

Conveners Group

Wednesday 25 September 2024

6th Meeting, 2024 (Session 6)

Update: delivery of activities to promote post-legislative scrutiny (PLS) and PLS activity in the Parliamentary year 2023-24

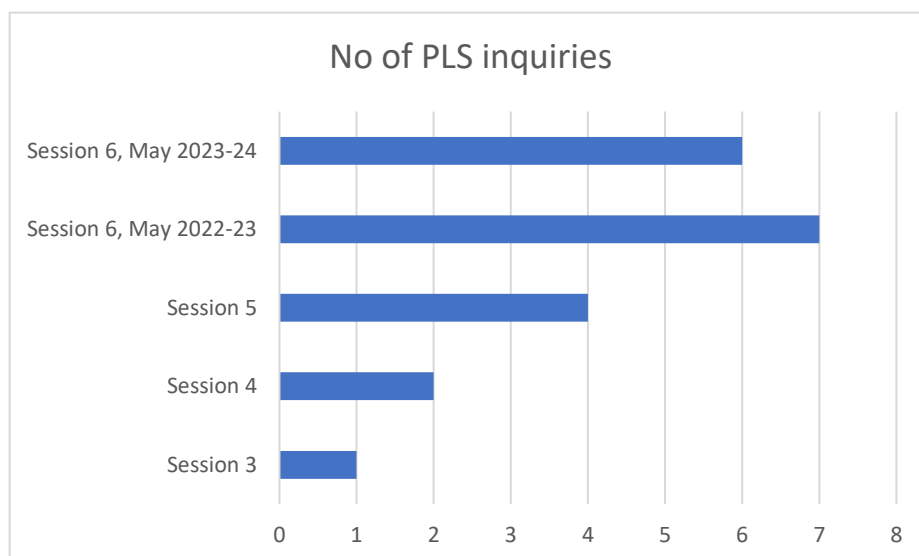
Background

1. One of the current strategic priorities of the Convener's Group (CG) is to promote a greater level of post-legislative scrutiny across the committees in the Scottish Parliament. A series of actions have been agreed by the CG to take this forward.
2. This paper provides details of the delivery of the various actions. It also includes an update on the levels of PLS activity in the last parliamentary year (May 2023 to May 2024).

Update on PLS activity and actions

3. Figure 1 below and Annex A to this paper contains details of the PLS activity across committees between May 2023 to May 2024 based on information collated from the annual reports that each committee published before summer recess.

Figure 1: PLS activity between May 2023 and May 2024 compared to the previous year and to previous parliamentary sessions.



4. Six PLS inquiries of differing types were undertaken in the parliamentary year May 2023 to May 2024. This is a fall of one compared to the previous year (May 2022 to May 2023), but is still a significant increase compared to activity levels in previous sessions.
5. It should be noted that the figure for the last parliamentary year was boosted particularly by the Health, Social Care and Sport Committee who have been particularly active this year on PLS inquiries; with three reviews undertaken.
6. In addition to these PLS inquiries, officials have been taking forward the following actions as part of the CG's efforts to promote PLS and our work.

PLS and business planning days: officials have been making arrangements to remind all committees to consider ideas for PLS inquiries in 2024-25 as part of any business planning days that are taking place.

PLS and pre-legislative scrutiny – officials in the PLS working group have been preparing a paper on PLS and pre-legislative scrutiny (see Annex B). This be used for training and for part of the clerking manual.

International engagement – officials have been supporting MSPs and other officials to promote our PLS activity to other parliaments internationally. Meetings and discussions have been held with the parliaments of Albania, Malawi, Nepal, Sweden and Zambia.

Training course on PLS and climate change – officials have been working with the Westminster Foundation for Democracy to offer a training course to staff on how to conduct a PLS inquiry focusing on the legislative impacts on climate change. This will be underway shortly in September for clerks and SPICe staff.

Review of PLS activity and preparations for a legacy paper for session 7 - an academic fellow, Dr Tom Caygill of Nottingham Trent University, has been taking forward his analysis of the success or otherwise of our efforts in this and previous sessions to promote PLS. His findings will be made available to the CG as part of preparations for a legacy paper for session 7.

Audit Scotland – officials have been working with staff in Audit Scotland to review how our respective organisations can support each other when it comes to ideas for PLS inquiries, including how reviews by Audit Scotland can highlight failures with legislative implementation. A seminar was held with them earlier in September.

Stephen Imrie
On behalf of the PLS working group
September 2024

Annexe A: Post-Legislative Scrutiny and Committee Annual Reports, May 2023 to 12 May 2024

Committee	Has any PLS been conducted in this parliamentary year?	Details
Citizen Participation and Public Petitions Committee	Yes	The CPPP Committee has been assisting other committees with their PLS work via the use of people's panels. A panel to support the Net Zero, Energy and Transport Committee's post-legislative scrutiny of section 91 of the Climate Change (Scotland) Act 2009 took place early in 2024 and the second of the two further panels recommended by this Committee will take place in late 2024-early 2025.
Constitution, Europe, External Affairs and Culture Committee	No	
Criminal Justice Committee	No	No PLS inquiries have taken place due to legislative workload. However, the Convener of the Committee met with international delegations from Zambia, Malawi and Albania who visited the Scottish Parliament to discuss the Committee's approach to post-legislative scrutiny (PLS) as part of a wider visit to the UK sponsored by the Westminster Foundation for Democracy
Delegated Powers and Law Reform Committee	No	
Economy and Fair Work Committee	Yes	The Committee is undertaking Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014 . The Committee's report was published in June 2024.

Education, Children and Young People Committee	Yes	The Committee has been undertaking an inquiry into Additional Support for Learning legislation.
Equalities, Human Rights and Civil Justice Committee	No	
Finance and Public Administration Committee	No	
Health, Social Care and Sport Committee	Yes	The Committee has been particularly active in PLS inquiries in this year. It has conducted a Post legislative scrutiny of the Social Care (Self-directed Support) (Scotland) Act 2013; a short post legislative review of the Health and Care (Staffing) (Scotland) Act 2019; and a short post legislative review of the Alcohol (Minimum Pricing) (Scotland) Act 2012.
Local Government, Housing and Planning Committee	No	No PLS inquiries have taken place due to other workload. However, the Convener of the Committee was part of the group of conveners who met with the international delegation from Albania who visited the Scottish Parliament to discuss our approach to post-legislative scrutiny (PLS) as part of a wider visit to the UK sponsored by the Westminster Foundation for Democracy.
Net Zero, Energy and Transport Committee	Yes	The Committee has been working with the CPPP Committee on the people's panel to review section 91 of the Climate Change (Scotland) Act 2009.
Public Audit Committee	No	The Committee does not have the same powers as other Parliamentary committees in relation to carrying out post-

		legislative scrutiny and therefore did not undertake any work in this regard.
Rural Affairs and Islands Committee	No	
Social Justice and Social Security Committee	Pending	Due to the Committee's work on primary legislation, the Committee was unable to conduct post legislative scrutiny. However, the Committee has committed to scrutinising the Child Poverty (Scotland) Act 2017.
Standards, Procedures and Public Appointments Committee	Pending	The Committee considered an evaluation of the Lobbying (Scotland) Act 2016 carried out by the Scottish Parliament Information Centre. The Committee has agreed to consider further whether it wishes to pursue any changes to the Act.

Annexe B: Draft paper on PLS and pre-legislative scrutiny

Overview

1. This explainer provides guidance on how to incorporate the potential for future post-legislative scrutiny (PLS) during the consideration of a bill.
2. This explainer may be revised or updated in line with the Clerking Manual's editorial policy. For this reason, please do not save this document to your local hard drive or print it.

What is PLS?

3. Post-legislative scrutiny is a term for an inquiry which looks back at an act of the Scottish Parliament, or part of an act, to see if it is working as planned. The inquiry is usually carried out by a committee. Sometimes a committee will look at more than one act at once, although this is rare.

Why consider the potential for future PLS when scrutinising a bill?

4. In order for a PLS inquiry to be successful, it is beneficial to know what act or, more likely, what provisions within an act were thought to be controversial or difficult to achieve when the bill was being scrutinised at Stage 1.
5. Since PLS usually takes place 3 to 5 years after an act has come into force, this institutional memory of what was controversial or deemed challenging at the time can be lost if it is not captured as part of the record of scrutiny, such as in a Stage 1 report and the various SPICe documents such as their bill briefings.
6. By considering the scope for future PLS when looking at a bill, it is possible therefore to put into the record whether such an inquiry could be needed after a period of time and what were the issues identified during scrutiny that can be looked at to assess whether the bill has had the impact expected.
7. Furthermore, through this consideration, it is possible to set out what information or data needs to be collected and published, and by whom, to make such an assessment.
8. It is therefore considered to be good practice for clerks and researchers to be thinking about the potential for a future PLS inquiry when scrutinising a bill.
9. It is important to note that not all bills need to come with a recommendation for some form of future PLS inquiry. It is a case of a committee coming to a view on whether there are key provisions in the bill that are central to an assessment of whether it has achieved what has been set out that need to be looked at in the future because they were controversial, were challenging to achieve or were otherwise a highly debated matter.

Top tips

10. Committee teams and researchers can facilitate the consideration of future PLS in several ways.

Briefings and questions

11. Clerks and SPICe can ensure that any relevant briefing or ideas for questions contain information or suggestions on why a future review of key provisions would be a good idea. If this leads to a general acceptance and a commitment from the Scottish Government to facilitate this, then a future PLS inquiry is more likely to happen when the time is right.

Stage 1 reports

12. This is the key place where the committee's views and potentially recommendations on the need for a future review can be set out, including details of why such a review may be needed, what information or data needs to be collected and published, and by whom.

Bill briefings

13. These summary documents of the main issues looked at when the bill was being scrutinised are a good place for a note on this matter to be added as they, along with Stage 1 reports, are likely to be a key information resource for a future clerking team.

Stages 2 and 3

14. Although it is not necessary to amend a bill to contain a section requiring a future review of an act or parts of an act, there are examples where a committee has been keen to make such a change if it was not already intended and to advocate for such an amendment to be made. Even if the Scottish Government does not agree to amend the legislation, ministers often commit to some form of review in any debate on an amendment and this commitment needs to be captured somewhere such as a bill briefing so that it is not forgotten over the preceding years.
15. One example of a section that can be used is that of a sunset clause where a bill or part of a bill ceases to be in force after a certain date until a review has taken place and a decision to proceed.
16. It is important to note that not all bills need such sections to be added and that any statutory commitment to a review needs to be carefully considered otherwise there is a danger of future reviews being required that no one then believes are necessary.

Examples/further reading

Stage 1 report recommendations for future PLS

- [Paragraphs 373-378 of the Stage 1 report on the Fireworks and Pyrotechnics Articles \(Scotland\) Bill 2023](#)

Proposed amendments for PLS reviews

- [Fireworks and Pyrotechnics Articles \(Scotland\) Bill 2023, amendment 78 at Stage 3:](#)

Jamie Greene

78 After section 19, insert—

<Review on operation of fireworks licensing scheme

- (1) The Scottish Ministers must, as soon as practicable after the end of the reporting period, lay before the Scottish Parliament a report on the operation of the fireworks licensing scheme during the reporting period.
 - (2) The report must, in particular, include information about—
 - (a) the effectiveness of the fireworks licensing scheme,
 - (b) the number of persons who applied for a fireworks licence,
 - (c) whether there is any evidence that the fireworks licensing scheme is contributing to improving firework safety.
 - (3) The reporting period is the period of 24 months beginning with the day that Part 2 comes into force.>
- Proposed amendments at [Stage 2 of the Abortion Services \(Safe Access Zones\) \(Scotland\) Bill](#)

Gillian Mackay

39 After section 11, insert—

<Review of Act

Review of Act

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the review period—
 - (a) undertake a review of the operation and effectiveness of the Act, and
 - (b) prepare a report on that review.

- (2) The Scottish Ministers may delegate their function under subsection (1) to such a person as they consider appropriate.
- (3) The Scottish Ministers must, as soon as reasonably practicable after the report is prepared—
 - (a) publish the report, and
 - (b) lay it before the Scottish Parliament.
- (4) In this section, “the review period” means—
 - (a) the period of 2 years beginning on the day on which section 2 comes into force, and
 - (b) each subsequent period of 5 years.>

Tess White

58 After section 11, insert—

<Reporting

Report on safe access zones

- (1) The Scottish Ministers must, for each reporting period, prepare and publish a report setting out—
 - (a) in relation to each safe access zone for a protected premises, whether, in the opinion of the Scottish Ministers, the safe access zone has been effective in protecting the safety and dignity of persons accessing, providing or facilitating the provision of abortion services at the protected premises,
 - (b) the impact of the Act on persons engaged in protests and vigils related to abortion services,
 - (c) in relation to each offence under the Act—
 - (i) the number of arrests,
 - (ii) the number of prosecutions,
 - (iii) the number of convictions,
 - (iv) whether, in the opinion of the Scottish Ministers, the penalty for the offence remains appropriate,
 - (d) whether, in the opinion of the Scottish Ministers, the operation of the Act is compliant with the Human Rights Act 1998,
 - (e) such other information as the Scottish Ministers consider appropriate.
- (2) When preparing a report under subsection (1), the Scottish Ministers must consult—
 - (a) the chief constable of the Police Service of Scotland,
 - (b) Health Boards,
 - (c) local authorities,

(d) such other persons as the Scottish Ministers consider appropriate.

(3) For the purposes of this section, a reporting period is—

- (a) the period of one year beginning with the day on which section 2 comes into force,
- (b) each subsequent period of one year.>

- [Post Office \(Horizon System\) Offences \(Scotland\) Bill](#)

After section 6

Angela Constance

After section 6, insert—

<Reporting

Report on the operation of the Act

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the period of one year beginning with the day after Royal Assent—
 - (a) prepare and publish a report on the operation of this Act,
 - (b) lay a copy of the report before the Scottish Parliament.
- (2) A report under subsection (1) must include information on—
 - (a) the number of convictions in respect of which the Scottish Ministers have—
 - (i) given notification to a convicting court under section 4(2),
 - (ii) given notification to a person under section 4(4),
 - (b) the steps taken by the Scottish Ministers to—
 - (i) identify the convictions quashed by section 1(1),
 - (ii) give notifications under section 4(4).>

Review clauses/sections in Bills

- [Section 50 of the Lobbying \(Scotland\) Act 2016](#)