

### **12.10 Bill summary for Parliament website**

The [Parliament's website](#) has information about every Bill that is in Parliament. Each Bill has an overview page, which outlines the content and purpose of the Bill (see this example from the [Agriculture Bill](#)).

When a Bill is sent to Parliament, the Parliament's Legislation Team will draft the overview summary for the website and will send this directly to PLU. PLU will then follow up with the relevant Bill team to ask them to review (in conjunction with SGLD and PCO) and suggest any necessary changes within 3 days of receipt. PLU will then return to the Legislation Team with the Bill team's comments.

Parliament's Legislation Team have noted that the summaries have to be kept within the allowed word count and have to meet the accessibility requirements of the Parliament's website. Details on both these requirements will be provided by the Legislation Team when they send draft summaries for comment. Bill teams should ensure that any suggested changes meet the requirements set out by the Legislation Team.

### **12.11 Introduction and publication of Bill**

Introduction is effected by handing in the signed Bill and statement on legislative competence to the Parliament's Legislation Team. Rule 9.4 then requires the Clerk of the Parliament to arrange for the Bill and its accompanying documents to be printed and published after introduction. The documents all have parliamentary copyright. The published Bill and accompanying documents are usually publicly available on the Parliament's website about 8.30 am on the morning after introduction. Bill Teams may find it easier and quicker to download Bills etc. than to order hard copies. The terms of copyright waivers for this material should be checked.

### **12.12 Media Handling**

Bill teams should work with Comms in the lead up to a Bill's introduction to develop the narrative which will be used when the Bill is published. It is likely that the Comms strategy will be discussed at the Ministerial Bill Management Meeting.

Comms officials will remind Bill teams that no public statements on the fact of introduction of the Bill, or on the content of the Bill, can take place before the Bill has been published on the Parliament's website the day after introduction.

### **12.13 Public Statements on Bills**

Bill teams should work with Comms in the lead up to a Bill's introduction to There are limits on what can be said publicly about primary legislation throughout the process of developing a Bill. This requirement applies to a number of aspects of the Bill process.

#### 12.13.1 Collective agreement

The Scottish Government operates under the principle of collective responsibility. This means that all decisions reached by the Scottish Ministers, individually or collectively, are binding on all members of the Government.

#### 12.13.2 Clearances needed for a Bill

The Cabinet Sub-Committee on Legislation (CSCL) has delegated authority from Cabinet to take decisions on legislative matters which do not require full Cabinet clearance. The collective agreement given, either via Cabinet or CSCL, sets the parameters for what can be said publicly about what the Bill will do at any given point.

Collective agreement is therefore required:

- to agree the legislative programme which is announced as part of the Programme for Government each September
- when a Bill is added to the legislative programme outwith the Programme for Government cycle;
- to issue a consultation on proposals which might give rise to the need for primary legislation;
- when finalising the policy content of the Bill; and, if necessary,
- should significant revisions be made to the Bill after initial Cabinet approval.

It is essential that no commitments are given in public on the timing of any Bills beyond what has already been set out in the manifesto, Programme for Government or Bute House Agreement. If, exceptionally, you consider it necessary to provide a public indication of timing of any Bill, it will be necessary for your Minister to seek CSCL's approval of that.

#### 12.13.3 Public Commitments to Legislate

Section 3.3 of the Scottish Ministerial Code makes clear that

“Ministers should not give undertakings either within or outside the Parliament to introduce primary legislation on any issue without the prior agreement of the Cabinet”.

The lead Minister can only confirm to stakeholders that the Scottish Government will be progressing a Bill once collective agreement has been secured with Cabinet/CSCL. However, no commitment should be given on timings for introduction. If you are providing advice to Ministers regarding a Bill or the potential requirement for a Bill, it is important that this is brought to the attention of your Minister(s).

You should consult Parliament and Legislation Unit for advice on how this agreement can be secured.

#### 12.13.4 Programme for Government

Government Bills can only be introduced to the Scottish Parliament if Cabinet has agreed that legislation should be brought forward, and if a Bill has secured a slot in the annual legislative programme. The Minister for Parliamentary Business prepares each annual legislative programme with input from individual Ministerial portfolios.

As above, no reference should be made to the Bill before collective agreement has been secured. Only once a Bill has been agreed collectively and announced in the Programme for Government, can Bill teams and lead Ministers make reference to their Bill but should not give any commitments on timings for consultation, final policy content and introduction date. Any further public comments on a Bill prior to introduction should refer back to how it is presented in Programme for Government; either the summary provided in the legislative programme chapter or any reference in the main text if it is a future commitment.

#### **12.14 Pre-introduction period**

There are additional restrictions about what can be said during the 3-week period when the Bill is sent to the parliamentary authorities for pre-introduction checks. No reference should be made to the fact that the Bill has been submitted to the parliamentary authorities, and any public description of what the Bill does should go no further than what has been said previously in the public domain before the Bill has been published on the Parliament’s website the day after introduction (usually at 08:30).

Bill teams need to take great care when considering what can be said about the Bill, and when, in the handling of comms prior to a Bill being published such as:

- Parliamentary Questions
- Stakeholder correspondence
- Press events
- Media queries

#### 12.14.1 Responding to PQs

MSPs in particular frequently ask Government for an update on timetables for introduction / delivery of Bills. Bill teams should refer back to commitments made in the Programme for Government and contact PLU for further guidance and timetabling lines to help formulate what the lead Minister can say in response to PQs about timescales for introduction of their Bill.

#### 12.14.2 Stakeholder correspondence

Although no commitments should be given to stakeholders on timetabling, Bill teams still need to be able to engage with them. Before the Bill has been announced, Bill teams can publish consultations (with the agreement of CSCL) as well as their consultation analysis and engage with key stakeholder to get their feedback, but with the caveat that no reference is to be made to the introduction of the Bill.

#### 12.14.3 Dealing with press events before publication

No comms should be made ahead of publication on the Parliament website on the morning after introduction, around 8.30am. Bill teams can prepare something for the press on an embargoed basis, but ideally you would leave a bit of a gap between publication and doing the event or having material appearing in the media. Bill teams should engage with comms colleagues to agree working with the press on an embargoed basis.

For any events on the Parliaments grounds, PLU would recommend that the proposal should be sent to the Minister for Parliamentary Business for agreement.

#### 12.14.4 Media queries

Any media queries received asking the Scottish Government to confirm when introduction of a Bill will take place should be responded to by referring back to what has been said previously in the public domain. If the query relates to future Bills, responses can indicate that the Government's future legislative priorities will be set out in the annual Programme for Government in the normal way.

## 13. PARLIAMENTARY STAGES OF A BILL

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### Summary

The parliamentary stages of a Bill are fast moving and driven by the rules in the Standing Orders. Bill teams should try to familiarise themselves with the parliamentary process before their own Bill is introduced, ideally by shadowing an earlier Bill.

**Key issues** for Bill Teams to keep under review:

- How the lead committee, and other committees, will scrutinise the Bill at Stage 1 and preparing for Government input to these processes
- Preparing the Government's response to the Stage 1 report, and participation in the Stage 1 debate
- Having robust systems in place to manage the amendments process at Stage 2 and Stage 3
- Ensuring Ministers can take a risk-based view on how to respond to non-Government amendments at Stage 2 and Stage 3
- Ensuring relevant accompanying documentation is updated between Stages 2 and 3
- Understanding what options are available if certain issues occur at Stages 2 and 3

The parliamentary passage of a standard Scottish Government Bill has three main stages:

- **Stage 1** – the Bill's general principles are scrutinised by the appropriate committee of the Parliament ("the lead committee") and then debated and voted upon in a plenary session of the full Parliament
- **Stage 2** – the lead committee considers amendments to the Bill
- **Stage 3** – the plenary considers amendments to the Bill and then votes on whether to pass or reject the Bill

The Parliament has produced guidance on the passage of Scottish Government Bills and this can be found [here](#).

Bill Teams will also wish to familiarise themselves with Chapter 9 of the Scottish Parliament Standing Orders, which sets out the basic rules which all Scottish Government Bills must adhere to and is accessible [here](#).

### 13.1 Use of the Official Report in construing statute ("*Pepper v Hart*")

Following the decision of the House of Lords (in *Pepper v Hart* [1993] All ER 42) the courts may, in certain circumstances, look beyond the text of the statute itself to parliamentary material when construing legislation. The implication of *Pepper v Hart* is that courts may do this if three conditions are satisfied:

- the legislation is ambiguous or leads to an absurdity
- the material relied upon consists of a statement by a Minister or other promoter of the Bill, together with such other parliamentary material as was necessary to understand that statement, and
- the statements relied upon are themselves clear

We have already had experience of the Court of Session examining the *Official Report* of the Scottish Parliament in the case of *Anderson, Doherty and Reid v the Scottish Ministers and the Advocate General for Scotland*. This case challenged, on ECHR grounds, the first Act of the Scottish Parliament, the Mental Health (Public Safety and Appeals) (Scotland) Act 1999.

Since clarity and the avoidance of ambiguity are key objects in the drafting of legislation, the procedure adopted in *Pepper v Hart* should remain the exception rather than the rule. Nevertheless, Bill Teams should exercise great care in drafting material for use by Ministers that may form part of the substantially verbatim transcript of the meetings of the Scottish Parliament and its committees (the *Official Report*) and, if necessary, find a satisfactory method for correcting any significant inaccuracies or ambiguities which appear. In order to achieve this the following steps should be followed:

- all speeches and speaking notes should be reviewed by SGLD and PCO for possible influence on interpretation
- SGLD should always attend relevant parliamentary proceedings on the Bill as part of the Minister's official support
- Officials should take care in providing impromptu advice to a Minister on interpretation when answering a point raised during Bill proceedings. If necessary, Ministers should be encouraged to offer to reflect on a point and reply on a future occasion
- the Bill Team and SGLD should always review the *Official Report* and consider whether there is any inaccuracy or ambiguity
- references to the *Pepper v Hart* judgement in Ministerial statements should not be made, to avoid any implication that the provision of the Bill being debated is indeed ambiguous
- if it is considered that the *Official Report* cannot be allowed to stand, Ministers should be advised accordingly and asked urgently to consider what action should be taken. Ministers will need to make a judgement, in the light of the advice from SGLD, PCO and other officials, on whether and how to clarify the record. Factors influencing this

judgement might include the possible effect on interpretation and implementation of the legislation, the desirability of precision in the particular circumstances of the case, and the political and handling implications of re-opening issues which may be controversial. PLU and the office of the Minister for Parliamentary Business (MfPB) should always be consulted about a proposal to correct the *Official Report*

- where it is decided that the *Official Report* needs to be corrected during the passage of the Bill, it should be done at a time and in such manner that it would be clear to the courts that the Parliament was aware of the matter before passing the Bill. The approach adopted may vary depending on the importance of the matter, the stage which the Bill has reached and the nature of the proceedings during which it is proposed that the correction should be made. The correction should contain a date and column reference to the *Official Report* record of the original statement
- where a Ministerial correction is made in this way it would be helpful if a cross-reference could be inserted at the *Official Report* record of the original statement. This may be possible if the correction is issued in time to be reflected in the bound volume. This should be discussed with the *Official Report* staff
- where a Ministerial correction is made after the Bill has been passed by the Parliament, it is unlikely that the courts will take it into account. This makes the accuracy of the *Official Report* particularly important during the later stages of Bills, and
- although letters to individual members will not be an effective way of correcting statements in the Parliament about the meaning of Bill provisions, they may still be appropriate as a way of giving factual information, flagging any errors or of answering points raised in debate

### **13.2 Designation of Lead Committee**

The first step following introduction of a Bill is usually for the Parliamentary Bureau to decide which committee of the Parliament will be designated as the lead committee.

Bill Teams will be asked to express a view on which committee is most appropriate to be designated as lead committee, and this will have been addressed on a preliminary basis in the Agreement to Introduce minute which is submitted to MfPB before introduction. The Scottish Government's position on committee referral will be represented at the Bureau by MfPB.

### **13.3 Stage 1**

The duration of Stage 1 varies but the Scottish Government's position is to plan for it to last 5 months, excluding recess periods, and this will be reflected in the timetable which you agreed with PLU.

Rule 9.6 of the Standing Orders deals with Stage 1 of the Bill's progress through Parliament. The key elements of Stage 1 are:

- Referral of the Bill to its lead committee by the Parliamentary Bureau with a date by which the committee should report back to the chamber
- The issuing of a 'call for evidence' by the lead committee which invites views on the Bill from stakeholders
- Oral evidence sessions involving officials, stakeholders and the lead Minister
- Scrutiny of the Bill for their interests by the Finance and Public Administration Committee and the Delegated Powers and Law Reform Committee (DPLRC)
- The development of a Stage 1 Report on the general principles of the Bill by the lead committee
- The Government's response to the Committee's Stage 1 Report
- A debate and vote by the Parliament in plenary on whether the Bill should proceed to Stage 2

Bill Teams should check the [committee web pages](#) (particularly the agenda for future meetings) of the Parliament's website regularly to keep on top of when the lead committee, Finance and Public Administration Committee and the DPLRC are discussing their Bill.

The lead committee will sometimes request an informal meeting with the Bill Team before they begin their formal Stage 1 scrutiny. These off-the-record meetings enable the committee to be briefed in a neutral setting and provide an opportunity for the committee to gain an understanding of the purpose of the Bill and its provisions. The meeting is also likely to act as an early indicator of any initial concerns the committee may have. Bill Teams should ensure their Minister is aware of, and content with, any such request before agreeing to this meeting.

#### 13.3.1 Lead committee call for evidence

The first step for a lead committee is usually to issue a 'call for evidence'. This is effectively a mini-public consultation by the lead committee where it invites written evidence on the general principles of the Bill. The lead committee will normally say that it is interested to hear the views of organisations and individuals on the proposals contained in the Bill and their likely impact. Recent examples of calls for evidence can be found here:

- [Non-Domestic Rates \(Scotland\) Bill - Call for Evidence](#)
- [UEFA European Championship \(Scotland\) Bill - Call for Evidence](#)

- [Scottish Biometrics Commissioner Bill – Call for Evidence](#)

Responses to the call for evidence will be published on the Scottish Parliament's website. Bill Teams will wish to monitor these responses, as they will provide a clear indication of stakeholder views on the Bill.

### 13.3.2 Lead committee evidence sessions

In considering the general principles of the Bill, lead committees will usually hold a series of meetings at Stage 1, inviting oral evidence from selected public bodies and interest groups. The bodies invited to give evidence are usually key stakeholders, and the clerk to the lead committee is likely to ask for the Bill Team's view on which organisations should be invited to give evidence.

The lead committee will normally take formal oral evidence from the Bill team first, although in some cases if the Bill Team has already participated in an informal session this may not be required. It is usual practice for SGLD to attend the formal evidence session with the Bill Team. PCO do not normally attend but should be given the opportunity to do so. The focus of the officials' evidence session should be on process and technical issues about how the Bill is structured and operates rather than on the policy justification for why particular decisions have been taken. Policy justifications for the Government's approach to a Bill are more appropriately addressed to the lead Minister and it can be anticipated that the convener and clerk of the committee will manage proceedings accordingly. When the lead Minister gives evidence to the committee at Stage 1 they wish, or be asked, to provide an opening statement before committee members ask questions. Committees generally prefer such opening statements to be brief, and it is advisable to agree in advance with committee clerks what time limit Ministers should work to. It is worth noting that the Convener of the committee is ultimately responsible for proceedings and may determine that an opening statement will not be taken or may reduce the time available for one. A recent example of officials' evidence can be found [here](#).

Stakeholders are usually next to be invited to give evidence to the lead committee. The Minister (supported by officials) usually gives oral evidence at the end of the evidence-gathering and this provides an opportunity to deal with any issues that have arisen in the course of evidence given by others. It is usual practice for SGLD to attend the evidence session with the Bill Team to support the Minister. PCO do not normally attend at Stage 1 but should be given the opportunity to do so. A recent example of Ministerial evidence can be found [here](#).

Bill teams will find it useful to observe as many Stage 1 evidence sessions as possible. This will help to develop an understanding of the mood of the committee, the views of stakeholders, and the particular interests of individual committee members. Most Ministers will expect a summary of Stage 1 evidence sessions to be provided on the day that they are held and Bill teams should provide a post Stage 1 evidence session summary for the lead Minister and copy in all CSCL members for their interests. A template Stage 1

Summary note of Committee evidence session proceedings can be found [here](#) and an example of this can be found [here](#). More generally, you may also wish to consider how you will keep Ministers and internal stakeholders updated on how the Parliament’s consideration of the Bill is proceeding. An example of this can be found [here](#).

It will also be important for Bill teams to consider how external stakeholders might be kept informed of the progress of the bill. Continued engagement with stakeholders throughout Stage 1 will often provide valuable information on their intentions regarding amendments to the Bill.

### 13.3.3 Scrutiny by other committees

Under rule 9.6.1 of the Standing Orders, other “secondary” committee(s) may be required to comment on the Bill to the lead committee. Where this is the case, the Minister in charge of the Bill may be required to attend/participate, supported by officials. The comments from these committees will be taken into account when the lead committee is preparing its report.

The Finance and Public Administration Committee and the DPLRC have specific responsibilities in relation to the scrutiny of Bills. The Standing Orders provide that:

- Where a Bill contains provisions conferring powers to make subordinate legislation or other delegated powers, the DPLRC consider and report to the lead committee on any provisions in such a Bill conferring other delegated powers (Rule 9.6.2)
- The lead committee shall take into account any views submitted to it by the Finance and Public Administration Committee on the Bill’s Financial Memorandum

The DPLRC may scrutinise the Delegated Powers Memorandum which has been submitted to it as part of the overall Bill pack. It is likely that the committee will address questions, in writing, to the Bill team on points of detail on the delegated powers (for example, why negative rather than affirmative procedure has been adopted in relation to a specific power) in the Bill. Ministers and officials will usually not have to give oral evidence to the DPLRC but this may be required if the lead committee is not satisfied with the answers it receives through correspondence or if the Bill is being progressed to an expedited timetable.

The DPLRC produce a report for the lead committee on the delegated powers in the Bill. The DPLRC will expect to receive a formal response from the Scottish Government on its report before Stage 2 begins, either as a standalone letter or as part of the Government’s response to the lead committee’s Stage 1 report. An example of recent exchanges between the DPLRC and the Scottish Government can be found here -

- [The DPLRC’s letter to Scottish Government, Scottish Government response to the DPLRC and the DPLRC report to the lead committee](#)

The Finance and Public Administration Committee will scrutinise the Bill's Financial Memorandum, and the level of scrutiny it adopts is likely to correlate to the significance of the financial implications of the Bill.

It is likely that the Finance and Public Administration Committee will adopt one of the following approaches to scrutiny:

- the committee seeks written evidence from organisations financially affected using a standard questionnaire and any responses received are passed directly to the lead committee considering the Bill. This is completed in advance of the lead committee's evidence session with the Minister at Stage 1
- the committee invites written evidence from affected organisations before taking oral evidence from the Bill team and then producing a report for the lead committee
- the Committee invites written and oral evidence from affected organisations, followed by evidence from the Bill team, and then produces a report for the lead committee

A formal response to the Finance and Public Administration Committee's report is not usually required but Bill teams may wish to consider whether there is advantage to be gained in addressing points raised by the Finance and Public Administration Committee in order that this can be taken into account by the lead committee in its deliberations.

#### 13.3.4 Stage 1 Report

Having issued its call for evidence, taken oral evidence from officials, stakeholders and Ministers, and received reports from other committees of the Parliament, the lead committee will then publish a report of its views on the Bill through a written Stage 1 report. Although a lead committee's report will invariably conclude with a recommendation on whether the general principles of a Bill should be agreed, it is also likely to include a range of specific recommendations and requests for further information. Committee Stage 1 Reports can be found [here](#).

The Government has undertaken to respond to all parliamentary reports which address recommendations to it, and this includes Bill Stage 1 reports. It is expected that the Government will provide a full written response to the lead committee's Stage 1 report. Under the terms of a protocol agreed between the Scottish Government and Scottish Parliament this must be provided no later than a week before the beginning of Stage 2, although as noted below it is usual to provide at least a partial response ahead of the relevant Stage 1 debate. The Government's Stage 1 report response should address the specific recommendations which are addressed to the Government and any other recommendations which it would be appropriate to offer a view on.

A recent example of a response to a Stage 1 Report can be found [here](#).

Although the Government does not have to provide a full written response to the lead committee's Stage 1 report ahead of the Stage 1 debate, it is increasingly common for committees to request that a full response be made available. If it is not possible or desirable to provide a full written response ahead of the Stage 1 debate, Bill Teams, and lead Ministers should consider carefully what interim response can be provided. This might take various forms, for example, a letter setting out the Government's position on key recommendations or an explanation of why further time is required before the Government can reach a view. The Government should make the lead committee aware of how it intends to respond. PLU should be notified of any handling issues which arise in relation to the preparation of Stage 1 report responses.

The lead committee's Stage 1 report will be published at least 5 sitting days ahead of the Stage 1 debate in Parliament to consider the Bill's general principles. Any shortening of that period must be agreed by the Parliament on a motion of any member under rule 9.6.3A of the Standing Orders. An example of this type of motion can be found in the Official Report [here](#).

#### 13.3.5 Stage 1 Debate

Following publication of the lead committee's Stage 1 Report, the chamber debates and votes on whether or not the Parliament agrees to the general principles of the Bill. This vote determines whether the Bill falls or progresses to Stage 2.

The Stage 1 debate is:

- opened by the lead Minister, who is then followed by the lead committee convener
- usually shaped by the issues raised in the lead committee's Stage 1 Report and it is typically lead committee members, along with opposition spokespeople, who make the main contributions during the debate

The date for the Stage 1 debate is set by the Parliamentary Bureau following discussions between PLU, PS/MfPB, the Bill Team and the Clerk of the relevant committee(s).

Bill Teams will need to prepare an opening and closing speech for their Minister, along with a briefing pack which addresses the issues raised in the lead committee's Stage 1 report. It is expected that the Bill Team and SGLD will be in attendance for the debate and PCO should be given the opportunity to attend.

The Minister in charge will require to move a motion that the general principles be agreed to. This motion typically adheres to the following standard form:

*“That the Parliament agree to the general principles of the [insert title] Bill.”*

It is possible for the Bill to be referred back to committee under Rule 9.6.5 of the Standing Orders for a further report on the general principles of the Bill (or any part of it). It is unlikely that the Government would wish to make use of this mechanism in relation to a Government Bill, and the Government would likely oppose any attempt to do so by other members. If the Bill, or any part of it, is sent back to the lead committee for reconsideration the same principles apply as for the initial consideration by the committee.

Most Ministers will expect a summary of the Stage 1 debate to be provided shortly after it is held and Bill teams should provide a post Stage 1 summary for the lead Minister and copy in all CSCL members for their interests. A summary note of Stage 1 proceedings for lead minister and CSCL template can be found [here](#) and an example of this can be found [here](#).

Bill teams may find it helpful to keep track of potential amendments ahead of the Stage 1 Debate to discuss handling strategies. An example and template can be found [here](#) and '[Example - Bill Development - Amendment tracker - Redress Bill](#)'

#### 13.3.6 Amendments to Stage 1 Motions

Stage 1 motions are amendable, although non-government amendments to motions are rare and there are few scenarios in which the Government is likely to propose an amendment.

An amendment to a Stage 1 motion may be lodged, to express concern about a specific issue or to invite the Government to take a specific course of action. The Presiding Officer will not select any amendments which cast doubt on whether the Parliament is being asked to agree the general principles of the Bill.

#### 13.3.7 Financial Resolutions

If a Bill triggers a significant level of financial expenditure it triggers the requirement for a Financial Resolution.

*Standing Orders* rule 9.12 states that where a Bill contains provisions—

- (a) which charge expenditure on the Scottish Consolidated Fund, or
- (b) the likely effect of which would be to—
  - (i) increase significantly expenditure charged on that Fund;
  - (ii) give rise to significant expenditure payable out of that Fund for a new purpose; or
  - (iii) increase significantly expenditure payable out of that Fund for an existing purpose,

no proceedings may be taken on the Bill at any Stage after Stage 1 unless the Parliament has by resolution agreed to the expenditure or the increase in expenditure being charged on or, as the case may be, payable out of that Fund.

PCO will provide guidance in the lead up to a Bill's introduction about whether a Financial Resolution is likely to be required, and this will be confirmed by the Presiding Officer after the Bill's introduction. If a Financial Resolution is required, it must be passed by the Parliament or a Bill cannot progress to Stage 2.

The usual practice is for notice of the motion for the Financial Resolution to be lodged a few weeks before the Stage 1 debate in plenary on the Bill's general principles (Bill teams should consult with MfPB's office on this, and PCO will lodge the resolution where one is needed), and for the motion for a Government Bill to be moved immediately after the Stage 1 debate.

As set out at paragraph 3.8 of the [Scottish Ministerial Code](#), all motions for Financial Resolutions are lodged by PCO in the name of the Cabinet Secretary with responsibility for finance. Only a Cabinet or Junior Minister may lodge and move the relevant motion. The motion may not be amended. It falls to the Minister responsible for the Bill to which the Financial Resolution relates to secure parliamentary approval of the Resolution.

Bill Teams should also note that under Rule 9.12.8 of the Standing Orders unless the Parliament approves the Financial Resolution within 6 months of the completion of Stage 1, the Bill falls. This rule does not apply where the need for a Financial Resolution does not arise or only arises upon an amendment to the Bill.

### **13.4 Stage 2**

PCO offer Stage 2 training for their Bill teams. The timing for this will vary depending upon when Stage 2 for your Bill is due to commence, but, unless your Bill team is already familiar with the process, you should speak to your PCO contact in advance of Stage 2 to arrange a suitable time for this.

Standing Orders Rule 9.5.3A specifies that there must be an interval of at least 12 sitting days between the end of the Stage 1 debate and the start of Stage 2 proceedings (i.e. there should be 12 clear sitting days). The first day of this 12 sitting day period starts the day after Stage 1 finishes, and the final day concludes before the earliest day on which Stage 2 could take place.

This is the minimum time period which should be built into the timetable, although it is usually desirable to allow significantly longer between Stage 1 and Stage 2.

Stage 2 ends once all amendments have been disposed of. For a small Bill with few amendments it is possible that only one Stage 2 session will be required. For a large Bill with lots of amendments it is likely that several committee sessions will be required.

Bill Teams should consider how much time will be needed to develop the necessary Stage 2 amendments in order to determine the best starting date for Stage 2. Bill Teams should discuss their proposed Stage 2 timetable with PLU, SGLD, PCO and PS/MfPB. Once there is an internal consensus about

the best timescale for Stage 2, PS/MfPB will discuss this with the lead committee Clerk.

Once these discussions have concluded, the parliamentary authorities will provide advice to the Parliamentary Bureau on a target date for the completion of Stage 2.

Once the programme of committee sittings is known, the lead committee will usually want to set targets for each sitting if a large volume of amendments are anticipated. So, for example, the target for Day 1 might be that the committee will not deal with amendments beyond section 10 of the Bill; or that for Day 3 it will consider amendments which relate to sections 40 to 60.

The setting of targets assists the orderly handling of business, as amendments which will not be taken on a particular day do not require to be lodged in time for that sitting. Targets are usually fixed by agreement between the Bill team (after consulting SGLD and PCO) and the lead committee clerk.

Further information on key concepts is set out in the PLU Stage 2 Reference Guide [here](#).

#### 13.4.1 Amendments

The principal role of the lead committee at Stage 2 is to consider and dispose of amendments. MSPs who are not members of the lead committee are entitled to participate in Stage 2 proceedings. They can lodge and speak on amendments in committee but they are not entitled to vote. Bill Teams should be aware that officials supporting the Minister are not entitled to speak.

Ministerial attendance at Stage 2 proceedings is essential, to move and speak to government amendments and to respond to non-government amendments. Even if no amendments are lodged at Stage 2 it is likely that the Minister will need to attend proceedings in case the committee raise any issues about the Bill as they go through the process of agreeing each section of the Bill (see chapter 13.4.8 for further information).

The Bill Team Leader and official responsible for the policy area (if not the same person) should attend in support of the Minister, together with representatives from SGLD and PCO. Other officials may attend if space in the committee room allows this. The clerk of the committee will be able to advise on the number of seats available for officials supporting the Minister, and how any rotation of officials will be conducted where that is necessary.

The main work of the Bill Team at Stage 2 will consist of providing briefing for the Minister on Government amendments and opposition amendments.

It is now the usual convention that streamlined Purpose and Effect (P&E) notes on Government amendments will be provided to the clerk for circulation to committee members, and you should speak to PS/MfPB about how these notes will be sent to the committee.

Where Stage 2 is taken by a committee of the whole Parliament (for example, in relation to an Emergency Bill), the Presiding Officer acts as convener of the “committee”. The procedures are otherwise as they would be in ordinary committee.

Where Government amendments to a Bill are required these should, as far as possible, be made at Stage 2 rather than at Stage 3, in order to leave Stage 3 for tidying up and for delivering on any undertakings given at Stage 2.

When the need for Government amendments becomes clear, these will be instructed following the same process as for the original Bill. Bill Teams will prepare policy instructions, SGLD will develop legal instructions, and PCO will draft the amendments. The level of Ministerial clearance will depend on the significance of the amendment and involvement of Ministers, but all should be cleared at least in principle with the Minister in charge of the Bill and their general authority to lodge purely technical amendments should be obtained in such circumstances where that is necessary.

Importantly, the financial implications of amendments, including non-Government amendments, should be assessed and cleared as necessary with the relevant Finance Team as well as with the Minister with responsibility for finance. PCO will advise whether a Financial Resolution is likely to be required if one was not already agreed by the Parliament at Stage 1.

Any amendment which is a Government amendment or a non-Government amendment the Government is minded to support should, if it significantly alters the policy agreed by Cabinet before the Bill’s introduction, or if it raises sensitive issues, be approved more widely. You should discuss with PLU whether Cabinet Sub-Committee on Legislation (CSCL) clearance is likely to be needed for any of your amendments.

MfPB should be included on copy lists and forewarned of large batches of or politically sensitive amendments.

Certain changes to the Bill are made administratively rather than by amendment. Changes may be made to section, schedule, Part and Chapter titles and to italic cross-headings to ensure that they continue to accurately reflect the relevant provisions. The numbering (including numbers in cross-references) is corrected and punctuation changed where this is required in consequence of amendments made to the Bill (so long as the sense of the provision is not altered). The changes to a Bill that may be made administratively rather than by amendment are described as “printing points”. PCO will deal with these points, in conjunction with the Clerks, but it is helpful if Bill Teams notify SGLD and PCO of any points that they identify.

#### 13.4.2 Handout Amendments

As part of the Government’s parliamentary handling plan, Ministers may seek to build cross-party support on Bills or topics by way of providing handout amendments to opposition or backbench members. The Scottish Government will then support the amendment.

Handout amendments might also be used where there are legislative competence issues with proposals from Members that might be difficult to resist. In these circumstances it is important to work with the Member to agree an amendment that the Scottish Government is confident is within legislative competence.

Discussions on handout amendments can be expected to take place with your Minister and SpAds following the Stage 1 debate and after Stage 2 where commitments may have been made to work with other Members on particular areas of concern in the Bill.

Further information is set out in the PLU [Handout Amendment Guidance Note](#).

### 13.4.3 Wrecking Amendments

Rule 9.10.5(c) of the Standing Orders specifies that any amendment must be consistent with the general principles of the Bill as agreed by Parliament. This rule is intended to rule out so-called “wrecking amendments” i.e. amendments that would reverse, substantially alter, or render ineffective a principal purpose of the Bill. The rationale for this rule is that the Parliament has already voted at Stage 1 in favour of the Bill’s general principles. The purpose of Stage 2 is to subject the Bill to detailed scrutiny and to improve the means by which it gives effect to those general principles. The proper course is therefore for Members to oppose the Bill at Stage 1 – or if any amendments made at Stage 2 are insufficient to make it acceptable in their view, to oppose the question that the Bill be passed at Stage 3. The Clerks will often discuss with PCO any amendment which they think might be a wrecking amendment.

There have been examples from previous bills where the rule has not been wholly effective in stopping wrecking-type amendments. For example, during the passage of the Tobacco and Primary Medical Services (Scotland) Bill, rather than put forward an amendment to remove a whole Part of the Bill (which probably would have been considered a wrecking amendment but which would not have been permitted anyway as only one section can be removed per amendment), individual amendments were brought forward which removed the individual sections of that Part. The individual amendments were not considered as wrecking amendments.

### 13.4.4 Legislative Competence of Amendments

Chapter 12 deals with the requirement for the Minister in charge of the Bill and the Presiding Officer to make statements about the legislative competence of the Bill when it is introduced.

There is no statutory or Standing Order requirement for either the Presiding Officer or the Minister in charge of the Bill to give any statement to the Parliament as to whether they consider that any amendment would be within the legislative competence of the Parliament. Neither is there provision in the Standing Orders which would entitle clerks, conveners or the Presiding Officer to rule that an amendment is inadmissible if he or she considers that it is not within the legislative competence of the Parliament.

If SGLD consider that a question may arise as to whether an amendment might not be within the legislative competence of the Parliament, they may consider it appropriate to seek a formal opinion from the Scottish Law Officers that the amendment is within competence in the same way as was done with the Bill itself.

The Bill team, with input from SGLD, should consider whether any non-Government amendment is likely to be within the legislative competence of the Parliament. Where any dubiety arises, such amendments should be brought to the attention of the Scottish Law Officers, with an analysis of the likelihood of the amendment being passed. Where it is clear that a non-Government amendment would be out with the competence of the Parliament, this fact should be made clear when the Minister speaks to the amendment at debate.

#### 13.4.5 Lodging Amendments

Government amendments will be lodged in the name of the Minister in charge of the Bill by PCO. Up to 4 members may add their names to an amendment (including a Government amendment) after it has been lodged. Although it is possible for other Ministers to add their names to the amendments, this is not necessary and is very rarely done.

At each amending Stage, amendments may not be lodged until the previous Stage has been completed. For Stage 2 amendments, this means once the Parliament has voted in favour of the general principles of the Bill at Stage 1.

Standing Orders Rule 9.10.2 specifies that, where an amendment is proposed it should be lodged with the Parliament no later than 4 sitting days before the relevant Stage 2 session of the committee is due to start (for example, on the Thursday for the Stage 2 session taking place on the following Wednesday). If Stage 2 takes place in one sitting, the lodging deadline for amendments is at noon on the final lodging day; on any other day amendments will count as having been lodged that day as long as they are lodged by 16:30.

In cases where Stage 2 takes place over more than one session, amendments can be lodged in advance of each session for any sections of the Bill which have not yet been voted upon. For bigger Bills, the committee will sometimes set targets for where they expect to reach. For a multi-session Stage 2 which is held across different weeks, the lodging deadlines are the same as they are for a single sitting; the only difference is that there will be a separate final lodging day for each session (i.e. noon on the day 4 sitting days before the session in question). For a multi-session Stage 2 which is held in the same week, the lodging deadlines are set by reference to the first session that week.

PCO can offer advice on when the lodging deadlines for your Bill fall once you know when Stage 2 is due to commence.

An amendment may be lodged at Stage 2 with notice of less than 4 sitting days having been given but only with the agreement of the convener. Such amendments are known as “manuscript amendments”. PLU and MfPB must be alerted when the Government is considering bringing forward manuscript amendments.

The Government has agreed that for Government amendments, the 4 sitting day rule at Stage 2 should be taken to be an absolute backstop, and Government amendments should normally be lodged at least 6 sitting days in advance (i.e. lodging by 16:30 on the Monday for a session on the Tuesday of the following week).

PCO lodge Government amendments once cleared (on the instruction of SGLD) and this can be done at any point ahead of the lodging deadline.

When amendments are lodged, notice of them will appear the next day in Section G of the *Business Bulletin* available in the [What's on | Scottish Parliament Website](#) page. On each day when amendments are lodged, the parliamentary authorities supply the committee members, PCO and the Bill team with a Daily List by email which consists of all the amendments (Government and non-Government) lodged that day. The *Business Bulletin* should be checked regularly by the Bill Team and will give the text of the amendment, the number of the amendment, the name of the member who proposed it, and those who have formally supported it. Only amendments which have been judged to be admissible will appear. This timescale leaves very little time to prepare and Bill Teams are advised to begin preparing briefing as soon as either the first drafts of Government amendments are prepared or non-Government amendments are received to allow for the inevitable rush at the end. Bill Teams should check with their Private Office about any briefing preferences their Minister has – some Ministers may want an initial view on amendments as soon as they are received; others may be content to wait until a full briefing pack has been prepared.

#### 13.4.6 Order of consideration of Bill at Stage 2

The normal order of consideration of amendments will be for the committee to work through the sections in the order that they appear in the Bill, with a schedule being taken immediately after the section which introduces it and with the long title being taken at the end. This order cannot be varied by the committee unless the Parliament has decided an order for consideration on a motion from the Parliamentary Bureau.

Where Bill Teams wish to take a Bill in a particular order (e.g. to delay consideration of part of the Bill to allow time for amendments to be prepared), they should consult PCO and MfPB's office in the first instance. The Clerk is likely to consult PCO at an early stage (before Stage 2 begins) on whether the Parliamentary Bureau is likely to be invited to recommend a particular order of consideration. The Clerk will also alert PCO to any proposal by the committee to decide an order other than the normal one.

#### 13.4.7 Grouping of amendments and order of debate

Amendments are grouped into topics to minimise repetition in debate and to maximise choice by considering related matters at the same time. Bill Teams need to know what the final groupings are so that Notes on Amendments and speaking notes for the Minister can be finalised in accordance with those groupings – i.e. each speaking note for a grouping will need to cover all of the Government and non-Government amendments in that group. Clerks are aware of the need for this to be done as timeously as possible although a final list cannot be made until the last deadline for lodging amendments has passed. PCO can give an indication of likely groupings, but P&E notes will need to be prepared on individual amendments (or batches of inextricably linked amendments) initially, with a view to collating these and working instead on notes for groupings as soon as the groupings are available.

The Clerk in the Parliament's Legislation Team will prepare and will then share draft groupings, in confidence, with PCO who will, in turn, advise the Bill Team. The Clerk is always willing to receive suggested groupings via PCO. The marshalled list and groupings are prepared by the Clerk for the first meeting in each week, with these documents then updated for sessions in subsequent weeks.

Amendments are grouped together if they are dependent on each other, or are alternative amendments on the same topic, or are about the same or related matters. It is probable that Government and non-Government amendments will be grouped together if they relate to the same topic. This provides an additional challenge in preparing Notes on Amendments and speaking notes for the Minister.

If the Government has the lead amendment in the group, the Minister will open the debate and speak to all of the amendments in the group, including non-Government amendments. At the end of the debate, once others have spoken to their amendments, the Minister will respond to points raised both on the Government amendments and the other amendments. For the avoidance of doubt about the Government's position, it is helpful for the Minister's speaking notes for groupings of amendments to conclude with a clear summary of which amendments in the group the committee is being invited to support or resist.

If the debate opens with non-Government amendments, the Minister will usually be the final person invited to contribute before the member who opened the debate sums up. This allows the Minister to respond to the points which members have made on their amendments. However, if the Minister has his or her own amendment(s) in the group, the Minister's opportunity to speak will arise based on the order that the first Government amendment falls in the grouping. The order of amendments within a group is based on the order in which they amend the Bill – e.g. an amendment to section 3(1) will be ordered before an amendment to section 3(4).

#### 13.4.8 Notes on Amendments

The Bill Team should produce Notes on Amendments for use by the Minister during the debate. Notes on Amendments should contain:

- the text of amendment(s), with their number and names of proposer and supporters (unless the text of the amendment is long, in which case you should refer to the Marshalled list)
- indication of Government line: Resist or Accept
- Purpose and Effect of each amendment. Short description of what the amendment is intended to achieve and what it actually does – the two may be different!
- Background Notes (not always needed) which might be helpful for the Minister, e.g. whether the amendment provided by campaigning group/subject debated at earlier stage/correspondence between Member and Minister on the subject, and
- Speaking note which sets out Government position and concludes by inviting the committee to approve the amendment/Member to withdraw the amendment etc. Ministers may have particular preferences for the form of the speaking note. Notes should be structured so as to make it clear which amendment, or grouping, is being dealt with. For large/complex groupings, Bill Teams are advised to have a short outline followed by more detailed notes for use only if needed.

Considerable numbers of notes can be involved so a strict routine is required to ensure that each amendment is being considered and that the notes are cleared by all interested parties. Ideally, one person should be designated to co-ordinate this process. Although some duplication in effort is involved, most Bill Teams will prepare a note on each amendment (excepting situations where a large number of consequential amendments are involved) and then combine these notes once the groupings of amendments are available from the Parliament.

If the Minister is moving a Government amendment which is the first amendment in a group, the normal form of words to be used at the end of the speech is “[*Accordingly,*] I move amendment [number]”. If the Minister has spoken to more than one Government amendment (because they were grouped) he or she moves only the Government amendment which leads the group. If the first amendment in the group is by a non-Government member, the Minister will not move any amendments when speaking to the amendments in the group, as the formal moving of those Government amendments will be dealt with later. Where the Minister is resisting amendments, the speech should normally end with an invitation to the member who has moved the amendment to withdraw or not move it.

Where an amendment is called having already been debated earlier, the convener will simply ask the member who proposed it whether he or she wishes to move it – to which the member can simply reply “Yes” or “No”. Where there are a number of such amendments consecutive in the list and within the same section or schedule, they may be moved *en bloc*. But if the

member who proposed them does not wish to move them, the convener should call the amendments individually to allow other members the opportunity to move any one in its place in the list.

Given the importance of accuracy (*Pepper v Hart*), all notes on amendments should be cleared by SGLD before going to the Minister, and PCO must also be given the opportunity to clear these. Where it is necessary for the Minister to read text into the record for *Pepper v Hart* purposes without departing from the agreed text, this should be clearly indicated in the text (e.g. use of bold typeface) and the Minister briefed on the significance of this.

MfPB's office will prepare the crib sheet on which the Bill team should mark up the Government's voting intentions – either Yes or No. The Minister's office will issue the crib sheet to Government committee members the night before the committee session.

Bill Teams should speak to their Private Office about how they wish to manage preparation of the folders which the Minister will use at Stage 2.

Although amendments are grouped for debate and are debated when the first amendment in the group is reached on the marshalled list, later amendments in the group will still be called in the order as per the marshalled list. They will not be debated again, but the Minister needs to be ready to move the amendment. It is helpful to provide the crib sheet as the cover to the pack of notes to guide the Minister and avoid any potential mistakes as proceedings often move along at speed.

If the Bill Team is inclined to support a non-Government amendment, SGLD and PCO should be consulted immediately for a legal and drafting perspective. If the amendment is defective, the Minister may wish to say that while they are willing to support the amendment in principle, they would prefer to lodge a Government amendment at Stage 3 in correct form.

It is unlikely that amendments lodged by individual Members will be drafted in precisely the same format as PCO would draft Government amendments. As a consequence, the Government may take the view that an amendment is technically deficient. The Minister can legitimately point out that fact during proceedings on amendments, but it should not be the sole or principal reason for why the Government chooses to resist an amendment. All non-Government amendments should be considered on their policy merits and, if the policy purpose is supportable, and the amendment is within legislative competence, the Minister may give an undertaking to return at Stage 3 with a redrafted amendment which addresses any technical concerns which the Government has.

#### 13.4.9 Formal requirement for the committee to consider and dispose of sections/schedules

Bill Teams will find that the Stage 2 process is driven by the consideration of amendments. However, it is worth bearing in mind that the Standing Orders formally require that the lead committee consider and dispose of every section

and schedule at Stage 2. In practical terms this means that the convener will put the question “That section/schedule x be agreed to.” at the end of consideration of any amendment relevant to that section. Before the question is put, the convener may give members the opportunity to raise any issues relevant to the section or schedule that have not been adequately discussed during consideration of amendments to it. Because the only mechanism to leave a section or schedule out of a Bill is by means of an amendment, putting the question on each section or schedule is, in practice, a formality. There is no obligation on members to agree when the question is put on the section or schedule, but disagreement does not lead to a division and cannot result in the omission of the section or schedule from the Bill. In other words, a substantive decision on whether a section or schedule should remain in the Bill will only be taken if a specific amendment to delete a section of the Bill has been lodged.

#### 13.4.10 Preparing for Stage 2

MfPB’s Private Office will convene a strategy meeting ahead of the Stage 2 proceedings to discuss and agree the handling strategy for Government and Non-Government amendments. The meeting will be chaired by MinfPB and attended by Lead Minister, Bill Team, SGLD, PCO, PLU, SpAds and Government Whips.

In line with the SG/SGP Cooperation Agreement (Bute House Agreement) members of CSCL may review the parliamentary passage of Bills ahead of Stages 1, 2 and 3 proceedings. The only exception is where papers relate to an excluded matter, for which Green Ministers should not be sighted. The Green SpAds and Ms Mackay, Green Party Business Manager, representing the Greens will also be invited to the Pre-Stage 2 meetings for Bills not in the excluded area. Further information on working with the Scottish Green Party can be found at this [link](#).

You can find further guidance on the pre-stage 2 meeting [here](#) which also includes the [template](#) for the briefing.

A summary of Stage 2 proceedings should be prepared shortly after it is held and Bill teams should provide a post Stage 2 summary for the lead Minister and copy in all CSCL members for their interests. A summary note of Stage 2 proceedings for lead minister and CSCL template can be found [here](#) and an example of this can be found [here](#).

#### 13.4.11 Preparing for Stage 3

The Standing Orders set a minimum of 10 clear sitting days between Stage 2 and Stage 3. However, the Government operates a convention whereby it tries to allow for a minimum of 14 clear sitting days. PLU will discuss this with Bill Teams when Bill timetables are being developed or reviewed. If, at the conclusion of Stage 2, it is considered that a longer gap before Stage 3 starts is required, this should be flagged to PLU as soon as possible.

At the end of Stage 2, if the Bill has been amended, the Clerk arranges for the Bill as amended to be reprinted. Sections, subsections etc. retain the numbers

which they had in the introduction print, additional provisions being given a number indicating their place in the Bill (e.g. section 18A, subsection (4A)). This numbering is retained throughout the progress of the Bill and makes it easier to track the history of a particular provision throughout the different parliamentary stages.

Bill Teams may need to produce revised documentation before Stage 3 starts, depending on what amendments were made to the Bill at Stage 2. Note the timetable for development of these documents is typically short, and Bill teams should ensure that the work required to produce the documents is scoped as soon as Stage 2 is complete:

- **Explanatory Notes** – Where new sections or schedules have been added or existing provisions have been substantially amended at Stage 2, revised or supplementary Explanatory Notes should be provided to the Parliament at least 4 sitting days ahead of Stage 3. There is an agreement that these will be provided in draft to the Parliament’s clerks (via PCO) at least 3 working days in advance of that deadline. Time also needs to be built in for the draft to be cleared by SGLD and PCO in advance of that. Updated Explanatory Notes will allow the amended Bill to be more easily understood and should summarise objectively what each of the (new or amended) provisions does and give any other information necessary or expedient to explain the effect of the amended Bill. Where non-Government amendments have been made, these will need to be explained in as objective a manner as possible. In cases where the Government considers the amendment to be legally or technically deficient or otherwise impracticable, it may be appropriate to say so and to indicate what changes are thought necessary. The decision on whether revised or supplementary Notes are required should be taken in consultation with SGLD and PCO. PCO will, as appropriate, discuss the format with the Parliament’s Legislation Team before a final decision is taken. The format will depend on the number of changes required to the original Notes, but it is expected that revised rather than supplementary Notes will be the norm.
- **Delegated Powers Memorandum** - Where powers to make subordinate legislation have been inserted or substantially altered at Stage 2, a revised or supplementary Delegated Powers Memorandum needs to be prepared. The timetable for this is whichever is the earlier of the 10<sup>th</sup> sitting day after the day on which Stage 2 ends or the end of the second week before the week on which Stage 3 is due to start. These also need to be provided in draft to the Parliament’s clerks at least 3 working days in advance of that deadline. In addition, time needs to be built in for the draft to be cleared by SGLD and PCO in advance of that. This means that there can be a very short turnaround time for the preparation of the revised or supplementary DPM. PCO can offer further advice on calculating these deadlines. The norm is for a supplementary Memorandum dealing only with new powers or those that have changed. PCO will arrange for the Memorandum to be sent to the Parliament’s Legislation Team on behalf of the Bill Team. Bill

Teams should also consider whether it is necessary to alert the DPLRC to relevant amendments proposed at Stage 3 which introduce or amend delegated powers (whether the amendments are entirely new or will amend or remove amendments made at Stage 2). Lead Committee should be notified too, especially if new policy content which in general should be avoided.

- **Financial Memorandum** - Where amendments have been made at Stage 2 or, following Stage 2, where new/updated financial information becomes available that substantially alters the cost implications of the Bill as described in the original Financial Memorandum, a revised or supplementary Financial Memorandum providing the information required under rule 9.3.2 should be provided to the same timescales as for the revised DPM as set out above. [Finance Guidance Note 2009/01](#) provides full guidance, but the following general points should be borne in mind:
  - any Government amendments that affect costs should have been cleared in advance with the relevant Finance Team and Ministers. Accordingly, suitable material should already be available for any revised or supplementary Memorandum. Please liaise closely with your Finance Team on the terms of any revision or supplement to the original Memorandum.
  - where a non-Government amendment carries substantial additional costs it should be possible to draw from the briefing prepared, in consultation with Finance colleagues and Ministers, when the amendment was considered at Stage 2. The Memorandum should offer a fair assessment of the costs together with any other relevant information considered appropriate.

MfPB's Office will seek information prior to Stage 3. This will include:

- what Government defeats (if any) occurred at Stage 2, the effect of such amendments, whether it is intended to seek to overturn them at Stage 3, the degree of controversy surrounding the amendments and the Minister's assessment of whether sufficient support can be secured to carry any amendments at Stage 3 to correct the amendments passed at Stage 2
- the expected number of Government amendments at Stage 3 and an estimate of the number of groupings expected and an indication of how amendments follow on from commitments given by Ministers at Stage 2
- an estimate of how much time may be required for debate on each grouping
- whether an Order of Consideration motion is required, and

- likely areas of controversy at Stage 3

MfPB's office will arrange for a pre-meeting to be held the day before the Stage 3 proceedings to agree the handling strategy. Attendees should include the Minister in charge of the Bill, a Whip, appropriate Special Adviser, Bill Team leader, PCO and SGLD.

### **13.5 Stage 3**

Rule 9.8 of the Standing Orders deals with Stage 3. Stage 3 will be taken by the full Parliament at a time proposed by the Parliamentary Bureau on a motion lodged by the member in charge of the Bill (as at Stage 1). It is at this point that the Parliament will decide if the Bill should be passed.

#### 13.5.1 Amendments

A Bill may be amended at Stage 3. Notice of an amendment may be given by any MSP after completion of Stage 2 up to 5 sitting days before the Stage is due to start. The Government has agreed to lodge amendments at least 6 sitting days in advance. Amendments may be lodged until 4.30 pm on any day, except on the final day (i.e. the day 5 sitting days before) when the deadline is noon.

Stage 3 is usually taken in a single plenary meeting of the whole Parliament but where, exceptionally, the Parliament plans to meet in more than one calendar week there will be a separate lodging deadline for each of those weeks, i.e. the fourth day before the first or only meeting in that week. As at Stage 2, manuscript amendments may be lodged.

Where amendments are lodged, Ministerial and official attendance should be as for Stage 2. At Stage 3, the Presiding Officer has the power to select which amendments are to be considered to ensure that proceedings on the Bill can be completed in a reasonable time. The Presiding Officer may choose not to select trivial or defective amendments, amendments which raise issues which were fully debated at Stage 2 or for which the Stage 2 debate indicated are of little merit or have little support (although the fact that an amendment was defeated at Stage 2 does not necessarily mean it will not be selected). Government amendments which are lodged prior to the deadline will usually be selected.

The Government has no locus in the process of selection, and the amendments selected are unlikely to be known until the marshalled list is issued. The marshalled list and groupings are prepared for the first meeting in each week. Bill Teams will therefore need to proceed on the basis that all amendments are to be selected, as a late discovery that an amendment has been unexpectedly selected could be particularly troublesome.

Before Stage 3 begins, the Parliament will normally, on a motion of the Parliamentary Bureau, agree to time limits on amendments as grouped by the Presiding Officer. In applying the time limits, the Presiding Officer will have regard to members who have a right to speak under the rules and the need to

not unreasonably curtail debate. Any time limit may, on a motion agreed by the Presiding Officer, be extended and there will be a knock-on effect to all remaining time limits. The total extended time should not exceed 30 minutes overall (rules 9.8.4A, .5 and .13 of the Standing Orders).

Amendments at Stage 3 are to be disposed of in the order in which the provisions they relate to arise in the Bill, unless the Parliament has decided otherwise on a motion from the Parliamentary Bureau. The parliamentary authorities will consult PCO on this. If no amendment to any particular section or schedule or any sequence of them is lodged, then that section, schedule, or sequence of them is not considered at all.

Rule 9.8.5 of the Standing Orders provides that if the Bill has been amended at Stage 3 the member in charge of a Bill may, immediately after the last amendment is disposed of or by previous arrangement, propose by motion without notice that the proceedings at Stage 3 be adjourned to a later day. He or she may then lodge further amendments, which may only be for the purpose of clarifying uncertainties or giving effect to commitments given earlier at Stage 3. This mechanism is likely to be used in connection with Government Bills where—

- non-Government amendments have been made to the Bill at Stage 3 and SGLD, PCO and the Bill Team need to consider the implications of these and to bring forward further amendments, or
- the Minister has promised concessions on a controversial issue and amendments are needed to give effect to the concession

In either case, the Bill Team should be aware in advance of the possible need to invoke the mechanism in relation to a particular amendment or issue. Where there is a risk that this will happen, MfPB and PLU should be forewarned. The Minister should move *“That further Stage 3 consideration of the [short title] Bill be adjourned to [date]/a later day.”* and this motion can be moved without notice and is decided without debate.

Rule 9.8.6 of the Standing Orders provides a further mechanism for part of the Bill to be recommitted for further Stage 2 consideration. This may be necessary where simply adjourning Stage 3 consideration under Rule 9.8.5 (as described above) is insufficient to resolve difficulties with the Bill (e.g. because the scope of amendments which Rule 9.8.5 allows is limited). As with Rule 9.8.5, the Bill Team will be aware in advance of the possible need to invoke the mechanism in relation to a particular amendment or issue. The approval of MfPB must be obtained in advance and a recommitment should only take place *in extremis*. The form of the motion will be *“That the [short title] Bill be re-committed for further Stage 2 consideration in respect of [specified section(s) and/or schedule(s)]”*. As only specified sections or Schedules can be recommitted (and no more than half of the total number of sections can be recommitted), the motion needs to set these out and should therefore be prepared by PCO in advance so that it can be moved quickly by the Minister. Recommitment can only happen once. Where a Bill is recommitted, the guidance provided for Stage 2 applies.

Stage 3 is the last point at which Crown Consent can be signified by the Cabinet Secretary if necessary. If this has not been done at Stage 1, or the Bill has been amended in a way which may alter the need for Crown Consent, this should be signified during Stage 3 proceedings (after amendments have been disposed of).

#### 13.5.2 Debate on whether Bill should pass

Once amendments have been disposed of, the Minister in charge of the Bill will propose that the Bill be passed by the Parliament. Then there is a short debate on the motion. This debate normally only lasts about an hour. MfPB's Private Office will provide advice on the amount of time that the lead Minister will have to make opening and closing speeches. Bill Teams will need to prepare a speech for the Minister on the motion and a wind-up speech for the end of the debate.

Where the Bill has been amended at Stage 3 or on reconsideration (see below), a further print of the Bill "As Passed" or "As Approved After Reconsideration" will be published by the Parliament the day after, still with provisions numbered, as they were when the Bill was introduced. Provisions which have been amended at Stage 3 (or on reconsideration) will be indicated by a line in the margin of the text. Bill teams should provide a post Stage 3 summary for the lead Minister and copy in all CSCL members for their interests. A summary note of Stage 3 proceedings for lead minister and CSCL template can be found [here](#) and an example of this can be found [here](#).

When a Bill is passed, or if it has been reconsidered, PLU should be informed in order that they can inform all UK Government Department contacts. As the 4 week period during which the Law Officers or Secretary of State can intervene begins with the passing of the Bill, they will arrange this as soon as the print of the Bill "As Passed" is ready. If this print is not available within a few days after passing, UK Government department contacts will be notified that the Bill has been passed and directed to the appropriate website where the Bill will become available in due course.

#### 13.5.3 Super-Majority Procedure

The Scotland Act 2016 increased the competence of the Scottish Parliament and the Scottish Ministers in relation to the operation of Scottish Parliament elections. It also provided for a super-majority procedure to be applied to proposed electoral legislation concerning:

- a) the persons entitled to vote as electors at an election for membership of the Parliament,
- b) the system by which members of the Parliament are returned,
- c) the number of constituencies, regions or any equivalent electoral area, and
- d) the number of members to be returned for each constituency, region or equivalent electoral area.

Any such provision can only pass at Stage 3 with at least a two-thirds majority of the total number of seats for members of the Parliament (i.e. subject to 'super-majority procedure' and requiring 86 votes in favour). The Presiding Officer will decide on whether any provisions of a Bill are subject to a super majority after all amendments have been considered at Stage 3.

Bill teams should consider whether any provision proposed for their Bill would trigger the need for a super-majority vote in Parliament. Such consideration should extend also to the potential for such provision to be amended into the Bill during its parliamentary passage.

Further information on how the internal and parliamentary procedures apply to consideration of super-majority matters can be obtained from your SGLD contact who will have access to the legal Billskill Note "Super-Majority Procedure" and can share and discuss this with you. Bill teams should, in particular, familiarise themselves with the requirement to prepare a letter for MfPB to send to the relevant Committee Convener, after lead Committee has been allocated by bureau, setting out the Scottish Government's view on whether the Bill triggers super-majority procedure.

#### 13.5.4 Reconsideration Stage

Rule 9.9 of the Standing Orders deals with the circumstances under which Bills which have been passed can be reconsidered. Bill Teams will wish to note that once passed a Bill can only be reconsidered and amended to resolve:

- a decision reached by the Supreme Court that the Bill, or a provision within it, is not within the legislative competence of the Parliament, or
- An order made by the Secretary of State under section 35 of the Scotland Act 1998 where he or she has reasonable grounds to believe that the Bill would be incompatible with any international obligations or the interests of defence or of national security or, that the Bill makes modifications to the law as it applies to reserved matters and the Secretary of State has reasonable grounds to believe that such modifications would have an adverse effect on the operation of the law as it applies to reserved matters

A Bill that is reconsidered after it has been passed may be amended to the extent allowed under Rule 9.9.4.

### **13.6 Royal Assent**

In advance of a Bill being submitted for Royal Assent, a copy of the Bill will be prepared, in which the numbering is regularised. For example, if a new section was inserted between sections 3 and 4 at Stage 2 that new section would have been numbered as section 3A for the remainder of the Bill process, in order to avoid confusion about what is being referred to when reference is made to section 4. However, after the Bill has been passed, an official print is prepared in which the numbering is redone and cross-references are adjusted accordingly. This is prepared by the Parliament and checked by PCO but Bill teams generally do not need to do anything however

you may be asked to review this as well. This needs to be done before the Bill can be submitted for Royal Assent.

Bills may only be submitted for Royal Assent by the Presiding Officer. The Bill Team does not need to do anything.

Bill Teams must allow for at least a 4-week gap between the date when they expect the Parliament to approve the Bill and the date Royal Assent is granted to allow for possible legal challenge on the grounds of legislative competence. In particular, the Attorney General (the UK Government Law Officers), the Advocate General for Scotland or the Lord Advocate can refer the Bill to the Supreme Court for a ruling on legislative competence (section 33, Scotland Act refers) and the Secretary of State's powers of intervention under section 35 could be used.

As discussed in Chapter 9, Bill Teams will wish to note that this potential 4-week delay can be shortened, if the Law Officers and Secretary of State give notice that they do not intend to refer the Bill to the Supreme Court or to make an order under section 35. Such shortening of the 4-week period is likely to be granted only in exceptional circumstances and the agreement of all four of the Attorney General, the Advocate General for Scotland, the Lord Advocate and the Secretary of State is required. The mechanism for expedited Royal Assent should only be used where there is a demonstrable need to obtain Royal Assent quickly (e.g. for an Emergency Bill).

The fact that the Lord Advocate may refer a Bill to the Supreme Court may appear odd, given that he is a member of the Scottish Government. However, this does provide a mechanism for any question of legislative competence to be conclusively determined at this stage, rather than waiting until a devolution issue is raised at a later date. It is expected that referral by the Lord Advocate will be a rare event, and will only occur when the Lord Advocate has lingering doubts as to the legislative competence or where a non-Government amendment has been passed that the Lord Advocate considers to be outside competence.

It should be noted that, where the mechanism described above is used to shorten the 4-week period between passing of the Bill and Royal Assent, the Lord Advocate is one of the Law Officers who must give notice that he does not intend to refer the Bill to the Supreme Court, even though the Lord Advocate will have been involved throughout the passage of the Bill. To assist this consideration SGLD will submit a supplementary note on legislative competence to the Scottish Law Officers, shortly after stage 3. This will update the position re legislative competence for amendments that have been made at stage 2 and 3 or other developments in the law (e.g. new court decisions) since the Bill's introduction. However, unlike the practice before introduction of the Bill, this supplementary note on legislative competence is not shared with the Office of the Solicitor to the Scottish Parliament or the Office of the Advocate General; it is just for the Scottish Law Officers and LSLA.

Once the 4-week period is completed, the Presiding Officer's office will send the Bill to the Palace for signification of Royal Assent from Her Majesty. When the Bill is returned from the Palace it is given to the Keeper of the Registers of Scotland. The Keeper will simultaneously, by e-mail, notify the Offices of the Presiding Officer and MfPB that Letters Patent have been sealed, that being the last stage of the Royal Assent process. This process can take up to a week and a half, meaning that Royal Assent is not usually achieved until 5 and a half weeks after the completion of Stage 3.

## 14. ACTION FOLLOWING ENACTMENT OF A BILL

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### Summary

Bill teams need to ensure that certain tasks are completed once a Bill has completed its parliamentary passage.

**Key issues** for Bill Teams to focus on are:

- Checking for publication of the Act
- Preparing updated Explanatory Notes to coincide with publication of the Act
- Considering the need for any publicity or commencement regulations
- Participating in a post-Bill review

### 14.1 Publication of Acts of the Scottish Parliament

Once a Bill has received Royal Assent, the resulting Act of the Scottish Parliament will be published by the Queen's Printer for Scotland. The legislative text will appear in the same form as in the Bill, while the overall presentation of the Act will be similar to that of Acts of the UK Parliament. Where on an Act of the UK Parliament the Royal Arms would appear, the Scottish form of the Royal Arms will appear on the Act. Each Act is assigned an "asp number", which serves the function of the chapter numbers assigned to Acts of the UK Parliament. Finally, there will be an enactment formula consisting of the date on which the Bill for the Act was passed by the Parliament, and the date on which it received Royal Assent. The Act will then be published electronically on [legislation.gov.uk](http://legislation.gov.uk).

### 14.2 Updating Explanatory Notes

The Explanatory Notes which accompanied the Bill throughout its parliamentary passage must be updated for publication by the Government in the form of Explanatory Notes to the Act. The Notes must:

- be updated to take into account amendments passed during the passage of the Bill along with any renumbering, consequential changes and cross-referencing arising as a result;
- include a parliamentary history table listing the dates and *Official Report* references for each Stage of the parliamentary proceedings on the Bill, including proceedings before every committee which considered the Bill at Stage 1. There should be references to any published reports of those committees, for example the Stage 1 report from the lead committee. This helps future users of the Act to trace the history of individual provisions and what was said about them during the passage of the Bill; and
- be cleared with SGLD and PCO (Ministerial clearance is not required)

There are strict National Archives guidelines on the formatting of Explanatory Notes. PCO have developed a template Explanatory Notes document to conform to these guidelines – this is available to Bill Teams on request from your PCO contact.

The Explanatory Notes should be completed and made ready for publication simultaneously with the Act. Once cleared internally they should be sent directly to the Queen’s Printer for Scotland (by email to [publishing.legislation@nationalarchives.gov.uk](mailto:publishing.legislation@nationalarchives.gov.uk)) by the Bill Team for publication on behalf of the Government and will appear alongside the Act on [legislation.gov.uk](http://legislation.gov.uk).

### **14.3 Publicity**

Bill Teams should consider what publicity should coincide with enactment and commencement of their Act. It is important to ensure that those who will be most directly affected by the legislation are aware of the timing of its implementation, and its consequences.

For example, local authorities or other public bodies will normally be sent a circular about any Act which affects their powers, duties, or functions. These circulars should be issued as soon as possible after the relevant Act has received Royal Assent. The circular should:

- set out the main provisions of the Act, without purporting to give an authoritative interpretation of its terms
- draw the recipients’ attention to any new duties placed on them or changes to their powers
- indicate, if possible, how the Scottish Ministers propose to exercise their powers and duties

Another action is that on completion of the passage of a Bill through the Parliament, but prior to Royal Assent, confirmation should be given to COPFS of any provision being brought into effect, whether by the Act itself, by commencement regulations, or by a substantive statutory instrument, which could have implications for criminal proceedings.

### **14.4 Commencement Regulations**

Where the Act states that any of its provisions are to be brought into force by commencement regulations, the number of regulations made and commencement dates specified should be kept to a minimum. Every effort should be made to rationalise their preparation and issue. It is undesirable for separate regulations bringing into operation sections of the same Act to be made within short intervals of each other. The setting of too many different commencement dates should also be avoided. Where distinct parts of the Government are responsible for the commencement of different parts of the Act, one should be designated as the lead Division and tasked with ensuring that arrangements are co-ordinated.

By convention, an Act will not be brought into force before the end of the period of 2 months starting with the day of Royal Assent (3 months in the case

of consolidation Acts). However, non-substantive provisions, such as the short title section and interpretation material, can commence earlier – commonly the day after Royal Assent. It should be noted that the Interpretation and Legislative Reform (Scotland) Act 2010 provides that where no provision is made for the coming into force of an Act, the Act comes into force the day after the day on which Royal Assent is granted.

Where there is a need or justifiable desire to bring an Act into force before the 2 month period is over, the agreement of the Cabinet Sub-Committee on Legislation is required. Further information on this can be found in chapter 9.

Commencement regulations are not subject to either affirmative or negative parliamentary procedure but are subject to technical scrutiny by the Delegated Powers and Law Reform Committee. Separate guidance on commencement regulations (including the numbering of series of such regulations and arrangements for providing them to the Delegated Powers and Law Reform Committee) is available in the [SSI Guidance](#).

#### **14.5 Post-Bill Review Meetings**

PLU aims to hold a Post-Bill Review (PBR) Meeting for each Bill to ensure lessons learned from the passage of a Bill can be shared with future Bill Teams. Such meetings normally involve members of the Bill Team, SGLD and PCO, and other colleagues where appropriate. The meetings normally last approximately one hour. Bill Teams are asked to complete and return the PBR template to PLU in advance of the meeting. The link for the template can be found [here](#).

## 15. OTHER TYPES OF GOVERNMENT BILLS

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### Summary

The Standing Orders make specific provision in respect of the handling of non-standard Government Bills. The most common types of non-standard Bill are Consolidation Bills and Emergency Bills, and even these are rare events. You should speak to PLU as soon as you think you may wish to progress a non-standard type of Bill.

**Key issues** for Bill Teams to focus on are:

- Familiarising yourself with the specific rules concerning the type of non-standard Bill you may need to progress
- Alerting PLU – non-standard Bills are very unusual!
- The legislative competence considerations and processes are the same for non-standard Government Bills.

### 15.1 Emergency Bill process

Emergency Bills, by definition, need to be progressed more rapidly than by the timings which apply to a normal Bill. Such bills may for example be necessary to promptly amend the law in response to a court decision which exposes loopholes or misinterpretations in a current statute. Only the Government can propose that a Bill be treated as an Emergency Bill.

Rule 9.21 of the Standing Orders sets out the special requirements of the Emergency Bill process.

If you think you will need to progress an Emergency Bill you must speak to PLU as soon as possible.

#### 15.1.1 Designation of an Emergency Bill

Before a Bill can be designated as an Emergency Bill it must first be introduced as a normal Government Bill. Only if the Parliament subsequently approves a motion by a Government Minister under the Standing Orders Rule 9.21.1 seeking an emergency designation will the Bill be defined as an Emergency Bill. The Standing Orders do not specify criteria which a Bill must meet in order to be designated as an Emergency Bill, but clearly a strong case will need to be put to the Parliament to explain why an emergency designation is genuine and justified.

#### 15.1.2 Emergency Bill timetables

Rule 9.21.2 of the Standing Orders specifies that the default timetable for Emergency Bills is for all stages of the Bill to be taken on the same day. The Parliamentary Bureau will propose the date on which proceedings will be taken, and can propose an extension to the default timetable for the Bill.

### 15.1.3 Materials which accompany an Emergency Bill

All of the Accompanying Documents and Impact Assessments required for a standard Government Bill are required for an Emergency Bill, unless the Parliament agrees to set aside that requirement.

A change to the Standing Order was made to the Delegated Powers Memorandum and Emergency Bills ([Motion S5M-24391](#), SP Paper 987). From the 12 May 2021 the Delegated Powers Memorandum has the same status as the other accompanying documents. Rule 9.4A has been deleted. In addition, there is no longer a requirement to produce revised or supplementary accompanying documents for a bill that is designated an emergency bill.

### 15.1.4 Scrutiny of an Emergency Bill

The default position is that all proceedings relating to an Emergency Bill take place in plenary. All three stages of the Bill process (a Stage 1 debate on the Bill's general principles, a Stage 2 session on amendments, and a Stage 3 session on amendments and a final debate) must take place in this way.

The Standing Orders requirements for the Finance and Public Administration Committee to consider the financial implications of the Bill and the Delegated Powers and Law Reform Committee to consider delegated powers are set aside in relation to Emergency Bills. However, either or both of those committees could decide to consider the relevant implications of an Emergency Bill and set out their views for the rest of the Parliament. That scenario becomes more likely if the Parliament varies the default single-day timetable.

At Stage 1, in a departure from the standard procedure, the Bill is referred immediately to plenary for decision on the Bill's general principles (i.e. the Bill is not allocated to a committee for consideration and report).

### 15.1.5 Amendment lodging deadlines

Different arrangements for lodging and selecting amendments apply for Emergency Bills, unless the Parliament agrees to an alternative timetable where normal lodging deadlines can be met. For Emergency Bills which are taken in the default single-day timetable, it is likely that the Parliament will suspend the normal lodging requirements to allow amendments to be lodged at short notice (e.g. on the same day as when Stage 2 and/or Stage 3 are taking place).

### 15.1.6 Expedited Royal Assent and Commencement

The reason for which an Emergency Bill parliamentary timetable was required can sometimes mean that an expedited period for seeking to obtain Royal Assent is also required. If you have a Bill where you consider you would need to reduce the five and half week period typically required for Royal Assent (following the completion of Stage 3), and/or the two month period usually allowed between Royal Assent and commencement of substantive provisions of a Bill, you should speak to PLU as soon as possible.

### 15.1.7 Implications of Parliament being in recess or dissolution

If an emergency arises when Parliament is in recess, the Presiding Officer may convene the Parliament under Standing Order Rule 2.2.10. The decision to recall Parliament is for the Presiding Officer alone, but in practice the views of all Party Business Managers would be sought on both the recall and the proposed handling arrangements for the Bill. It is likely that the Presiding Officer would only agree to recall Parliament for the consideration of an Emergency Bill in the most exceptional of circumstances.

Parliament cannot be recalled once dissolved, as there is no Parliament. That remains the case until MSPs are returned at a Scottish general election. If an emergency arises during such a period the only means of securing a primary legislative solution would be to ask the UK Government to bring forward primary legislation in the UK Parliament. Although the Sewel convention provides that the UK Parliament would not *normally* legislate on devolved matters without the consent of the Scottish Parliament, this course may be appropriate in extreme circumstances.

#### 15.1.8 Previous Emergency Bills

The list of Emergency Bills which have been designated since 1999 is set out in the table below. (Note that in some cases a Bill initially designated as an Emergency Bill has subsequently had changes made to its timetable to bring it more into line with the practice for normal Bills.)

<b>BILL</b>	<b>Introduced</b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Royal Assent</b>
<b>Mental Health</b>	31 Aug <b>1999</b>	2 Sept 1999	8 Sept 1999	8 Sept 1999	13 Sept 1999
<b>Erskine Bridge Tolls</b>	4 Sept <b>2001</b>	6 Sept 2001	6 Sept 2001	6 Sept 2001	13 Sept 2001
<b>Criminal Procedure</b>	25 Feb <b>2002</b>	27 Feb 2002	27 Feb 2002	27 Feb 2002	8 Mar 2002
<b>Senior Judiciary</b>	13 Jun <b>2006</b>	15 Jun 2006	15 Jun 2006	15 Jun 2006	27 Jun 2006
<b>Convention Rights</b>	15 Jun <b>2009</b>	18 Jun 2009	18 Jun 2009	18 Jun 2009	23 Jul 2009
<b>Criminal Procedure</b>	26 Oct <b>2010</b>	27 Oct 2010	27 Oct 2010	27 Oct 2010	29 Oct 2010
<b>Offensive Behaviour</b>	17 Jun <b>2011</b>	23 Jun 2011	14 Sept 2011	14 Dec 2011	19 Jan 2012
<b>UK Withdrawal from the European Union (Legal Continuity) (Scotland)</b>	27 Feb <b>2018</b>	7 Mar 2018	13 Mar 2018	21 Mar 2018	n/a
<b>Coronavirus (Scotland) Bill</b>	31 Mar <b>2020</b>	1 Apr 2020	1 Apr 2020	1 Apr 2020	6 Apr 2020
<b>Coronavirus (Scotland) (No. 2) Bill</b>	11 May <b>2020</b>	13 May 2020	19 May 2020	20 May 2020	26 May 2020

## **15.2 Expedited Bill process**

An expedited Bill timetable is a timetable which is shorter than normal (Bills usually take about 9 months from introduction to Royal Assent) but is not a formal Emergency Bill. There is no expedited procedure in Standing Orders and so expedited timetables need to be negotiated with the parliamentary authorities and agreed with Parliamentary Bureau. Expedited timetables usually arise where the need for primary legislation arises unexpectedly, and there is a date by which it must be implemented, to meet a particular policy. In this scenario, action needs to be taken quickly, but it is not urgent enough to justify an emergency approach. Please liaise with PLU if you think such a timetable is necessary for your Bill.

## **15.3 Consolidation Bill process**

The purpose of a Consolidation Bill is to restate existing law, whether or not with amendments, to give effect to recommendations of the Scottish Law Commission or of the Scottish Law Commission and the Law Commission jointly. Bills which restate the law more generally, including common law and/or case law, are known as Codification Bills.

### 15.3.1 Material which accompanies Consolidation Bills

Such a Bill should be accompanied by:

- tables of derivations and destinations (showing where Bill provisions have come from and where provisions in existing law are now to be found); and
- a statement on legislative competence.

The usual accompanying documents are not required.

### 15.3.2 Referral of Consolidation Bills to committees

On introduction, the Parliamentary Bureau will normally propose the establishment of an *ad hoc* Consolidation Committee to consider the Bill. Where possible at least one member of the Consolidation Committee will be drawn from amongst the members of a committee within whose remit the subject matter of the Bill falls. The Parliament can vary this approach - for example, in the case of the Bankruptcy Bill, it decided to refer the Bill to the Delegated Powers and Law Reform Committee for scrutiny.

### 15.3.3 Role of Consolidation Committee (Stage 1 and Stage 2)

At Stage 1 of a Consolidation Bill the Consolidation Committee (as opposed to a lead committee) considers and reports on whether the law which is restated in the Bill should be restated. Once the Consolidation Committee has reported, the Parliament decides (without debate) whether the law should be restated. Unless the Parliament agrees that the law should be restated as in the Bill, the Bill falls.

The Consolidation Committee then deals with Stage 2. No amendment may be made to the Bill which would cause it to cease being a Consolidation Bill. Accordingly, any amendment which proposes a substantive new provision would be inadmissible, but amendments proposing changes to the manner in which the law is restated would be admissible.

#### 15.3.4 Stage 3 of Consolidation Bills

At Stage 3 the Parliament decides, without debate, whether to pass or reject the Bill. Amendments can only be made at this stage if they are necessary to ensure that the Bill is an accurate restatement of the law or give effect to any recommendations of the Scottish Law Commission or the Scottish Law Commission and the Law Commission jointly. As a result, amendments at Stage 3 are likely to be limited to minor errors not previously corrected.

#### 15.3.5 Previous Consolidation Bills

The list of Consolidation Bills which have been introduced since 1999 is set out in the table below.

<b>BILL</b>	<b>introduced</b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Royal Assent</b>
<b>Salmon and Freshwater Fisheries (Consolidation) Bill</b>	27 Nov <b>2002</b>	13 Feb 2003	25 Feb 2003	26 Mar 2003	1 May 2003
<b>Bankruptcy Bill</b>	30 Oct <b>2015</b>	27 Jan 2016	23 Feb 2016	22 Mar 2016	28 Apr 2016

#### 15.4 **Scottish Law Commission Bills**

The Scottish Law Commission (SLC) recommends reforms to improve, simplify, and update the law of Scotland. In 2013 the Scottish Parliament adopted a procedure to allow Bills proposed by the SLC to be referred to the Delegated Powers and Law Reform Committee (DPLRC) if they did not raise major or contentious political or financial issues (though the requirement about not raising financial issues has since been dropped).

##### 15.4.1 Presiding Officer's determination on referral criteria

The Presiding Officer's Determination on what criteria had to be met in order to identify a Scottish Law Commission Bill for referral to the DPLRC can be found at [Rule 9.17A of the Standing Orders](#) as follows—

As well as implementing all or part of a report of the Scottish Law Commission, the definition of a Scottish Law Commission Bill includes criteria to be determined by the Presiding Officer. The Presiding Officer has determined under Rule 9.17A.1(b) that a Scottish Law Commission Bill is a Bill within the legislative competence of the Scottish Parliament the primary purpose of which is to—

(a) simplify, modernise or improve the law to—

(i)

ensure it is fit for purpose,

(ii)

respond to developments, or address deficiencies, in the common law, or

(iii)

respond to other developments in the law

(b) make provision which is not likely to generate substantial controversy among stakeholders.

Consideration should also be given by the Parliamentary Bureau to whether there are any wider legislative proposals expected within two years beginning with the date of introduction of the Bill (or by the end of the same session if sooner), which relate closely to the same particular aspect of law as the Bill. Where further legislation is expected, regard should be had to whether scrutiny of the overall proposed law change would be aided by both pieces of legislation being referred to the committee that would be designated lead committee were Rule 6.11.1(g) not to apply.

Further information can be found in [Business Bulletin, 24th March 2021](#).

#### 15.4.2 Previous Scottish Law Commission Bills referred to the Delegated Powers and Law Reform Committee

The list of SLC Bills which have been referred to the DPLRC since the referral procedure was established is set out below.

<b>BILL</b>	<b>Introduced</b>	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Royal Assent</b>
<b>Legal Writings (Counterparts and Delivery) Bill</b>	14 May 2014	25 Nov 2014	20 Jan 2015	24 Feb 2015	1 Apr 2015
<b>Succession Bill</b>	16 Jun 2015	11 Nov 2015	8 Dec 2015	26 Jan 2016	3 Mar 2016
<b>Contract (Third Party Rights) Bill</b>	31 Jan 2017	25 May 2017	27 Jun 2017	21 Sept 2017	30 Oct 2017
<b>Prescription Bill</b>	8 Feb 2018	27 Jun 2018	25 Sept 2018	8 Nov 2018	18 Dec 2018

#### **15.5 Hybrid Bill process**

Standing Order Rule 9C.1.1 provides that a Hybrid Bill is a Public Bill which adversely affects a particular private interest of an individual or body in a manner different to the private interests of other individuals or bodies of the same category or class. In short, Hybrid Bills combine some elements of a normal Bill (with general policy intent) and some elements of a Private Bill (which directly affects specific people or bodies). The defining feature of the Hybrid Bills procedure is that individuals or bodies who may be disadvantaged by the Bill are entitled to lodge objections, and their objections must be considered by the lead committee.

The only Hybrid Bill that the Scottish Parliament has considered so far is the Bill for the Forth Crossing Act 2011.

The Scottish Parliament has produced detailed guidance on the Hybrid Bill process, which can be found [here](#).

### **15.6 Statute Law Repeals and Statute Law Revisions Bills**

Statute Law Repeals Bills are used to repeal spent enactments. They are dealt with in the same manner as Consolidation Bills, although here the committee is referred to as the Statute Law Repeals Committee.

Statute Law Revision Bills are used to revise statute law by repealing and re-enacting provisions as required. These too are dealt with in the same manner as Consolidation Bills. Here the Committee is referred to as the Statute Law Revision Committee.

### **15.7 Budget Bills**

A Budget Bill is a Government Bill for a Budget Act within the meaning of section 29(3) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1). The Scottish Government proposes how to use the money it receives through a block grant from the UK Government and from taxes raised in Scotland. It does this by introducing the Budget Bill. This is shaped by – and needs approval from – the Scottish Parliament. Only a member of the Scottish Government can introduce the Bill and there is no requirement for it to be accompanied by a Financial Memorandum, Explanatory Notes or a Policy Memorandum.

Rule 9.16 of the Standing Orders sets out the special requirements of the Budget Bill process.

On Tuesday 8 May 2018, the Scottish Parliament voted to accept a new Written Agreement between the then Finance and Constitution Committee and the Scottish Government, setting out the administrative arrangements for the annual budget process and other related budgetary matters. Read more about the Scottish Budget process [here](#).

In relation to the SG/SGP Cooperation Agreement (Bute House Agreement), which came into effect on 31 August, it requires the Scottish Government to consult the Green Group on its development of the annual budget. Colleagues in the Directorate for Budget and Finance will lead these conversations and engagement to seek the Green Group's support and provide assurance of adequate funding for the delivery of the Shared Policy Programme. This should not replace separate policy or portfolio level engagement on policy, spending and legislation. Further information on working with the Scottish Green Party can be found at this [link](#).

## 16. NON-GOVERNMENT BILLS

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### Summary

Although the Scottish Government brings forward most of the Bills scrutinised by the Scottish Parliament, it is not the only source of primary legislation. The most common type of non-Government Bills are Members' Bills, although policy officials may also need to engage with Private Bills and Committee Bills. It is important that the Government shadows all non-Government Bill proposals so that their legal and policy implications are understood, and to enable the Government to intervene during their parliamentary passage where appropriate. For that reason, relevant policy officials will be asked to act as shadow Bill teams for any non-Government proposals in their area.

**Key issues** for shadow Bill teams to focus on are:

- Understanding the different types of non-Government Bills which may emerge
- Understanding the key internal clearance processes which must be followed in determining the Scottish Government's collective view on non-Government Bills
- Following the progress of the Bill

### 16.1 Members' Bills

A Member's Bill is a Public Bill introduced by an individual MSP. Before introducing a Member's Bill, the MSP must first lodge a draft proposal and then a final proposal.

#### 16.1.1 Draft Proposal

The Standing Orders enable MSPs to lodge a "draft proposal" for a Member's Bill. This draft proposal is a general statement (often only a single line long) about what the Bill is intended to do.

The draft proposal must be accompanied by a consultation document, or a statement of reasons why the MSP does not consider consultation necessary. In the latter scenario the relevant lead committee will consider the statement of reasons. If the committee accepts the reasons, the MSP can move immediately to lodge a final proposal; if not, the MSP must undertake a consultation.

When a draft proposal is lodged, the lead policy officials should send a submission to the lead Minister, ideally within 2 weeks of lodging. The submission should provide an initial assessment of the proposal, SG considerations, and implications for government policy. Further information on what should be covered in this submission is set out in PLU's [Member's Bill Guidance Note](#) on eRDM.

### 16.1.2 Final Proposal

After the draft proposal process has been completed, the MSP can lodge a “final proposal”. The final proposal (which again may just be a short general statement of policy intent) must be broadly similar to the draft proposal, but does not have to match precisely. The final proposal will be accompanied by an analysis of consultation responses, except in the scenario above in which the lead committee has accepted a statement of reasons as to why no consultation is required.

The final proposal is published for a month. If the final proposal gains sufficient cross party support (18 MSPs, from at least half of the parties represented on the Parliamentary Bureau) during that time, the MSP secures the right to introduce a Bill.

During the one month publication period, the Government has the option to indicate that it proposes to legislate to give effect to the policy set out in the final proposal. If the Government exercises this option, the Government must first publish a written statement and follow up with an oral statement in the Chamber with the opportunity for questions to be asked by the Member who lodged the final proposal and other Members. The Government must initiate legislation within a period of 2 years from the date of the statement or by the end of the same session, whichever is sooner. The Government will be committed to delivering precisely what is set out in the final proposal if they take over a Member’s Bill in this way.

At the final proposal stage, the lead policy officials will require to produce a paper for consideration by the Cabinet Sub-Committee on Legislation (CSCL). The paper is essentially an update on the submission which was prepared for the lead Minister at draft proposal stage, inviting CSCL to agree a collective Scottish Government approach to the Bill. Further information on what should be covered in this CSCL paper is set out in PLU [Member’s Bill Guidance Note](#).

### 16.1.3 Introduction

If, having secured the right to introduce a Bill, the MSP proceeds to do so, it is subject to the same three-stage scrutiny process as other Public Bills. The development time of Members’ Bills varies, but on average there is a gap of about a year between an MSP securing the right to introduce a Bill and a Bill being introduced. Generally the Non-Government Bills Unit draft Members Bills, however some Members secure external drafting resource.

When a Member’s Bill is introduced the Government submits a Memorandum to the lead committee setting out the Government’s views on the Bill, addressing key issues such as the policy and financial implications. This Memorandum is submitted in the name of the lead Minister and is cleared by CSCL.

The Government will need to engage with a Member’s Bill throughout its parliamentary passage, and policy leads can anticipate that their Minister will

need to participate in committee evidence sessions, plenary debates, and amendment sessions.

#### 16.1.4 Further guidance

Detailed advice on handling in relation to Members' Bills is set out in the PLU [Member's Bill Guidance Note](#).

## **16.2 Private Bills**

### 16.2.1 Overview

Private Bills are introduced by a "promoter", which can be an individual person, a body corporate, or an unincorporated association of persons, for the purpose of obtaining for that promoter particular powers or benefits in excess of or in conflict with the general law. These Bills often relate to the estate, property, status or style, or personal affairs of the promoter.

Private Bills differ from Public Bills (Government Bills, Members' Bills and Committee Bills) and are subject to substantially different procedures. Public Bills have a common purpose to alter or clarify the public and general law. Private Bills involve measures sought in the private interests of the promoter, and which may impact on other parties in their private capacity. The role of the Parliament to legislate remains, but there is an additional responsibility to mediate between competing private interests. As a result, the procedures for Private Bills are both parliamentary and quasi-judicial in character.

On average, there have been 5 Private Bills introduced each parliamentary session since 1999.

### 16.2.2 Parliamentary passage of a Private Bill

All Private Bills are subject to a three-Stage process.

- **Preliminary Stage**  
Committee considers and reports on the general principles of the Bill and whether it should proceed as a Private Bill, and gives preliminary consideration to any objections; the Parliament then decides whether the Bill should proceed to the next stage
- **Consideration Stage**  
Committee gives full consideration to any objections, then considers any amendments lodged
- **Final Stage**  
The Parliament considers any further amendments lodged and then decides whether to pass the Bill

A separate Reconsideration Stage is also possible in certain circumstances.

Chapter 9A of the Standing Orders sets out rules governing Private Bills.

### 16.2.3 Scottish Government interest in a Private Bill

As a consequence of their origins and subject matter, the Scottish Government generally has little or no interest in Private Bills. However, all Private Bills need to be assessed for any public policy interest and, should any arise, then the Government may need to set out its view and to participate in parliamentary proceedings.

To formally agree the extent of the Government's interest in a Private Bill and its public position, where relevant, an analysis needs to be provided to the Cabinet Sub-Committee on Legislation (CSCL).

The lead Minister or Cabinet Secretary should submit a paper to CSCL as soon as possible after a Bill is introduced. The paper should summarise what the Bill aims to achieve and identify any sensitivities associated with it. The assumption is that the Scottish Government will take a neutral position on a Private Bill and CSCL should be provided with advice on whether or not it is appropriate to alter that stance.

Cabinet Secretariat or PLU can provide a template for CSCL papers in relation to Private Bills and examples of CSCL papers for previous Private Bills.

## **16.3 Committee Bills**

### 16.3.1 Overview

A Committee Bill is a Public Bill, introduced by the convener of a committee of the Scottish Parliament, following a proposal for a Bill in relation to matters within that committee's remit. The proposal is made by way of a report to the Parliament. The Bill cannot be introduced if the Scottish Government or the UK Government have indicated that they are planning to introduce legislation in response to the proposal.

Committee Bills are unusual – there have only been 7 Committee Bills introduced since the establishment of the Scottish Parliament.

### 16.3.2 Parliamentary passage of Committee Bills

The start of the process for Committee Bills differs from that of other Public Bills as there is no formal Stage 1.

The committee may establish the need for a Bill by, for example, holding an inquiry. Following an inquiry, if a committee decides to make a proposal (whether on its own initiative or in response to a draft proposal referred to it), it does so in the form of a report to the Parliament. The report may, but need not, include a draft Bill. Once the committee proposal report has been published, the convener lodges a motion seeking Parliament's approval of the Committee Bill proposal. If the Parliament agrees to the motion (and hence the proposal), this gives the committee convener the right to instruct the drafting of a Bill to give effect to the proposal, and to introduce the Bill.

At Stage 1, a Committee Bill is not referred to a lead committee. The Finance and Public Administration Committee will consider and report on the Financial Memorandum in the normal way and, if necessary, the Delegated Powers and Law Reform Committee will report on any provisions conferring powers. Once those committees have reported to the Parliament, the Stage 1 debate takes place in the normal way, to agree the principles of the Bill. It is therefore important that the Government considers its interests in prospective Committee Bills at the earliest possible stage if it wishes to influence their policy development and direction.

Stage 2 and 3 will follow the same process as for other Bill types.

[Chapter 9](#) of the Standing Orders in general, and Rule 9.16 in particular, set out rules governing Committee Bills.

### 16.3.3 Scottish Government interest in Committee Bills

Generally, the shadowing role for Committee Bills is the same as that required for Members' Bills.

If a committee holds an inquiry to establish the need for a Bill, lead policy officials should send a submission to the lead Minister, providing an assessment of the proposal and SG considerations and interests. As the committee's position becomes clearer and development of a Bill more likely, lead policy officials should prepare a CSCL paper for the lead Minister or Cabinet Secretary seeking approval of a written statement.

If the Parliament agrees to the proposal for introduction of a Committee Bill, then a 5 sitting day period is provided during which the Government has the option to indicate that it proposes to legislate to give effect to the policy set out in the proposal agreed by Parliament. If the Government exercises this option, the Government must first publish a written statement and follow up with an oral statement in the Chamber with the opportunity for questions to be asked by the convener of the committee who lodged the proposal and other Members. The Government must initiate legislation within a period of 2 years from the date of the statement or by the end of the same session, whichever is sooner. The Government would be expected to legislate for the final proposal to which the Parliament agreed in principle during the plenary debate.

If the Government does not indicate that it will legislate, the convener of the committee can instruct the drafting of the Bill to give effect to the proposal, and introduce the Bill. The Bill will then be referred straight to the consideration of its general principles in plenary, without the need for a report from the committee (as would be required for other types of Bill).

As with a Member's Bill, it will be necessary for lead policy officials to draft a CSCL paper for the lead Cabinet Secretary/Minister to obtain agreement to the Government's position on whether the Bill should be supported or resisted, and clearance of a written statement to the lead committee setting

out the Government's view on the Bill. Detailed guidance on what should be covered in the CSCL paper is set out in PLU [Member's Bill Guidance Note](#).

#### 16.3.4 Legislative Competence

The Scottish Government does not certify the legislative competence of non-Government Bills on introduction to Parliament. The Presiding Officer does issue a certificate under section 31 of the Scotland Act 1998.

Following the passage of a non-Government Bill at stage 3, section 33 of the Scotland Act 1998 applies in the usual way – the Bill, or a provision of it, can be referred to the Supreme Court by the UK Law Officers or by the Lord Advocate. Therefore SGLD should brief the Scottish Law Officers following the passage of a non-Government Bill at stage 3 as to any issues of legislative competence.

It is therefore important, to minimize the risk of referral to the Supreme Court, that shadow Bill teams for non-Government Bills involve their SGLD contacts so that emerging issues of legislative competence can be identified and addressed as necessary, during the parliamentary process. SGLD should keep the Scottish Law Officers and LSLA briefed as appropriate.

## 17. IMPLEMENTATION OF BILLS

### Summary

In addition to implementing Bills brought forward by Government, the Scottish Government is also responsible for taking the lead on implementing Bills which make it to the statute book. For Scottish Government Bills, the Financial Memorandum requires Bill teams to think about implementation and costs from the early stages of a Bill's development and parliamentary passage. It also enables us to set out our stall on how long implementation might take. Non-Government Bills by their very nature don't allow Scottish Government officials the same level of early thinking and development. However, as these Bills progress through Parliament, relevant Scottish Government policy teams should begin to consider what might need to be done to implement it if Parliament passes it.

### Key issues for implementation teams to focus on are:

- Understanding of who relevant delivery bodies will be
- Understanding of what is being done by delivery bodies in other areas which might delay implementation
- Consideration of any guidance and training implications for delivery bodies
- Whether further secondary legislation (SSIs) will be required to implement the Bill
- Timetables for SSIs
- Communication and engagement strategy

### 17.1 Early engagement

It is important for implementation teams to have a shared understanding early on between delivery bodies and the Scottish Government of what the Bill means and what will be required to implement it. Implementation teams will also need to consider at an early stage what needs to be done to monitor success (or otherwise) of the Bill. Parliament may take an interest in plans for post-legislative scrutiny as a Bill progresses through Parliament and so it can be useful to have this information to hand early on.

Implementation teams should also consider the list of implementation tasks, relevant to the Bill, listed below. Not all of these will be relevant for every Bill, and similarly not every task will be covered here.

#### 17.1.1 Implementation Team: coordination

The Implementation team work with PLU to co-ordinate the strategy for the legislation and work on developing any secondary legislation required to be in place in advance of commencement as well as any statutory guidance. Development of these materials may require close working with other Divisions or Directorates across the Scottish Government as well as careful

engagement with key stakeholders. PLU also leads on the coordination process specific to the implementation of each Bill around the Section 104 Scotland Act Order to ensure that, where it is necessary, key provisions of the Bill extend to the rest of the UK, covered in 17.1.5 below.

Implementation teams will need to consider how many Scottish Government staff will be needed to implement the Bill. The Bill team may need to be turned into an Implementation Team.

#### 17.1.2 Plan timetables for SSIs

To ensure PLU can co-ordinate the deployment of SGLD resource and parliamentary time, a bid template must be completed and submitted to Ministers for approval before an SSI will be accepted into the programme. The bid template, along with instructions for how to complete it, can be found [here](#).

PLU will review all bid templates before they are submitted to Ministers. If implementing the Bill is likely to require a large number of SSIs, please discuss the SSI Programme with PLU. The Bill/implementation team should liaise with SGLD on SSI plans to make sure the drafting resource will be there when needed.

Policy officials should continue to rely on the normal sources of information which exist for SSIs:

- PLU's [SSI guidance](#)
- Your main SGLD contact

#### 17.1.3 Delivery Bodies

Implementation teams should check what else is being done by delivery bodies in other areas which might delay implementation (or where there might be potential synergies). Bodies such as the Scottish Courts and Tribunals Service, Police Scotland, National Records of Scotland and the Convention of Scottish Local Authorities (and individual local authorities) are likely to be progressing a number of projects at the same time. Implementation teams should also check with delivery bodies will need to recruit additional or specialist staff to implement the Bill, or whether implementation work can be absorbed by current staff resources. Implementation teams should also consider how long a delivery body might need to progress its own implementation work, and the implications of this for commencement timings.

Implementation teams should also check whether any contracts need to be let or any grant letters to delivery bodies need to be adjusted.

#### 17.1.4 Justice community

When a Bill is going through the Scottish Parliament, the Scottish Government considers the need for court (or tribunal) rules. If we consider civil court rules are needed, we prepare a policy paper requesting those rules for the Scottish Civil Justice Council, or one of its Committees. The development process for this paper involves working closely with the Council on the paper to ensure

that the policy is clear and will establish an effective foundation for the Council's work on rules.

Consideration should be given to the implications of any criminal offences (or changes to criminal offences) with the Crown Office and Procurator Fiscal Service [COPFS] Policy Unit. There could be internal implications for COPFS staff and/or the Lord Advocate may need to issue guidance to COPFS staff, guidelines to Police Scotland, and public-facing information. There is a useful guidance page on what to do if considering new offences for setting the Bill policy, but it is also relevant for implementation. You can find the link here to [advice on setting offences and penalties](#).

Bill teams should also

- clear any planned criminal offences at an early stage with Criminal Justice Division;
- consider any training implications for delivery bodies - Judicial training is entirely a matter for the Judicial Institute so it is advisable to make early contact with them should training be required;
- check any planned civil penalties with Civil Law Division;
- check if there are any IT changes needed by delivery bodies or the Scottish Government as these can take time - there may be a queue for the services of IT specialists in delivery bodies;
- consider implications for court and tribunal rules as action in this area can be time consuming. For example, preparing civil court rules can take around a year from the Scottish Government early engagement with the Scottish Civil Justice Council and the Lord President's Private Office to rules actually coming into force. Implementation teams should prepare a policy paper to the Scottish Civil Justice Council or one of its Committees accordingly. This provides more on the formal process: [Rule Making \(scottishciviljusticecouncil.gov.uk\)](http://www.scottishciviljusticecouncil.gov.uk).

#### 17.1.5 Section 104 Order

Section 104 Orders are covered in Section 9.11 of the Bill Handbook – they are time consuming and take around a year. Implementation teams should check whether an Order is required under section 104 of the Scotland Act 1998 on reserved or cross-UK border matters to implement a Bill.

Remember that although section 104 Orders are UK Orders, the policy instructions are done by the Scottish Government and the initial drafting by SGLD.

If a section 104 Order may be required, please make early contact with PLU to discuss.

#### 17.1.6 Communication and engagement

The Implementation team is responsible for developing and finalising secondary legislation and statutory guidance. Sensitivities around parliamentary protocols [and political positioning] will inform communications handling.

The Communications Manager will help manage these as well as support the policy team to maintain top lines and develop any future consultations required for secondary legislation. These may include:

- public facing guidance;
- public facing application forms;
- publicity internally with Scottish Government and with delivery bodies.

Considerations should also be given to need for an Implementation Board or Programme Board to monitor progress on implementation and bring together Scottish Government and delivery bodies.

#### 17.1.7 Post-legislative scrutiny

This is mentioned briefly above already and the right approach will vary depending on what a Bill does, but points for a Bill team to consider may be:

- How the effect of their legislation can be monitored – will stats be produced?
- Do they need to liaise with colleagues in analytical services on producing this?
- Can delivery bodies support this work through their own research or statistical publications?
- Does the Bill contain any requirements to report on the Bill that might form part of post-legislative scrutiny?
- What are stakeholders with an interest in the Bill policy expecting?
- Were concerns raised in parliament about Bill policy that could be addressed by specific post-legislative actions being taken?

As an example, a check-list of relevant tasks listed above for a justice-related measure is provided here.

<b>Task</b>	<b>Comments</b>
Public facing guidance	
Public facing application forms	
Publicity – including public facing; internal within SG and with delivery bodies.	
Staff recruitment by delivery bodies/SG.	
Check what else is being done by delivery bodies in other areas which might delay implementation (or where there might be potential synergies).	Bodies such as the Scottish Courts and Tribunals Service, Police Scotland, National Records of Scotland and the Convention of Scottish Local Authorities (and individual local authorities) are likely to be progressing a number of projects at the same time.

Consider any training implications for delivery bodies.	For example, judicial training is entirely a matter for the Judicial Institute: make early contact with them if required.
Check any IT changes needed by delivery bodies or the SG.	These can take time and there may be a queue for the services of IT specialists in delivery bodies.
Clear any planned criminal offences at an early stage with Criminal Justice Division	
Consider the implications of any criminal offences (or changes to criminal offences) with the Crown Office and Procurator Fiscal Service [COPFS] Policy Unit.	There could be internal implications for COPFS staff and/or the Lord Advocate may need to issue guidance to COPFS staff; guidelines to Police Scotland; and public-facing information.
Check any planned civil penalties with Civil Law Division.	
Consider implications for court and tribunal rules.	Action in this area can be time consuming. For example, preparing civil court rules can take around a year from the SG sending a policy paper to the Scottish Civil Justice Council to rules actually coming into force.
Plan timetables for SSIs.	If implementing the Bill is likely to require a large number of SSIs, discuss with PLU SSI Programme, with a view to potentially advising the Parliamentary timetables accordingly.
Check whether an Order is required under section 104 of the Scotland Act 1998 on reserved or cross-UK border matters.	If a section 104 Order may be required, make early contact with PLU to discuss.  Remember that: <ul style="list-style-type: none"> <li>• Although section 104 Orders are UK Orders, the policy instructions are done by SG and the initial drafting by SGLD.</li> <li>• Section 104 Orders are time consuming – they take around a year and timetables must be agreed with UK Government.</li> </ul>
Check whether any contracts need to be let or any grant letters to delivery bodies need to be adjusted.	
Consider need for Implementation Board or	

<p>Programme Board to monitor progress on implementation and bring together SG and delivery bodies.</p>	
<p>Consider at an early stage what needs to be done to monitor success or otherwise of the Bill.</p>	<p>This will be needed for post-legislative scrutiny.</p>
<p>Consider how many SG staff will be needed to implement the Bill.</p>	<p>The Bill team may need to be turned into an Implementation Team.</p>

## ANNEX A: CHECKLIST OF KEY TASKS

CHAPTER	TASKS
2. Collective agreement to proceed with a Bill	<p><b>Key issues</b> for Bill Teams to focus on are:</p> <ul style="list-style-type: none"> <li>• Obtaining a slot in the overall legislative programme</li> <li>• Securing collective agreement to:               <ul style="list-style-type: none"> <li>○ consult on the policy proposals intended for the Bill</li> <li>○ the final content of the Bill on introduction</li> <li>○ any significant changes to the content of the Bill during its passage</li> </ul> </li> </ul>
3. Timetabling	<p><b>Key issues</b> for Bill Teams to focus on:</p> <ul style="list-style-type: none"> <li>• Agreeing a target introduction date for the Bill with PLU</li> <li>• Developing a full timetable with input from PLU, SGLD and PCO</li> <li>• Ensuring delivery of key milestones to target dates</li> <li>• Identifying and flagging any significant risks to delivery</li> </ul>
4. Legislative programme assurance and oversight	<p><b>Key issues</b> for Bill Teams to focus on:</p> <ul style="list-style-type: none"> <li>• Understanding the role of PLU and MfPB</li> <li>• Establishing your local project management structure</li> <li>• Familiarising yourself with the formal Bill Management Meeting process</li> <li>• Providing fortnightly updates on progress</li> </ul>
5. Training, guidance and support	<p><b>Key issues</b> for Bill Teams to focus on:</p> <ul style="list-style-type: none"> <li>• Participating in the Bill seminar series</li> <li>• Discussing your training needs with PLU</li> </ul>
6. Who is involved in the Bill process?	<p><b>Key issues</b> for Bill Teams to focus on:</p> <ul style="list-style-type: none"> <li>• Identifying your key internal and external stakeholders and building relationships with them</li> <li>• Establishing good working arrangements with SGLD and PCO at an early point</li> <li>• Identifying the project management arrangements that best suit the needs of your Bill</li> </ul>

7. Consultation and Stakeholder engagement	<p><b>Key issues</b> for Bill Teams to focus on:</p> <ul style="list-style-type: none"> <li>• Planning your approach to consultation and stakeholder engagement with input from Comms and others</li> <li>• Ensuring your timetable can accommodate your consultation plans</li> <li>• Considering whether there would be benefit in more than one consultation, and whether there should be consultation on a draft Bill</li> </ul>
8. Policy-Proofing and Impact Assessments	<p><b>Key issues</b> for Bill Teams to focus on:</p> <ul style="list-style-type: none"> <li>• Understanding the range of IAs which need to be addressed</li> <li>• Understanding the different policy-proofing topics which need to be considered in developing a Bill</li> </ul>
9. Legal issues	<p><b>Key issues</b> for Bill Teams to focus on:</p> <ul style="list-style-type: none"> <li>• Understanding the limitations of legislative competence and the points in the legislative process at which it is a critical issue</li> <li>• Identifying any EU issues or international obligations which need to be taken into account in developing the Bill</li> <li>• Addressing any complicating factors such as retrospection and hybridity</li> <li>• Developing a plan for the commencement of the Bill once it becomes an Act</li> <li>• Developing a coherent plan for the framework of any delegated powers provided for in the Bill</li> <li>• Identifying whether issues around Crown application and/or Crown consent require to be addressed</li> <li>• Identifying whether any pre- or post-Bill Scotland Act Orders will be required to ensure that the policy framework can operate effectively</li> </ul>
10. Instructing the Bill	<p><b>Key issues</b> for Bill Teams to focus on are:</p> <ul style="list-style-type: none"> <li>• Understanding the different roles played by the Bill Team, SGLD, and PCO in the drafting of a Bill</li> <li>• Understanding what issues policy instructions need to cover</li> <li>• Developing an agreed way of working with SGLD and PCO on the development of policy instructions</li> </ul>

	<ul style="list-style-type: none"> <li>• Understanding the iterative process of instructions and drafting</li> <li>• Becoming familiar with the key structural aspects of Bills and the wider policy frameworks within which the Bill may require to operate</li> </ul>
11. Accompanying Documents	<p><b>Key documents</b> for Bill Teams to focus on:</p> <ul style="list-style-type: none"> <li>• Policy Memorandum</li> <li>• Explanatory Notes</li> <li>• Financial Memorandum</li> <li>• Delegated Powers Memorandum, and</li> <li>• Auditor General’s Report (in rare cases)</li> </ul>
12. Preparing for Introduction	<p><b>Key issues</b> for Bill Teams to keep under review:</p> <ul style="list-style-type: none"> <li>• Understanding the purpose and format of Bill Management Meetings</li> <li>• Identifying all of the documentation which needs to be completed, and understanding when it will need to be published</li> <li>• Securing approvals for introduction of the Bill</li> </ul>
13. Parliamentary stages of a Bill	<p><b>Key issues</b> for Bill Teams to keep under review:</p> <ul style="list-style-type: none"> <li>• How the lead committee, and other committees, will scrutinise the Bill at Stage 1 and preparing for Government input to these processes</li> <li>• Preparing the Government’s response to the Stage 1 report, and participation in the Stage 1 debate</li> <li>• Having robust systems in place to manage the amendments process at Stage 2 and Stage 3</li> <li>• Ensuring Ministers can take a risk-based view on how to respond to non-Government amendments at Stage 2 and Stage 3</li> <li>• Ensuring relevant accompanying documentation is updated between Stages 2 and 3</li> <li>• Understanding what options are available if certain issues occur at Stages 2 and 3</li> </ul>
14. Action following enactment of a Bill	<p><b>Key issues</b> for Bill Teams to focus on are:</p> <ul style="list-style-type: none"> <li>• Checking for publication of the Act</li> <li>• Preparing updated Explanatory Notes to coincide with publication of the Act</li> <li>• Considering the need for any publicity or commencement regulations</li> <li>• Participating in a post-Bill review</li> </ul>

<p>15. Other types of Government Bill</p>	<p><b>Key issues</b> for Bill Teams to focus on are:</p> <ul style="list-style-type: none"> <li>• Familiarising yourself with the specific rules concerning the type of non-standard Bill you may need to progress</li> <li>• Alerting PLU – non-standard Bills are very unusual!</li> <li>• The legislative competence considerations and processes are the same for non-standard Government Bills.</li> </ul>
<p>16. Non-Government Bills</p>	<p><b>Key issues</b> for shadow Bill teams to focus on are:</p> <ul style="list-style-type: none"> <li>• Understanding the different types of non-Government Bills which may emerge</li> <li>• Understanding the key internal clearance processes which must be followed in determining the Scottish Government’s collective view on non-Government Bills</li> <li>• Following the progress of the Bill</li> </ul>

## ANNEX B: ERDM FILING

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### Filing

For a major Bill it is suggested that the following series of files be opened, using the following file names—

1. [Bill name:] Preliminary consideration and drafting: 20[XX] – 20[YY]
2. [Bill name:] Consultation: 20[XX] – 20[YY]
3. [Bill name:] Cabinet proceedings: 20[XX] – 20[YY] [subject to Rules on filing Cabinet papers]
4. [Bill name:] Accompanying Documents: 20[XX] – 20[YY]
5. [Bill name:] Stage 1: 20[XX] – 20[YY]
6. [Bill name:] Stage 2: 20[XX] – 20[YY]
7. [Bill name:] Stage 3: 20[XX] – 20[YY]
8. [Bill name:] Royal Assent: 20[XX] – 20[YY]
9. [Bill name:] Publicity: 20[XX] – 20[YY]
10. [Bill name:] Implementation: 20[XX] – 20[YY].

In the list above, 20[XX] is the year that work begins on the Bill proposal, and 20[YY] is the year five years after that.

However, this list is not prescriptive; the number of files required will ultimately be dependent on the nature and circumstances of the Bill, and deciding what files are required is a matter of discretion for the Bill Team in consultation with SGLD and PCO. For example, items 8 and 9 on the list of files are often dispensed with. A minor Bill (e.g. one of a few sections) may be dealt with in a short series of files.

Similarly, it may be helpful to have a series of files on the consultations held in the pre-legislative phase depending on their nature and extent, such as where a number of different approaches (e.g. questionnaires; open forums etc.) are used. However, it is recommended that the folders for Bill stages are not split further, as this can cause problems in filing if correspondence deals with a number of different matters at once.

### Some Points for Compiling and Storing Briefing

- It is useful to set up a Bill Team mailbox, and to designate one person to track all briefing requested or received
- The Bill Team should clear all briefings with SGLD and PCO should be given the opportunity to comment
- A record of all briefing material requested or received should be entered in a suitable tracker

- All briefing documents should have an appropriate identification header/footer, including an indication of which draft version it is
- A copy of any briefing recorded on the tracker database should be checked by a member of the Bill Team for style and content etc
- Once finalised, a hard copy of the briefing, properly indexed, should be provided for the Cabinet Secretary/Minister for a wet signature at introduction. A strategy should be prepared to ensure that changes made by the Cabinet Secretary/Minister to the hard copy are handled and documented consistently.
- Finalised briefing and other relevant material should be properly stored on eRDM

## ANNEX C: GLOSSARY OF ACRONYMS

<b>Acronym</b>	<b>Full Form</b>
PLU	Parliament and Legislation Unit
SGLD	Scottish Government Legal Directorate
PCO	Parliamentary Counsel Office
LSLA	Legal Secretariat to the Lord Advocate
MfPB	Minister for Parliamentary Business
DPLR	Delegated Powers and Law Reform
CSCCL	Cabinet Sub-Committee on Legislation
IBMM	Initial Bill Management Meeting
OBMM	Officials' Bill Management Meeting
MBMM	Ministerial Bill Management Meeting
CLOs	Committee Liaison Officers
IAs	Impact Assessments
PBU	Public Bodies Unit
OSCR	Scottish Charity Regulator
EU	European Union
ECHR	European Convention on Human Rights
P&E	Purpose and Effect
SSI	Scottish Statutory Instrument
COPFS	Crown Office and Procurator Fiscal Service