

Legislative Process

Consideration of legislation is the core of a parliament's role. The Parliament debates and decides the laws that are going to govern the country.

A proposal for a new law is known as a Bill. If the Parliament passes a Bill, it becomes an Act of the Scottish Parliament. Acts set the framework for the law in a particular area.

Bills are either:

- Public Bills - seeking to change the law as it affects the general population, or
- Private Bills - seeking powers or rights for a particular individual or organisation that are in excess of or in conflict with the general law

Most of the Bills considered by the Parliament are Public Bills. Public Bills can be introduced in the Parliament by:

- a member of the Scottish Government (a "Government Bill")
- an individual member of the Parliament (a "Member's Bill"), or
- a parliamentary committee (a "Committee Bill"),

Before they can become law, all Public Bills go through the same stages of scrutiny in the Parliament. The stages are explained briefly below.

Stage 1

The purpose of Stage 1 is for the Parliament to consider the general principles of a Bill. This is a broad consideration in the round of whether legislation on the issue is required and, if so, whether this Bill is the right approach.

After a Bill is introduced it is referred to the relevant policy committee. That committee is required to consider and report on the general principles of the Bill, and will usually make a recommendation to the Parliament as to whether those general principles should be agreed to and whether, therefore, the Bill should proceed beyond Stage 1.

To inform that decision, the committee will hear from interested stakeholders and will also take on board the views of other parliamentary committees with an interest. Usually the Finance Committee and the Delegated Powers and Law Reform Committee will have such an interest. On the basis of these inquiries, the committee makes a report to the Parliament.

The Parliament as a whole then debates the general principles, informed by the committee's report. Following that debate, the Parliament decides whether to agree to the general principles of the Bill. If it does not agree, the Bill falls. If it does agree, the Bill progresses to Stage 2.

Stage 2

Stage 2 is an opportunity for detailed scrutiny of the Bill.

The Bill is usually referred back to the committee which considered it at Stage 1 to undertake Stage 2 scrutiny.

At Stage 2 there is an opportunity for any member of the Parliament to propose changes to the Bill by way of amendments to the text. Members wishing to lodge amendments should speak to the clerks in the Parliament's legislation team, who will help in drafting amendments.

Although any member of the Parliament may lodge amendments, the amendments are considered and voted on only by the committee to which the Bill has been referred.

At Stage 2 all admissible amendments lodged are considered by the committee.

Stage 2 consideration of the Bill is concluded once every amendment has been considered and the committee has been through each of the Bill's provisions.

Stage 3

Stage 3 is the second and final opportunity for the Parliament to amend the Bill.

As at Stage 2, any member can lodge amendments and, again, support to do so is provided by the Parliament's legislation team.

Stage 3 consideration, however, is undertaken by the Parliament as a whole and so all members can vote on the amendments.

At Stage 3, unlike at Stage 2, only amendments selected by the Presiding Officer are debated by the Parliament. The criteria which inform decisions on selection by the Presiding Officer are published in the Guidance on Public Bills.

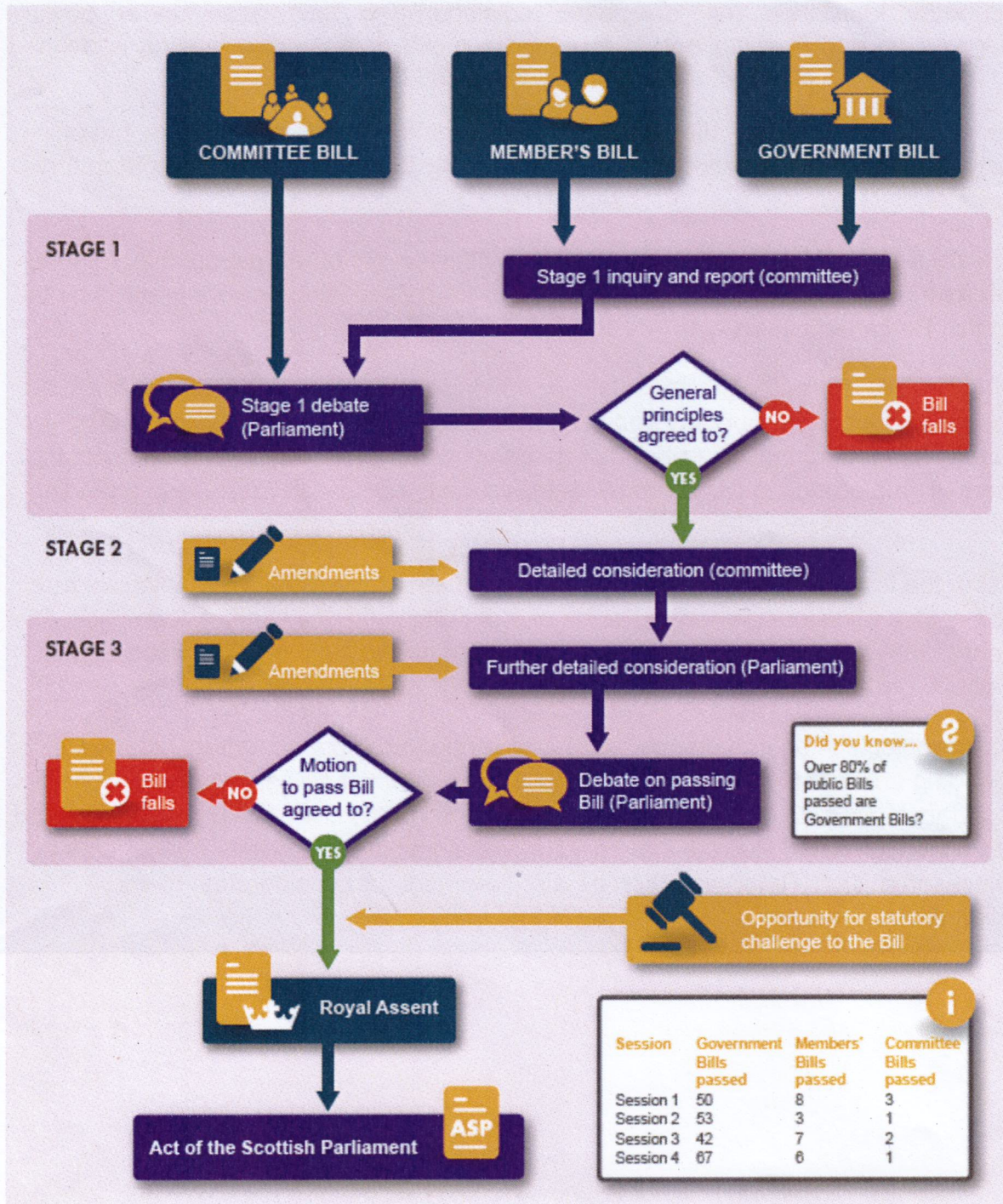
After the consideration of amendments, the Parliament then debates whether to pass the Bill. That is the end of parliamentary consideration of the Bill. If it is not passed, the Bill falls. If the Bill is passed, it begins its progress to becoming an Act.

Becoming an Act

There is then a four-week period during which the Bill as passed can be challenged by being referred to the Supreme Court if the Law Officers of the UK or Scottish Governments believe it to be outside the law-making powers of the Scottish Parliament.

If the Bill is not challenged, it is submitted by the Presiding Officer to HM The Queen for Royal Assent, on receipt of which it becomes an Act of the Scottish Parliament.

Stages in the passage of a Public Bill



Implementation

Often much of the Act's provisions will not come into force until they have been commenced by and/or set out more fully in secondary legislation.

Secondary legislation (or "delegated legislation") is law made under powers delegated by and from an Act. The power to make delegated legislation is defined and limited by the primary legislation that delegated those powers.

The term secondary legislation encompasses a variety of different matters, but of most relevance are regulations, which are normally in the form of Scottish Statutory Instruments (SSIs).

SSIs are a form of law made by the Scottish Ministers (or other responsible authority such as the Lord President of the Court of Session) exercising powers granted by the Scottish Parliament in an Act.

SSIs generally set out technical details or administrative matters necessary for Acts to operate, but can include any subject matter and in much more detail than is usually provided for in Acts ("primary legislation") – for example, setting-up licensing schemes, implementing EU obligations, prescribing application forms, and providing procedural processes, rules or codes of practice.

Most of the law considered by the Parliament is in the form of secondary legislation. The Scottish Ministers present upwards of 300 SSIs in the Parliament each year. The extent of the powers delegated in Acts varies and accordingly the SSIs made under these powers also vary.

Secondary legislation can be subject to different forms of parliamentary scrutiny, depending on what is stipulated in the Act that granted the power to make it. Where secondary legislation is subject to parliamentary scrutiny, it will usually be considered first by the Delegated Powers and Law Reform Committee, and then by the relevant subject committee. There may then be a requirement for consideration by the Parliament as a whole.

Further information and assistance

The legislation process in the Parliament is supported by the Parliament's Legislation Team.

If you wish to know more about the process or wish assistance in relation to legislation, you can contact the legislation team at 0131-348-5277 or LegislationTeam@parliament.scot