

A GUIDE FOR CARERS

Understanding how law is made in Scotland

This Guide provides a simple introduction to how law is made in Scotland. It is aimed at carers and carer organisations to support them in understanding and influencing the legislative process in Scotland.



The Scottish Parliament

The Scottish Parliament was created by the Scotland Act 1998. Additional powers were granted to the Scottish Parliament and Scottish Ministers through the Scotland Act 2012. The 2012 Act also formally changed the name of the then Scottish Executive to the Scottish Government.

The Scottish Parliament is made up of 129 elected Members of the Scottish Parliament (MSPs) of which 73 are constituency MSPs and 56 are regional MSPs. This is to ensure that Parliament more accurately reflects voters' intentions across Scotland. Issues can be raised with either the constituency MSP or any of the seven regional list MSPs.

The Scottish Parliament is responsible for making law in Scotland on devolved matters (see section below) and for scrutinising the actions of the Scottish Government.



The Scottish Government

The Scottish Government is a separate organisation. It develops policies and implements laws that have been passed by the Scottish Parliament.

The First Minister is the Head of the Scottish Government which is made up of Cabinet Secretaries and Ministers appointed by the First Minister. The work of Cabinet Secretaries and Ministers is supported by the civil service.

Cabinet Secretaries and Ministers are part of both organisations: the Scottish Government in their ministerial role; and, the Scottish Parliament as MSPs.

Each year, the Government sets out its legislative priorities. This is known as the Programme for Government. For 2014/15, the Government has included the Carers bill as part of its Programme.



Devolved Matters

The Scottish Parliament can legislate on any matter except those that are specifically reserved to the UK Parliament at Westminster. Certain areas of responsibility were devolved to the Scottish Parliament by both the 1998 and 2012 Acts. Some issues, particularly those with a UK or international impact, remain the sole responsibility of the UK Parliament. Matters devolved to the Scottish Parliament **include** agriculture, forestry and fisheries, education and training, environment, health and social services, housing, law and order (including the licensing of air weapons), local government, sport and the arts, tourism and economic development, and, many aspects of transport.

The Scottish Parliament is also free to debate on any matter, including reserved matters. For example, the Scottish Parliament has held debates on the UK Government's welfare reform programme.

Reserved Matters

The UK Parliament at Westminster retains responsibility for passing laws on benefits and social security, immigration, defence, foreign policy, employment, broadcasting, trade and industry, nuclear energy, oil, coal, gas and electricity, consumer rights, data protection and the Constitution.

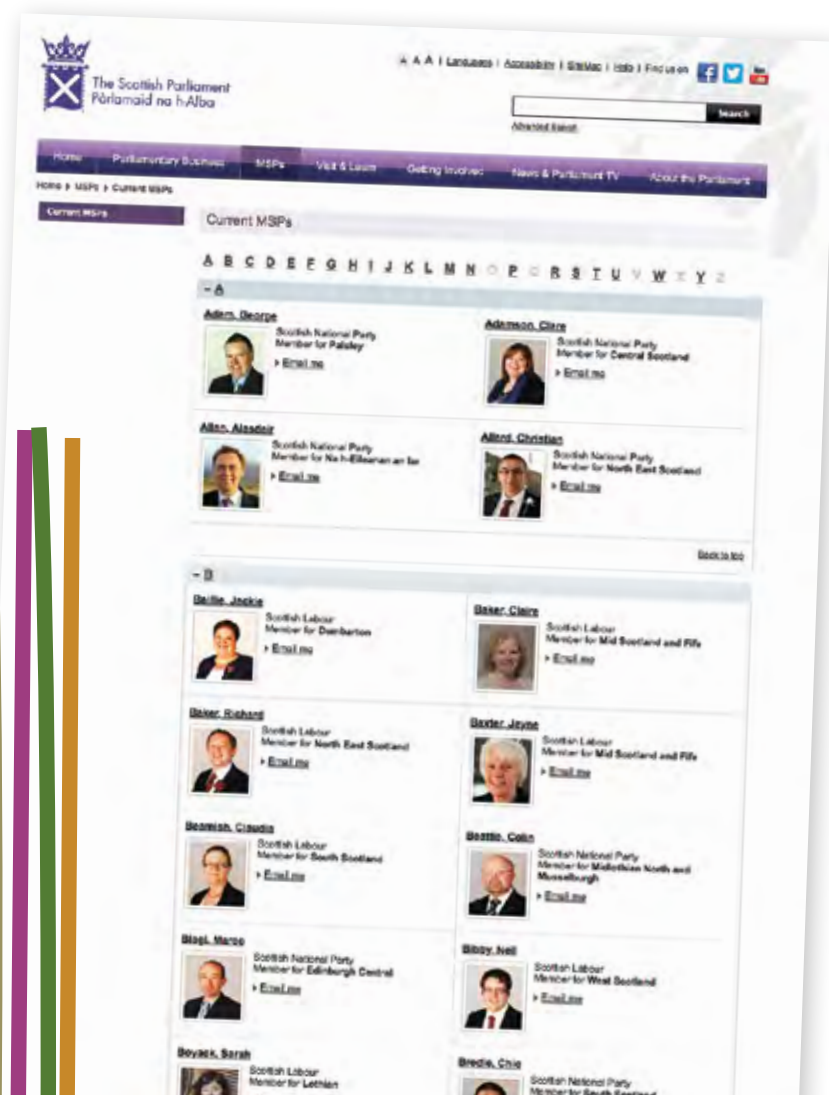
It is expected that further powers over welfare benefits, (e.g. Carers Allowance, Disability Living Allowance and Personal Independent Payments) will be devolved to the Scottish Parliament following the publication of the Smith Commission Report. It is anticipated that this will happen after the May 2015 United Kingdom General Election.



What you need to know

It is important to know whether the issue you are interested in has been devolved to the Scottish Parliament or whether it is the responsibility of the UK Parliament as this will determine who you contact. A full list of constituency MSPs can be found at this part of the Scottish Parliament website.

www.scottish.parliament.uk/msps/current-msps.aspx



How law is made in Scotland

The Scottish Parliament makes law by passing bills.

A bill is a proposal for a new law or a proposal to change/ amend an existing law. Bills can be introduced by the Scottish Government, individuals MSPs, Committees of the Scottish Parliament and individuals or organisations who are not MSPs.

There are three main types of bill: public bills; private bills; and, hybrid bills.

Public bills

There are also 3 main types of Public bills: Government bills; Committee bills; and, Members' bills.

Government bills are introduced by a Scottish Government Cabinet Secretary or Minister. The majority of bills considered by the Scottish Parliament are Government bills.

Committee bills are introduced by the Convenor of a Committee and may follow a Committee enquiry on a particular area.

Members' bills can be introduced by any MSP who is not a member of the Scottish Government. Before a Members' bill can be introduced it also have to go through the following process:

- A draft proposal has to be printed in Section G of the Business Bulletin for one day;
- A consultation document is issued seeking views and opinions (usually at the same time as it being included in the Business Bulletin);
- At the end of the consultation period (or after it has been agreed that no consultation is required) the final proposal is printed in Section G of the Business Bulletin for one month; and,

- If the final proposal attracts cross party support from at least 18 other MSPs during this period and the Scottish Government indicates that it will not be bringing forward its' own proposal, the Member can then introduce the bill.

Private bills

Private bills only affect an individual, a company or a group of people. Private bills generally relate to the private interests of the promoter and which others may object to, for example, infrastructure, property or status. They do not change the law across Scotland. Private bills still have to be introduced by a Minister, Committee or MSP.

Hybrid bills

Hybrid bills are public bills that relate to the public and general law of Scotland but that can also directly affect the interests of particular individuals or bodies. They are introduced by a member of the Scottish Government.

Private and Hybrid bills are comparatively rare and are unlikely to directly affect carers' and related issues.





Subordinate Legislation

Subordinate legislation is also known as secondary or delegated legislation and can be introduced by a Government Minister or another person with the required authority. Their primary purpose is to:

- provide the detail on how an Act will be implemented,
- bring a specific section or sections of an Act into force; or,
- amend existing Acts.

Subordinate legislation can only set out the steps to be taken to meet the requirements of primary legislation. It cannot introduce additional elements.

Subordinate legislation often takes the form of **regulations** that cover the fine details of new legislation so that Parliamentary time is not used up on technical matters. Subordinate legislation can be passed much faster than a bill, so it is useful for changing circumstances or any issue where swift action needs to be taken.

Stages of a bill

Before any proposed legislation becomes a bill, it must be consulted upon. This is to enable any interested parties including Parliament, individuals and campaigning organisations to inform and influence the decision making process. This process is known as pre-legislative consultation. Lists of current Scottish Government consultations can be found at Scottish Government: Current Consultations.

www.scotland.gov.uk/Consultations/Current

The Scottish Government is required to publish an analysis of, and report on, the outcome of the pre-legislative consultation.

A Policy Memorandum setting out the policy intentions of the bill must be attached to the bill.

All bills must pass through 3 basic stages:

- **Stage 1** – the bill is considered by the most appropriate Parliamentary Committee. A secondary Committee may also scrutinise aspects of the bill. A report will then be written. The Committee lays a motion stating whether it believes, on the basis of the report, that the general principles of the bill should be agreed to. If Parliament does not agree, the bill will ‘fall’ and proceed no further.
- **Stage 2** – if the bill proceeds, it then undergoes detailed line-by-line scrutiny at this stage by the appropriate Committee, Parliament or a combination of both. Usually more than one Committee will look at the bill and amendments may be made at this stage. Individuals and organisations can contact MSPs who sit on the committee with suggested amendments and ask them to lay and speak to them.
- **Stage 3** – the bill is considered by the whole Parliament and further amendments can be made at this stage, but not on areas which were pushed to a vote at Stage 2. Parliament will vote on the (amended) bill which will either pass or fall.

Once a bill has been passed by Parliament, there is a 4 week period in which the decision may be challenged by the Advocate General, the Lord Advocate, the Attorney General or the Secretary of State for Scotland.

After the 4 week period has closed, the Presiding Officer submits the bill for the formality of Royal Assent. Once Royal Assent has been received, the bill becomes an Act of the Scottish Parliament.

At any stage of the bill, interested parties are given an opportunity to scrutinise the proposals and feed in their views. Parliamentary committees can call witnesses to give evidence on a bill, identify possible difficulties or recommend changes (amendments) at Stage 1. Evidence can also be submitted in writing to the Committee. Committees can also question relevant Ministers.



Carers bill Case Study

The Scottish Government's Programme for 2014/15 contains an explicit commitment to introduce a Carers bill.

“The Carers bill is an important part of the Scottish Government's wider programme of Health and Social Care reform. The bill will extend the rights of carers, including young carers. The bill will make a meaningful difference to carers and will contribute towards the improvement of their health and wellbeing, ensuring that they can continue to care and to have a life alongside caring. The bill will help deliver:

- *A new Carers Support Plan.*
- *Improved and sustained personal outcomes.*
- *Improved information and advice provision.*
- *Improved access to local support services.*
- *More carer involvement in the planning and delivery of support and services, both at individual and strategic levels.¹”*

In January 2014, the Scottish Government launched the consultation on the proposed Carers bill (the prelegislative consultation stage) allowing 3 months for public consultation. The outcome of the consultation process will be published to ensure the views of respondents are publicly available.

¹ One Scotland: the Government's Programme for Scotland 2014-15
Scottish Government 2014

Scottish Government Guidance

The implementation of an Act can be supported by Scottish Government Guidance which can be statutory in nature, i.e. legally enforceable, or based on expected good practice.

For example, statutory guidance underpins the implementation of the Social Care (Self Directed Support) (Scotland) Act 2013. The intent of the guidance is to ensure that local authorities follow the “letter and the spirit of the guidance” and that it is not departed from without good reason.

Parliamentary Committees

Parliamentary Committees play a vital role in scrutinising the work of the Scottish Government. There are currently 17 Parliamentary Committees. A list of current Committees can be found at Current Committees – Parliamentary Business: Scottish Parliament – www.scottish.parliament.uk/parliamentarybusiness/1700.aspx

Committees have a number of functions. They scrutinise draft legislation, undertake inquiries into areas of concern and hold the Scottish Government to account through the questioning of Ministers. They can also seek to introduce legislation. Special Committees can be set up to deal with a specific short-term or long-term issue.

There are also a number of other ways in which issues can be raised within Parliament.

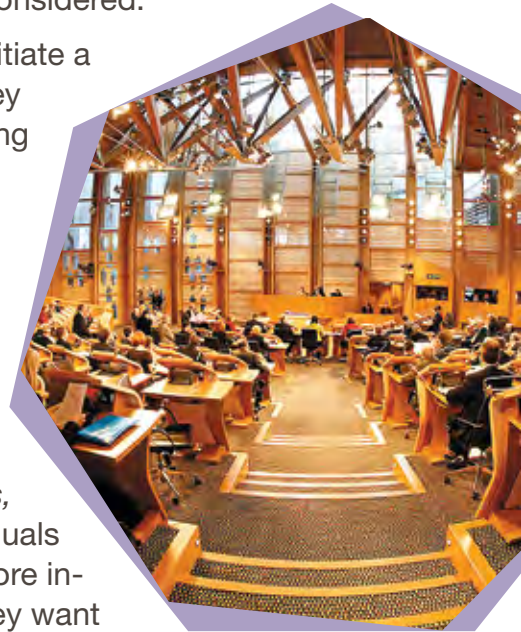


Parliamentary Debates

Parliamentary debates are useful in raising the profile of a particular issue and to gauge the position of individual MSPs or the Scottish Government. To initiate a parliamentary debate, a ‘motion’ must be lodged. All Parliamentary debates, whether Government, Opposition or Committee are subject to a vote. MSPs can lodge amendments to a motion to enable alternative points of view to be considered.

Individuals can ask an MSP to initiate a debate on a motion providing they have no other motions outstanding for Members’ debate. Members’ debates happen outside official Parliamentary time and are not subject to a vote although they require a response from a Minister. Motions are set out in a required format with the following introduction: *“That the Parliament (approves, recognises, calls upon)...”*. Very often, individuals and/or organisations will have more in-depth knowledge of the issue they want debated and can assist the MSP in drafting the proposed motion. Before a motion can be debated, it must have cross party support. Once the motion has been lodged, the Parliamentary Bureau will select which motions will be scheduled for debate.

Members’ debates are useful for airing an issue and for securing an ‘on the record’ response from Government.



Example

Motion S4M-11700: Rhoda Grant, Highlands and Islands, Scottish Labour, Date Lodged: 26/11/2014

Carers' Rights Day

“That the Parliament notes that 28 November is Carers’ Rights Day, a time dedicated to making sure that carers are aware of their rights and where they can find help and support, raising awareness of the challenges that carers face both in terms of balancing their time and navigating their way to the financial and practical support that they are entitled to, notes that, according to Carers UK, almost 47% of carers are greatly worried about money; understand the sacrifice that many carers make in, often, giving up work to care while simultaneously being faced with the additional costs of caring, and hopes that all carers, including the reported 660,000 carers in Scotland, have access to the support that they need and understand their rights as carers.”



Parliamentary Questions (PQ's)

Parliamentary questions can be asked by any MSP and are often used to obtain factual or statistical information from the Scottish Government. Individuals and/or organisations can approach MSPs to ask a parliamentary question on their behalf if the information they seek is not readily available from other sources or there is a need to raise the profile of a particular issue.

Parliamentary questions can be in oral or written form. Oral questions are answered at Question Time and First Minister's Question Time. Oral questions also allow for an instant response from the questioner following the Minister's reply. Written questions are answered in the Written Answers Report and must be answered within 10 working days (20 within Parliamentary Recess).

Example

Question S40-03518: James Dornan, Glasgow Cathcart, Scottish National Party, Date Lodged: 17/09/2014

"To ask the Scottish Government what steps it will take to improve support for unpaid carers."



Petitions

Any member of the public or group can submit a petition to the Parliament's Public Petitions Committee. Submitting a petition is one of the main ways in which the public can raise issues of national concern directly with MSPs. MSPs themselves cannot submit a petition. Petitions do not need a minimum number of signatures to be submitted, one signature is sufficient.

The role of the Public Petitions Committee (PPC) is to consider which petitions are admissible. Each meeting of the Committee will consider both new and current petitions. Oral evidence may be sought from the petitioner in order to broaden the Committee's understanding of the issue being raised. Written evidence may also be sought from organisations with an interest in the matter.

The Committee will then consider what action is to be taken. Petitions may be referred by the PPC to the appropriate subject Committee of the Scottish Parliament for further investigation or a bid may be made for parliamentary time for the petition to be debated by the whole Parliament. The PPC may also decide that no further action is required and the petition will be closed. Lists of current petitions before the Committee can be found at [View petitions – Getting Involved: The Scottish Parliament – **www.scottish.parliament.uk/gettinginvolved/petitions/ViewPetitions.aspx**](http://www.scottish.parliament.uk/gettinginvolved/petitions/ViewPetitions.aspx)

Cross Party Groups (CPG)

Cross Party Groups provide a key opportunity for individual MSPs, members of the public and interested groups/ organisations to discuss a shared interest. There are currently over 40 CPGs including a Carers CPG and a wide range of condition specific CPGs.

The Standards, Procedures and Public Appointments Committee is responsible for the approval of new cross party groups. Each cross party group is required to abide by a code of conduct and this includes an annual AGM and the re-election of office bearers each year.

Individuals and/or organisations can approach an MSP to set up a cross party group. Once the MSP has agreed to take forward a proposed CPG, they must determine whether there is sufficient interest amongst other MSPs to establish it. If there is sufficient interest, an initial meeting must be called. At the meeting, the purpose, MSP membership and elected office bearers must be confirmed. Each CPG must have at least 5 MSP members with at least one MSP from each of the political parties or groups represented on the Parliamentary Bureau.



Getting Involved

There are numerous opportunities for carers and those who support and work with carers to get involved in informing, influencing and shaping legislation which affects carers and those in receipt of care.

At the pre-legislative stage, views will be sought from a wide range of parties. Consultation events may be organised by local or national carers' organisations. The contacts listed on the following page can assist you in identifying opportunities to contribute your views. Individuals can also submit responses.

Opportunities to further refine the content of the bill are available at all stages but require a MSP to 'lay' an amendment or amendments. Individuals and organisations can approach MSPs to do this on their behalf. It is important that where amendments are to be tabled, that the MSP has as much information as possible to support the proposed change.

During the progress of a bill, Parliamentary committees may ask for evidence from relevant parties.

For example, as the Carers bill makes its way through Parliament it is likely that they will ask carers and carer organisations to submit evidence and attend committee meetings to discuss aspects of the bill which they require further information on.

Consultation will also take place on subordinate legislation which looks at the technical detail of implementing legislation.

Key Contacts

There are a wide range of carer support organisations that can assist you in helping to inform and influence the development of carers and related legislation. The contact details below are for the National Carer Organisations (NCO's) who can put you in touch with local agencies:

Carers Scotland
The Cottage
21 Pearce Street
Glasgow
G51 3UT



0141 445 3070
www.carersscotland.org
info@carersscotland.org

Carers Trust Scotland
Skypark 3
Suite ½, 14/18 Elliot Place
Glasgow
G3 8EP



0300 123 2008
www.carers.org/scotland
scotland@carers.org

Coalition of Carers in Scotland (COCIS)
PO Box 21624
Stirling
FK7 1EF



01786 850 247
www.carersnet.org
coalition@carersnet.org

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Crossroads Caring Scotland
24 George Square
Glasgow
G2 1EG
0141 352 9757
www.crossroads-scotland.co.uk
info@crossroads-scotland.co.uk



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MECOPP (Minority Ethnic Carers of People Project)
172 Leith Walk
Edinburgh EH6 5EA
0131 467 2994
www.mecopp.org.uk
info@mecopp.org.uk



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Scottish Young Carers Services Alliance
c/o Carers Trust Scotland
Skypark 3
Suite 1/2, 14/18 Elliot Place
Glasgow
G3 8EP
0300 123 2008
www.carers.org/scotland
scotland@carers.org



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Unit 2, Dunfermline Business Centre
Izatt Avenue
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KY11 3BZ
01383 622462
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Carers Scotland

Carers Trust Scotland

Coalition of Carers in Scotland (COCIS)

Crossroads Caring Scotland

MECOPP

Scottish Young Carers Services Alliance

Shared Care Scotland