



**PARLIAMENTARY  
COUNSEL OFFICE**

SHAPING THE LAW OF SCOTLAND

# Who are PCO and what do we do?

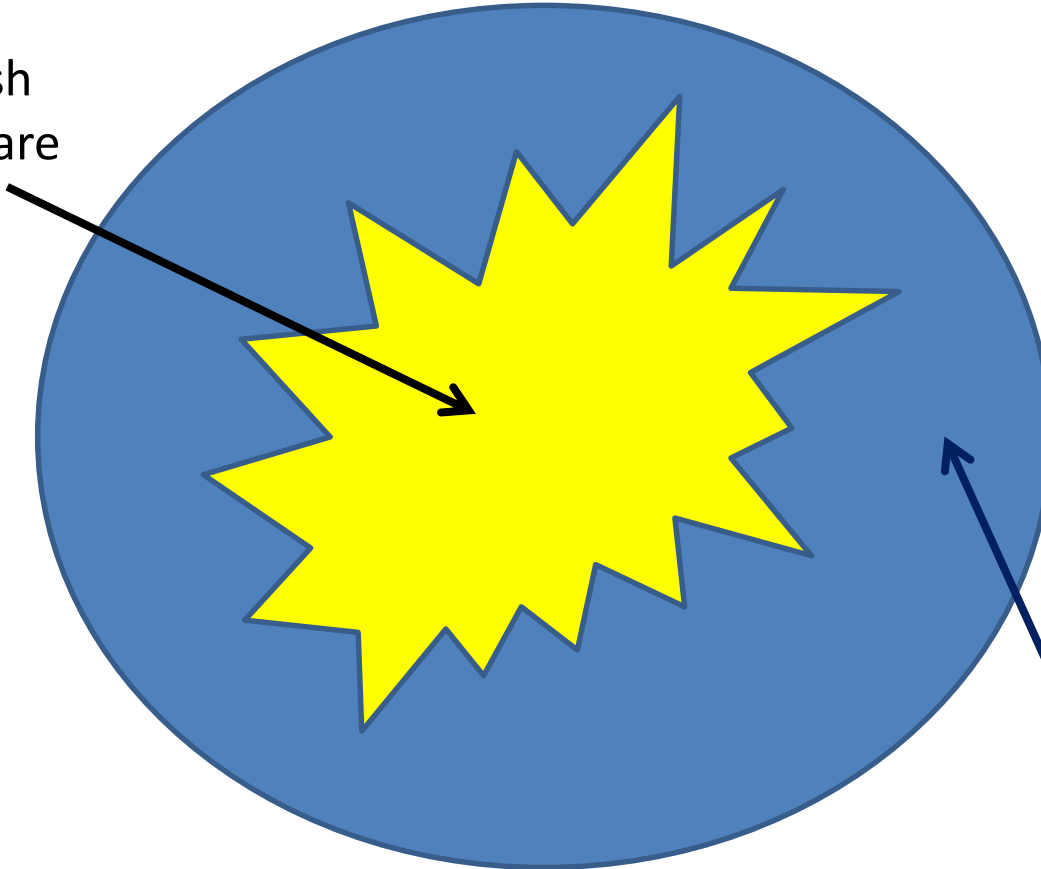
- Parliamentary Counsel Office is the Scottish Government's legislative drafting office, based in Edinburgh.
- We are a directorate of 18 specialists in drafting and parliamentary procedure
- Our main aim is to draft Scottish Government Bills (and amendments) and advise on their passage through the Scottish Parliament

# The Scottish Parliament

- Section 1(1) of the Scotland Act 1998:  
“There shall be a Scottish Parliament.”
- The Parliament may make laws to be known as Acts of the Scottish Parliament – section 28(1).
- An Act of the Scottish Parliament (ASP) is not law so far as any provision of the ASP is outside the legislative competence of the Parliament – section 29(1).

# Power to legislate

UK and Scottish  
Parliament share  
competence



UK Parliament  
retains  
exclusive  
competence to  
legislate for  
Scotland

# Limits on legislative competence of ASP

(2)(a)

- Forms part of the law of a country or territory other than Scotland
- Confers or removes functions otherwise than in or as regards Scotland

(2)(b)

- Relates to reserved matters e.g. foreign affairs, defence, the constitution

(4)

- Does not relate to reserved matters but modifies Scots private law or Scots criminal law as it applies to reserved matters

(2)(c)

- breach of the restrictions in schedule 4

(2)(d)

- Incompatible with the European Convention Human Rights

(2)(d)

- Incompatible with EU law (pre EU Exit)\*

# The Scottish Ministers

Section 44 of the Scotland Act 1998:

(1) There shall be a Scottish Government, whose members shall be—

(a) the First Minister,

(b) such Ministers as the First Minister may appoint under section 47, and

(c) the Lord Advocate and the Solicitor General for Scotland.

(2) The members of the Scottish Government are referred to collectively as **the Scottish Ministers**.

# Who is my client?

- A.K.A. our client!
- Bill team as triangle: policy department instruct solicitors and solicitors instruct PCO.
- Law officers' supervisory role: Lord Advocate gives final advice on whether a Bill is within Parliament's competence (and therefore whether Ministers should introduce it)

# How PCO helps clients (general)

- Drafting function and counsel function
- Second as important as the first:
  - help in understanding legal issues and consequences
  - help in defending the statute book and creating good law (i.e. clear, effective and accessible)
  - help in making policy decisions...?



# How PCO helps clients (particular)

- New guidance published on instructing “common legislative solutions”: helping navigate line between policy and legal issues
- Advice and training on Parliamentary process
- Liaison with Parliamentary clerks
- Help preparing accompanying documents (including Explanatory Notes) as well as Bills



**Give a man a fish and feed  
him for a day.**

**Don't teach a man to  
fish...and feed yourself.  
He's a grown man.**

**And fishing's not that hard.**

- Ron Swanson