OpenLearn



The Scottish Parliament and law making





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Introduction and guidance

Introduction and guidance

Welcome to this badged open course, The Scottish Parliament and law making.

The course lasts eight weeks, with approximately three hours of study each week. You can work through the course at your own pace, so if you have more time one week there is no problem with pushing on to complete another week's study.

In this course you learn about the law making role of the Scottish Parliament and consider how, and why, laws are made by both the Scottish and United Kingdom (UK) Parliaments. You explore devolved matters, reserved matters, legislative competence, secondary legislation and consider changes in the legal culture of Scotland which took place at the end of the twentieth century. You are introduced to reading an Act of the Scottish Parliament, the workings of the Scottish and UK Parliaments and how citizens can become involved in the law making process.

Law is not made in isolation, it reflects the society and culture within which it is made, developed and applied. It is not static. Mechanisms (such as the Scottish and UK Parliaments) evolve to allow it to develop and change. Law making is heavily influenced by change, whether political, social, economic or technological. You consider aspects of this as you explore how the Scottish Parliament works.

No legal system is without its criticisms as there are both benefits and drawbacks to the way in which law is made and scrutinised. You will explore a number of these as you progress through the course.

After completing this course, you should be able to:

- understand the role of the Scottish Parliament in law making
- understand the relationship between the Scottish and UK Parliaments
- understand the role played by law and how you can influence the law making process.

After completing *The Scottish Parliament and law making*, you may like to enrol on these free OpenLearn courses:

Scottish courts and the law

Legal skills and debates in Scotland

Law and change: Scottish legal heroes

And if you would like to take your study in this subject area further, sign up to the Open University course *Law making in Scotland*.

Moving around the course

In the 'Summary' at the end of each week, you can find a link to the next week. If at any time you want to return to the start of the course, click on 'Course content'. From here you



can navigate to any part of the course. Alternatively, use the week links at the top of every page of the course.

It's also good practice, if you access a link from within a course page (including links to the quizzes), to open it in a new window or tab. That way you can easily return to where you've come from without having to use the back button on your browser.

What is a badged course?

While studying *The Scottish Parliament and law making* you have the option to work towards gaining a digital badge.

Badged courses are a key part of The Open University's mission *to promote the educational well-being of the community*. The courses also provide another way of helping you to progress from informal to formal learning.

To complete a course you need to be able to find about 24 hours of study time, over a period of about 8 weeks. However, it is possible to study them at any time, and at a pace to suit you.

Badged courses are all available on The Open University's <u>OpenLearn</u> website and do not cost anything to study. They differ from Open University courses because you do not receive support from a tutor. But you do get useful feedback from the interactive quizzes.

What is a badge?

Digital badges are a new way of demonstrating online that you have gained a skill. Schools, colleges and universities are working with employers and other organisations to develop open badges that help learners gain recognition for their skills, and support employers to identify the right candidate for a job.

Badges demonstrate your work and achievement on the course. You can share your achievement with friends, family and employers, and on social media. Badges are a great motivation, helping you to reach the end of the course. Gaining a badge often boosts confidence in the skills and abilities that underpin successful study. So, completing this course should encourage you to think about taking other courses.





How to get a badge

Getting a badge is straightforward! Here's what you have to do:

- read each week of the course
- score 50% or more in the two badge guizzes in Week 4 and Week 8.

For all the quizzes, you can have three attempts at most of the questions (for true or false type questions you usually only get one attempt). If you get the answer right first time you will get more marks than for a correct answer the second or third time. If one of your answers is incorrect you will often receive helpful feedback and suggestions about how to work out the correct answer.

For the badge quizzes, if you're not successful in getting 50% the first time, after 24 hours you can attempt the whole quiz, and come back as many times as you like.

We hope that as many people as possible will gain an Open University badge – so you should see getting a badge as an opportunity to reflect on what you have learned rather than as a test.

If you need more guidance on getting a badge and what you can do with it, take a look at the OpenLearn FAQs. When you gain your badge you will receive an email to notify you and you will be able to view and manage all your badges in My OpenLearn within 24 hours of completing the criteria to gain a badge.

Get started with Week 1.





Week 1: Law making powers of the Scottish Parliament

Introduction

In this week you consider the law making powers of the Scottish Parliament. In subsequent weeks you consider the law making process in the Scottish Parliament.

When the process of devolution within the UK began in 1998, legislation from the UK Parliament created new devolved legislatures in Scotland, Wales and Northern Ireland with new law making powers. The Scotland Act 1998 outlined the initial powers of the new Scottish Parliament, the Government of Wales Act 1998 outlined those of the National Assembly of Wales and the Northern Ireland Act 1998 outlined those for the Northern Ireland Assembly. Those original devolution settlements have been built upon in subsequent decades. The powers of the Scottish Parliament and Welsh Assembly have been extended. The situation in Northern Ireland is more complex and differs. The Assembly there has been suspended on a number of occasions when agreement over power sharing arrangements has not been reached.

Devolution is therefore an ongoing process which reflects the changing nature of the UK. In Scotland it reflects the relationship between the Scottish and UK Governments and the people both parliaments represent. From its inception devolution has been seen as a 'process and not an event' and this week takes an historical approach to explore how the powers of the Scottish Parliament have evolved.

Understanding the law-making powers of the Scottish Parliament is important as it can only legislate (make laws) within certain defined areas. Its powers flow from the devolution legislation passed by the UK Parliament. In the first three sections you consider this transfer of powers and the subsequent expansion of those powers. There are three relevant Acts and each will be considered in turn:

- the Scotland Act 1998
- the Scotland Act 2012
- the Scotland Act 2016.

Learning outcomes

By the end of this week you will be able to:

- understand the law-making powers of the Scottish Parliament
- explain the difference between devolved and reserved matters
- explain what a legislative consent motion is and why they are used.



Before you start, The Open University would really appreciate a few minutes of your time to tell us about yourself and your expectations of the course. Your input will help to further improve the online learning experience. If you'd like to help, and if you haven't done so already, please fill in this optional survey.

1 The Scotland Act 1998

The Scotland Act 1998 (The 1998 Act) established the Scottish Parliament and outlined the law-making process, on what matters laws can be made (devolved matters) and the legislative competence of the Scottish Parliament. The law-making process is explored in week 3. Here you consider on what matters law can be made.



Figure 1 The Mace of Scotland

The 1998 Act contained a list of 'reserved matters' in Schedule 5. These were matters which were to be reserved for the UK Parliament and on which only the UK Parliament could make law. There was, however, no similar list of devolved matters on which the Scottish Parliament could legislate. It has therefore been established that the matters on which the Scottish Parliament can legislate are, in effect, all those matters that are not 'reserved'. So, although power is devolved, there are some limitations as the UK Parliament continues to legislate for Scotland on reserved matters.



Box 1 Reserved and Devolved matters under the Scotland Act 1998 (unamended)

Reserved matters in Schedule 5 of the Scotland Act 1998 (original unamended) include:

constitutional matters

UK foreign policy (including relations with

Europe)

UK defence and national security

the fiscal, economic and monetary system

immigration and nationality

energy: electricity, coal, gas and nuclear

energy

Matters on which the Scottish Parliament can legislate under the original unamended Scotland Act 1998

health

education

local government

economic development

tourism

criminal law

common markets civil law

trade and industry, including competition and

customer protection

agriculture and food

railways, transport safety and regulation sport and the arts

employment legislation planning social security and child support social work

gambling and the National Lottery national heritage

data protection training firearms housing

consumer protection some aspects of transport, including the road

network, ports and harbours

ordnance survey law and home affairs (the prosecution system

and courts)

abortion, human fertilisation, embryology,

genetics

the police and fire services

xenotransplantation and vivisection the environment

equal opportunities agriculture, forestry and fishing

regulation of activities in outer space statistics, public registers and records

The Scottish Parliament has full legislative competence (it can pass both primary and subordinate legislation) in devolved areas (i.e. those matters that are not 'reserved'). Since its establishment in 1998 the Scottish Parliament in its law making and powers has influenced the character and style of Scots law in ways in which have resulted in differences from those applicable in England, Wales and Northern Ireland. The possibility of the UK Parliament legislating on devolved matters does, however, exist. This is explored in Weeks 2 and 4.



2 The Scotland Act 2012

In 2007 the Scottish Parliament voted to establish the Commission on Scottish Devolution (known as the Calman Commission after the Chair of the Commission, Professor Sir Kenneth Calman) to review how devolution was working and whether any amendments were needed to make it effective. The Commission was to provide an independent review. Its terms of reference are in Box 2.

Box 2 Terms of reference of the Calman Commission

To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, that would improve the financial accountability of the Scotlish Parliament and that would continue to secure the position of Scotland within the United Kingdom (Holden, 2010)

Following wide-ranging consultations the Commission made a number of recommendations in its final report *Serving Scotland Better: Scotland and the United Kingdom in the 21*st *Century* (Commission on Scottish Devolution, 2009).



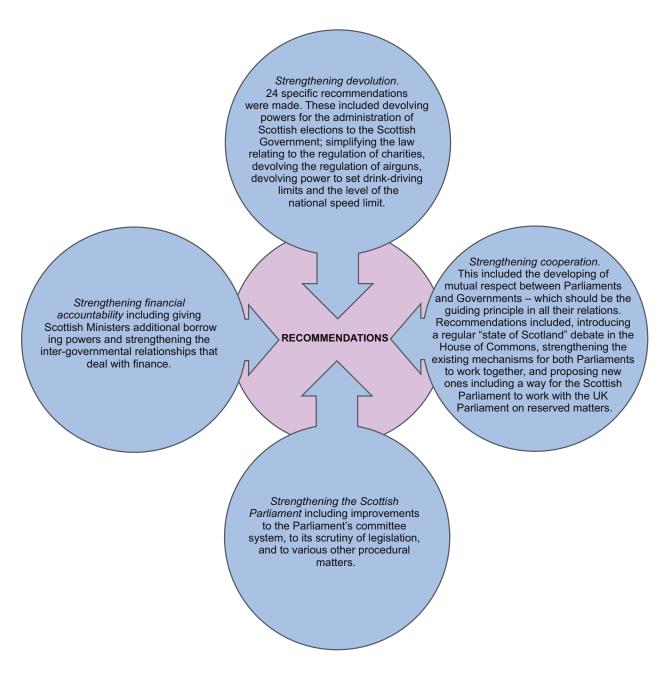


Figure 2 Recommendations from *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*

The Calman Commission provides an illustration of the difference between the roles of the Scottish Parliament and Scottish Government (Executive). The Calman Commission was established by the Scottish Parliament. The Scottish Government (Executive) had voted against the establishment of the Commission when the proposal was made in Parliament, although it later cooperated with the Commission.

2.1 New and amended powers

The UK Coalition Government (conservative and liberal democrats) had committed to implementing the recommendations of the Calman Commission. This commitment resulted in The Scotland Act 2012 (passed by the UK Parliament) which made a number of changes to the devolution settlement for Scotland. It gave effect to many of the



recommendations as set out in the Calman Commission's final report. The Scottish Executive was formally renamed as the Scottish Government, Revenue Scotland was established to replace HMRC for devolved taxes and further powers were transferred (see Box 3 for more detail).



Scotland Act 2012

2012 CHAPTER 11

An Act to amend the Scotland Act 1998 and make provision about the functions of the Scotlish Ministers; and for connected purposes.

[1st May 2012]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Figure 3 Scotland Act 2012 Chapter 11

Disagreement over the draft Bill which subsequently became the 2012 Scotland Act (the 2012 Act) had to be resolved before it was passed by the UK Parliament. The UK Government also required a legislative consent motion be passed by the Scottish Parliament before the 2012 Act was passed by the UK Parliament. Paragraph 8 of the explanatory notes to the 2012 Act state that the 2012 Act 'contains provisions that trigger the Sewel Convention. As the Act changes the devolution settlement for Scotland, the Act contains provisions which alter the legislative competence of the Scottish Parliament (for example, relating to air weapons) and provisions which alter the executive competence of the Scottish Ministers (for example, relating to the power to prescribe drink-driving limits). The Scottish Parliament gave its consent to the provisions in the Act that trigger the Sewel Convention on 18 April 2012.'

You will learn more about the Sewel convention and legislative consent motions in Section 4.

Box 3 New and amended Devolved Powers following the 2012 Scotland Act

Power	Implementation
Air weapons	The Air Weapons and Licensing (Scotland) Act 2015 asp 10 received Royal Assent on 4 August 2015.
Borrowing powers	Power to borrow up to £2.2 billion (Capital) and £500m (Revenue) from 1 April 2016.
Drink-driving alcohol limits	Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014. New drink-driving alcohol limits applied in Scotland from 5 December 2014.



Land and Buildings Transaction Tax	Land and Buildings Transaction Tax replaced the Stamp Duty Land Tax from 1 April 2015.
Landfill Tax	Landfill Tax (Scotland) Act 2014 asp 2 applied in Scotland from 1 April 2015.
Scottish Rate of Income Tax (SRIT)	UK Government deducts 10p in the £ from basic, higher and additional rates of income tax and the Scottish Parliament has the power to levy a Scottish rate across the three bands from 1 April 2016.

Based on information from the Scottish Parliament website (n.d).

3 The Scotland Act 2016

In September 2014, following a Scottish referendum on independence, the people of Scotland voted to remain part of a United Kingdom. The Scottish Government had campaigned for independence. Following the referendum Lord Smith of Kelvin was tasked with overseeing and delivering a cross-party agreement on the shape of improved and enhanced devolution for Scotland.



Figure 4 The Smith Commission

On 27 November 2014 Lord Smith delivered an agreement. This had been agreed by all five of the main Scottish political parties and outlined further powers for the Scottish Parliament.

Box 4 Comment on the Scotland Bill leading to the 2016



Scotland Act.

The Bill will make the Scottish Parliament one of the world's most powerful devolved parliaments and allow more decisions affecting Scotland to be taken in Scotland. It will increase the financial responsibility of the Scottish Parliament, and its accountability to the Scottish public.

The package contains significant financial powers, including over income tax and VAT, the devolution of substantial elements of the welfare system and a range of other powers, including constitutional powers and powers in areas such as oil and gas and transport.

Along with a more powerful and accountable Scottish Parliament, Scotland will also retain the huge benefits of being part of a strong United Kingdom with a large UK economy, a UK pound, UK pensions and UK armed forces – just as the Scottish people made clear they wanted in last year's referendum.

Scotland Office and Mundell (2015a).

The explanatory note to the Bill indicates that it delivers the Smith Commission Agreement.

Box 5 Overview of the Bill

- 1 The Scotland Bill will deliver the Smith Commission Agreement, which was published in November 2014 having gained all-party agreement in Scotland.
- The Bill is an enabling Bill and the majority of the provisions in the Bill set out the powers that are being transferred to the Scottish Parliament and or Scottish Ministers. In particular the Scotland Bill amends sections of the Scotland Act 1998 and rebalances the devolved and reserved responsibilities between the administrations. The Bill also includes provisions which set out the constitutional relationship of the Scottish Parliament and Scottish Government within the United Kingdom's constitutional arrangements. It does not amend this relationship.

Scotland Office and Mundell (2015b).

3.1 Further additional powers

The Scotland Act 2016 transferred the following additional powers to the Scottish Parliament:

- powers to set rates and thresholds of Income Tax, and devolution of Air Passenger Duty
- some social security powers including disability and carers' benefits, Winter Fuel payments
- the power to create new benefits in devolved areas and to top up reserved benefits
- the power to adjust aspects of Universal Credit in Scotland including the housing element
- devolution of some employment services
- devolution of the Crown Estate in Scotland



- the arrangements for elections to the Scottish Parliament
- devolution of Tribunals in reserved areas such as the Employment Tribunals in Scotland
- devolution of additional powers over equal opportunities, including to legislate for gender balance on public boards
- devolution of British Transport Police.



Scotland Act 2016

CHAPTER 11

CONTENTS

PART 1

CONSTITUTIONAL ARRANGEMENTS

The Scottish Parliament and the Scottish Government

1 Permanence of the Scottish Parliament and Scottish Government

Figure 5 Scotland Act 2016 Chapter 11

The powers of the Scottish Parliament have grown since the original devolution settlement contained in the 1998 Scotland Act. The growth of those powers has been incremental (with subsequent Acts in 2012 and 2016) and piecemeal. There are now a number of Acts and other instruments to consider when looking at the powers of the Scottish Parliament.

Box 6 UK Government Policy paper 2010 to 2015 government policy: Scottish devolution

Scotland has two governments: the UK government is responsible for matters including defence, foreign affairs, the economy, social security and the constitution, while the Scottish government is responsible for matters including health, education, justice and policing, and local government.

Although responsibility is divided in this way, the two governments work together on many issues and cooperate to make sure that the devolution settlement is well managed.



The division of responsibilities is not fixed, and it has changed several times since devolution began in 1999.

Office for the Advocate General for Scotland (2015).

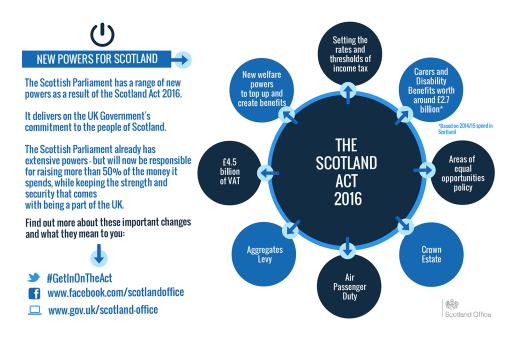


Figure 6 The Scotland Act 2016 - new powers for Scotland

Activity 1 Reserved or Devolved?

Allow about 20 minutes

This Activity is designed to provide you with an opportunity to pause and reflect on the information provided so far and to enable you to test your knowledge of reserved and devolved powers. You have engaged with a lot of important information about the powers of the Scottish Parliament.

Take a few minutes to reflect on what you have read. How did you manage the information presented? Did you find it approachable or did you have to read it several times?

Provide your answer...

2 The list below contains matters which are either devolved or reserved. Based on the knowledge you have gained from your studies indicate by clicking in the appropriate box whether a matter is devolved or reserved.

Devolved

Select the devolved matters.

- □ social security
- □ health



□ broadcasting
□ housing
□ education and training
□ equal opportunities
□ miscellaneous matters, such as compiling statistics and keeping public records
□ defence
□ planning and the environment
□ medicines
□ sport and the arts
□ aspects of transport (e.g. regulation of air services, rail and international shipping)
□ the prosecution system and the courts
□ the constitution
□ agriculture, forestry and fishing
□ tourism and economic development
□ aspects of energy regulation (e.g. electricity, coal, oil and gas and nuclear energy)
□ trade and industry
□ employment
□ financial and economic matters
□ social work
□ foreign affairs
□ Scottish road network, bus policy, and ports and harbours
□ misuse of drugs
□ immigration and nationality
□ local government
□ international development
□ the Civil Service
Reserved
Select the reserved matters.
□ equal opportunities
□ health
□ defence
□ employment
□ housing
□ aspects of energy regulation (e.g. electricity, coal, oil and gas and nuclear energy)
□ financial and economic matters
□ education and training
□ foreign affairs
□ immigration and nationality
□ planning and the environment
□ social security
□ international development
aspects of transport (e.g. regulation of air services, rail and international shipping)



□ the prosecution system and the courts □ agriculture, forestry and fishing □ misuse of drugs □ medicines □ broadcasting □ sport and the arts □ the constitution □ tourism and economic development □ the Civil Service □ local government miscellaneous matters, such as compiling statistics and keeping public records □ trade and industry □ Scottish road network, bus policy, and ports and harbours □ social work

Comment

- The powers of the Scottish Parliament are set out in Acts of the UK Parliament. Acts of Parliament create law. Those laws tend to be expressed in formal language that is quite different from the language you would find in a novel or newspaper article, and very different from the language in an online blog or tweet. Learning to order information to make sense of it is an important skill. Here the authors chose to take a step-by-step historical approach to build a picture of the powers of the Scottish Parliament. This enabled the incremental nature of those powers to be explained. The incremental nature reflects events such as the independence referendum. Devolution has not been a fixed and settled process and is on-going, reflecting changes within society.
- The Scotland Act 1998 (as amended) specifies those matters that are reserved to the UK Parliament. Matters not reserved by the Scotland Act 1998 (as amended) are devolved to the Scottish Parliament.

4 Legislative consent – or 'Sewel' motions

During the debates of the Scotland Act 1998 in the House of Lords (UK Parliament), Lord Sewel, the then Parliamentary Under-Secretary of State for Scotland, stated that they 'would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament'. It was important that this convention was established as there were no provisions in the Scotland Act 1998 (original unamended) which prevented the UK Parliament from legislating on devolved matters.

The Scottish Parliament is able to agree the incorporation of legislative provisions affecting Scotland in devolved areas. This enables the Scottish Parliament to consent to the UK Parliament legislating for Scotland on devolved matters in certain circumstances where, for example, it is considered sensible and appropriate to put in place a single, UK-



wide regime, or where the Scottish Parliament supports the proposed legislation but there is no parliamentary time available because of separate Scottish priorities.

These agreements, initially known as Sewel motions, were renamed in 2005 as legislative consent motions. The procedures for legislative consent motions are stated in the Scottish Parliament's Standing Orders. Such motions can save time and the need for separate and similar legislation in both the Scottish and UK Parliaments. They can also be used to confine legislative discussions to the UK Parliament only. Such a motion was used in respect of civil partnerships legislation which eventually became the Civil Partnerships Act 2004.

Box 7 Legislative consent motions

A legislative consent motion is the means by which a devolved body grants permission to the UK Parliament to pass a law on something that is a devolved matter. Sometimes referred to as Sewel motions, they arise out of the convention that the UK Parliament would not normally legislate on a devolved matter without the consent of the relevant devolved institution.

UK Parliament website (n.d.).

In practice five uses have emerged:

- Where it would be more effective to legislate on a UK basis in order to put in place a single UK-wide regime (for example, powers for the courts to confiscate the assets of serious offenders).
- Where there is a complex inter-relationship between reserved and devolved matters that can most effectively and efficiently be dealt with in a single Westminster Bill (for example, the introduction of civil partnerships).
- Where the UK Parliament is considering legislation for England and Wales which the Scottish Government believes should also be brought into effect in Scotland, but no Parliamentary time is available at Holyrood (for example, to strengthen protection against sex offenders).
- Where the provisions in question, although they relate to devolved matters, are minor or technical and uncontroversial (for example, powers for Scottish Ministers to vary the functions of the Central Council for Education and Training in Social Work).
- Where the breadth of the powers of the Scottish Parliament and/or Scottish Ministers would be enhanced in a manner that could not be achieved unilaterally through an Act of the Scottish Parliament (for example, conferral of functions in relation to railways).

Box	8 Legisla	ative a	and I	Public	Bodies	Act	consent	memorand	lums
and	motions	statis	tics						

Current session statistics



!Warning! Calibri not supportedParliamentary Session	Sewel/ Legislative consent memorandums lodged	Supplementary memorandums published or lodged	Legislative consent motions lodged/ Sewel Motions lodged	Legislative consent/ Sewel Motions passed
Current 12 May 2016 to	9	2	10	10
Session 41 May 2011 to 23 March 2016	40	12	46	11
Session 3: 9 May 2007 – 22 March 2011	34	6	30	30
Session 2 7 May 2003 to 2 April 2007	41	3	38	38
Session 1 12 Mat 1999 to 31 March 2003	38	1	39	39

Since 2011 consent motions to Public Bodies Acts are also recorded. In Session 4 these totalled 11, at the time of writing there had been none in Session 5.

(The Scottish Parliament, n.d.)

Activity 2 Reserved matters

Allow about 15 minutes

Take a moment to think about what you have read so far. The Scottish Parliament has devolved powers and there are reserved matters on which only the UK Parliament can legislate. It has been established that the UK Parliament would not normally legislate in a devolved matter in Scotland without the agreement of the Scottish Parliament. What might be the benefit to the Scottish Parliament in having some matters reserved to the UK Parliament?

Provide your answer...

Comment

There are a number of reserved matters. These include constitutional issues, foreign policy, defence and national security, data protection, and ordnance survey. There are a number of benefits to having reserved matters, including:

- the Scottish Parliament has more time to devote to Scottish issues
- the Scottish Parliament is able to consult more widely on issues which affect Scotland
- it allows the UK Parliament to legislate in areas where there is likely to be common agreement (Scottish MPs still sit in the UK Parliament)
- it could be seen to prevent duplication of debate in both Parliaments.

This list is not exhaustive and you may have thought of other benefits. The relationship between the Scottish and UK Parliaments continues to develop. It can suit the Scottish Parliament to allow the UK Parliament to legislate in a devolved matter. Remember, however, that the Parliaments and Government are separate and serve different



functions. Protocols have therefore emerged for the use of these powers and you will now explore these.

5 Working relationship between the Parliaments and Governments

In practice the principle that the UK Parliament would not normally legislate on a devolved matter in Scotland without the agreement of the Scottish Parliament operates through a system of consultation. The UK Cabinet Office publishes Devolution Guidance Notes which provide advice on the working relationships between the UK and Devolved Governments. Box 9 outlines the areas on which such notes have been published.

Box 9 Devolution Guidance Notes

- 1 Common working arrangements: advice on common working arrangements between the UK government and the devolved administrations. It sets out an introduction to the main principles involved in the managing of the devolution settlements and looks in more depth at bilateral relations, correspondence, parliamentary business, legislation and concordats.
- 2 Handling correspondence under devolution: the general principles for the handling by UK government departments of correspondence from members of the devolved legislatures. Guidance on the handling of inter-ministerial and inter-departmental correspondence is available in devolution guidance note 6.
- Role of the Secretary of State for Scotland: the functions and the role played by the Secretary of State for Scotland following devolution.
- 4 [...]
- 5 [...]
- 6 Circulation of inter-ministerial and inter-departmental correspondence: the conventions to be followed by UK government departments when they are involving devolved administrations in matters which are the subject of correspondence between UK ministers, or otherwise writing to ministers of devolved administrations.
- 7 Court proceedings regarding devolution issues: not yet published.
- 8 [...].
- 9 [...].
- 10 Post-devolution primary legislation affecting Scotland: guidance for UK government departments on handling legislation affecting Scotland. Sets out how the LP Committee expects departments to handle primary legislation affecting Scotland, while ensuring the smooth management of the government's legislative programme.
- Ministerial accountability after devolution: general advice on matters which remain the responsibility of UK ministers, and for which they are accountable to the UK Parliament.



- 12 Attendance of UK ministers and officials at committees of the devolved legislatures: advice for UK ministers and civil servants on how to deal with invitations to attend committees of devolved legislatures. It does not provide guidance on the giving of evidence to these committees.
- Handling of parliamentary business in the House of Lords: general principles to be put in practice in business before the House of Lords. Comprises 2 separate weeks on Bills, and on parliamentary guestions and debates.
- 14 Use of Scotland Act 1998 Week 30(2) Orders: the use of Week 30(2) Orders to amend the list of reservations in the Scotland Act - either increasing or reducing the scope of reserved matters.
- Scottish legislative proposals giving devolved powers and functions to UK bodies: Acts of the Scottish Parliament can, in certain circumstances, include provisions giving powers or functions to UK government ministers, UK departments or other UK bodies. The Scottish Executive and the UK government have agreed a protocol setting out the procedures which will apply if considering the possibility of legislating in this way.

16 [...]

Cabinet Office (2011).

5.1 Devolution Guidance Note 10

Devolution Guidance Note 10 is relevant here as this sets out guidance for UK wide government departments on the ways in which legislation affecting Scotland is managed, including how and when consultations between relevant Ministers and departments should take place. The guidance restates the principle of legislative consent and notes that the Commons Procedures Committee (UK Parliament, House of Commons) also supports the convention.

A framework for consistent working with each of the devolved administrations has also been published as a Memorandum of Understanding (MOU). This represents an agreement reached between the UK Government and the Governments of the three devolved administrations (the most recent version at the time of writing was the 2012 version) and sets out principles which underlie relations between them. The MOU is not, however, intended to be legally binding.

This principle, that the UK Parliament would not normally legislate in a devolved matter in Scotland without the agreement of the Scotlish Parliament, has now been enshrined into the Scotland Act 1998 with an amendment to Section 28. The amendment was made by the Scotland Act 2016 Sections 2 and 72(7). Figure 7 shows the relevant amendment. The amendment added a new subsection, subsection 8, to Section 29. You will explore how legislation is set out and amended in more detail in Weeks 3 and 4.



Figure 7 Section 29(8) Scotland Act 1998



You may have noticed that the word 'normally' has been included in the wording of this new subsection. The meaning of 'normally' in this context has yet to be tested.

A complex system has emerged as two Parliaments can now make laws which affect Scotland. You will explore this in Week 7.

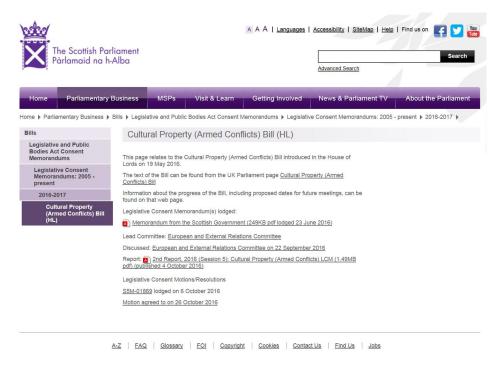


Figure 8 Example of an legislative consent motion

5.2 What next?

The results of the EU Referendum on 23 June 2016 have caused debate both within Scotland and within the UK. In Scotland the vote was 62% in favour of remain but within the UK overall the vote was 51.9% to leave the European Union. Article 50 of the Lisbon Treaty was triggered by the UK's Prime Minister, Teresa May, on 23 March 2017. Following this the Scottish First Minister, Nicola Sturgeon, responded by writing to the UK Prime Minister, Teresa May. The letter expressed frustration over the way in which the devolved administrations have been consulted over Article 50. The EU set out its position in the European Council (Art. 50) guidelines for Brexit negotiations issued on 29 April 2017.





Figure 9 David Cameron and Nicola Surgeon, Figure 10 EU and Scottish flags, Figure 11 Nicola Sturgeon, Figure 12 UK Parliament and Scottish flag

These events were followed by a UK general election on 8 June 2017. This election changed the political landscape of both Scotland and the UK resulting in a minority government for the UK. This had a number of consequences including:

- for the moment, until the terms of the negotiations over the UK's exit from the EU are clear, a second independence referendum in Scotland is unlikely to be held.
- the UK government was not returned with the anticipated majority. This resulted in a confidence and supply agreement with the Democratic Unionist Party (DUP) which has an impact on the approach taken to negotiations.

Debate over the terms of the UK's exit from the EU will continue well into 2018. The outcome of negotiations and any roles of the administrations in Scotland, Wales and Northern Ireland in that process remain unclear. The negotiations are unlikely to be reported on in an unbiased manner with information coming from a number of sources. This makes it difficult to gain a clear overall picture. The UK is one of 28 member states and all member states will be consulted.

The UK remains a member of the European Court of Human Rights and a signatory to the European Convention on Human Rights. Although often confused with the EU and the Court of Justice of the European Union they are in fact separate institutions.

The EU currently exercises powers which come within the remit of the devolved administrations, for example, agriculture, as those EU powers cover devolved matters. The position in relation to the return of powers directly from the EU to the devolved administrations is a complex matter over which the devolved administrations and UK Government disagree.

The Scottish Parliament (and the devolved assemblies in Wales and Northern Ireland) as part of its legislative competence has to ensure that all laws comply with EU law. An amendment of some form will be needed to the 1998 Scotland Act in relation to legislative competence. This will be dependent on the outcome of negotiations.



5.3 Referencing

Referencing is an important skill. By referencing you are providing a clear note of where you found information that you are using and sharing this information with those reading your work. Referencing is important in academic work for a number of reasons.

- the points you make are clearly supported by evidence for example, what the Section of an Act states
- you can use the sources for further research in the future for example, you will know which Section of the Act you were discussing
- your work will be more persuasive for example, you reference the Section of an Act around which you based your explanation or discussion – but the reader of your work can see your starting point and evidence
- your reader can find your sources for example, you have referenced the Section of the Act around which you based your explanation or discussion and they can go and read the original if they wish to
- you can demonstrate how widely you have read and show that you understand the
- your work will reflect expected academic values and good academic practice.

Referencing, whether to an Act you have discussed, a text book you have read, a piece you have found on the internet, a journal article or this course, demonstrates good academic practice.

You can reference this course as The Open University (2017) *The Scottish Parliament and law making,* [Online]. Available at

www.open.edu/openlearn/society-politics-law/the-scottish-parliament-and-law-making/content-section-overview (Accessed 13 October 2017).

In this course you will learn how Acts of Parliament are structured and how to reference them (this is referred to by lawyers as a citation). This is covered in the weeks that follow.

6 This week's quiz

Well done – you have reached the end of Week 1 and can now take the weekly quiz to test your understanding.

Week 1 practice quiz

Open the quiz in a new tab or window (by holding ctrl [or cmd on a Mac] when you click the link).

Summary

During this week you have learnt about the powers of the Scottish Parliament and the inter-relationship between the Scottish and UK Parliaments which continues to evolve. Having studied this week you should now:



- 1 understand the role of the Scottish Parliament in law making
- 2 understand the relationship between the Scottish and UK Parliaments

In the following week you explore the importance of the principles that underpin law making.

You can now go to Week 2.

During this course, at the end of each Week you will be provided with a summary overview detailing what that Week covered. We hope you find these useful.

References

Cabinet Office. (2011). *Devolution guidance notes* [Online] Available at https://www.gov.uk/government/publications/devolution-guidance-notes (Accessed 5 May 2017).

Holden, H. (2010). *The Commission on Scottish Devolution – the Calman Commission* [Online]. Available at http://researchbriefings.files.parliament.uk/documents/SN04744/SN04744.pdf (Accessed 8th September 2017).

Office of the Advocate General for Scotland. (2015). 2010 to 2015 government policy: Scottish devolution [Online]. Available at https://www.gov.uk/government/publications/2010-to-2015-government-policy-scottish-devolution/2010-to-2015-government-policy-scottish-devolution (Accessed 8 September 2017).

Scotland Office and Mundell, D. (2015a). *Scotland Bill 2015 - legislation and explanatory notes (summary)* [Online]. Available at https://www.gov.uk/government/publications/scotland-bill-2015-legislation-and-explanatory-notes (Accessed 5 May 2017).

Scotland Office and Mundell, D. (2015b). Scotland Bill 2015 - legislation and explanatory notes[Online]. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430324/Scotland_Bill_2015_-_Explanatory_Notes.pdf (Accessed 5 May 2017).

Scottish Parliament website. (n.d.). *List of devolved powers* 1999-2016 [Online]. Available at http://www.parliament.scot/images/Parliament%20Publications/ListDevolved-Powers_1999-2016.pdf (Accessed 5 May 2017).

Scottish Parliament website. (n.d.). *Legislative and Public Bodies Act Consent Memorandums and Motions statistics* [Online]. Available at http://www.parliament.scot/parliamentarybusiness/Bills/19023.aspx (Accessed 5 May 2017).

UK Parliament Website. (n.d.). *Glossary – legislative content* [Online]. Available at http://www.parliament.uk/site-information/glossary/legislative-consent/ (Accessed April 2017).

Serving Scotland Better: Scotland and the United Kingdom in the 21st Century (June 2009)

European Council (Article 50) guidelines for Brexit negotiations

Legislation

Scotland Act 1998 c 46

Scotland Act 2012 c 11

Scotland Act 2016 c 11





Week 2: Constitutional characteristics, the rule of law and Scotland

Introduction

The UK's constitution has undergone significant change in recent decades. In this week you will explore the role and function of a constitution, the constitutional arrangements of the UK and the rule of law. You then consider the implications of these for both the Scottish Parliament and Scotland.

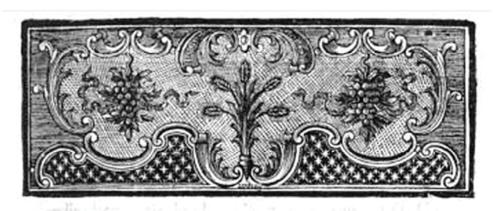
By the end of this week you should be able to:

- explain the UK's constitutional arrangements
- define the UK's constitution
- explain the principle of the rule of law.

1 Constitutions

Here you consider constitutions as they apply to states. Other organisations such as sports clubs, companies, local authorities, Police Scotland, charities, volunteering organisations, the United Nations and Council of Europe also have constitutions which share some of the features of state constitutions. These are often contained in the form of rules, memorandum or articles of association.





REGIAM MAJESTATEM, LIBER PRIMUS. PRÆFATIO (a).

Regi duo sunt necessaria; Arma, quibus Hostes debellet; Leges, quibus Subditos pacifice regat.

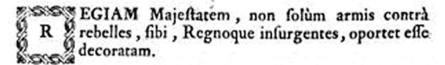


Figure 1 Regiam Majestatem

Most state constitutions develop over time and evolve as the structures of society in which they exist develop. Some constitutions are created as a result of conflict or rebellion (which generally results in a single constitutional document). For example, the French constitution was redrafted in the period leading to the declaration of a republic in 1792, and has been redrafted or refined on a number of occasions since. The Constitution of the United States of America developed after war with England. It first came into effect in 1789 and has been amended 27 times since.

1.1 What is a constitution?

The UK's constitution is not contained in a written document but has developed and evolved in a piecemeal way over time.

In the media you may have come across or heard about the importance of 'checks and balances' on presidential or prime ministerial power. That phrase relates to constitutional arrangements within a state which you explore later.

The past 50 years has seen great constitutional change within the UK; the joining of the EU, the creation of the UK Supreme Court and devolution of the Nations. These changes



have had a significant impact on the nature of the UK's constitution and on the role of Scotland.

Activity 1 How would you define a constitution?

Allow about 10 minutes

Consider the following quotations and using these as your source of information identify what features you think a constitution should have.

1. The Encyclopaedia Britannica (2014) defines a constitution in the following terms:

Every government has an organizational structure that defines the specific responsibilities of its public officials. Some officials make the laws, others see to their enforcement. Taxes must be collected and revenues spent. There must be provision for preserving the domestic peace and providing for national-defence. The fundamental written documents that state how governments shall operate and define their limitations are their constitutions.

Figure 2a Definitions of a constitution

2. Anthony King, an academic author on the subject of the UK constitution, defines a constitution as a:

set of the most important rules and common understandings in any given country that regulate the relations among that country's governing institutions and also the relations between that country's governing institutions and the people of that country.

(King, 2009, p. 3)

Figure 2b Definitions of a constitution 2



3. Professor Kenneth Wheare explored a number of questions relating to modern constitutions. He defined a constitution as: the whole system of government of a country, the collection of rules which establish and regulate or govern the government.

(Wheare cited in Barnett, 2013, p. 7

Figure 2c Definitions of a constitution 3

4. Thomas Paine (1737-1809), an Anglo-American political Activist during the American War of Independence:

A constitution is not the Act of government, but of a people constituting a government, and a government without a constitution is power without right ... A constitution is a thing antecedent to a government; and a government is only the creature of a constitution.

(Paine cited in Barnett, 2013, p. 7)

Figure 2d Definitions of a constitution 4

Provide your answer...

Comment

A range of state constitutions exists worldwide and each one is unique. A range of definitions also exist but at its most basic a state constitution is seen as having the following elements:

- rules about the structure and power of government of the state
- rules about the basic rights and freedoms of the citizens of that state
- rules on how law is created within that state.

States have their own legal systems and national laws which are created according to their constitution. Constitutions are fundamental to a society as they provide the structures which determine who has the right and the power to make and enforce the law. The constitution of each state also represents the history and culture of that state.



Looking at each of the definitions you were given as your source of information revealed different aspects of a state constitution and what features the authors thought ought to exist.

- The definition in *The Encyclopaedia Britannica* identifies the need for a structure, a definition of responsibilities, and different roles for different public officials is emphasised. The definition also links the notion of both peace and defence to a constitutional framework. You may have noticed that at the end of the definition it indicates that the constitution should be contained in a written form. This is an aspect that you will return to later.
- 2 King's definition focuses on the relations between governing institutions, but again mentions the relationship between the state (governing institutions) and individuals.
- Professor Wheare's focuses on the regulation of the government by a system of rules. This definition has a narrower focus than the other definitions we have considered. There may at first glance appear to be a small difference; however, a constitution which is defined as regulating the state and state bodies has a wider scope than one which concentrates on regulation of the government.

The definitions discussed so far have considered the state, the government, and also the relationship between the state and individuals.

Paine's approach to defining a constitution provides a different perspective as it focuses on the source of a constitution. Paine's view is that a constitution ultimately derives from the people acting through the government.

Another point to note is that definitions of a constitution tend to be neutral in their tone. They do not make a judgement as to whether the constitution is good or bad. Regimes such as Nazi Germany and the Soviet Union both had constitutions.

1.2 Features of a constitution

Before moving on take a few moments to reflect on what you have learnt as you will build on this as you consider the UK's constitution. A constitution will do one or more of the following:



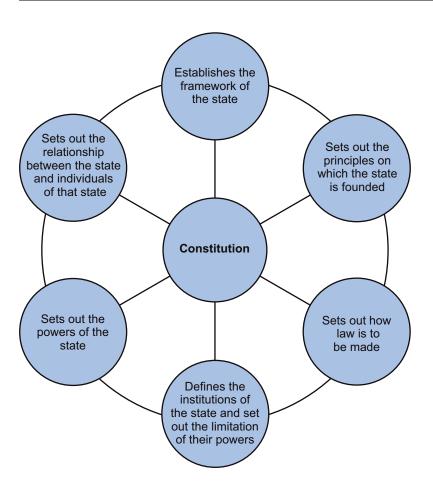


Figure 3 Features of a constitution

2 Evolution of the United Kingdom

The constitutional arrangements in the United Kingdom (UK) are a reflection of the relationship between the four nations that make up the UK. This relationship is one based on a history of conflict, trade and war. Box 1 contains a very concise overview of how four nations came to be the UK.

Box 1 A concise historical overview

By 1283 much of Wales had been conquered by Edward I of England. Wales retained a separate legal system but was governed by the English Monarch. The Acts of Union with Wales 1535 to 1542 effectively ended the separate legal system. Wales continued to be governed by the English Monarch.

The kingdom of Scotland evolved around the early 800s. Scotland and England were often at war with each other and border raids were commonplace. Scotland during this time had a closer relationship with France than with England.



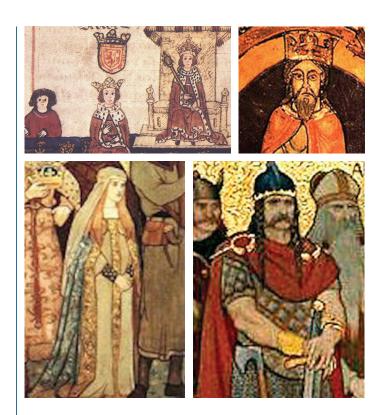


Figure 4 Alexander III , Figure 5 David of Scotland, Figure 6 Margaret Maid of Norway, Figure 7 Kenneth





Figure 8 James I, Figure 9 Mary Queen of Scots, Figure 10 James VI, Figure 11 Charles I

In 1603 Elizabeth I of England died childless and her cousin James VI of Scotland was invited to become King of England. (Henry VII of England was Elizabeth's grandfather and James VI's great great grandfather). This united the two countries under one monarch for the first time. James VI of Scotland became James I of England. Although there was one monarch two separate parliaments and legal systems continued. It was not until the Union of Scotland Act 1706 and the Union with England Act 1707 that one Parliament at Westminster (the Parliament of Great Britain) was created with the power to make laws relating to Scotland.

The history of political relations between Ireland and England is complex. Ireland came under English control in the twelfth century but since this time there has been almost constant strife between the two countries. In 1800 the Act of Union with Ireland was passed. A civil war in the early twentieth century led to the Government of Ireland Act 1920, which split Ireland in 1920. This removed 26 counties of the Irish Free State from the UK. Ongoing political issues led to the Northern Ireland Act 1974. This established that the UK Parliament in London would rule over Northern Ireland directly. This lasted until the Good Friday Agreement in 1998.



3 Characteristics and functions of the UK's constitution

Having learnt a little about the background of the evolution of the UK you now consider the specific characteristics and functions of the UK's constitution. You may already be aware (from reports you may have seen in the media or TV and film dramas) of some underlying conventions of the UK's constitution, for example that:

- free and fair elections are held on a regular basis (whether for the Scottish Parliament or the UK Parliament)
- in the Scottish Parliament, the leader of the political party with the largest majority normally becomes First Minister. The First Minister is nominated by the Scottish Parliament and is officially appointed by the monarch
- in the UK Parliament, the leader of the political party with the largest majority in the House of Commons normally becomes Prime Minister. The Prime Minister is officially appointed by the monarch
- in the UK Parliament, the custom that the Gentleman Usher of the Black Rod knocks at the door of the House of Commons chamber to summons the members of the House of Commons to hear the Queen's Speech in the House of Lords.

The UK's constitution has been described as monarchical, supreme, largely unwritten (uncodified), and flexible. On the diagram below click on each of the four boxes to learn more about these aspects of the UK's constitution.

Interactive content is not available in this format.

4 The UK's constitutional arrangements

Having considered the characteristics of the UK's constitution you now consider some of the underpinning principles of the UK's constitution.

The UK's constitution can be thought of as a building with a number of columns.

As illustrated by Figure 12 the UK's constitution can be thought of as a building with a number of columns. Listen to the following audio which explores the UK's constitutional arrangements as illustrated by Figure 12.



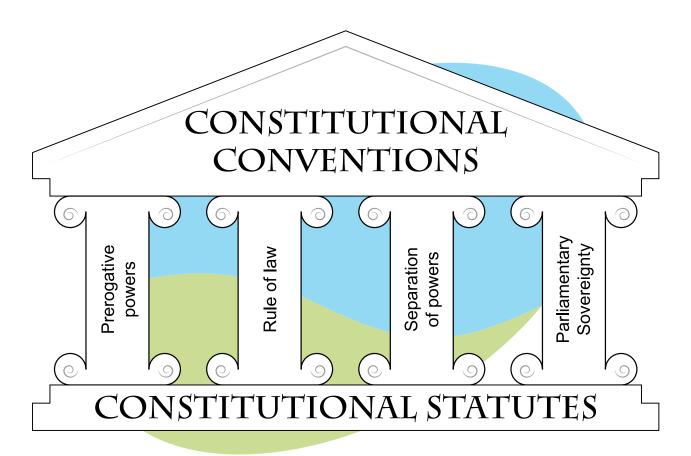


Figure 12 The UK's constitution can be thought of as a building with a number of columns

Audio content is not available in this format.

4.1 The rule of law and UK's constitution

You should now be familiar with the rule of law and the constitutional arrangements of the UK. Activity 2 has been designed to test your knowledge of the rule of law and UK's constitutional arrangements.

Activity 2 The rule of law

Allow about 10 minutes

You have learnt that the rule of law is a fundamental principle underpinning the constitution of the UK. This Activity is designed to test your knowledge of the rule of law as you will return to the rule of law when exploring the powers of the Scottish Parliament, delegated legislation, Members of Scottish Parliament (MSPs) and Members of Parliament (MPs).

Consider each of the statements below and select the statements which reflect the rule of law.

- 1 Protects rights and liberties
- o True



o False

Comment

The rule of law protects rights and liberties. This requires that a person's rights and obligations are determined by the law, that wrongs are punished according to law and that everyone is subject to the law.

- 2 States everything must be done in accordance with the law (legality).
- o True
- o False

Comment

States everything must be done in accordance with the law (legality). For example, a public authority must not do something which affects a person's rights or liberty (e.g. decide to refuse planning permission) unless Parliament has given it authority to do so, either in an Act of Parliament or indirectly by subordinate legislation..

- 3 Requires that government is carried out within a framework of rules and principles.
- o True
- o False

Comment

Requires that government is carried out within a stable framework of rules and principles which place appropriate restrictions on the exercise of power. This is why the judiciary has developed a series of administrative law rules) which public bodies are required to observe when exercising discretionary powers. This provides certainty and predictability and prevents the abuse of discretionary power.

- 4 States no one should be judge in his or her own cause.
- o True
- o False

Comment

States no one should be judge in his or her own cause. Therefore, disputes about the legality of something done by the government are decided by a judiciary which is independent of the government. Judicial independence is seen as a cornerstone of the UK's constitution.

- 5 States there will be fairness between the government and its citizens.
- o True
- o False

Comment

States there will be fairness as between the government and its citizens. In other words, public bodies should generally be subject to the same legal duties and liabilities as individuals, unless this is inconsistent with their government functions.

Requires that procedures for determining legal disputes must be fair, and must not involve inordinate delay or prohibitive cost. This is a principle about providing access to justice.



- o True
- o False

Comment

Requires that procedures for determining legal disputes must be fair, and must not involve inordinate delay or prohibitive cost. This is a principle about providing access to justice.

- 7 Upholds fundamental human rights and the UK's compliance with its obligations under international law.
- o True
- o False

Comment

Upholds fundamental human rights and the UK's compliance with its obligations under international law. As you will learn foreign affairs are reserved to the UK Parliament.

- 8 Requires that the law is written in language that is, so far as possible, clear and free from ambiguity.
- o True
- o False

Comment

Requires that the law is written in language that is, so far as possible, clear and free from ambiguity. Laws must avoid contradictions and must not command the impossible. Laws must be forward looking (prospective), in other words they must not be backdated (retrospective). This is a principle about how the law is written down and published.

- 9 Must be observed at all stages of the law making process.
- o True
- o False

Comment

Must be observed at all stages of the law making process. It is relevant when deciding the content of laws, when drafting laws and when public bodies and the courts administer and enforce the law.

- 10 Laws must also be freely available.
- o True
- o False

Comment

Laws must also be freely available. Laws of both the Scottish and UK Parliaments are available electronically as the case reports of the UK Supreme Court, High Court of Justiciary and other appeal courts.

Figures 13, 14 and 15 take the form of cartoons which represent aspects of the rule of law and provide an example of an alternative way in which the rule of law can be illustrated.





'No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of the law established in the ordinary legal manner before the ordinary Courts of the land.' (Dicey, 1889, p. 175)

Figure 13 !Warning! Arial, sans-serif not supported Dicey's rule of law part 1



Every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen.' (Dicey, 1889, p. 181)

Figure 14 !Warning! Arial,sans-serif not supportedDicey's rule of law part 2



General constitutional principles exist as a 'result of judicial decisions determining the rights of private persons in particular cases brought before the Courts'. (Dicey, 1889, p. 183)

Figure 15 !Warning! Arial,sans-serif not supportedDicey's rule of law part 3

4.2 Thinking about the UK's constitution

In this section you explore further the UK's constitutional arrangements and identify the key features of that constitution.

Activity 3 Defining the UK's constitution Allow about 10 minutes

Take a few moments to reflect on what you have learnt. How would you describe the UK's constitution? Select the terms and phrases you think are applicable to the UK's



constitution and add them into the blank box provided. You are not being asked to create an order or hierarchy within the box. This Activity is designed to encourage you to identify the terms and phrases that you think provide an accurate description of the UK's constitution.

Interactive content is not available in this format.

Comment

There were a number of terms and phrases that you could have identified as relevant to the UK's constitution. These included:

- Uncodified
- Parliamentary sovereignty
- Flexible
- Constitutional principles
- Conventions
- No one is above the law
- Separation of powers
- UK Parliament
- Monarch
- Statutes
- Rule of Law
- Scottish Parliament
- Welsh Assembly
- Northern Ireland Assembly

The other terms could apply to a written constitution (such as codified). The UK does not have a federal constitution (although some lawyers based outside the UK see the devolution settlements as moving towards a federal framework). Democracy does not form part of constitutional arrangements - it follows from them.

A federal constitution is one in which a national government and specificgovernments (for example, the devolved administrations) each has their own powers which are specified by the constitution.

5 Constitutional characteristics and Scotland

The process of devolution has impacted the UK's constitutional framework as new constitutional statutes exist. You have learnt about the theory that the UK Parliament is sovereign – it can make and unmake any law, it cannot be bound by decisions of past parliaments and it cannot bind future parliaments.

Questions about the sovereignty of the UK Parliament are not uncommon. In recent times, as you may have heard or seen in the media, these were often in relation to membership



of the EU and the European Communities Act 1972. The nationwide referendum on EU membership in 2016 proved a turning point in relation to those questions as the UK Parliament prepared legislation to leave the EU.

In R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) [2017] UKSC 5 the concept of Parliamentary Sovereignty was considered and upheld.

Since [...] will be a fundamental alteration in the UK's constitution, it can only be effected by Parliamentary legislation.

The process and consequences of devolution differ. New relationships between the nations which make up the UK have been created. These relationships differ significantly from EU membership and the aspirations which lead to the creation of Europe-wide institutions such as the EU or European Court on Human Rights.

The EU, as it is known today, emerged from institutions created at the end of WWII. In the aftermath of that war European politicians (including those based in the UK) and governments sought to create a climate of stability, harmony, prosperity and cooperation to ensure that the horrors which occurred during the war would never be seen again in Europe. The way forward was seen to be through agreed common values, such as the protection of the rights of citizens, security, democracy and the rule of law.

The relationship between the nations has a longer history encompassing conflict, revolution, conquest, integration and rule by one monarch. Scotland has always retained its own legal system and economic reasons lead to the Treaty of Union in 1707. That treaty was not necessarily popular with everyone, as shown by the popular uprisings and general unrest in Scotland at the time.

Scotland is also often referred to as the 'most devolved nation' as it was initially given the greater of the devolved powers. The Scotland Act 1998, established Scottish devolution. The Scotland Act 2016 inserted a new Section into the 1998 Act, providing for the permanence of the Scottish Parliament and Government. This acknowledges that both the Scottish Parliament and Government are a permanent part of the UK's constitutional arrangements. The Section states that they should not be abolished without the consent of the Scottish people, which would be gained through a referendum (Section 63A(3)).

Box 2 Section 63(A) Scotland Act 1998

F163A Permanence of the Scottish Parliament and Scottish Government

- (1) The Scottish Parliament and the Scottish Government are a permanent part of the United Kingdom's constitutional
- (2) The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Scottish Parliament and the Scottish Government
- (3) In view of that commitment it is declared that the Scottish Parliament and the Scottish Government are not to be abolished
- except on the basis of a decision of the people of Scotland voting in a referendum.]

Figure 16 Section 63(A) Scotland Act 1998

In theory, despite devolution, the concept of parliamentary sovereignty remains. The UK Parliament granted the new law making powers as part of the devolution settlements, and so it could remove them. In theory the UK Parliament remains as the supreme law making power. You will explore this later when you consider the role and powers of both the Scottish and UK Parliaments.

Watch the following video of the opening of the fourth session of the Scottish Parliament. The video includes a speech made by the Presiding Officer of the Scottish Parliament and



one made by Queen Elizabeth II. Listen to these speeches carefully. They explore the role and functions of the Scottish Parliament. In particular listen to how MSPs are reminded about the role of parliament to legislate, scrutinise and reflect the will of the people.

The speeches in the audio have not been edited. They contain some important points which link to the following weeks of this course. Identifying key points in a text, speech, presentation or discussion is an important skill whether for study, for work or leisure time. If you choose further study (such as a degree or apprenticeship), you may attend events such as seminars in which you will expected to take notes of key points. In employment you may attend conferences or presentations of colleagues, where being able to concentrate and identify information relevant to your work could be important. In your leisure you may enjoy sports, travel or going to the cinema. In all these you will be presented with information to process and make sense of. Being able to concentrate and identify relevant information is something we hope the audios in this course will assist you in practising.

6 This week's quiz

Well done – you have reached the end of Week 2 and can now take the weekly quiz to test your understanding.

Week 2 practice quiz

Open the quiz in a new tab or window (by holding ctrl [or cmd on a Mac] when you click

Summary

In this week you explored the fundamentals of the UK's constitution. An understanding of the overall picture of the UK provides a foundation on which to build your knowledge of the Scottish Parliament, its powers, role and relationship with the UK Parliament.

You should now be able to explain the different elements of the UK's constitution. Before moving on take a few moments to reflect on what you have learnt about the sources and principles which underpin the UK's constitution during this week of study.

You should now be able to:

- explain the UK's constitutional arrangements
- define the UK's constitution
- explain the principle of the rule of law.

In the next week you explore the law-making processes of the Scottish Parliament. You can now go to Week 3.



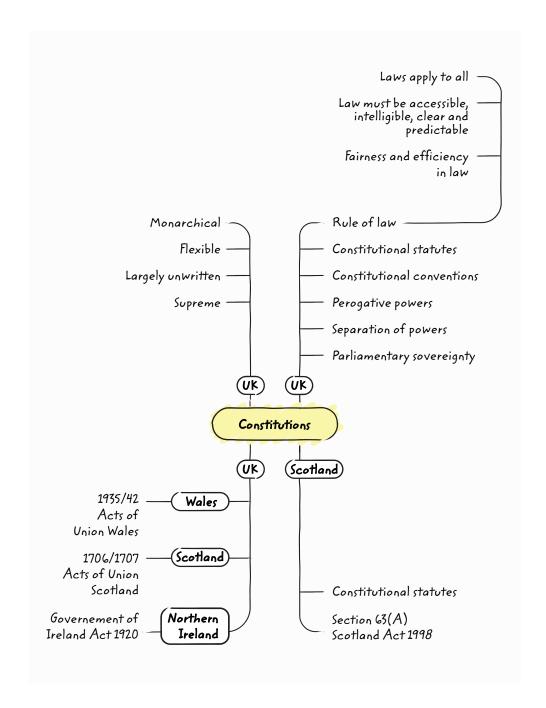


Figure 17 Summary overview of Week 2

References

R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) [2017] UKSC 5

Legislation

Acts of Union with Wales 1535 - 1542 European Communities Act 1972 c 68



Government of Ireland Act 1920 c 67
Northern Ireland Act 1974 c 28
Scotland Act 1998 c 46
Scotland Act 2016 c 11
Union of Scotland Act 1706
Union with England Act 1707





Week 3: Law making processes in the Scottish Parliament

Introduction

In this week you consider the legislative powers (law making) of the Scottish Parliament and the procedures that Bills have to go through before they become law. A Bill is a draft Act. If the Bill is passed it is enacted and becomes an Act and part of legislation.

Before devolution, all Bills affecting Scotland were introduced in, and subject to the procedures of, the UK Parliament. Some of those Bills were limited in extent to Scotland, while others applied to the whole of the UK (although often with some distinct provisions applicable only to Scotland).

By the end of this week you should be able to:

- explain the different types of Bills
- describe the stages in the law making process of the Scottish Parliament
- explain the legislative competence of the Scottish Parliament.



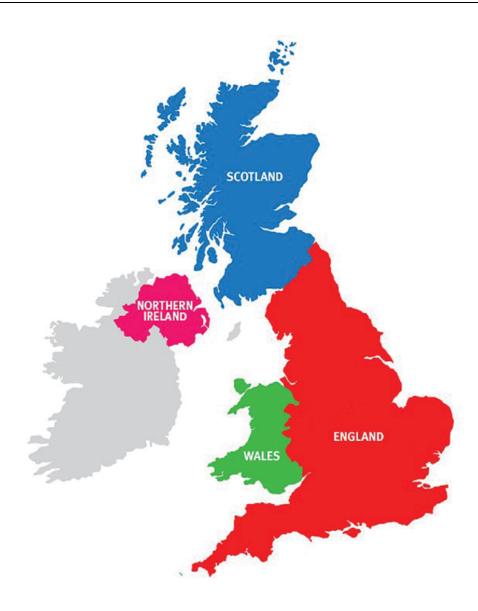


Figure 1 Map of the four nations that make up the UK

1 A new Scottish Parliament

The Scotland Act 1998 established a new Scottish Parliament with 129 seats. The current Scottish Parliament has a unicameral parliament, meaning that, unlike the UK Parliament, there is only one parliamentary chamber.





Figure 2 Scottish Parliament at night

The Scotland Act 1998 gave the Scottish Parliament power to make laws (both primary and secondary legislation) in a number of areas. The Scotland Act 1998 also established a Scottish Government (at that time referred to as Executive). This consists of the First Minister and a number of ministers appointed by the First Minister. Members include the Lord Advocate and the Solicitor General for Scotland. The monarch appoints the First Minister. They are usually the leader of the party with the most seats in the Scottish Parliament. The roles of the Scottish Parliament and Scottish Government differ. In this course you consider the Scottish Parliament; if you wish to learn more about the role of the Scottish Government you can explore their website.





Figure 3 The Scottish Parliament and Scottish Government explained

1.1 Law making processes in the Scottish Parliament

Here you consider the processes used to make law in the Scottish Parliament. The Scottish Parliament can only make laws that are within its competence (i.e. that it has the power to make) so competence will be explored before the Parliamentary process.



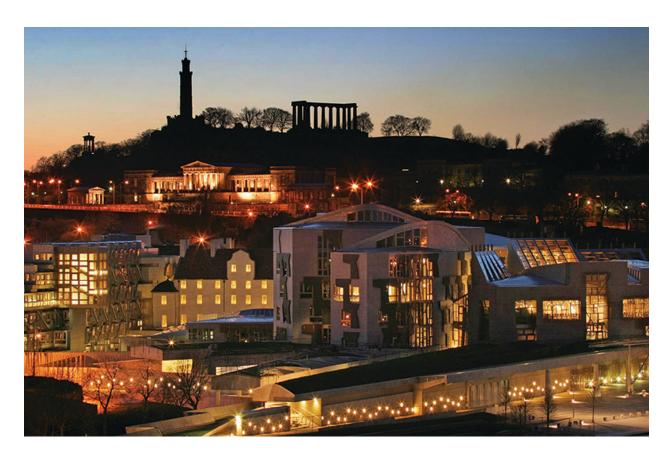


Figure 4 The Scottish Parliament illuminated at night

The powers of the Scottish Parliament and processes of law making were established by the Scotland Act 1998, a constitutional statute which forms part of the UK's constitution. Throughout this week extracts from that Act will be used to explain the powers of the Scottish Parliament. This approach has been chosen to enable you to become familiar with the layout of Acts (sometimes called statues, and often referred to as legislation), the technical language and terminology used. Do not be too concerned if the design, terminology and language of Acts looks and feels unfamiliar, possibly even alien. This is not an uncommon reaction but, as you become more familiar with them, you will begin to find Acts more approachable. The important point is that powers have been created in a particular way: a framework for law making has been created. As you will learn later, if that framework is not followed then there are consequences.

2 Legislative competence

The legislative competence of the Scottish Parliament is set out in the Scotland Act 1998 (as amended). In particular, Sections 28 and 29 of the Act are relevant. The concept of 'legislative competence' is an important factor in the law making process of the Scottish Parliament. The Scottish Parliament can only make laws that are within its legislative competence. Any law that is made without legislative competence is void (and therefore has no legal effect).

Section 28 (as amended) is set out in Figure 5. This Section gives the Scottish Parliament power to make laws and sets out the arrangements for Bills of the Scottish Parliament,



once passed, to receive Royal Assent. You will learn more about the process of Royal Assent in the next week (it is signified by the monarch under the Scottish Seal).

Section 28(5) (this is a citation for an Act of Parliament: You look at these in more detail later in the course) notes that the validity of an Act of the Scottish Parliament will not be affected by any invalidity in the proceedings of the Scottish Parliament during the process of enactment. i.e. the debating and other stages of the parliamentary law making process.

Section 28(7) links to the parliamentary sovereignty discussion you explored in the previous week of study. This is the subsection that is said to maintain UK Parliamentary sovereignty.

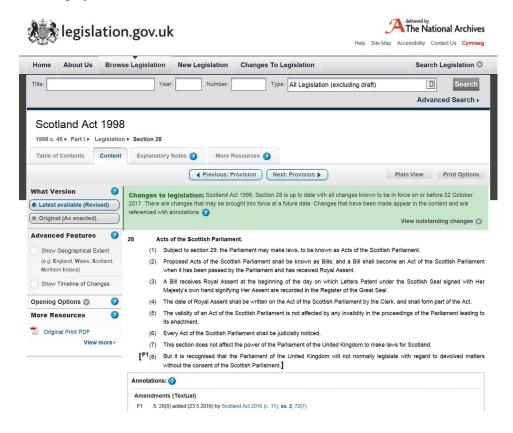


Figure 5 Section 28 Scotland Act 1998 (as amended)

As you looked at Section 28 you may have noticed the use of F1 and square brackets [..]. These brackets are used to show that the original Act has subsequently been amended. It is not uncommon for subsequent Acts to amend earlier Acts by making further additions. The copy of the Scotland Act 1998 in Figure 5 is a screen shot (of an Act currently in force) taken from legislation.gov.uk. On that website the original text of the Act (original pdf and sometimes called 'as enacted') can be found alongside the most up to date version of the Act and explanatory notes. Section 28(8) was added to the original Scotland Act 1998 by a later Act. Section 28(8) relates to legislative consent motions which you explored earlier in the course.

Section 29 of the Scotland Act 1998 sets out legislative competence and provides that 'An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament'. This section sets out the powers of the Scottish Parliament to make laws in devolved areas. You now explore those powers in Section 2.1.





Figure 6 Section 29 Scotland Act 1998 (as amended)

2.1 The criteria to determine legislative competence

Legislative competence of the Scottish Parliament is defined according to five criteria:

- 1 The UK Parliament can only legislate for or in relation to Scotland.
- 2 The Scottish Parliament cannot legislate in relation to the 'reserved matters'.
- The UK Parliament cannot modify certain enactments (these include the Human Rights Act 1998, certain provisions of the Acts of Union 1705-6 and the European Communities Act 1972).
- 4 Any legislation must be compatible with the European Convention on Human Rights (ECHR) and with European Union law.
- The Scottish Parliament cannot remove the Lord Advocate from their position as head of the system for criminal prosecution.

The concept of legislative competence is important because the Scotland Act 1998 (as amended) requires the legislative competence of any Bill to be assessed before it is introduced, and also provides an opportunity for it to be challenged after a Bill is passed but before it can become law.



The Scottish Parliament does not have power to legislate for England, Wales or Northern Ireland; it cannot legislate on reserved matters and cannot create legislation which is incompatible with EU law or the ECHR. It must follow the provisions of the Scotland Act 1998 (as amended).

Box 1 Changing legal culture

Legislative competence is a way of determining whether an Act of the Scottish Parliament has been produced within the power of the Scottish Parliament.

This represents a change in the legal culture of Scotland. Practising and academic lawyers had, until this point, been taught that an Act of Parliament *was* law. With the introduction of the Scottish Parliament they must now question whether an Act of Parliament *is* law. If an Act of the Scottish Parliament has been passed in an area where there is no legislative competence, that Act can be challenged. Where such issues arise they will be determined by a court. The final court for the determination of these issues is the Supreme Court of the United Kingdom.

You may recall from your studies of the rule of law that one of the underlying principles was that laws should be freely available. The use of the internet has enabled greater access to legislation. Laws made by both the Scottish and UK Parliaments can be accessed quickly online. They are also available in hard copy. However, you also explored that the rule of law requires that the law is written in language that is, so far as possible, clear and free from ambiguity. Having considered Sections 28 and 29 Scotland Act 1998 (as amended) you may have developed a view as to whether laws of the UK Parliament (the Scotland Act 1998 was passed by the UK Parliament as it transferred its powers to a new Scottish Parliament) are written in a clear and unambiguous way.



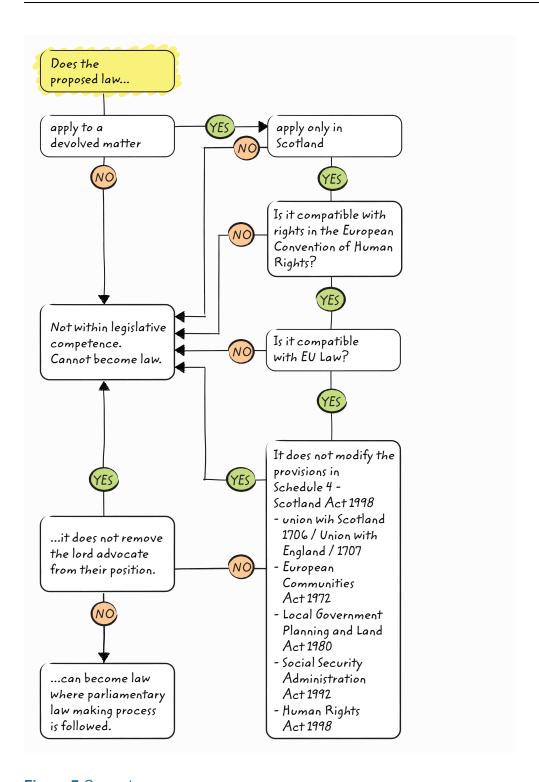


Figure 7 Competences

3 How law is made in the Scottish Parliament

The Scotland Act 1998 provided minimum requirements for the process which was to be followed by the Scotlish Parliament in creating law by considering and passing Bills.



Section 36(1) of the Scotland Act 1998 required there to be at least three distinct stages to which Bills are subject, including a stage when MSPs can debate and vote on the general principles of a Bill, a stage when they can consider and vote on its details and a final stage when the Bill can be passed or rejected.

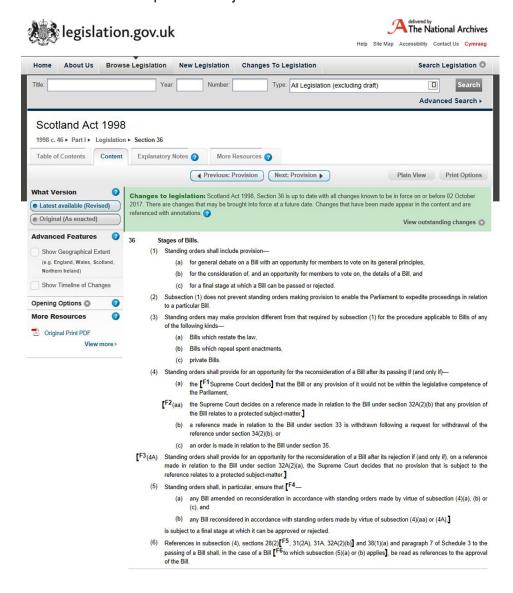


Figure 8 Section 36 Scotland Act 1998 (as amended)

3.1 Bills in the Scottish Parliament

Bills in the Scottish Parliament are very similar, in terms of layout, structure and the conventions of legislative drafting, to Bills of the UK Parliament. This is primarily because the Acts of the Scottish Parliament, to which they are intended to give rise, form part of the UK 'statute book' alongside existing statute law.

All current Bills can be accessed on the <u>Scottish Parliament website</u>. Alongside the original Bill other information such as the stages a Bill is going through, amendments, research briefings, lead committee (the committee designated to gather feedback and undertake scrutiny) and dates of consideration (both in public or private) can be found.



Acts of the Scottish Parliament, as they form part of UK legislation, can be found at Legislation.gov.uk.

St Andrew's Day Bank Holiday (Scotland) Bill

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 41-EN. A Policy Memorandum is printed separately as SP Bill 41-PM.

St Andrew's Day Bank Holiday (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish a bank holiday for St Andrew's Day.

1 St Andrew's Day bank holiday

In paragraph 2 (bank holidays in Scotland) of Schedule 1 to the Banking and Financial Dealings Act 1971 (c.80) insert after "The first Monday in August."—

"30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day."

2 Short title and commencement

- (1) This Act may be cited as the St Andrew's Day Bank Holiday (Scotland) Act 2005.
- (2) This Act comes into force on the day after the date of Royal Assent.

Figure 9 Example of the layout of a Bill



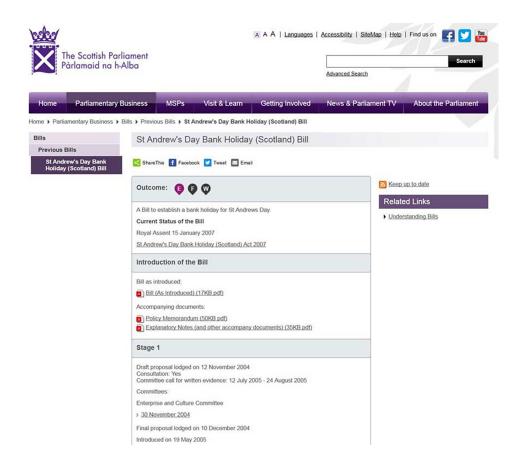


Figure 10 Example of overview information available on Scottish Parliament website in relation to a Bill

3.2 Types of Bills

The stages of a Bill through the Scottish Parliament will depend on a number of factors as not all Bills follow the same process.

- Public Bills seek to change the general law or deal with matters of public policy.
- Private Bills seek powers for a particular organisation or individual that are in excess of or in conflict with general law.

There are also a number of routes by which a Bill can be introduced.

Table 1 Routes by which a Bill can be introduced

Government Bill	introduced by Cabinet Secretaries and Ministers
Members' Bill	introduced by an MSP
Committee Bill	introduced by the convenor of a parliamentary committee
Private Bill	introduced by an external person, company or group of people

All Bills submitted for introduction must be accompanied by various documents. These include:

explanatory notes



- a financial memorandum
- a statement of legislative competence
- a policy memorandum.

Other requirements apply to Bills relating to the budget and to Bills which seek to repeal existing legislation. One of the purposes of this process is to provide as much information as possible to ensure informed decision making.

The Bills considered by the Scottish Parliament have been wide-ranging in their focus and topics, for example, from planning, historical monuments, succession, education, justice, carers, violence, alcohol, burial, bankruptcy, abusive behaviour, tenements, railways, dog fouling, climate change, criminal cases, agricultural holdings, elections, British sign language, welfare, the commonwealth games, fur farming, water industry, high hedges, charities and homelessness to emergency workers and wind farms.

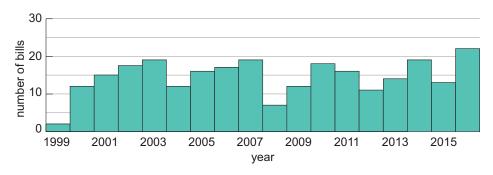


Figure 11 Bills of the Scottish Parliament 1999 to 2016

Details of Bills and the work of the Scottish Parliament can be found in their annual reports (accessible via the Scottish Parliament website).

Table 2 Breakdown of Bill types

Scottish Parliament Annual Report	Number of Bills	Government Bills	Members Bills	Committee Bills	Private Bills
2015-16	18	13	3	1	-
2014-15	20	15	5	-	-
2013-14	17	11	4	-	2
2012-13	18	16	1	-	1
2011-2012	13	13	-	-	-
2000-2011	19	11	8	-	-
1999-2000	18	12	2	1	2*

(* plus 1 hybrid Bill).

3.3 Finding Bills

Being able to access and find information is an important skill. As you have learnt, one aspect of the rule of law is that laws are accessible. The Scottish Parliament website is designed to encourage as much engagement with the public as possible and make the information about the work of the Scottish Parliament accessible. It covers information on



the work of the Parliament, MSPs and Committees. You will also see that there is a parliamentary TV channel where you can watch live debates or access archive material form previous debates.

Activity 1 Finding Bills of the Scottish Parliament

Allow about 20 minutes

Find the Scottish Parliament website. Take a few moments to familiarise yourself with the website. What sort of information does it contain? Locate the information on current Bills under the Parliamentary business tab. Look at the number and range of those Bills and explore whether they are members' Bills, government Bills or committee Bills.

Provide your answer...

Comment

Figure 13 contains what we found when looking for current Bills.



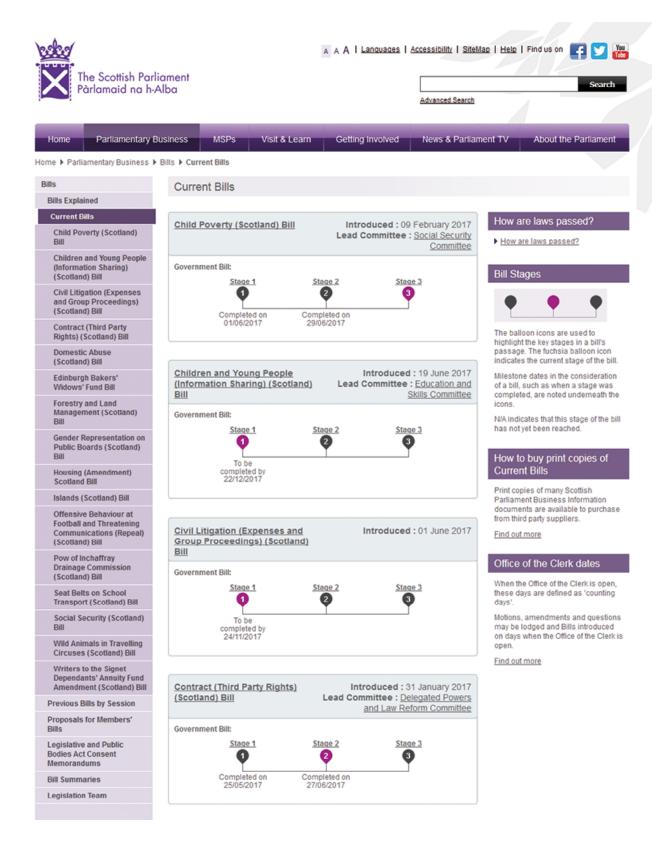


Figure 12 Examples of what can be found when looking for current Bills (6 May 2017).

3.4 Stages of legislation

When a Bill is introduced to the Parliament there are three stages that it must go through.



- Stage 1 involves consideration of the general principles of the Bill by the
 parliamentary committee designated to deal with it. Here there will be proactive
 engagement with the general public and relevant experts. The committee will report
 back to Parliament and, if Parliament agrees to the Bill's general principles, it will be
 referred back to the committee.
- Stage 2 entails detailed consideration of the Bill, including any amendments proposed by the Scottish Government and MSPs.
- Stage 3 is where final consideration of the Bill takes place and the Parliament votes on whether or not the Bill should be passed.

Figure 14 shows an alternative and more visual way of illustrating the stages of a Bill. Pause for a few moments and reflect on how you process and remember information. Which of the two ways of presenting the information do you prefer? The linear list such as the one above, or the diagram in Figure 14? Being able to identify the way in which you respond to, and learn from information, is a skill. One of the keys to success is identifying which best suits your own needs.

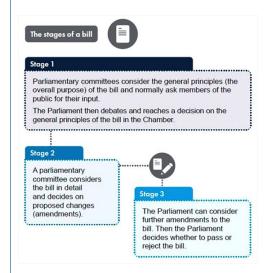


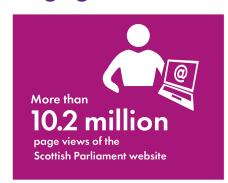
Figure 13 Stages of a Bill (from Scottish Parliament website)

One of the unique features of the Scottish Parliament is its openness, transparency of process and proactivity in engaging with the Scottish public. There are processes for wide consultation, an open evidence process at committees, and members of the public and interested parties are able to liaise directly with MSPs to lobby for amendments to a Bill. The Scottish Parliament website has a 'Getting Involved' week which encourages individuals to engage with and participate in the work of the parliament and explains how to do this. For all this work the Scottish Parliament has received international recognition and works more closely with the people MSPs represent.



parliament.scot/ParliamentDays

Engagement with the public



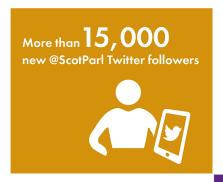
Parliament Days

The Parliament has continued to seek out ways to involve the people of Scotland in its work and demonstrate the relevance of its activities to their lives. Key to this has been the continuation of the Parliament Days initiative. Parliament Days have not only enabled the public's views to be heard by committees, they have also provided people with an alternative route to access their local MSPs on parliamentary matters through lively question and answer sessions hosted by the Presiding Officer, Craigmillar in Edinburgh, Orkney, Paisley, Motherwell and Dunfermline all extended a warm welcome to the Parliament this year and showed that local people are eager to find out how their voices can be heard in the Scottish Parliament.

In December, the Parliament Day in Dunfermline included a conference designed to help local people and organisations learn more about the Parliament, its committees and its processes. The 'Your Scottish Parliament' conference was attended by 107 people, representing more than 40 local community groups from across Fife. Topics covered ranged from how to use social media to engage with the Parliament through to the operation of the public petitions system.

In addition to the organised sessions, there were opportunities for those attending to meet Parliament staff and find out more about making their voices heard, including how to organise an event at the Parliament. The Visitor Services team was also on hand to talk about the free tours and public events that take place at Holyrood – and those attending could even buy a Christmas tree bauble from our pop-up shop.

Schools, colleges and universities have again participated enthusiastically in our exciting education programme at Holyrood and in the local community. Outreach staff visited 255 schools across Scotland, delivering 473 sessions to 11,983 pupils. In addition, education staff welcomed 11,463 pupils and students into 365 sessions at Holyrood this year. This included sessions looking at the language used in Parliament, curriculum-based modern studies work for Higher students and wider information sessions for those studying the Parliament and politics. It also included a programme of activities based around the John Bellany and the Scottish Women's Hospitals exhibition. The themes of the exhibition were used to help students explore issues relating to the role of women and the experiences of those who worked and were cared for at the hospitals.



25

Figure 14 Extract from 2015-16 Scottish Parliament Annual Report

Watch the following videos which provides an overview of the law making process in the Scottish Parliament.

Overview

http://www.parliament.scot/visitandlearn/100530.aspx

Stage 1

http://www.parliament.scot/visitandlearn/100531.aspx

Stage 2

http://www.parliament.scot/visitandlearn/100532.aspx

Stage 3

http://www.parliament.scot/visitandlearn/100533.aspx



How the Bill comes into force

http://www.parliament.scot/visitandlearn/100534.aspx

3.5 A Government Bill

To provide a flavour of the law making process you now consider the stages of a Government Bill.

A Government Bill begins life through the formulation of policy. If it is felt that legislation is required to achieve that policy, a team is put together to draft a Bill. While the draft Bill is being prepared there is usually a process of public consultation. 'Pre-legislative' scrutiny may also take place. This means that the proposals or draft Bill may be considered by a parliamentary committee. The committee chosen will be the one expected to consider the Bill when it is introduced to the Parliament. This procedure is useful as it allows members of the committee to familiarise themselves with the subject matter of the Bill at an early stage.

When the draft Bill is finalised, there is a three-week period during which matters such as legislative competence are checked. At this point the Bill is also checked to ensure that it is set out in the proper form.

Once the Bill has been introduced the Stage 1 processes of the consideration of the Bill take place. These are outlined in Table 3 below.

Table 3 The processes of the consideration of a Bill

Stage 1 Committee

The function of the committee is to produce a Stage 1 report on the general principles of the Bill. In preparing this they: look at the accompanying documents, may take evidence from witnesses, may ask for written evidence and consider, for an Executive Bill, whether sufficient consultation was undertaken before introduction.

Stage 1 Report

Committee report which will include a recommendation as to whether the general principles of the Bill should be agreed to.

Stage 1 Debate

Parliament decides whether to agree to the general principles of the Bill. Debates take place, amendments may be agreed or the Bill may be returned to the committee for a further report. Where there is agreement the Bill moves to Stage 2.

The Stage 2 processes involve a more detailed consideration of the Bill by a committee. The Stage 2 committee could be a committee of the whole Parliament of which all MSPs are members, the committee producing the Stage 1 report or another specialist committee. The Stage 2 process begins 11 whole sitting days after the completion of the Stage 1 process.

At Stage 2 the role of the committee is to consider and dispose of proposed amendments to the Bill. Once the Stage 1 decision is taken, any MSP could lodge an amendment to the Bill. If amendments are agreed, the Bill is reprinted.

Once Stage 2 has been completed, Stage 3 proceedings take place. Again amendments can be proposed. The Bill is now heard by Parliament. Proposed amendments are dealt with first. Once these have been voted on, Parliament must decide whether to pass the Bill. This is done by majority vote.



3.6 Royal Assent

Section 32 of the Scotland Act 1998 provides that a Bill, once passed, must be submitted by the Presiding Officer for Royal Assent. This is done after a period of four weeks. During that time, the Bill may be subject to legal challenge by the Advocate General for Scotland, the Lord Advocate or the Attorney General, and may also be subject to an order made by the Secretary of State. The Presiding Officer may, however, submit the Bill for Royal Assent after less than four weeks if notified by all three Law Officers and the Secretary of State that they do not intend to exercise their powers of legal challenge.

Royal Assent, when the Bill becomes an Act, is treated (under Section 28(3) of the Scotland Act 1998) as taking place at the beginning of the day on which Letters Patent signed by the Monarch are recorded in the Register of the Great Seal by the Keeper of the Registers of Scotland. When Royal Assent has been given, the Clerk of the Parliament writes the date of Royal Assent on the Official Print. The Clerk also assigns an 'asp number' in the form '2017 asp 1' (for the first Act given Royal Assent in 2017. The letters asp stand for Act of the Scottish Parliament). The Clerk then sends a certified copy of the Official Print to the Queen's Printer for Scotland, as authority to publish the Act. The Official Print itself is sent to the Keeper of the Records of Scotland for inclusion in the National Archives of Scotland (NAS). (NAS also hold the signed Letters Patent.)

The 'Queen's Printer' version of the Act, which is identical to the Official Print except the date and asp number are added, is available to the public through Stationery Office bookshops and on the OPSI (Office of Public Sector Information) website. (It is not a publication of the Scottish Parliament and therefore does not appear on the Scottish Parliament website.) The text of the Act is also sent to the Statutory Publications Office for inclusion in the electronic Statute Law Database, legislation.gov.uk.

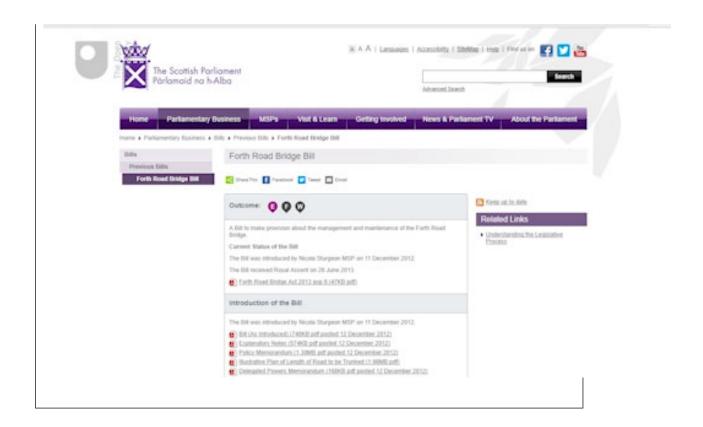
With a Scottish Bill, the interval between the passing of a Bill and Royal Assent is less predictable in advance than it would be in relation to a Bill of the UK Parliament because of the possibility of a Law Officer's reference under Section 33 or 34 of the Scotland Act 1998 or a Secretary of State order under Section 35 of the Scotland Act 1998. Partly for that reason, most Bills provide for a commencement date by an order made under the resulting Act.

At the same time, the Official Print version of the Act is prepared. This is produced on special archive-quality paper bound with ribbon. The Official Print is identical, in terms of its legislative text, to the Bill that was passed by the Parliament. (This is made possible by the drafting convention that, within the text of a Bill, all references are, for example, to 'this Act' rather than 'this Bill'.)

You should now watch this video which explores the Forth Road Bridge.

Video content is not available in this format.





3.7 Acts of Scottish Parliament

Figure 15 shows the number of Acts passed by the Scottish Parliament from 1999 - 2017. Figure 16 shows the origin of Acts between 2009 and 2016, indicating whether they originated from Government, Members, Private or Committee Bills.

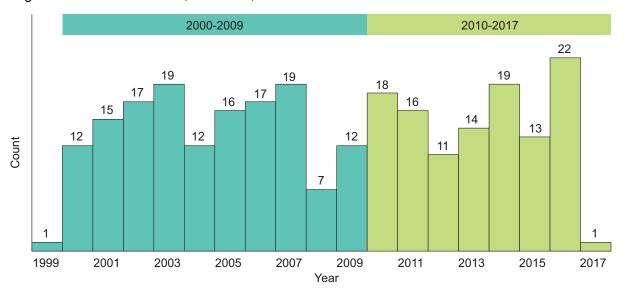


Figure 15 Acts of the Scottish Parliament 1999 to 2017



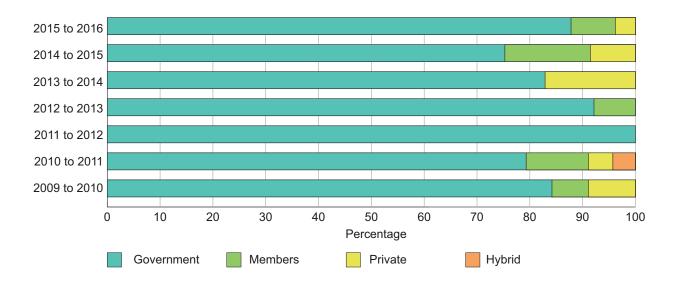
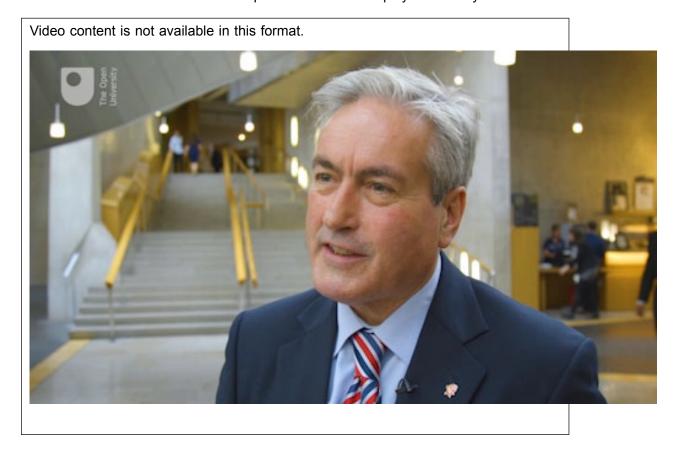


Figure 16 The origin of Acts of the Scottish Parliament 2009 - 2016

If you wish to find out more about the work of the Scottish Parliament then the annual reports provide a good starting point and can be found using the search function on their website.

You should now watch the following video in which lain Gray, MSP, reflects on legislation of the Scottish Parliament and the important role that law plays in society.





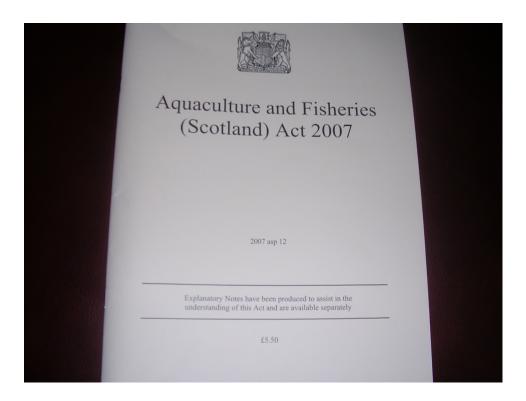


Figure 17 Aquaculture and Fisheries (Scotland) Act 2007

Before moving on to the next week watch this clip which explores the work of the Scottish Parliament in 2014.

You can out more about the work of the Scottish Parliament and how to follow their work on the Scottish Parliament website.

4 This week's quiz

Well done – you have reached the end of Week 3 and can now take the weekly quiz to test your understanding.

Week 3 practice quiz

Open the quiz in a new tab or window (by holding ctrl [or cmd on a Mac] when you click the link).

Summary

In this week you learnt about the law making processes of the Scottish Parliament. You have explored how Bills become law, the different types of Bill and begun to understand the Scottish Parliament's role in law making. You will learn to read an Act of the Scottish Parliament in later weeks.

You should now be able to:

- explain the different types of Bills
- describe the stages in the law making process of the Scottish Parliament



explain the legislative competence of the Scottish Parliament.

In the next week you learn about the law making process in the UK Parliament. The UK Parliament legislates on reserved matters and matters where a legislative consent motion has been passed by the Scottish Parliament.

You can now go to Week 4.

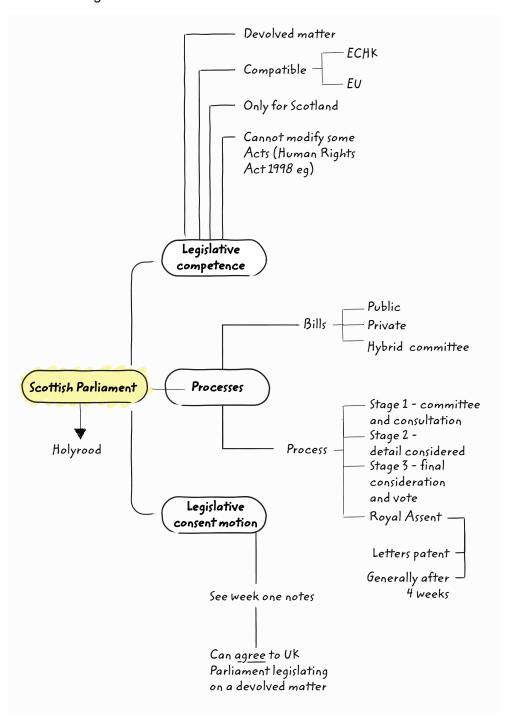


Figure 18 Summary overview of Week 3



References

Legislation

Aquaculture and fisheries (Scotland) Act 2007 asp 12 Human Rights Act 1998 c 42 Acts of Union 1705 and 1706 c 11 European Communities Act 1972 c 68 Scotland Act 1998 c 46





Week 4: Law making and the UK Parliament

Introduction

In this week you explore the role of the UK Parliament in law making. You have learnt that the UK Parliament legislates on reserved matters. It can also legislate on devolved matters with the agreement of the Scottish Parliament.



Figure 1 Inside the UK Parliament





Figure 2 Inside the House of Lords

The law making process at Westminster is a very different process from that of the Scottish Parliament. It involves both the Houses of the UK Parliament. Unlike the Scottish Parliament, the UK Parliament is bicameral, it has two chambers, the House of Commons and the House of Lords.

By the end of this week you will be able to:

- understand the law-making process in the UK Parliament
- explain the difference between the House of Commons and House of Lords
- explain the types of Bills introduced in the UK Parliament.



1 Bills in the UK Parliament



Figure 3 UK Parliament

An Act of the UK Parliament starts off as a Bill, which, if approved by a majority in the House of Commons and the House of Lords, becomes an Act of the UK Parliament. There are several types of Bill:

- A Public Bill –This is the most common type of Bill. Public Bills deal with matters
 affecting the public generally and are usually introduced by a government Minister.
 Most Bills are public and are introduced and supported by the government.
- A Private Members' Bill A Private Members' Bill deals with matters affecting the
 public generally but is introduced by a Member of Parliament who is not a Minister.
 Private Members' Bills are a type of Public Bill and should not be confused with
 Private Bills.
- A Private Bill Deals with issues which affect only a very small number of people.
 For example a Private Bill could deal with a matter affecting a single local authority.
 Private Bills are promoted by the group concerned. A Private Bill does not affect the general public as a whole.

The rest of this section will deal mainly with Public Bills and the procedural stages through which they must pass to become Acts of the UK Parliament.

1.1 Preparation for Bills

A period of preparation of a Bill allows time to scrutinise evidence on the policies underlying Bills, and to consider whether Bills can be improved before they are introduced. Proper preparation of a Bill should lead to better-informed debates on Bills



when they are introduced, and may save time by identifying problems at an early stage. This period of pre-legislative scrutiny allows valuable time for consideration and is intended to avoid introducing laws that are unworkable. Consultations are organised by the Government Department responsible for the Bill and may include the following:

- The Government Department will publish a Green Paper outlining the ideas for a Bill
 and seek comments and advice from affected organisations. These comments are
 summarised by civil servants and passed on to the relevant Minister.
- The Department may then publish a White Paper that outlines firm proposals which will be contained in the Bill. This White Paper will form the basis of the Bill to be introduced to Parliament.





Figure 4 Scotland's Parliament document



04.12.97

04.12.97

20.05.97



Figure 5 The Scotland Bill: Devolution and Scotland's Parliament



Figure 6 Public consultation on the United Kingdom's future legal framework

Bills are drafted by Parliamentary Draftsmen (lawyers skilled in drafting Bills) who work to ensure that a Bill is clear and unambiguous.

Box 1 Bills and Parliamentary Counsel

Sir Geoffrey Bowman KCB, First Parliamentary Counsel [...] in written evidence, [he] described the relationship between the Department from which a bill originated and the Parliamentary Counsel Office:

Bill is a joint effort, and there are many participants – Ministers, administrative and legal civil servants, drafters, Members and officials of both Houses, and members of the public affected by the Bill. The drafter's



main contact will usually be with the departmental lawyers, who draw up written instructions to our office.

There is an inherent tension in the process of producing Bills. On the one hand there is the political need to get legislation prepared and enacted quickly. On the other hand there is the need to get legislation right. If it does not stand up to logical analysis or it is legally defective, it will be prone to attack as it passes through Parliament and (once enacted) it will be challenged in the courts. There is always a balance to be struck. If you go too quickly you risk producing a faulty product. If you go too slowly you risk getting nothing done. But any Bill needs a certain time to mature. Everything needs to be thought through and tested in order to make sure that it stands up. The iterative process in which successive drafts are tried out and discussed prior to introduction into Parliament is vital. And it takes time.

Kelly, R. and the Parliament and Constitution Centre. (2005).

2 Stages of a Bill in the UK Parliament

In order to become an Act of the UK Parliament a Bill has to be passed by both the House of Commons and the House of Lords. A Bill may start in either the House of Commons or the House of Lords, with the exception of Finance Bills which always start in the House of Commons. A Finance Bill is introduced by the UK Government shortly after the Budget to bring the government's tax proposals into law.

Before the Bill can become an Act of the UK Parliament it must undergo a number of stages. Briefly these are as follows.

1 First reading

The title of a Bill is read out and copies of it are printed but no debate takes place. There will be a vote on whether the House wishes to consider the Bill further.

2 Second reading

The general principles contained in the Bill are debated. Frequently, the second reading stage is the point at which public attention becomes drawn to the proposal through press coverage and, on occasion, vociferous campaigns for and against the Bill by groups affected by the Bill. At the end of this debate a vote is taken: a majority must be in favour of the Bill in order for it to progress any further.

3 Committee stage

At this stage a detailed examination of each clause of the Bill is undertaken by a Committee of between 16 and 50 MPs. The Committee subjects the Bill to line-by-line examination and makes amendments. The Committee which carries out these



discussions comprises representatives of the different political parties roughly in proportion to the overall composition of the House. Often there will be a government majority on the Committee; however, an attempt is made to ensure representation by minority parties. The membership of the Committee will usually be those with a special interest in, or knowledge of, the subject of the Bill under consideration. (For Finance Bills the whole House of Commons will sit in Committee.)

4 Report stage

A Bill that has been amended in Committee stage is reviewed by the House where it started. The amendments will be debated in the House and accepted or rejected. Further amendments may also be added.

5 Third reading

This is the final vote on the Bill. It is almost a formality since a Bill which has passed through all the stages above is unlikely to fail at this late stage. In fact in the House of Commons there will only be a further debate on the Bill if at least six MPs request it. In the House of Lords amendments are sometimes made at this stage.

6 The House of Lords

The House of Commons and the House of Lords must finally agree on the text of a Bill. If a Bill started life in the House of Commons it is now passed to the House of Lords where it goes through all of the stages outlined above. If the House of Lords makes amendments to the Bill it will go back to the House of Commons for that House to consider those amendments.



Figure 7 The House of Lords in session

If the House of Lords votes against a Bill it can go back to the House of Commons and will become law if the House of Commons passes it for the second time. The reason for this is that the House of Lords is not an elected body and its function is to refine and add to law rather than oppose the will of the democratically elected House of Commons. There are



proposals to make the House of Lords more representative and some members of the House of Lords may be elected in the future. This could possibly lead to a change in the role and function of the House of Lords.

2.1 Debating Bills

There is opportunity for parliamentary debate and discussion at all stages except the initial stage. This process enables politicians from all parties to participate in parliamentary debates. The debate and discussion also allows the UK Government the opportunity to reflect on its proposed laws and modify them if necessary. An intricate web of politics therefore is woven into what otherwise might appear a rather mechanical procedure for making law. !Warning! Calibri not supportedFigure 7 provides an overview of the process a Bill goes through in the UK Parliament. You

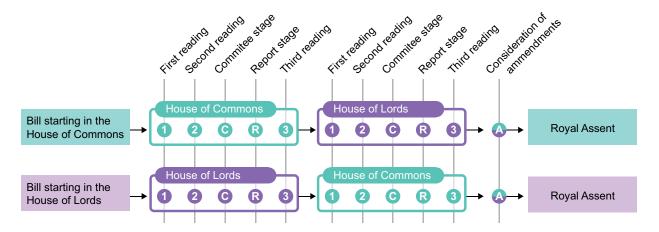


Figure 8 Stages of a Bill

Watch the following video which explores how the House of Lords works with the House of Commons to make a Bill law.

Watch the Video at YouTube.com

How the Lords works with the Commons to make a Bill law

2.2 Royal Assent

The monarch formally assents to a Bill in order for it to pass into law. Royal Assent has never been withheld in recent times. Queen Anne was the last monarch to withhold Royal Assent, when she blocked a Scottish Militia Bill in 1707. The Queen feared a Scottish militia might be turned against the monarchy.



New legislation

The following Bills received Royal Assent on Thursday 27 April 2017:

Broadcasting (Radio Multiplex Services) Bill
Bus Services Bill
Children and Social Work Bill
Criminal Finances Bill
Digital Economy Bill
Farriers (Registration) Bill
Farriers (Registration) Bill
Faversham Oyster Fishery Company Bill
Finance (No. 2) Bill
Guardianship (Missing Persons) Bill
Health Service Medical Supplies (Costs) Bill
Higher Education and Research Bill
Homelessness Reduction Bill
Intellectual Property (Unjustified Threats) Bill
Intellectual Property (Unjustified Threats) Bill
Merchant Shipping (Homosexual Conduct) Bill
National Citizen Service Bill
Neighbourhood Planning Bill
Northern Ireland (Ministerial Appointments and Regional Rates) Bill
Parking Places (Variation of Charges) Bill
Persion Schemes Bill
Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Bill

■ Technical and Further Education Bill

Figure 9 Bills of the UK Parliament receiving Royal Assent on 27 April 2017

Since the sixteenth century no monarch has actually signed a Bill themselves. Instead, the monarch signs what are known as Letters Patent which announce that the monarch has given their assent. Alternatively, the Queen signs a document known as a Commission which commands certain Lords, known as Royal Commissioners, to let both Houses of Parliament know that Royal Assent has been given.

Once Royal Assent has been given, the Bill is an Act of the UK Parliament.

2.2 Commencement of Acts of the UK Parliament

Following the Royal Assent the Act of the UK Parliament will usually come into force on midnight of that date. However there has been a growing trend for Acts of the UK Parliament not to come into force immediately. Instead, the Act itself either states the date when it will commence, or responsibility passes to the appropriate Minister to fix the date when the Act will come into force. In the latter case the Minister will bring the Act into force by issuing a commencement order.

To learn more watch the following video:

http://www.parliament.uk/about/how/laws/

To learn more about the role in the House of Commons in law making:

http://www.parliament.uk/about/podcasts/theworkofparliament/house-of-commons-chamber-film/making-laws/

To learn more about the work of the UK Parliament watch:

2.3 The UK Parliament and Scotland

The UK Parliament has the power to legislate on reserved matters and on devolved matters where a legislative consent motion has been passed by the Scottish Parliament. Activity 1 now asks you to explore Acts of the UK Parliament and their relevance to Scotland.



Activity 1 Exploring Acts of the UK Parliament

Allow about 10 minutes

Take a few moments to consider the Acts listed below. These Acts were some of the final Bills to receive Royal Assent before the dissolution of the UK Parliament on 3 May 2017 prior to the general election on 8 June 2017. Having read through the list, and based on the titles of the Act and your knowledge of matters which are devolved and reserved, indicate whether or not you think the Act covers Scotland.

The Broadcasting (Radio Multiplex	Yes	No	Not sure
Services) Act 2017 The Bus Services Act 2017	Provide your answer	Provide your answer	Provide your answer
Children and Social Work Act 2017	Provide your answer	Provide your answer	Provide your answer
Criminal Finances Act 2017	Provide your answer	Provide your answer	Provide your answer
Farriers (Registration) Act 2017	Provide your answer	Provide your answer	Provide your answer
Finance Act 2017	Provide your answer	Provide your answer	Provide your answer
Guardianship (Missing Persons) Act 2017	Provide your answer	Provide your answer	Provide your answer
Health Service Medical Supplies (Costs) Act 2017	Provide your answer	Provide your answer	Provide your answer
Homelessness Reduction Act 2017	Provide your answer	Provide your answer	Provide your answer



Intellectual Property (Unjustified Threats) Act 2017	Provide your answer	Provide your answer	Provide your answer
Local Audit (Public Access to documents) Act 2017	Provide your answer	Provide your answer	Provide your answer
Merchant Shipping (Homosexual Conduct) Act 2017	Provide your answer	Provide your answer	Provide your answer
National Citizen Service Act 2017	Provide your answer	Provide your answer	Provide your answer
Neighbourhood Planning Act 2017	Provide your answer	Provide your answer	Provide your answer
Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017	Provide your answer	Provide your answer	Provide your answer
Parking Places (Variation of Charges) Act 2017	Provide your answer	Provide your answer	Provide your answer
Pension Schemes Act 2017	Provide your answer	Provide your answer	Provide your answer
Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017	Provide your answer	Provide your answer	Provide your answer

Comment

The purpose of this activity was to get you to reflect on the which matters the UK Parliament may legislate for Scotland, whether these be as a result of reserved powers, such as international relations, or where there have been legislative consent motions.

Figures 10, 11 and 12 have been provided to show you where the information that appears in these comments for each Act was found. Legislation.gov.uk does, on



occasion, change but the screen shots are of the following: Figure 9 is of the legislation.gov.uk home page. On this page Scotland was selected which lead to the screen shot in Figure 10. Then by clicking on UK Public Acts the screen shot in Figure 11 appeared. Each Act was selected and then the extent Section was read to locate the answers given below. Your studies in subsequent weeks will familiarise you with the look and layout of Acts.



Figure 10 The official home of UK legislation



Figure 11 Selecting the Scotland tab on the home page leads to this and then selecting UK Public General Acts



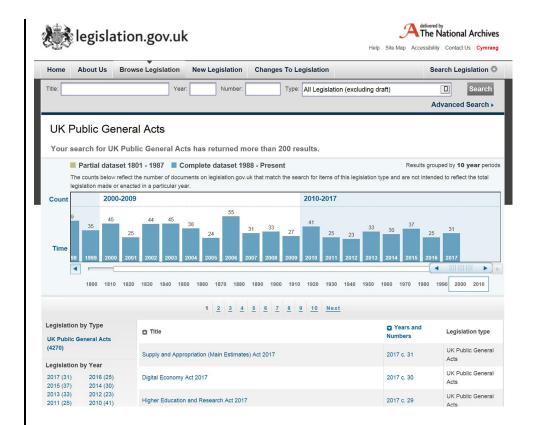


Figure 12 Selecting UK Public General Acts from the Scotland page

A number of the Acts had an impact on the law in Scotland.

Three of the Bills which you saw in Figure 8 earlier and which had received Royal Assent were not shown on legislation.gov.uk at the time of search 7 May 2017. These were the Digital Economy Bill, the Higher Education and Research Bill and the Haversham Oyster Fishery Company Bill.

- The Broadcasting (Radio Multiplex Services) Act 2017. Section 2 (1) states that it applies to (extends to) all of the UK.
- The Bus Services Act 2017 Section 25 states that only certain provisions apply in Scotland (sections 17 and 23 to 27).
- Children and Social Work Act 2017 states that section 10 and certain paragraphs in Schedule 1 apply to England, Wales and Scotland.
- Criminal Finances Act 2017 Section 57 states that certain provisions apply UKwide and certain provisions only apply to Scotland or Northern Ireland or England and Wales.
- Farriers (Registration) Act 2017 Section 3(1) states that the Act applies in England, Wales and Scotland.
- Finance Act 2017 outlines fines to be applied on conviction in Scotland.
- Guardianship (Missing Persons) Act 2017 applies to England and Wales only.
- Health Service Medical Supplies (Costs) Act 2017 applies to England and Wales only.
- Homelessness Reduction Act 2017 Section 13 states it applies to England and Wales only.
- Intellectual Property (Unjustified Threats) Act 2017 Section 7 states that it applies to England, Wales, Scotland and Northern Ireland.



- Local Audit (Public Access to documents) Act 2017 Section 2 states that it applies to England and Wales only.
- Merchant Shipping (Homosexual Conduct) Act 2017 Section 2(3) states that the Act applies to England, Wales, Scotland and Northern Ireland subject to Section 3(2).
- National Citizen Service Act 2017 Section 13 states that the Act applies to England and Wales (subject to any subsequent amendments which may extend the Act).
- Neighbourhood Planning Act 2017 Section 45 states that the Act applies to England and Wales except Section 42 and Part 3 which apply to (extend to) England and Wales, Scotland and Northern Ireland.
- Northern Ireland (Ministerial Appointments and Regional Rates) Act 2017
 Section 3(1) states that it applies to Northern Ireland only.
- Parking Places (Variation of Charges) Act 2017 Section 3(2) states that it applies to England and Wales only.
- Pension Schemes Act 2017 Section 43 states that the Act extends (applies to) to England, Wales and Scotland.
- Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017 Section 3(3) states that the Act applies (extends to) England, Wales, Scotland and Northern Ireland.
- Technical and Further Education Act 2017 states in Section 46 that Part Four and Section 6 (as it relates to Section 426 of the Insolvency Act 1986) apply to England and Wales, Scotland, and Northern Ireland. Section 46(3) states that the remaining sections of the Act apply to England and Wales only.

2.4 The work of the UK Parliament and getting involved

You should now have an understanding of the UK Parliament's role in relation to law making and Scotland. As you have seen from Activity 1 this can create complexity as parts of some Acts will apply to Scotland, all of some Acts will apply to Scotland and other Acts will not apply in Scotland at all. This is a piecemeal approach to law making which you consider further in later weeks.



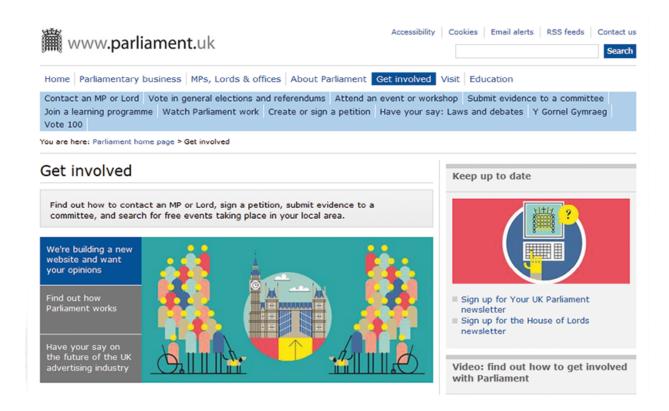


Figure 13 Get involved

You can out more about the work of the UK Parliament and how to follow their work on the UK Parliament website.



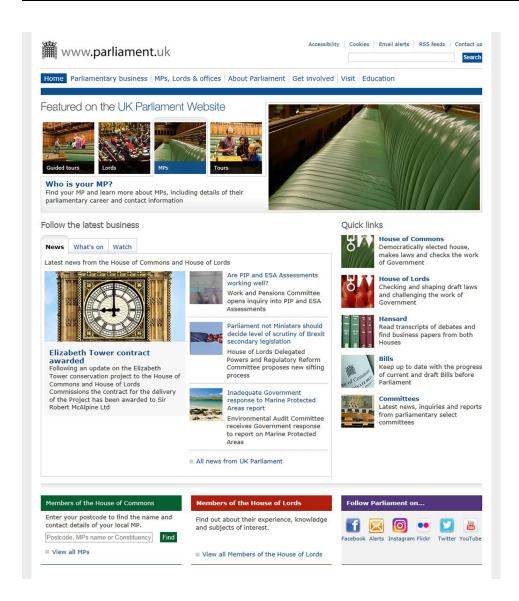


Figure 14 UK Parliament homepage

3 This week's quiz

It's time to complete the Week 4 badged quiz. It is similar to previous quizzes, but this time instead of answering five questions there will be fifteen.

Week 4 compulsory badge quiz

Remember, this quiz counts towards your badge. If you're not successful the first time, you can attempt the quiz again in 24 hours.

Open the quiz in a new tab or window (by holding ctrl [or cmd on a Mac] when you click the link.



Summary

In this week you learnt about the law making processes of the UK Parliament. You have explored how Bills become law, the different types of Bill and begun to understand the UK Parliaments role in law making in relation to Scotland.

You should now be able to:

- understand the law-making process in the UK Parliament
- explain the difference between the House of Commons and House of Lords
- explain the types of Bills introduced in the UK Parliament.

Next week you explore how acts of the Scottish Parliament are structured and cited (referenced).

You can now go to Week 5.

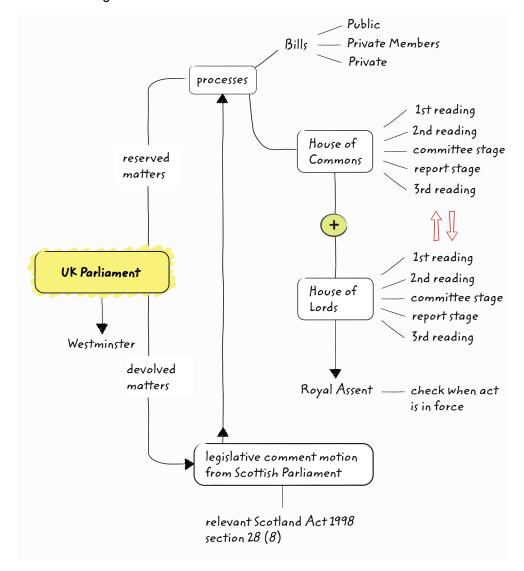


Figure 14 Summary overview of Week 4



References

Kelly, R. and the Parliament and Constitution Centre. (2005). *Drafting Legislation and the Parliamentary Counsel Office* [Online]. Available at http://researchbriefings.files.parliament.uk/documents/SN03756/SN03756.pdf (Accessed 12th September 2017)





Week 5: Reading an Act of the Scottish Parliament

Introduction

In this week you examine how legislation is structured and how you reference (cite) legislation. You were introduced to sections of an Act when you explored the powers of the Scottish Parliament and Sections 28 and 29 of The Scotland Act 1998 (as amended). Here you learn more about the structure of Acts and how to read them.

By the end of this week you should be able to:

- explain how an act is structured
- discuss the accessibility of language used in Acts
- understand the role of Parliamentary Counsel.

1 Acts: An overview

You have learnt that Acts of the Scottish Parliament and Acts of the UK Parliament (also referred to as statutes and often referred to as legislation) originate in the Scottish (Holyrood) or UK (Westminster) Parliaments as Bills. Once a Bill has passed through the various Parliamentary stages it may receive Royal Assent and become an Act. Some Acts of the UK Parliament still apply to Scotland, while all Acts of the Scottish Parliament apply to Scotland only.

Since 1999 Explanatory Notes have been produced for all Public Acts (and some Private Acts) published by the Scottish Parliament and UK Parliament. These Explanatory Notes are designed to make the Act of Parliament accessible by providing explanations in plain English outlining what the Act sets out to achieve, why it was passed and its content and extent. These are aimed at readers who have no specialised knowledge of the matters dealt with in the Act.

Recent Acts of Parliament have moved towards using ordinary language and being more clearly written so that they are accessible. This is regarded as important as individuals should easily be able to understand exactly what the Act was intended to cover and what 'the law' is on a particular subject. Some Acts of the Parliaments however, particularly older Acts, can be more difficult to understand. This may be due to the complexity of the subject matter, the more traditional language used, the length of the Act or the number of provisions within the Act.



Some Acts may codify (bring together) the law on a specific area. Some Acts codify common law, some Acts may amend the law while also creating new laws, others consolidate several Acts into one and other Acts create new laws. Acts of the Parliaments may also include a lot of exceptions to the Act, a lot of 'whereases' and cross-references to other Acts. This can make it difficult to understand what an Act means and covers.

Box 1 Citations

When an Act is referenced in writing it is given a citation. The citation allows the reader to locate the relevant Act and Section that the writer is referring to.

Every Act is given a running number for the year in which it is passed. These are known as the asp (lower case is used) number for Acts of the Scottish Parliament and Chapter Number for UK Acts.

Acts are referred to by their short title and year, for example, National Galleries of Scotland Act 2003 (whose running number is asp16) or the Scotland Act 2016 (whose running number is Chapter 11).

Parts of statutes

Acts tend to be divided into sections which are often further divided into sub-sections. For example Section 28(6) refers to Section 28 subsection 6.

Schedules

Many Acts have schedules at the end. Don't overlook these as they can contain important information. For example, in week 1 you learnt that Schedule 5 of the Scotland Act 1998 (as amended) sets out the reserved matters on which the Scotlish Parliament cannot legislate. These may be further divided into paragraphs, for example: Sch.1 para 8 is a reference to schedule 1, paragraph 8.

2 Acts of the Scottish Parliament

In this section you look at an Act that started life as Private Members' Bill. This Act has been chosen as it is short and has an accompanying explanatory note.

The starting point with any legislation from the Scottish Parliament is to consider whether it has been passed with the 'legislative competence' of the Scottish Parliament. The matter in this Private Members' Bill is not a reserved one as it does not touch upon a reserved matter such as national security. The Bill relates to land and buildings in the centre of Edinburgh.



68. National Galleries of Scotland Bill

Bill (as introduced)

Explanatory Notes (and other accompanying documents)

Promoter's Memorandum

Bill (as passed)

Received Royal Assent on 1 May 2003 <u>National Galleries of Scotland Act 2003</u> (HMSO website) <u>Explanatory Notes</u> (HMSO website)

SPICe briefings are available on request by emailing: spice@scottish.parliament.uk

Marshalled lists and groupings of amendments are available on request by emailing: legislation.team@scottish.parliament.uk

Figure 1 Screenshot of the summary of the National Galleries Bill from the Scottish Parliament website (accessed 5 October 2017)

2.1 Accompanying documentation to Bills

Through Activities 1 - 4 you will become familiar with the documents which accompany Bills.

Activity 1 fPromoters' memorandum to the National Galleries of Scotland Bill

Allow about 15 minutes

Read through the <u>promoter's memorandum</u> (The Scottish Parliament, 2015b) then answer the following questions.

1 Who were the promoters of the Bill?

Provide your answer...

Comment

The promoters of the Bill were the Board of Trustees of the National Gallery of Scotland. This information could be found in paragraph one.

2 When was the Bill introduced?

Provide your answer...

Comment

The Bill was introduced into the Scottish Parliament on 28 October 2002. This information was in paragraph one.

3 What were the objectives of the promoters?

Provide your answer...



Comment

The objectives of the promoters were in relation to a piece of land onto which new facilities for the National Gallery of Scotland would be built. These included new facilities and access. The proposed building works and improvements were prevented by a statutory restriction and the Trustees were seeking permission by legislation to carry out those works. They were seeking to have the land removed from the gardens over which there was a restriction and the restriction on that piece of land removed. This information could be found in paragraph three.

4 Who has been consulted?

Provide your answer...

Comment

Paragraph 34 contained a list of 19 organisations that had been consulted and explained why they had been chosen.

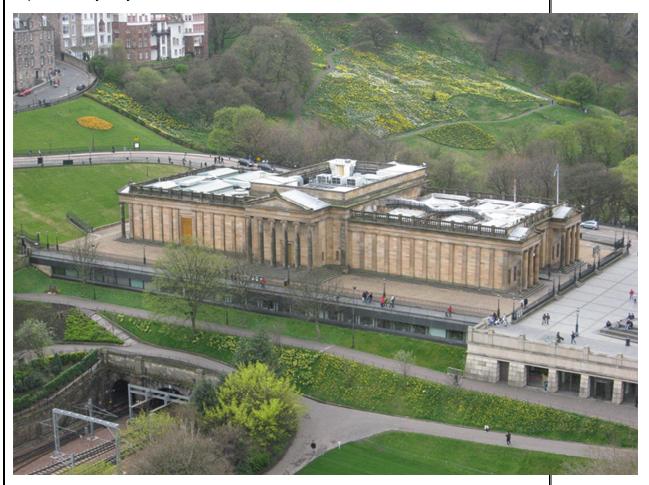


Figure 2 National Gallery of Scotland showing the extension





Figure 3 National Gallery of Scotland showing its location in the Mound, Princess Street gardens

Having read the promoters' memorandum Activity 2 asks you to think about legislative competence and how Bills are advertised as part of the open and transparent law making process.

Activity 2 Explanatory note

Allow about 10 minutes

Read through the <u>explanatory note</u> (The Scottish Parliament, 2015a) and answer the following questions.

1 Who gave the statement on legislative competence?

Provide your answer...

Comment

The statement on legislative competence was given by the Presiding Officer (Sir David Steel) in paragraph 34.

Where had advertisements giving notice of the Bill been placed?

Provide your answer...

Comment



Advertisements giving notice of the Bill had been placed both in newspapers (the Scotsman and Evening News on two separate occasions) and local libraries (based in six Edinburgh constituencies).

2.2 Structure of an Act of the Scottish Parliament

Having considered the promoters' memorandum and explanatory note Activity 3 requires you to read the Act and answer a number of questions in relation to that Act.

Activity 3 Structure and commencement

Allow about 15 minutes

Read through the National Galleries of Scotland Act 2003 in Figure 5 below and answer the following questions.



National Galleries of Scotland Act 2003

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 26th March 2003 and received Royal Assent on 1st May 2003

An Act of the Scottish Parliament to provide for a certain piece of land to cease to form part of Princes Street Gardens and to disapply the effect of section 22 of the Schedule to the City of Edinburgh District Council Order Confirmation Act 1991 to that land.

1 Relevant land: removal from Princes Street Gardens and disapplication of restrictions

Upon the coming into force of this Act-

- (a) the relevant land shall cease to form part of Princes Street Gardens; and
- (b) the restrictions on constructing buildings contained in section 22 (restrictions on buildings in certain parks) of the Schedule to the City of Edinburgh District Council Order Confirmation Act 1991 (c.xix) shall cease to apply to the relevant land.

2 Meaning of "the relevant land"

In this Act, "the relevant land" means the rectangular piece of land which-

- (a) prior to the coming into force of this Act, formed part of that part of Princes Street Gardens in the City of Edinburgh which lies east of, and adjacent to, The Mound; and
- (b) comprises an area of approximately 319 square metres bounded by an imaginary line commencing at grid reference NT254412738479 then proceeding southerly for a distance of approximately 59 metres to grid reference NT254574737915 then proceeding westerly for a distance of approximately 5.5 metres to grid reference NT254522737900 then proceeding northerly for a distance of approximately 59 metres to grid reference NT254361738464 and then returning easterly for a distance of approximately 5.5 metres to the point of commencement;

and in this section, "grid reference" means Ordnance Survey National Grid reference.

3 Short title and commencement

- This Act may be cited as the National Galleries of Scotland Act 2003.
- (2) This Act comes into force one week after the date of Royal Assent.

Figure 4 National Galleries of Scotland Act 2003 (asp 16)

1 How is the Act to be cited and where is this information found?

Provide your answer...



Comment

Section 3(1) states that the Act to be cited as the National Galleries Scotland Act 2003.

When did the Act come into force? i.e. when did it become law?

Comment

The Act came into force on 8 May 2003. This was one week after 1 May 2003, the date of Royal Assent. This information could be found in Section 3 (2).

3 How many sections does the Act have?

Comment

The Act has three Sections.

4 What does the Act do?

Comment

The Act provides for a 'certain piece of land to cease to form part of Princes Street Gardens and to disapply the effect of Section 22 of the Schedule to the City of Edinburgh District Council Order Confirmation Act 1991 to that land'. Section 1 is designed to remove the restrictions and Section 2 specifies the piece of land to which the Act applies.

An <u>explanatory note</u> accompanied the Act. You have not been asked to read this but you may wish to do so.

If you visit the National Gallery on the Mound in Edinburgh you will see the completed works which include a lecture theatre, café, improved access and a link between the buildings.





Figure 5 National Gallery of Scotland

Through Activities 1-3 you became familiar with the documents which may accompany a Bill and the structure of an Act of the Scottish Parliament. Although the Scottish Parliament works to be as transparent and open as possible in its law making process there are limitations as the structure of Acts is determined by long standing historical precedent. Activity 4 asks you to consider and reflect on the process.

Activity 4 Reflection on reading an Act

Allow about 10 minutes

Take a few moments to think about everything you have read. Reflect on the different types of document you have read, one of which contained a law. How approachable did you find the style of writing, layout and language used in the documents?

Provide your answer...

Comment

Some of the information you may have found approachable and interesting, some you may have found difficult in its use of technical or specialised terminology and some you will have found straightforward. However you approached the information you have been asked to read in this activity, you will have started to develop strategies to help you make sense of it.



Understanding an Act is not always easy without some guidance. This activity was presented in a number of stages to introduce the specialist terminology used, including sections, schedules, commencement and asp numbers. This was designed to make the task more approachable and to introduce you to, and build your confidence in, reading unfamiliar and technical material.

Some familiarity with the terminology and conventions (such as citation) used makes understanding an Act much easier.

Some reading strategies

Figure 6 contains a number of suggestions that you may find useful when reading.

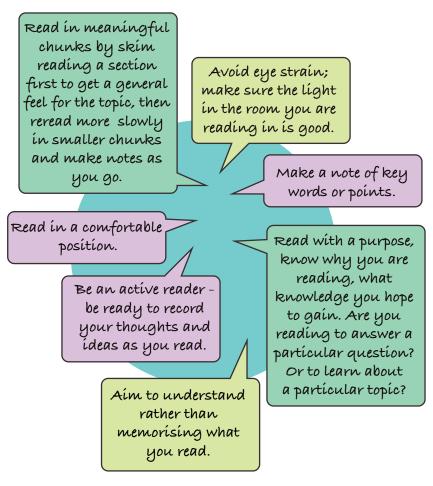


Figure 6 Some tips for reading

2.3 Citing an Act

Acts can often seem confusing at first, particularly if they are long and use technical or complex language. The use of citation however can work as a sort of shorthand to make discussion of the Act more straightforward and ensure that people know exactly which Act, and which part of the Act or its supporting documents, are being discussed. Table 1 provides an overview guide to citing an Act in different ways and contexts.

Table 1 Citing an Act of the Scottish Parliament



Type of citation	Example	
Short title including year	Harbours (Scotland) Act 2015	
Number	2015 asp 13	
Citation in written material such as an academic essay	(Harbours (Scotland) Act 2015)	
Citation where a Section of the Act has been referred to specifically or quoted	(Harbours (Scotland) Act 2015 Section 2) or (Harbours (Scotland) Act 2015 s.2.)	
If you refer to the Act in a sentence	The Harbours (Scotland) Act 2015 was designed to	
If you want to refer to a specific Section to explain it	Section 2 of Harbours (Scotland) Act 2015 states that	
Reference included in a bibliography or reference list at the end of an article or academic essay	Harbours (Scotland) Act 2015 asp 13.	

3 Who drafts the Bills?

You have seen that drafting (writing) a Bill in a way that is both legally certain and precise, and comprehensive and accessible, is no easy task. Drafting is a skill. At the Scottish Parliament there are a group of individuals whose task it is to draft Bills.

Box 2 Extract from drafting Legislation and the Parliamentary Counsel Office 2005

Since devolution, the Lord Advocate has become head of the Crown Office and Procurator Fiscal Service. He is assisted by the Solicitor General for Scotland. They are the Scottish Law Officers and members of the Scottish Executive.

The Office of the Scottish Parliamentary Counsel is located within the Scottish Executive. The Office is:

'Responsible for drafting Bills to be put before Parliament by the Executive and handling associated work such as the preparation of Executive amendments to Bills.'

It is headed by to the First Scottish Parliamentary Counsel. In addition, the office has 12 Parliamentary Counsel.

However, the Scottish devolution settlement allowed for not only Members' bills (similar to Westminster's Private Members' bills) but also for bills to be recommended by committees. Such bills are not prepared by the Office of the Scottish Parliamentary Counsel. The Scottish Parliament has a non-executive bill unit which provides support for both members' bills and committee bills. It was described in evidence to the Richard Commission on the powers and electoral arrangements of the National Assembly for Wales:

'It's basically a drafting resource within the Parliament itself but the members of that Unit are all staff of the Parliament not staff of the Executive and they



also incidentally draft Members' Bills so it is quite distinct from the Office of the Scottish Parliamentary Counsel.'

Kelly, R. and the Parliament and Constitution Centre, (2005)

You will now consider Acts of the UK Parliament as these still have relevance in Scotland.

4 Acts of the UK Parliament

Copies of all Acts of the Parliament sitting at Westminster have been kept since 1497. Most of these are kept in the House of Lords Record Office in the Victoria Tower at Westminster and are available for public inspection on arrangement with the Clerk of the Records. The oldest Act held in the Victoria Tower dates from 1497 and is entitled 'The Taking of Apprentices for Worsteads in the County of Norfolk Act'.

Box 3 The title of an Act of the UK Parliament

Acts before 1962 use the following reference:

Year of reign (known as Regnal Year)/Monarch/chapter number to define a chapter of the appropriate statute book. The terminology 'chapter' arises because the very earliest Acts were regarded as parts of a single statute passed at one meeting of Parliament. For example, '16 Charles II c.2' was the second Act passed during the session of Parliament that fell during the 16th year of the reign of Charles II. Another example is the Bills of Sale Act of 1854 known as 17 & 18 Vict c.36.

Since 1962, the Regnal Year has been replaced by the calendar year.

Now all Acts of Parliament have a name and date, for example, the Road Traffic Act 1961. The name usually reflects the subject matter of the Act and the date indicates the year in which the Act passed through Parliament. Acts also have a number (for example, the Road Traffic Act was No. 50 of 1961 – that is, it was the 50th Act passed in 1961).

You should now watch the following video which considers the Farriers (Registration) Act 2017.

Video content is not available in this format.





ELIZABETH II

c. 28



Farriers (Registration) Act 2017

2017 CHAPTER 28

An Act to make provision about the constitution of the Farriers Registration Council and its committees. [27th April 2017]

5 Bills and Acts and the UK Parliament

The Office of the Parliamentary Counsel is a group of government lawyers who specialise in drafting legislation. Their role begins when legislation is first being considered and they remain involved throughout the Parliamentary process and beyond.



Figure 7 Houses of the UK Parliament at Westminster



Box 4 Information on Acts of the UK Parliament

Putting the Act into force

The Government is responsible for bringing new laws into force, once they have been passed by Parliament.

An Act may come into force immediately, on a specific future date, or in stages. You can find out when an Act is due to come into force by looking at a Section of the Act itself, headed 'Commencement' – this is among the very last sections of an Act.

Sometimes a specific date is not given and the timing is left to the discretion of the Secretary of State for the relevant government department.

Although Parliament is not responsible for implementing legislation, its committees can investigate how well an Act is being implemented by the Government and the effect that the new law is having. This is known as post-legislative scrutiny.

Changes to Acts

Future changes to the law happen through the passing of another Act or delegated legislation. An Act can also be repealed so that its provisions no longer apply. Parliamentary committees examine UK laws and recommend the removal of out-of-date legislation.

Finding the text of Acts

Almost all current Acts of Parliament are available to read on the Legislation.gov.uk website. Be aware that the text of the original Act passed by Parliament will differ from a revised version of the Act that incorporates changes made by subsequent legislation.

The UK Houses of Parliament changed from hand writing original Acts of Parliament to printing them in 1849. They are printed on vellum, and still are to this day.

The Acts were also the Bills, until the switch to printing. The Bills would pass through one House, be handwritten onto parchment after report stage, and all amendments made on third reading and during all stages in the second House were painstakingly made onto the parchment. This same document became the Act after Royal Assent. This was the case from 1497–1849, so anyone wanting to consult Bills in this period should actually consult the original Act.

There do additionally exist printed Bills for reference from the early 18th century but they were not made systematically. There is no single definitive set, sometimes they were printed by private promoters (rather than by Parliament), and where odd Bills do survive there is often no indication of what stage of debate they had reached. Their usefulness therefore varies.

Texts of most Acts of Parliament as originally passed by Parliament since 1800 are available on the Legislation.gov.uk website. The Parliamentary Archives has copies of original Acts from 1497.

6 Making law accessible

In Week 2 you explored the concept of the rule of law. Underpinning this were a number of criteria relating to the accessibility and openness of the law.



The Scottish Parliament does a great deal to ensure that its work is open and accessible to the public. The UK Parliament is also working to ensure the accessibility of its legislation. Making Acts easily available is an important part of this work. Here you explore whether what is being done is enough.

Box 5 Legislation and its impact

Legislation affects us all. And increasingly, legislation is being searched for, read and used by a broad range of people. It is no longer confined to professional libraries; websites like Legislation.gov.uk have made it accessible to everyone. So the digital age has made it easier for people to find the law of the land; but once they have found it, they may be baffled. The law is regarded by its users as intricate and intimidating.

That experience echoes observations that have been made about statute law for many years. The volume of legislation, its piecemeal structure, its level of detail and frequent amendments, and the interaction with common law and European law, mean that even professional users can find law complex, hard to understand and difficult to comply with.

Should we be concerned about any of this? After all, modern life in a developed country like the UK is complicated, and we use the law to govern many aspects of it. So it is not surprising that statutes and their subordinate regulations are complex; and it is perhaps reasonable to assume that citizens will need help or guidance in understanding the raw material of law.

But in my view, we should regard the current degree of difficulty with law as neither inevitable nor acceptable. We should be concerned about it for several reasons. Excessive complexity hinders economic activity, creating burdens for individuals, businesses and communities. It obstructs good government. It undermines the rule of law.

!Warning! Calibri not supportedParliamentary Office and Office of the Parliamentary Counsel (2013)

Over the past decade there has been a growing movement to make the wording of law more accessible. The UK Cabinet Office and Parliamentary Counsel have launched an initiative called 'good law' which aims to make legislation more accessible and understandable for UK citizens. They have undertaken a number of reviews and set the challenge of making law clear, coherent, effective and accessible.

The good law initiative is an appeal to everyone interested in the making and publishing of law to come together with a shared objective of making legislation work well for the users of today and tomorrow.

Listen to the following clip in which the former First Parliamentary Counsel, Richard Heaton, explores law and the language used. The clip makes reference to delegated legislation which you will explore in more detail in week Six. The clip is longer than some of the others you have encountered in your studies. Being able to listen to presentations, concentrate and identify their key points is an important skill. This clip contains material relevant to this week of study and to the following week of study. As you listen reflect on what you have learnt so far in this course. Think about how the points made in the clip are relevant to your studies.



https://www.gov.uk/guidance/good-law - TEDx Houses of Parliament speech by former First Parliamentary Counsel Richard Heaton

The material in the clip is relevant to current debates about the volume of legislation, complexity of drafting and new ideas for review and reform. Through activities you have been introduced to the law making processes in both the Scottish and UK Parliaments and have begun to see the complexity that this creates.

The interconnectedness between four areas (content, language and style, publication and the statute book) that have traditionally been treated separately is shown in Box 9. Parliamentary Counsel are challenging law makers to consider each of the four from the different perspectives of citizens, professional users and legislators. Reform has been called for and is ongoing.

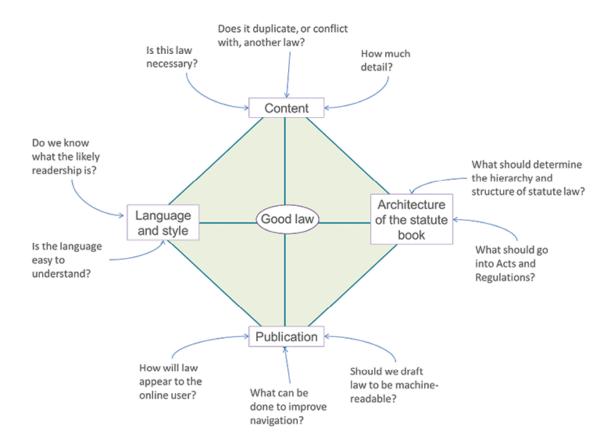


Figure 8 Good law

Think back to Activity 4 where you were asked to reflect on your experience of reading the National Galleries of Scotland Act 2003 and explanatory notes. Do your reflections support the need for an initiative such as the 'good law' initiative to make law more accessible and clearer?



7 This week's quiz

Well done – you have reached the end of Week 5 and can now take the weekly quiz to test your understanding.

Week 5 practice quiz

Open the quiz in a new tab or window (by holding ctrl [or cmd on a Mac] when you click the link).

Summary

You have explored Acts from both the Scottish and UK Parliaments and considered how legislation is structured and cited (referenced). You have also been introduced to the growing complexity of law making, both in terms of sources of legislation (two Parliaments) and the language used.

You should now be able to:

- explain how an Act is structured
- discuss the accessibility of language used in Acts
- understand the role of Parliamentary Counsel.

In the next week you consider the use of delegated legislation. This links to the growing calls for reform on the grounds of accessibility to which you have been introduced during your studies of this week.

You can now go to Week 6.



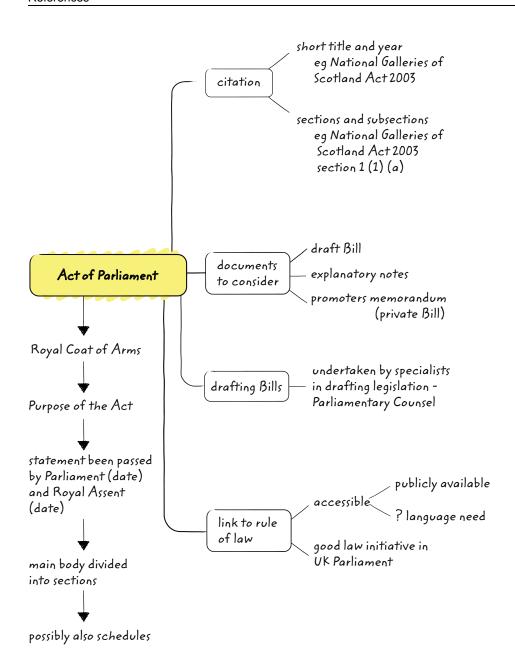


Figure 9 Summary overview of Week 5

References

Cabinet Office and Office of the Parliamentary Counsel. (2016). *Working for the Parliamentary Counsel: Caroline MacBeath* [Online]. Available at https://www.gov.uk/government/case-studies/working-for-the-parliamentary-counsel-caroline-macbeath (Accessed 7 May 2017).

Kelly, R. and the Parliament and Constitution Centre. (2005). *Drafting Legislation and the Parliamentary Counsel Office* [Online]. Available at http://researchbriefings.files.parliament.uk/documents/SN03756/SN03756.pdf.

National Galleries of Scotland Act 2003.

Parliamentary Office and Office of the Parliamentary Counsel. (2013). When laws become too complex [Online]. Available at https://www.gov.uk/government/publications/when-



laws-become-too-complex/when-laws-become-too-complex (Accessed 13 September 2017).

The Scottish Parliament (2015a). *National Galleries of Scotland Bill – Explanatory Notes* [Online]. Available at http://www.parliament.scot/S4_Bills/National%20Galleries%20of% 20Scotland%20Bill/b77s4-introd-en.pdf (Accessed 12 September 2017).

The Scottish Parliament (2015b). *National Galleries of Scotland Bill – Promoter's Memorandum* [Online]. Available at http://www.parliament.scot/S4_Bills/National% 20Galleries%20of%20Scotland%20Bill/b77s4-introd-pm.pdf (Accessed 12 September 2017).

Legislation

Farriers (Registration) Act 2017 c 28





Week 6: Exploring legislation

Introduction

In this week you explore and consider the growing use of secondary legislation for the purposes of law making. You also consider the processes for scrutiny in both the Scottish and UK Parliaments and explore some of the challenges presented by secondary legislation.

By the end of this week you will be able to:

- explain what secondary legislation is
- understand why secondary legislation is used
- Understand the difference between primary and secondary legislation.

1 Secondary legislation

An Act of Parliament (whether of the Scottish or UK Parliament) may give a Minister, or some other body, power to make detailed regulations in a specified area of their responsibility. In passing a Bill the Parliament accepts the principles and general objectives but subordinate (also referred to as secondary or delegated) legislation can then be used for the detail of the laws needed to achieve those objectives. It is becoming increasingly common for Acts of Parliament to provide a framework into which much of the real detail and impact of the law will subsequently be added through secondary legislation. Secondary legislation may also be used to state the date upon which an Act will come into force.

Subordinate (secondary or delegated) legislation is generally regarded as a tool for producing detailed legislation.

Box 1 Primary / Secondary / Subordinate / Delegated

An Act of Parliament is referred to as primary legislation. Secondary, Subordinate and Delegated legislation are the terms used to refer to legislation which is made under the authority of an Act of Parliament.



2 The Scottish Parliament

The time available for debate and scrutiny in the Scottish Parliament is limited. The Parliament sits on Tuesdays, Wednesdays and Thursdays. Parliamentary Committees will normally meet on a Tuesday or Wednesday (occasionally Monday). This means that it may not be possible to hear all the detailed aspects of a particular area of legislation quickly. A system, similar to the one used in the UK Parliament, has therefore been developed to allow for the creation of subordinate legislation in the Scottish Parliament.

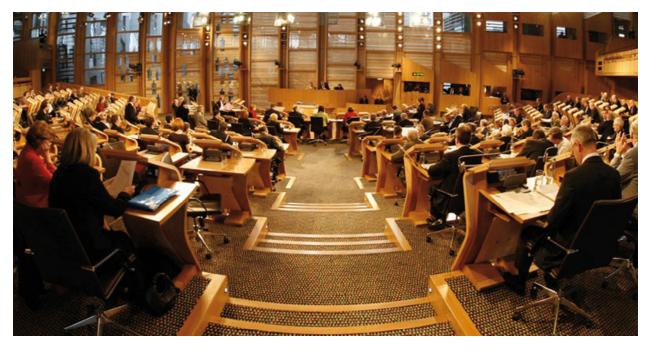


Figure 1 The debating chamber of the Scottish Parliament



Figure 2 Committee room inside the Scottish Parliament



2.1 Subordinate legislation

Primary legislation of the Scottish Parliament often grants powers to individual Ministers or executive bodies to create law. Their powers to make laws have limitations. They are only able to act within the powers and the framework set by the primary legislation. If they fail to do so then that law may be challenged by the Parliament or Committee.

As you have learnt it is quite common for the detail of an Act (for example concerning timing, implementation or the mechanism for updating) to be filled out by subordinate legislation.

The Scottish Parliament has a role in scrutinising subordinate legislation and has the power to approve or reject it. It is extremely rare, however, for the Scottish Parliament to have any scope to amend or change subordinate legislation.

Most subordinate legislation takes the form of statutory instruments. These are considered by the Delegated Powers and Law Reform Committee and at least one other Scottish Parliament committee. However, there are occasions when on a motion of the Parliamentary Bureau, the Parliament may decide that an instrument or draft instrument will go directly to the Parliamentary Chamber for consideration.

The parent Act will generally specify the type of parliamentary procedure that subordinate legislation must follow. They will follow either the negative procedure or the affirmative procedure.

Activity 1 Children and Young People (Scotland) Act 2014
Allow about 15 minutes

Read this section from the Children and Young People (Scotland) Act 2014. What powers does this Act give to Ministers?



99 Subordinate legislation

- (1) Any power of the Scottish Ministers to make an order under this Act includes power to make—
 - (a) different provision for different purposes.
 - (b) such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.
- (2) An order made under any of the following sections is subject to the affirmative procedure—

```
section 3(2)
section 7(5)
section 30(1)
section 31(2)
section 37(7)
section 43(1)
section 44(2)
section 47(2)(c)(ii)
section 47(4)
section 48(2)
section 51(2)
section 56(2)
section 57(2)(b)
section 58(2)
section 68(3)(b)
section 71(5)(b)
section 96(6).
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- (3) An order made under section 101 containing provisions which add to, replace or omit any part of the text of this or any other Act is subject to the affirmative procedure.
- (4) All other orders made under this Act are subject to the negative procedure.
- (5) This section does not apply to an order made under section 102(3).

Figure 3 Section 99 Children and Young People (Scotland) Act 2014

Provide your answer...

Comment

Section 99(1) of the Children and Young People (Scotland) Act 2014 outlines the powers of Ministers. Where they have been given the authority to make orders under the Act then section 99(1) means Scottish Ministers are empowered 'to make different provision for different purposes' (Section 99(1)(a)). They also have further power to make 'such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate' (Section 99(1)(b)). Note the wording: 'as they consider appropriate'.

Section 99 delegates power to the Minister who is then able to use that power without further consulting the Parliament. You will return to consider this later.

You may have noted the mention of affirmative and negative procedures.



2.2 Affirmative or negative procedure

Affirmative and negative procedures are important in scrutinising delegated legislation. Delegated legislation is a major source of law making. In the Scottish Parliament more than 300 pieces of delegated legislation are passed each year. Delegated legislation does not follow the same process as Bills so there is little public consultation although there may be consultation with experts in the particular area.

- The affirmative procedure means that delegated legislation is laid before Parliament in draft form. Approval of that draft by Parliament is needed before it comes into force (becomes law).
- The negative procedure means that the delegated legislation is signed by the Minister and then laid (go before) Parliament. Usually they come into force 28 days after they are laid.

The scope of delegated legislation varies considerably, from technical and procedural to much more wide-ranging powers.





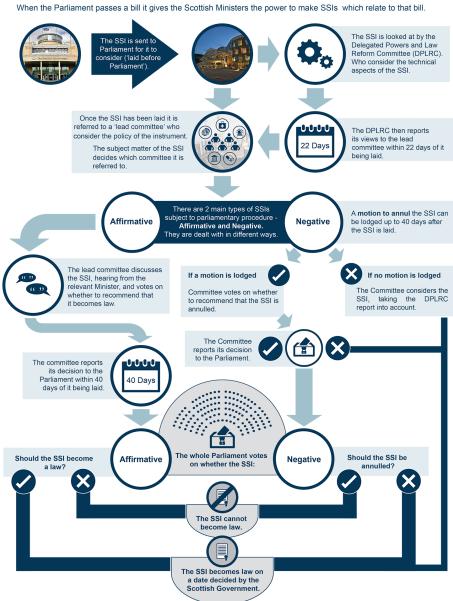


Figure 4 Infographic Scottish Parliament Delegated Powers and Law Reform Committee

Watch the following video which summarises the difference between primary and subordinate legislation and explores the work of the Delegated Powers and Law Reform Committee.

Watch the Video at YouTube.com



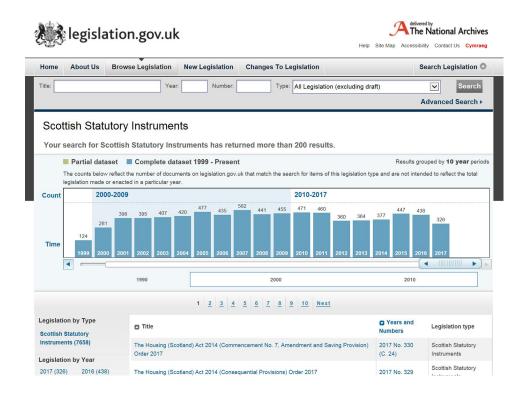


Figure 5 shows the volume of Scottish Statutory Instruments from 1999 to mid-2017. A significant number are passed each year with the highest number in 2007 (at 582).

Take a moment and reflect on how many Acts of the Scottish Parliament there have been (you considered these in Week 3). Statutory instruments far outnumber them.

3 The UK Parliament

Many UK-wide laws are also made by delegated legislation and do not go through the process set out in week 4. The term delegated legislation tends to be used more frequently when referring to the UK Parliament. As in the Scottish Parliament most delegated legislation is created as statutory instruments. Primary Acts set out the framework of powers delegated to Ministers or other bodies in the primary Act. Delegated legislation, mostly in the form of statutory instruments, is frequently used to supplement, provide detail, update and amend primary legislation. This can all be achieved without the UK Parliament having to pass a new Act.

Box 2 UK Parliament and delegated legislation

Delegated legislation is usually concerned with detailed changes to the law made under powers from an existing Act of Parliament. Statutory instruments form the majority of delegated legislation but rules or codes of practice can also be used.

What delegated legislation does

Delegated legislation allows the Government to make changes to a law without needing to push through a completely new Act of Parliament. The original Act (also known as primary legislation) would have provisions that allow for future delegated legislation to alter the law to differing degrees.



These changes range from the technical, like altering the level of a fine, to fleshing out Acts with greater detail; often an Act contains only a broad framework of its purpose and more complex content is added through delegated legislation.

Statutory instruments

Statutory instruments (SIs) are a type of delegated legislation. Approximately 3,000 SIs are issued each year, making up the bulk of delegated legislation. About two thirds of SIs are not actively considered before Parliament and simply become law on a specified date in the future.

SIs are normally drafted by the legal office of the relevant government department. Consultations often take place with interested bodies and parties.

The House of Lords Delegated Powers Scrutiny Committee

The Lords Delegated Powers Scrutiny Committee (established in 1992) keeps under constant review the extent to which legislative powers are delegated by Parliament to government ministers, and examines all Bills with delegating powers which allow SIs to be made before they begin their passage through the House. There is an informal understanding in the Lords that, when the Delegated Powers Committee has approved provisions in a Bill for delegated powers, the form of those powers should not normally be the subject of debate during the Bill's subsequent passage.

The House of Commons has no equivalent committee.

The House of Lords Secondary Legislation Scrutiny Committee (formerly the Merits Committee)

Established in 2003, the Lords Secondary Legislation Scrutiny Committee considers every negative and affirmative SI (or draft SI) laid before Parliament – about 1200 per year – with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds:

- that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House
- that it may be inappropriate in view of the changed circumstances since the passage of the parent Act
- that it may inappropriately implement EU legislation
- that it may imperfectly achieve its policy objectives
- that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation
- that there appear to be inadequacies in the consultation process which relates to the instrument.

The Lords Secondary Legislation Scrutiny Committee reports every week, normally considering SIs written 12–15 days of being laid before the House.

Like the Lords Delegated Powers and Regulatory Reform Committee, the Lords Secondary Legislation Scrutiny Committee's role is to advise the House of Lords, and it is for the House to decide whether or not to act on the Committee's conclusions.

The House of Commons has no equivalent committee.



From the information in Box 2 you can see that the procedures used in the UK Parliament differ from those in the Scottish Parliament and are more complex. The House of Lords has a wide-ranging membership with experts (including former members of the judiciary with their legal expertise) drawn from many areas and scrutinises delegated legislation. The Select Committee of the House of Lords on the constitution (9th Session 2015-16) raised concerns over the use of delegated legislation, in particular that the role of Parliament in scrutinising legislation and challenging the government was being undermined.

3.1 Scrutiny in the UK Parliament

The UK Parliament can delegate powers to UK Government ministers to make laws that extend to Scotland. Scrutiny of subordinate legislation by the UK Parliament is therefore important. You have explored the use of legislative consent motions and know that the UK Parliament is able to make laws for Scotland in reserved areas. To understand law making in Scotland it is therefore also necessary to be familiar with UK Parliamentary procedure for scrutiny and challenge. There are three procedures in the UK Parliament.

Box 3 Procedures for approving delegated legislation in the UK Parliament

(I) The Negative Procedure

- Delegated legislation going through this procedure becomes law on a stated date unless there is a motion passed in either House annulling the instrument. This motion is known as a 'prayer'. If a member of either House wishes to reject a negative instrument they have to do so within 40 days of the instrument being laid before the UK Parliament.
- In the House of Commons, MPs table a prayer by putting it down as an Early Day Motion. If time is allocated, MPs have up to 90 minutes to debate the instrument.
- In the House of Lords, time is usually found for debate on a prayer motion. This
 debate is not subject to a time limit. Peers can either seek to reject the instrument
 or table a non-fatal motion, critical of the instrument without annulling it.

(II) The Affirmative Procedure

- The most substantial and important pieces of delegated legislation are subject to a
 more stringent form of control and require the active approval of both Houses of
 Parliament before they can come into effect.
- In the House of Commons, affirmative instruments are referred to a Delegated Legislation Committee for debate, unless a motion for the debate to be held in the Commons chamber is tabled. Debates last no longer than 90 minutes and are conducted on a 'consideration' motion. Following debate in committee, an approval motion is put formally to the House without debate on a separate day.
- In the House of Lords, a motion to approve an affirmative instrument can be taken in either Grand Committee or on the Floor of the House. Peers can express their opposition or concern by making an amendment to the approval motion or by tabling a separate motion, effectively withholding the agreement of the House as



was the case in October 2015 when Peers delayed approval of the Tax Credit regulations.

- (III) The Strengthened Scrutiny Procedures
- There are currently 10 Acts of the UK Parliament that provide for certain of their powers contained to be subjected to a higher level of parliamentary scrutiny than the affirmative procedure. They confer upon a minister a significant power to amend primary legislation (often referred to as a Henry VIII power). The UK Parliament therefore has the opportunity to comment and recommend changes to proposals under these powers and in some cases to veto the proposed instrument.

Blackwell, J. (2015)

3.2 Reflection on subordinate legislation in the Scottish and UK Parliaments

The use of subordinate legislation is increasing. As you have learnt procedures for scrutiny differ between the UK and Scottish Parliaments. Activity 2 asks you to think about subordinate legislation and some of the concerns over its use.

Activity 2 Use or abuse? Thinking about delegated legislation Allow about 20 minutes

Delegated legislation is a complex area. Take a few minutes to reflect on what you have learnt and then answer the following questions.

1 Where do the powers to make delegated legislation come from?

Provide your answer...

Comment

The powers to make delegated legislation can be found in the primary Act. That Act will specify what powers have been delegated and to whom.

2 Are other terms used as an alternative to delegated legislation?

Provide your answer...

Comment

Delegated legislation is also referred to as secondary or subordinate legislation. Both the terms 'secondary' and 'subordinate' indicate that they are subject to something – in this case, the primary Act of Parliament.

3 What procedures exist to scrutinise delegated legislation?



Provide your answer...

Comment

There are procedures in both the Scottish and UK Parliaments. There are two procedures in the Scottish Parliament, the affirmative and negative procedures. The affirmative procedure requires parliamentary consideration. In the UK Parliament there are three procedures, affirmative, negative and strengthened scrutiny.

4 Legislation applicable to Scotland may be made by both the Scottish Parliament (on devolved matters) and the UK Parliament (on reserved matters). To find the applicable law on a topic you may need to research both primary and delegated legislation made by either Parliaments. The delegated legislation may not have received much scrutiny. Take a few moments and identify three issues you think this may raise and why.

Provide	vour	answer	
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Comment

There is growing criticism of law making using delegated legislation. The issues you identified will reflect your viewpoint and views on law making in this way. There was no right or wrong answer to this question. It was designed to make you stop and think about what you had read, identify issues, reasons why you think they are issues and then note them. Accessibility may have struck you as one issue: if there was so much law how do you find it and navigate a way through it to find the answer to a question? And does this, in turn, mean that Ministers (whether of the Scottish or UK Government) are delegated a great deal of power with little scrutiny of how that power is used? Finally, there is no process for reviewing whether the delegation was effective and there is usually no stated point at which the power ends.

3.3 The expansion of regulation

The increase in delegated legislation is an indicator of the growing complexity of society. The expansion of regulation, the wide range of social security provision and the wide range of tax provisions, the rapidly changing nature of technology, the growth in delegation of powers to local authorities and councils, use of the internet, the growth in technical detail required and the complexity of a 21st century society have all contributed to a significant increase in the volume, technicality and complexity of delegated legislation.

Activity 3 A need for reform?

Allow about 10 minutes

Look at the following list and indicate whether you class the statement as support for, or a criticism of, delegated legislation:



	Support for delegated legislation	Criticism of delegated legislation
Supervising delegated legislation is very difficult.	Provide your answer	Provide your answer
Publication takes place but few people may be aware that the delegated legislation exists and where to find it.	ple may be aware that the egated legislation exists and	
Most individuals do not know on what ground you can challenge delegated legislation or how to go about it.	Provide your answer	Provide your answer
Some enabling Acts can be ambiguous and can therefore be open to wide interpretation.	Provide your answer	Provide your answer
Great power may be given to Ministers. The enabling Act might include a phrase like 'the minister may make such regulations as he sees fit for the purpose of bringing the Act into operation'.	Provide your answer	Provide your answer
Relieves pressure on parliamentary time so that Parliament can concentrate on important laws, rather than technicalities.	Provide your answer	Provide your answer
Delegated legislation can be created more easily and quickly.	Provide your answer	Provide your answer
Delegated legislation can be drafted by experts in the field.	Provide your answer	Provide your answer
Delegated legislation can be made at any time, whereas Acts need to be timetabled.	Provide your answer	Provide your answer
Parliament has insufficient time to scrutinise it.	Provide your answer	Provide your answer
Delegation of powers causes complexity and confusion.	Provide your answer	Provide your answer
Sheer volume causes complexity – it is impossible keep abreast of all delegated	Provide your answer	Provide your answer
legislation (an average of 4,000 and more a year between both Parliaments).		
Lack of publicity for, and consultation on, delegated legislation.	Provide your answer	Provide your answer
Undemocratic: most delegated legislation is drafted by civil servants.	Provide your answer	Provide your answer



Henry VIII clauses can give power to amend or repeal Acts of the UK Parliament.	Provide your answer	Provide your answer
Saves limited time in Parliament allowing for more detailed debates on policy and other matters.	Provide your answer	Provide your answer
MPs and MSPs often lack detailed or technical knowledge.	Provide your answer	Provide your answer
Enables a quick response to new developments, crises or emergencies.	Provide your answer	Provide your answer
Enables minor changes to statutes, for example variations in sentences and approval of motor vehicle changes.	Provide your answer	Provide your answer
There is a fear that Ministers are increasingly seeking to use SIs rather than Bills to achieve their policy objectives as these receive much less scrutiny than primary legislation.	Provide your answer	Provide your answer
Delegated legislation takes up less parliamentary time.	Provide your answer	Provide your answer
Traditionally, the justifications for using delegated legislation have been the need to elaborate complex and technical detail that cannot be easily done on the face of a Bill.	Provide your answer	Provide your answer
Delegated legislation enables flexibility and adaptability.	Provide your answer	Provide your answer
The system of delegated legislation has been predicated on its reasonable use and application by Ministers coupled with trust in the Parliaments 'systems of scrutiny.	Provide your answer	Provide your answer
Delegated legislation is now being used for administrative convenience and often in circumstances where governments have not fully pinned down the detail of policy proposals.	Provide your answer	Provide your answer
Delegated legislation can be found to justify almost any form of delegation a minister might now desire.	Provide your answer	Provide your answer

Comment



	Support for delegated legislation	Criticism of delegated legislation
Supervising delegated legislation is very difficult.		Yes
Publication takes place but few people may be aware that the delegated legislation exists and where to find it.		Yes
Most individuals do not know on what ground you can challenge delegated legislation or how to go about it.		Yes
Some enabling Acts can be ambiguous and can therefore be open to wide interpretation.		Yes
Great power may be given to Ministers. The enabling Act might include a phrase like 'the minister may make such regulations as he sees fit for the purpose of bringing the Act into operation'.		Yes
Relieves pressure on parliamentary time so that Parliament can concentrate on important laws, rather than technicalities.	Yes	
Delegated legislation can be created more easily and quickly.	Yes	Yes
Delegated legislation can be drafted by experts in the field.	Yes	
Delegated legislation can be made at any time, whereas Acts need to be timetabled.	Yes	Yes
Parliament has insufficient time to scrutinise it.		Yes
Delegation of powers causes complexity and confusion.		Yes
Sheer volume causes complexity – it is impossible keep abreast of all delegated legislation (an average of 4,000 and more a year between both Parliaments).		Yes
Lack of publicity for, and consultation on, delegated legislation.		Yes
Undemocratic: most delegated legislation is drafted by civil servants.		Yes
Henry VIII clauses can give power to amend or repeal Acts of the UK Parliament.		Yes
Saves limited time in Parliament allowing for more detailed debates on policy and other matters.	Yes	
MPs and MSPs often lack detailed or technical knowledge.	Yes	Yes
Enables a quick response to new developments, crises or emergencies.	Yes	
Enables minor changes to statutes, for example variations in sentences and approval of motor vehicle changes.	Yes	



	There is a fear that Ministers are increasingly seeking to use SIs rather than Bills to achieve their policy objectives as these receive much less scrutiny than primary legislation.		Yes
	Delegated legislation takes up less parliamentary time.	Yes	
	Traditionally, the justifications for using delegated legislation have been the need to elaborate complex and technical detail that cannot be easily done on the face of a Bill.	Yes	
	Delegated legislation enables flexibility and adaptability.	Yes	
	The system of delegated legislation has been predicated on its reasonable use and application by Ministers coupled with trust in the Parliaments 'systems of scrutiny.		Yes
	Delegated legislation is now being used for administrative convenience and often in circumstances where governments have not fully pinned down the detail of policy proposals.		Yes
	Delegated legislation can be found to justify almost any form of delegation a minister might now desire.		Yes
1			

3.4 Advantages and disadvantages of using delegated legislation

There are both advantages and disadvantages in using delegated legislation. For its critics, the growth in such legislation is however making law less accessible – something that goes against the rule of law. There are a growing number of calls for review, as some observers argue the current system is creaking. Box 4 outlines reasons put forward by the Hansard Society for change.

Box 4 The need for change

According to a blog written by the Hansard Society:

- The delegated legislation process is no longer fit for purpose. The way
 in which Parliament deals with delegated powers is neither systematic
 nor consistent. The Hansard Society's research shows that too much of
 the process relies on 'gut feeling' and 'judgement' rather than objective
 criteria.
- An incremental approach to reform has created a patchwork of procedures, resulting in a system of scrutiny that is overly complex and confusing and often illogical.
- The language 'made' and 'laid', 'negative', 'affirmative', and 'super affirmative', 'prayers' and 'Henry VIII powers' – is confusing and



- undermines parliamentary and public understanding of the legislation. Many parliamentarians openly admit they don't understand them.
- Further patchwork reform risks making the situation worse. It is impossible to separate consideration of delegated legislation from that of primary legislation. The issues are now so serious that an independent expert inquiry is needed to review the entire legislative process looking at:
 - How both primary and delegated legislation is prepared in Whitehall and scrutinised at Westminster.
 - Issues of principle and practice, and where the balance should lie between administrative and political convenience and good legislative process.
 - Rationalisation of scrutiny procedures exploring what criteria and principles define what members want to look at again in the area of delegated legislation and how this can best be achieved.
 - Whether the burden on Members to scrutinise delegated legislation should be reduced through the introduction of individuals or independent advisory bodies with genuine technical expertise in particular policy areas.
 - Whether the scrutiny system should be re-designed so that the greater burden of technical scrutiny work falls on the House of Lords in future.

Blackwell, J. (2015)

Unlike primary legislation, delegated legislation is not subject to judicial review.

3.5 Delegated powers and the Scotland Act 1998

You may be wondering what relevance this all has to law making in Scotland. Section 35 of The Scotland Act 1998 (as amended) helps illustrate some of the points made.

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Figure 6 Section 35 Scotland Act 1998

This section gives the Secretary of State (a UK Government post) power to prevent the Presiding Officer of the Scottish Parliament from submitting a Bill of the Scottish Parliament for Royal Assent in certain circumstances. This applies to both devolved and reserved matters. Note the use of words such as 'reasonable grounds' and 'interests of defence or national security' which are not defined in the Act.



Figure 7 Secretary of State for Scotland logo



[F163A Permanence of the Scottish Parliament and Scottish Government

- (1) The Scottish Parliament and the Scottish Government are a permanent part of the United Kingdom's constitutional arrangements.
- (2) The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Scottish Parliament and the Scottish Government.
- (3) In view of that commitment it is declared that the Scottish Parliament and the Scottish Government are not to be abolished except on the basis of a decision of the people of Scotland voting in a referendum.]

Annotations: 7		
Amendments (Textual)		
F1 Pt. 2A inserted (23.3.2016) by Scotland Act 2016 (c. 11), ss. 1, 72(1)(a)		

Figure 8 Section 63A Scotland Act 1998

Listen to the following audio discussion in which academics from the OU Law School, Simon Lavis and Edwin Parks, explore delegated legislation and reflect on its use and place in law making.

Audio content is not available in this format.

The use of delegated legislation

4 This week's quiz

Well done – you have reached the end of Week 6 and can now take the weekly quiz to test your understanding.

Week 6 practice quiz

Open the quiz in a new tab or window (by holding ctrl [or cmd on a Mac] when you click the link).

Summary

During this week you explored the reasons why secondary legislation is used and the procedures followed in the Scottish Parliament and the UK Parliament. You learnt that the procedures are different and that there is growing criticism of the use of such legislation. In particular, critics say that the growing use of secondary legislation is making the law less accessible and that this undermines one of the important principles underpinning the rule of law.

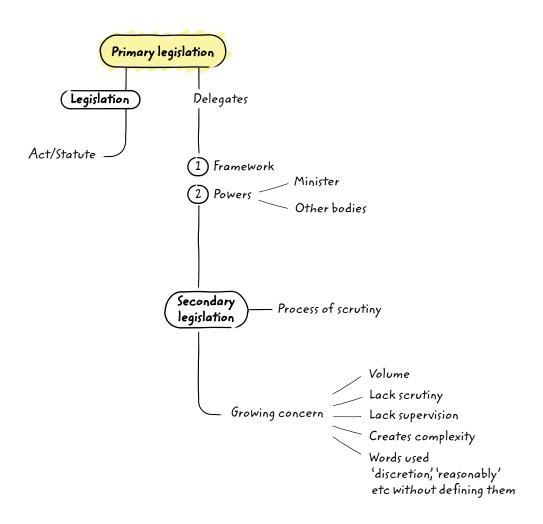
You should now be able to:

- explain what secondary legislation is
- understand why secondary legislation is used
- Understand the difference between primary and secondary legislation.

In the next week you learn about MSPs and MPs and their roles.

You can now go to Week 7.





References

Blackwell, J. (2015, December 14). Delegated Legislation: Frequently Asked Questions [Blog post]. Retrieved from http://blog.hansardsociety.org.uk/delegated-legislation-frequently-asked-questions/

Legislation

Children and Young People (Scotland) Act 2014 asp 8 Scotland Act 1998 c 46





Week 7: MSPs, MPs and law making

Introduction

Both the Scottish and UK Parliaments make laws covering Scotland. This may be achieved through primary or subordinate / delegated legislation. In previous weeks you have considered how the Parliaments make laws. In this week you explore who the individuals who contribute to making those laws are – the MSPs (Members of the Scottish Parliament) and MPs (Members of Parliament, meaning the UK Parliament). You consider the election process and work of Committees in the Scottish Parliament.

By the end of this week you will be able to:

- explain who can vote in Scottish and UK Parliament elections
- explain the differences between Scottish and UK Parliament elections
- discuss the principles underpinning the Code of Conduct for MSPs.

1 Members of the Scottish Parliament(MSPs)

The Scotland Act 1998 established a Scottish Parliament with legislative powers. There were to be 129 seats in the Scottish Parliament. The Parliament was to be elected partly on the basis of proportional representation and assumed full powers on 1 July 1999. Terms of office of MSPs were to be for four years. The Scotland Act 1998 also established the Scotlish Government (referred to as the executive until The Scotland Act 2012).

The Scottish Government consists of the First Minister (elected by the Scottish Parliament and appointed by the monarch), other ministers appointed by the First Minister, the Lord Advocate and the Solicitor General for Scotland. The law office for Scotland at the UK Parliament is now called the Advocate General for Scotland.





Figure 1 Members of the Scottish Government in March 2017

The Scottish Parliament is not responsible for organising or administering elections to the Scottish Parliament. You may recall from your studies of Week 2 that the separation of powers which underpins the rule of laws separates the function of the legislature (Scottish Parliament), executive (Scottish Government) and judiciary.



Figure 2 Aerial shot of Scottish Parliament

1.1 Voting in Scottish parliamentary elections

The Scottish Parliament Elections (Dates) Act 2016 sets out the rules on elections. The most recent elections were on 5 May 2016. The next Scottish Parliament elections are scheduled to take place on 6 May 2021. The Scottish Parliament is a fixed term parliament and power to set election dates is now devolved to the Scottish Parliament.

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There are a number of differences between the systems for election to the Scottish and UK Parliaments. There are also differences in who is entitled to vote in elections.

For Scottish Parliament elections individuals can vote if they are:

- aged 16 or over on the day of the election, and
- a UK, Commonwealth or European Union citizen, and
- resident at an address in Scotland, and,
- on the electoral register.

Box 1 Registering to vote in the Scottish Parliament elections

You can register to vote:

- online at gov.uk/register-to-vote, or
- by contacting the Electoral Registration Officer (ERO) for your local area. You can find the ERO contact details using the postcode search on the <u>About my vote</u> website.

In elections for the Scottish Parliament individuals are voting for MSPs to represent them and make decisions on devolved matters in Scotland.

Every registered voter in Scotland has two votes:

- 1 vote for a constituency MSP
- 1 vote to elect regional MSPs.

Box 2 The power to set election dates

In June 2015 Scottish Secretary, David Mundell, announced:

The UK Government will devolve the power to Holyrood to set an alternative date for the Scottish Parliament election which had been due to take place in 2020

The UK and Scottish Governments agreed voters should be aware of the length of term they will be electing MSPs to in 2016.

Mr Mundell has written to the Presiding Officer and Scottish party leaders to inform them that Scotland Office is taking forward a Section 30 Order to devolve the power which will allow the Scottish Parliament to legislate on the timing of the first Scottish Parliament general election to be held after 2016.

The wider power to set election dates beyond the next Scottish Parliament election will be included in the Scotland Bill.

Elections to both the UK and Scottish Parliaments had been scheduled to take place on the same day in 2020, as a result of the Fixed-term Parliaments Act 2011.

The change will allow the Scottish Parliament to introduce and pass legislation to avoid this happening. Holyrood will be able to set a date which avoids holding the poll on the same day as UK Parliament, [...] or local government elections.



The move is consistent with the Smith Commission's recommendation that power over Scottish elections should be devolved to the Scottish Parliament.

The Order has the support of the UK and Scottish Governments, the Scottish Parliament's Presiding Officer and the leaders of all parties represented at Holyrood.

Mr Mundell said:

'This is a sensible move which ensures clarity for voters in Scotland by giving the Scottish Parliament the power to set its own parliamentary terms. It will ensure Holyrood elections take place separately from others in future.'

(Scotland Office and Mundell, D., 2015)

You should now watch the following explanation 'How to vote in a Scottish Parliament election'.

Watch the Video at YouTube.com

How to vote in a Scottish Parliament election

2 The work of MSPs

In Scotland every individual is represented by several MSPs, one for the constituency in which they live and others for the larger region in which they live.





Figure 3 Inside the debating chamber

In Scotland MSPs have a number of roles and are expected to demonstrate certain characteristics such as honesty and integrity. Read the information in Box 3 taken from the Code of Conduct for Members of the Scottish Parliament 6th Edition (2016).

Box 3 Key principles underpinning the Code of Conduct for MSPs

3.1.2 These principles set the tone for the relationship between members and those they represent and between the Parliament and the people of Scotland.

Public duty

- 3.1.3 Members are expected to act in the interests of the Scottish people and the Scottish Parliament. Members should uphold the law and act in conformity with the rules of the Parliament.
- 3.1.4 In order to exercise their public duty, members must take the oath of allegiance or make a solemn affirmation as explained in Rule 1.2 of the Standing Orders.

Duty as a representative

3.1.5 Members should be accessible to the people of the areas for which they have been elected to serve and represent their interests conscientiously.

Selflessness

3.1.6 Members should take decisions solely in terms of the public interest. They should not act in order to gain financial or other material benefit for themselves, their family or friends.

Integrity



3.1.7 Members have a duty not to place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

Honesty

3.1.8 Members should act honestly. They must declare any private interests (as required by the Interests of Members of the Scottish Parliament Act 2006) relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest. The categories of registrable interest are outlined in the schedule to the Act. The schedule is contained in Volume 4 of the Code.

Accountability and openness

- 3.1.9 Members are accountable for their decisions and actions to the Scottish people. They should consider issues on their merits, taking account of the views of others.
- 3.1.10 Members should be as open as possible about their decisions and actions.

Leadership

3.1.11 Members should promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its members in conducting public business.

Extract from Code of Conduct for Members of the Scottish Parliament (Scottish Parliament, 2016)

2.1 The many roles of an MSP

MSPs will become involved in law making and may propose new laws, take part in Chamber debates, participate on Parliamentary Committees, suggest amendments to laws, participate in campaigns to change the law, speak in debates, and ask questions of Government. Their work is varied. Each MSP has an office at the Scottish Parliament and their offices form part of the iconic images of the Scottish Parliament. Box 4 explains this in more detail.

Box 4 MSP accommodation at the Scottish Parliament

The unique façade of the Members' office accommodation quickly became the first iconic image of Holyrood. The shape of the windows is said to have been inspired by an outline of the Reverend Robert Walker skating on Duddingston Loch taken from Raeburn's famous painting.

The windows are made from stainless steel and framed in oak, with the oak lattices providing privacy and shade for MSPs. The cladding around the windows is a mosaic of materials, including Kemnay granite from Aberdeenshire and darker granite from South Africa. To break the uniformity of the façade the windows jut out at differing widths and face in both directions.

There are 114 projecting bay windows in total. MSPs occupy 108 of the offices and the others are used as party resource rooms.





Figure 4 Internal image of an MSP think window



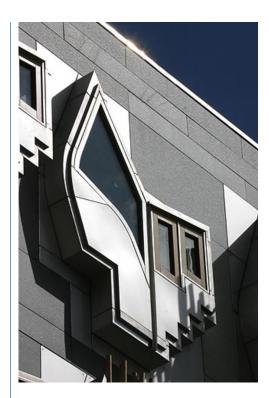


Figure 5 External image of an MSP think window

Description of Members' office accommodation taken from Scottish Parliament website (Scottish Parliament, 2015)

To learn more about the work of MSPs watch the following short videos.

Watch the Video at <u>YouTube.com</u>
In the Parliamentary Chamber

Watch the Video at <u>YouTube.com</u>
In Committees

Watch the Video at <u>YouTube.com</u>
Out and about

3 The Committee System

The way in which the Committee system operates and works is a unique feature of the Scottish Parliament. There are a number of Committees (shown in Box 5) with allocated areas of responsibility. They have between five and fifteen members and scrutinise the work of the Government. They work much more on cross-party lines than do Committees of the UK Parliament. There tends to be much more agreement among MSPs from different parties when they are scrutinising or challenging the Scottish Government's legislation as it passes through Parliament. The Convenors of the Committees are



responsible for organising the meetings. These Convenors are drawn from across the main political parties.

Box 5 Committees of the Scottish Parliament

- Culture, Tourism, Europe and External Relations Committee
- Delegated Powers and Law Reform Committee
- Economy, Jobs and Fair Work Committee
- Edinburgh Bakers' Widows' Fund Bill Committee
- Education and Skills Committee
- Environment, Climate Change and Land Reform Committee
- Equalities and Human Rights Committee
- Finance and Constitution Committee
- Health and Sport Committee
- Justice Committee
- Justice Sub-Committee on Policing
- Local Government and Communities Committee
- Pow of Inchaffray Drainage Commission (Scotland) Bill Committee
- Public Audit and Post-legislative Scrutiny Committee
- Public Petitions Committee
- Rural Economy and Connectivity Committee
- Social Security Committee
- Standards, Procedures and Public Appointments Committee

You should now watch this short video in which lain Gray explores the work of the Scottish Parliament and its committees.

Video content is not available in this format.

lain Gray on the work of the Scottish Parliament and its committees





4 The UK Parliamentary elections

The UK Parliament can legislate for Scotland on reserved matters. In the UK Parliament there are 59 MPs who represent constituencies in Scotland. Both the workings of the UK Parliament and the election process differ from those of the Scotlish Parliament.

The UK Parliament is divided into two chambers, the House of Commons and the House of Lords. The House of Commons is a directly elected Chamber. Members of the House of Commons are elected by the public, with the country being divided into constituencies. Each constituency returns one Member of Parliament (known as an MP).



Figure 6 Inside the House of Commons

The Fixed-term Parliaments Act 2011 established a five-year fixed term for the UK Parliament. An election can, however, be announced before the end of the five-year period if:

- a motion of no confidence is passed and there is no alternative government, or
- if a motion for an early general election is agreed either by at least two thirds of the House or without division. This happened in April 2017 when agreement was given to hold an election on 8 June 2017, some two years before the end of the fixed five-year term of that Parliament.

Before the Fixed-term Parliaments Act 2011 Act a UK Prime Minister could call a general election at any time of their choosing within a five-year period of election to that parliament.



4.1 The UK Government

The UK Government of the day is generally formed by the political party which has the most MPs elected to the House of Commons. The Prime Minister will usually be the leader of the largest political party (i.e. the one with the most seats). The Prime Minister selects a large team of ministers to run each of the Government departments. The head of each department is usually a Secretary of State and sits in the Cabinet. The Cabinet is the group of approximately 20 senior Government ministers who are responsible for running the Government departments of state and deciding Government policy. For example, the Secretary of State for Scotland (Scottish Secretary), whose role is to promote and protect the devolution settlement and who has responsibilities which include promoting partnership between the UK government and the Scottish government, and relations between the two Parliaments.



Figure 7 Scotland Office





Figure 8 The Scottish Office Whitehall

4.2 The voting system for the UK Parliament

Each voter has only one vote and to vote they simply place a cross on the ballot paper to indicate their preference. The person who wins the highest number of votes within a constituency is the elected MP for that constituency. This electoral system is known as the 'first-past-the-post' system which is described in Box 6.

Box 6 The first-past-the-post system

The first-past-the-post system is the only system ever used in British general elections and it has many advantages over other systems. It usually produces strong, decisive Governments with an overall majority in Parliament; with every voter represented by one MP, it provides a clear democratic link between the people and Parliament and it is quick and simple for the voters. However, the system may also be unfair. As an example, an election for the constituency of Not-Real has taken place.

The three main candidates are from the three most prominent national parties. The result is as follows:

Candidate A: 25,000 votes Candidate B: 20,000 votes Candidate C: 10,000 votes

In this example, the clear winner is Candidate A with a majority over Candidate B of 5,000. However, 25,000 voted for the candidate who won that election but 30,000 voted against

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the winner. If more people vote against a candidate by choosing an alternative, is this democratic in terms of popular representation in Westminster?

In the 1997 UK General Election, the Labour Party gained 43.2% of the total votes cast and won 63.6% of seats at Westminster. The combined number of votes for the Conservatives and Liberal Democrats represented 47.5% of the total votes (over 4% more than Labour), yet between them they won 32.1% of the seats available at Westminster. In the 2001 election, Labour had 43% of the total vote whereas all the other parties had 57% – yet Labour maintained its very powerful position in Parliament with 413 MPs out of 659 (63% of the total number of seats in Parliament). In the 2005 General Election, Labour won 37% of the vote and 55% of the seats in the House of Commons. The combined number of votes for the Conservatives and Liberal Democrats represented 55% of the total votes (18% more than Labour), yet between them they got 40% of the seats available in the House of Commons.

The 2010 election resulted in the first coalition government in 70 years. The Conservatives and Liberal Democrats shared power. In the election the Conservatives won 36% of the votes, the Liberal Democrats 23% and Labour 29%. The combined votes of the Conservatives and Liberal Democrats represented 59% of the vote. The Conservatives had 306 seats, the Liberal Democrats 57 seats, the SNP 6 seats and Labour 258 seats.

The 2015 election resulted in an overall Conservative majority of 11 seats in the House of Commons (not including the Speaker). The Conservatives won 330 seats, Labour won 232, the Liberal Democrats 8 and the SNP 56. The Conservatives polled 11.3 million votes, 36.8% of the vote.

The 2017 election result resulted in a minority Conservative government with a confidence and supply agreement with the DUP. The Conservatives won 318 seats, Labour 262, the Liberal Democrats 12 and the SNP 35. The Conservatives polled 13.6 million votes, 42% of the vote.





Figure 9 UK Cabinet ministers

No UK Government since 1935 has had a majority of public support as expressed through votes cast at a national election. The effect of this on law making is that a powerful UK Government with overwhelming Parliamentary power can usually push through its required legislation – but with only a minority of the country supporting it.

In May 2011 a referendum was held on the voting system used to elect MPs to the House of Commons. The question asked on the ballot paper was:

At present, the UK uses the 'first past the post' system to elect MPs to the House of Commons. Should the 'alternative vote' system be used instead?

Electoral Commission (2011)

Of those who voted, 68% voted for no change and 32% voted for change.

4.3 Who can vote in a UK general election?

To vote in a UK general election you must be registered to vote and also

- be 18 or over, and
- be a British citizen, a qualifying Commonwealth citizen or a citizen of the Republic of Ireland, and
- not be subject to any legal incapacity to vote.

Voters cast their single vote for a constituency MP.

There are restrictions as to who can vote in a UK General election. The following individuals cannot vote (although they can vote at elections to local authorities):

Members of the House of Lords.



- EU citizens resident in the UK.
- Anyone other than British, Irish and qualifying Commonwealth citizens.
- Convicted persons detained in pursuance of their sentences (though remand prisoners, un-convicted prisoners and civil prisoners can vote if they are on the electoral register).
- Anyone found guilty within the previous five years of corrupt or illegal practices in connection with an election.

4.4 The House of Lords

Originally the members of the House of Lords was comprised of those who had inherited a title (known as hereditary peers), senior judges who sat as Law Lords, and the most senior bishops in the country. During the twentieth century the awarding of a title for life (known as a life peerage) became more common. The Prime Minister nominated people who should receive a title for their lifetime only. In this way, people who had served the country and were thought to be suitable members of the House of Lords were able to bring their expertise to the House.



Figure 10 Inside the House of Lords

Most life peerages were given to former politicians who had retired from the House of Commons. For example, James Callaghan, who was Prime Minister from 1976 to 1979, was made a life peer in 1987, taking the title Lord Callaghan of Cardiff, while Margaret Thatcher, the first female Prime Minister, was made a life peer in 1992 and became known as Baroness Thatcher. When men are made life peers they are called lords; women life peers are called baronesses.

During the late 1990s the Labour Government decided that in a modern society an inherited title should not automatically allow someone to participate in making law. They



felt that some of the members of the House of Lords should be elected and some should be nominated. The right of most of the hereditary peers to sit in the House of Lords was abolished in 1999. As a result of this change three types of peer now sit in the House of Lords: life Peers, Bishops and elected hereditary Peers.

The House of Lords is characterised by 'independence of thought'. Some members (Peers) have a political background, most don't. They represent a wide range of professions – including medicine, law, business, the arts, science, sports, education, the armed forces, diplomacy and public service.

Currently, there are about 825 members who are eligible to take part in the work of the House of Lords. The majority are life Peers. Others include 26 archbishops and bishops and 92 hereditary Peers. There is no upper limit on the total number of members.

- Life peers: the majority (about 700) of members are appointed for their lifetime by the
 Queen on the advice of the Prime Minister. Any British, Irish or Commonwealth
 citizen who is a UK resident and taxpayer over the age of 21 is eligible to be
 nominated or can apply to become a member, via the independent House of Lords
 Appointments Commission.
- Archbishops and bishops: 26 Church of England archbishops and bishops sit in the House. When they retire as bishops their membership of the House ceases and is passed on to the next most senior bishop.
- Elected hereditary members: the House of Lords Act 1999 ended the right of most hereditary peers to sit and vote in the House; 92 remain.

To learn more about the work of the House of Lords watch the following video.

Watch the Video at YouTube.com

How the Lords works with the Commons to make a Bill law

5 Parliamentary election constituencies

For elections to the Scottish Parliament, Scotland is divided into constituencies and regions. There are 59 constituencies and eight Regions. Information on constituencies, regions and MSP details can all be found on the Scottish Parliament website.

For UK Parliament elections the UK is divided into constituencies. Constituency boundaries are regularly reviewed. As of July 2017 there are 650 parliamentary constituencies: 533 constituencies are in England, 59 in Scotland, 40 in Wales, and 18 in Northern Ireland.

The size (both geographical and in terms of population) of UK Parliament constituencies differs between different parts of the UK. The geographically largest constituency of Ross, Skye and Lochaber is situated in Scotland. The smallest, Islington North, is in London. More details can be found on the UK Parliament website.

Activity 1 Elections to the Scottish and UK Parliaments

Allow about 15 minutes

Using your knowledge complete the following table.



Question	Scottish Parliament	UK Parliament
How many chambers?	Provide your answer	Provide your answer
How many elected members?	Provide your answer	Provide your answer
How many members represent Scotland?	Provide your answer	Provide your answer
Whose work does it scrutinise?	Provide your answer	Provide your answer
How are members selected?	Provide your answer	Provide your answer
What matters do they cover?	Provide your answer	Provide your answer
What age must you be to be eligible to vote?	Provide your answer	Provide your answer

Comment

Question	Scottish Parliament	UK Parliament
How many chambers?	One	Two (House of Commons and House of Lords)
How many elected members?	129 MSPs	650 MPs The House of Lords has approximately 825 members
How many members represent Scotland?	129 MSPs	59 MPs and all members of the House of Lords
Whose work does it scrutinise?	The Scottish Government	The UK Government
How are members selected?	73 MSPs on the first-past-the-post system and 59 on proportional representation	MPs elected using the first- past-the-post system Members of the House of Lords are not elected by the general public
What matters do they cover?	Devolved matters	Reserved matters
What age must you be to be eligible to vote?	16	18



6 This week's quiz

Well done – you have reached the end of Week 7 and can now take the weekly quiz to test your understanding.

Week 7 practice quiz

Open the quiz in a new tab or window (by holding ctrl [or cmd on a Mac] when you click the link.

Summary

In this week you considered how MSPs and MPs are elected, who is eligible to vote and noted the differences in the systems between the Scottish and UK Parliaments. You learnt about the work of MSPs and the role of parliamentary committees. If you wish to learn more about your MSP or MP and the work they do, visit the relevant parliamentary website. If you wish to ask them a question you can do so by email or letter. Their contact details are available via the parliamentary website.

You should now be able to:

- explain who can vote in Scottish and UK Parliament elections
- explain the differences between Scottish and UK Parliament elections
- discuss the principles underpinning the Code of Conduct for MSP.

In the next week, the final week of the course, you explore how individuals are encouraged to become involved in law making and how they can do so.

You can now go to Week 8.



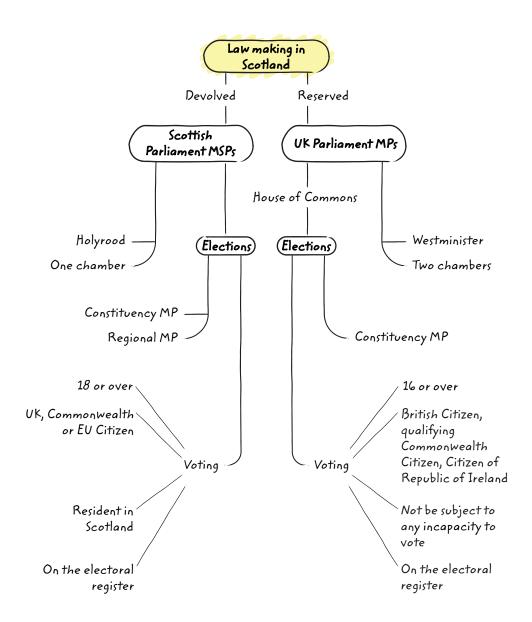


Figure 11 Summary overview of Week 2



References

Electoral Commission. (2011). Referendum on the voting system for UK parliamentary elections [Online]. Available at http://www.electoralcommission.org.uk/__data/assets/pdf_file/0019/141328/Final-PVS-report.pdf (Accessed 13th September 2017).

Scotland Act 1998 c 46

Scotland Office and Mundell, D. (2015, 10 June). Power to set 2016 Scottish Parliamentary term to be handed over [News article]. Retrieved from https://www.gov.uk/government/news/power-to-set-2016-scottish-parliamentary-term-to-be-handed-over Scottish Parliament. (2015). About the building – MSP building [Web page]. Retrieved from http://www.parliament.scot/visitandlearn/15920.aspx

Scottish Parliament. (2016). *Code of Conduct for Members of the Scottish Parliament* (6th Edition) [Online]. Available at http://www.parliament.scot/Parliamentaryprocedureandguidance/CCEd06Rev01201605.pdf (Accessed 13th September 2017).





Week 8: Getting involved in law making

Introduction

In this week you consider where the ideas for the need for an Act of the Scottish Parliament come from. You explore the sources of those ideas before looking at how citizens can shape and become involved in the law making process of the Scottish Parliament. Earlier in the course you explored the different types of Bills that exist and how they go through a process before becoming law. You have also seen that in the Scottish Parliament the process for public engagement is transparent and that public engagement is encouraged. You start this week by considering why law changes.



Figure 1 Common questions

By the end of this week you will be able to:

- explain why law changes
- explain some of the ways in which law is changed
- understand how you can contribute to the work of the Scottish Parliament.



1 Why law changes

One of the most important functions of any legal system is to state the laws by which the society in which it exists is to operate. Society does not remain static so the legal system and the laws it produces need to be relevant in order to be effective. Laws need to respond to social, economic, technological, moral and political change by evolving as those changes emerge.

Activity 1 Why change?

Allow about 10 minutes

What new law would you introduce to improve life in the society in which you live? Write a short paragraph (no more than 150 words) outlining what law you would like to see introduced and arguing in favour of this law.

Provide your answer...

Comment

What new law did you think of? Would your suggested law be responding to a technological development, change in the social or moral climate, or to economic conditions?

There are an endless number of suggestions that could be made and these will reflect your own circumstances and views. Here are some suggestions the course team came up with:

- New laws to make businesses responsible for protecting human rights and the
 environment wherever they operate would make a difference in Scotland and all
 over the world. This would mean that multinational companies would have to
 meet basic social and environmental standards no matter where they were
 operating.
- New laws in relation to bullying and abuse over the internet.
- New laws to make companies disclose and be transparent as to what data is collected, where it is stored and held and how it is used.
- New laws on organ donation.

These suggestions are responding to social, moral, economic and technological developments.

As technology develops it becomes easier and more profitable for multinational companies to set up in developing countries and take advantage of cheap labour and a lack of environmental legislation. Growing social awareness of the injustice this can cause and the damage to the environment that can result indicates the need for a new law.

Greater use of technology is changing behaviour. Abuse and bullying on social media websites is common but prosecution is rare. Many individuals don't read the several pages of information which internet companies use to obtain consent before they allow them to proceed and use the application, and those pages are often written in technical



legal language. There has been a long battle for greater consumer rights in areas such as loan agreements and faulty goods. But this is not yet being transferred to the online environment. While concerns over privacy and use of data are often expressed, and laws criminalising certain online behaviours exist, protections in this area could be broadened.

In relation to organ donation different systems and expectations now exist in the UK. Organ donation touches upon social, moral, economic and technological developments. Wales was the first nation to introduce an opt-out system – a system of deemed consent with the Human Transplantation (Wales) Act 2013 (anaw 5). Similar legislation is now being drafted in Scotland.

You will now consider how laws can change and how you could become involved in the process. As you work through the next sections think about what would be the best way of achieving the law reform which you suggested in Activity 1 and what obstacles there may be to your proposal.

2 Where do ideas for change come from?

Society is constantly changing. The law and legal system need to reflect society's views and keep pace with these changes and so, in turn, are constantly undergoing change. Inevitably, the more complex the society, the more complicated the legal issues and cases which arise. In the nineteenth century, the majority of cases coming before the courts concerned the sale of horses. Today's courts often have to deal with large commercial transactions involving electronic communications.

The list of sources for ideas for change that follows is not exhaustive, but is intended to provide an illustration of the range of bodies interested in law and changes in the law.

- Political party manifestos Party manifestos and pre-election promises are influenced by what politicians believe the public will vote for. A government is not, however, legally bound to introduce any pre-election promises.
- Public opinion Members of the general public can influence members of parliament to introduce Bills.
- The media can harness public opinion in order to pressure Parliament to make new laws.





Figure 2 Publicity on the date of the first same-sex marriage in Scotland

- An emergency or crisis Legislation may be passed because of some national emergency or crisis which emerged during the government's period in office.
- Royal Commissions Royal Commissions occasionally report to Parliament with recommendations for legislation which may be taken up as part of the government's legislative programme. Royal Commissions are advisory committees established by the government, though formally appointed by the Crown hence 'royal' to investigate any subject the government of the day sees fit to refer to such a Commission. They are often used for non-party political issues, or for issues that a government wishes to be seen to be addressing in a non-party political way.
- The Scottish Law Commission Another source of legislation is the recommendations of the Scottish Law Commission. The Commission was created in order to review and make recommendations about any areas of the law which it felt were in need of reform.





Figure 3 Logo of the Scottish Law Commission

Private Members' Bills Individual Members of Parliament have the power to
introduce their own legislation known as a 'Private Members' Bill'. Private Members'
Bills may be the result of an MSP being approached for support for a proposal put
forward by particular interest groups operating outside Parliament. Alternatively,
Private Members' Bills may originate from a government suggestion to an MSP that
he or she propose a particular measure.

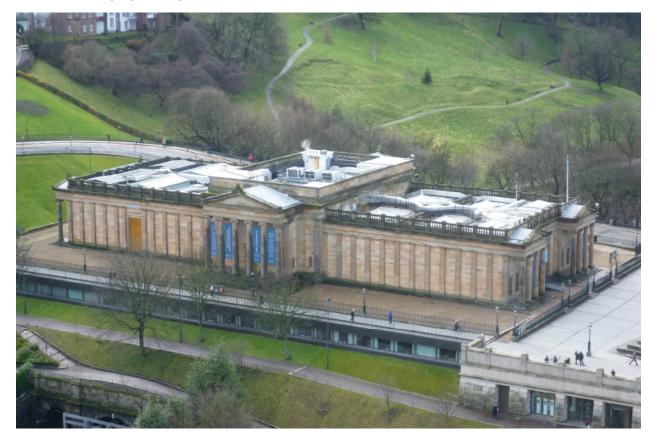


Figure 4 National Gallery of Scotland, Edinburgh

Pressure groups A pressure group can be described as an organised group that
exists for the purpose of permanently representing particular interests. Pressure
groups do not generally put up candidates for election but seek to influence
government policy or legislation. They can also be described as 'interest groups',



'lobby groups' or 'protest groups'. In the UK, the number of political parties is very small, whereas the number of pressure groups runs into thousands. A pressure group can be a huge organisation like the CBI (Confederation of British Industry), which represents approximately 150,000 businesses, but it can also be a single-issue, locally-based organisation.

The aim of all pressure groups is to influence the people who actually have the power to make decisions. Pressure groups provide a means of popular participation in national politics between elections. They are sometimes able to gather sufficient support to force government to amend or even repeal legislation. There is considerable evidence of successful pressure group campaigns that have changed government policies.



Figure 5 Allan MacRae of the Assynt crofters trust

3 How is law reformed?

The one certainty in the study of any area of law is that it will be characterised by change. There is a continuous conflict between the need to acknowledge pre-established laws and the need to facilitate change in view of changing social and economic conditions. The law must be both static and dynamic: it must change, yet at the same time continue on its old path.

If the law was ever changing, it could not fulfil its basic function, namely to answer to the need for certainty, predictability, order and safety. An ever-changing law would increase practical uncertainty, social instability and economic insecurity.



Activity 2 Reflecting on why law changes?

Allow about 10 minutes

Do you think the law should always change as an immediate response to changes in society? Or do you think that changes to the law should be gradual, taking into account previous laws and with a process of full consultation?

Provide your answer...

Comment

There is no one answer to this question. Your viewpoint will depend on your own views and experiences. Often, during debates about the law, there are few clear or obvious answers. One of the skills law students and lawyers develop is to create a persuasive argument using examples and information to lead their audience to the conclusion they wish to be drawn. This usually involves outlining the law, acknowledging strengths and weaknesses, considering other viewpoints, putting forward suggestions and creating a narrative. A narrative can be likened to a story with a beginning, middle and an end.

Law in Scotland can be changed in a number of ways:

- 1 through the Scottish Parliament on devolved matters
- 2 through the UK Parliament on reserved matters (or on devolved matters if there is a legislative consent motion)
- 3 through the judiciary in the Scottish legal system
- 4 through treaty obligations as enforced by the European Court of Human Rights.

3.1 The Scottish and UK Parliaments

The Scottish and UK Parliaments are major sources of law in Scotland. They create new laws, reform and repeal existing laws and codify existing laws in their areas of legislative competence.





Figure 6 Scottish Parliament

One of the ways in which parliaments respond to changes in society or the demands of society is by creating new legislation. You explored the processes through which draft legislation goes and learnt about the process of scrutiny in earlier weeks on this course. On occasion, as a response to public pressures, scientific or other developments, legislation may be passed very quickly. Whilst this may seem to have benefits in that politicians can be seen to be doing something it can also have unintended consequences and the legislation may be prone to interpretation.



Figure7 UK Parliament



You have learnt that there are Parliamentary processes which have been designed to ensure the technical quality of legislation (you explored the 'good' law project in Week 5) and that effective parliamentary scrutiny is maintained. Legislation should also be proportionate, justified and transparent. It should uphold constitutional rights and abide by the rule of law.

However, there are occasions when emergencies arise and it may not be feasible for the full process to be used. In the Scottish Parliament there is an emergency bill procedure that enables the fast tracking of legislation. Procedural rules provide guidance on the scrutiny to be undertaken and the Bill (unless the parliament agrees otherwise) must be accompanied by the usual accompanying notes. In this way, if necessary, legislation can be passed in a day. In the UK Parliament there is also a fast track procedure where legislation can go through the House of Commons stages in one day. These fast track procedures have been used for a number of reasons, for example, economic reasons, terrorism, closing legal loop holes, responding to public concerns or court judgments.

Activity 3 now asks you to think about examples that you may have come across where the law has been changed as a result of public pressure.

Activity 3 Law reform and public pressure

Allow about 15 minutes

Can you think of any examples where Parliament changed the law in response to public or media pressure? Using your own experiences, can you identify any examples of a situation when Parliament reacted to public pressure to change what was considered unlawful conduct?

Provide your answer...

Comment

You may have thought of many laws introduced by Parliament in response to an emergency or crisis. Acts of Parliament which were introduced in response to national emergencies or crises include:

UK Parliament

- The Anti-Terrorism, Crime and Security Act 2001 Introduced to respond to the new situation arising from the terrorist attacks on New York and Washington on 11 September 2001.
- The Human Reproductive Cloning Act 2001 Introduced in response to a 'breakthrough' by US scientists in creating human embryo clones.
- The Animal Health Act 2002 Introduced in response to the foot-and-mouth outbreak of 2001.
- The Counter-Terrorism and Security Act 2015 Introduced to respond to 'radicalised' Britons travelling to Syria.

Scottish Parliament

 The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 – introduced following campaigns against online 'revenge porn'.



Some legal commentators see the growth and development of the law as reflecting particular phases and trends in social history as written by the mass media and politicians. Activity 3 helps illustrate this.



Figure 8 Big day out

3.2 The judiciary

Judges are not primarily concerned with law reform, but they frequently draw attention to anomalies in the law and call for change. Judges can, in fact, reform the law through the medium of interpreting Acts of Parliament and reinterpreting the common law.





Figure 9 Members of the Scottish judiciary in the traditional procession which signifies the start of the new legal term

Much of the law in common law systems is judge-made. This means that there is an important body of law, doctrines and practices which developed over time, through case law, and which cannot be tied to any statutory text. Much of statute law is also subject to judicial interpretation. However, legislation is enacted by democratically elected representatives of the people; judges are not elected. Judges who make up new law could be thwarting the will of the people or usurping the role of Parliament.

3.3 The European Court of Human Rights

The European Convention on Human Rights (ECHR) was created in 1950 in the aftermath of the devastation of the Second World War. The UK was one of the first signatories and played a major role in drafting the Convention which protects a series of fundamental human rights, including:

- the right to life
- freedom from torture and inhuman and degrading treatment
- freedom from forced labour or slavery
- the right to liberty and to a fair trial
- the right to privacy.

The ECHR is important as it provides citizens with a tool for challenging excesses by public authorities. The European Court of Human Rights (the Court), which is based in Strasbourg, enables individuals to lodge complaints against those states who have signed up to the ECHR for alleged violations of rights contained in the Convention.

Any person claiming to be a victim of a violation of the ECHR may lodge a complaint directly with the Court provided that they have first tried to resolve their case in the domestic courts of the state concerned. All final judgments of the Court are binding on the state. The UK, as a signatory, is therefore expected to change the law to accommodate the Court's ruling and judges of the Court may therefore make decisions which may lead to a change in what is considered unlawful in the UK.





Figure 10 Treaty obligations as enforced by the European Court of Human Rights

Although UK citizens already enjoyed many of the important rights contained in the ECHR judges in the Court have been called upon to decide socially and politically sensitive questions relevant to the UK. The Court has, on a number of occasions, held that the UK has violated the rights of individuals, for example, a judgment made by the European Court of Human Rights effectively abolished corporal punishment in schools in the UK.

4 How can you become involved?

As you have learnt the Scottish Parliamentary process has been designed to be as open as possible. This is reflected not only in the procedures that have been established but also in the design of the Parliament building itself. The debating chamber, which was central to the design for the Scottish Parliament, was designed to reflect the Parliament's commitment to openness. The mace presented by the Queen at the opening of the Scottish Parliament on 1 July 1999 is engraved with the words: 'wisdom', 'justice', 'compassion' and 'integrity'. These are designed to represent the aspirations of MSPs. How can a citizen become involved in the law making process? As one of our constitutional duties citizens are expected to vote in parliamentary elections, where both MSPs and MPs are elected. In voting in those elections a citizen is becoming involved in law making (even though they may not realise this).





Figure 11 Get involved

Activity 4 How can I become involved in the law-making process of the Scottish Parliament?

Allow about 20 minutes

Reflect on what you have read in this course. Then make a list of all the ways in which you feel you could become involved in the law-making processes of the Scottish Parliament.

Provide your answer...

Comment

You could have identified a number of ways of becoming involved in the law-making process. These include:

- Taking part in the elections for MSPs these are held every four years.
- Writing to a parliamentary committee to give your viewpoint.
- Using the media or social media to generate public interest in an issue and pressure Parliament to make changes to the law.
- Writing to an MSP on a particular issue.
- Lobbying an MSP to make an amendment to a Bill.
- Standing for election as an MSP (you need to be over 21 and could stand as an independent candidate or as a candidate for a political party).
- Participating in online debates using the discussion forums on the Scottish Parliament website.
- If you have specialist knowledge you can register as a potential adviser to a committee.



- You could submit a petition to the parliament asking for the introduction of a new law or change to an existing one (or that they look into a matter of public interest or concern).
- You could become involved in a Cross-Party Group. These provide an opportunity for MSPs, individuals and organisations to meet and discuss areas of interest.
- You could attend a committee event. These are held throughout Scotland to discuss issues with the public.

As you learnt earlier in the course the Scottish Parliament has achieved international recognition for its openness and the way in which it provides opportunities for its citizens to become involved.



Figure 12 Making your voice heard at the Scottish Parliament

5 This week's quiz

It's time to complete the Week 8 badged quiz. It is similar to previous quizzes, but this time instead of answering five questions there will be fifteen.

Week 8 compulsory badge quiz



Remember, this quiz counts towards your badge. If you're not successful the first time, you can attempt the quiz again in 24 hours.

Open the quiz in a new tab or window (by holding ctrl [or cmd on a Mac] when you click the link.

Summary

You have been introduced to where the ideas for the need for an Act of the Scottish Parliament may come from and considered why new laws may be needed. You have also seen that in the Scottish Parliament the process for public engagement is transparent and public engagement is encouraged. While the Scottish Parliament may seem remote, there are many opportunities for citizens in Scotland to participate and such participation is welcomed.

You should now be able to:

- explain why law changes
- explain some of the ways in which law is changed
- understand how you can contribute to the work of the Scottish Parliament.



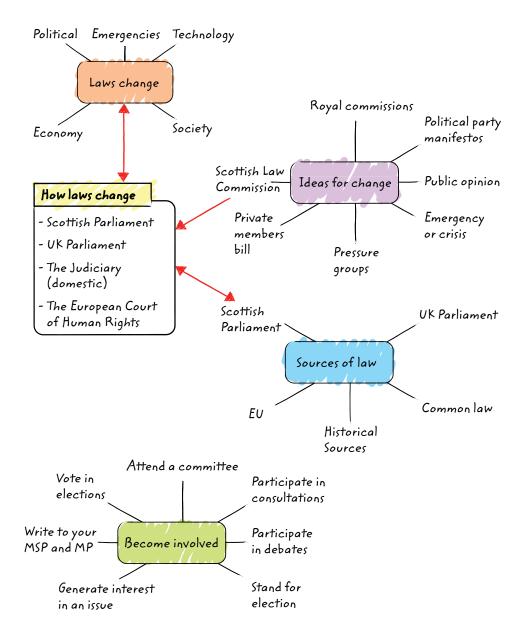


Figure 14 Summary overview of Week 8

End of course conclusion

We very much hope that you have enjoyed your studies on this course. As you may have gathered from your studies, the course authors think that law making is a fascinating and important subject which underpins all aspects of our daily lives. An understanding of law making can give us a fresh insight into the society in which we live. It also highlights the important role of MSPs and MPs. Law has an important function in assisting a society to grow and develop because the culture of any society is reflected in its legal system. We hope that through your studies on this course you have been able to recognise some of these aspects in the work of the Scottish Parliament. We also hope that your studies have given you a new viewpoint on, and a fresh insight into, the Scottish Parliament and the importance of its role in contemporary Scotland.



Now you've completed *The Scottish Parliament and law making*, you may like to enrol on these free OpenLearn courses:

Scottish courts and the law

Legal skills and debates in Scotland

Law and change: Scottish legal heroes

And if you would like to take your study in this subject area further, sign up to the Open University course *Law making in Scotland*.

Tell us what you think

Now you've completed the course we would again appreciate a few minutes of your time to tell us a bit about your experience of studying it and what you plan to do next. We will use this information to provide better online experiences for all our learners and to share our findings with others. If you'd like to help, please fill in this optional survey.

Acknowledgements

Acknowledgements

This free course was written by Carol Howells.

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Audio Visual

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