

How a law is made

Parliament is the national legislature (lawmaking body) of South Africa. As such, one of its major functions is to pass new laws, to amend existing laws, and to repeal old laws. Both houses of Parliament – the National Assembly and the National Council of Provinces (NCOP) – play a role in this process.

Legislative authority

Parliament has legislative authority (the right to make laws) in the national sphere of government, provincial legislatures make laws in the provincial sphere of government, and municipal councils make laws in the local sphere of government.

National and provincial lawmaking

When is a lawmaking matter national and when is it provincial?

- Schedule 4 of the Constitution lists the functional areas in which Parliament and the provincial legislatures jointly have the right to make laws – this includes things like agriculture, health, housing, the environment and education (but not tertiary education)
- Schedule 5 of the Constitution lists the functional areas in which only the provincial legislatures may make laws – this include things like provincial roads and traffic, liquor licensing, provincial planning and provincial sport

In exceptional circumstances Parliament may even make laws in a Schedule 5 area if this is necessary to:

- maintain national security
- maintain economic unity
- maintain essential national standards
- establish minimum standards for the rendering of services
- prevent unreasonable action by a province which prejudices the interests of another province or the country as a whole

The basic lawmaking process

A bill (a draft law) can only be introduced in Parliament by a minister, a deputy minister, a parliamentary committee, or an individual MP.

Most bills are drawn up by a government department under the direction of the relevant minister or deputy minister. This kind of bill must be approved by the Cabinet before being submitted to Parliament. Bills introduced by individual MPs are called private members' bills.

Before it can become a law, a bill must be considered by both houses of Parliament. Certain bills which affect provinces may first be introduced in the NCOP. All other bills are first introduced in the National Assembly. Once it is introduced, the bill is referred to the relevant committee. The bill is published in the Government Gazette for public comment unless it is very urgent. It is debated in the committee and amended if necessary. If there is great public interest in a bill, the committee may organise public hearings. Once it has decided on its version of the bill, the committee submits it to a sitting of the house for further debate and a vote. A bill could be referred back to a committee for more work before a vote is taken. The bill is then referred to the other house for its consideration. If the bill pass through both the National Assembly and the NCOP, it goes to the President for assent. Once it has been signed by the President, it becomes an Act of Parliament – a law of the land.

The four types of bill

The Constitution describes four kinds of bills:

- Section 74 bills - constitutional amendments
- Section 75 bills - ordinary bills not affecting the provinces
- Section 76 bills - ordinary bills affecting the provinces
- Section 77 bills - money bills (ones which have to do with appropriations, taxes, levies or duties). These must be introduced by the Minister of Finance in the National Assembly.

Each type of bill has a different passage to becoming a law and usually fits into only one category. The Joint Tagging Mechanism (JTM), which consists of the presiding officers and their deputies, decides on the category of a bill. If a bill does not clearly fit onto one category, or if it fits into more than one category, it is usually redrafted or split into more than one bill.

Decision making

For most bills to be passed in the National Assembly, a majority of the members must be present and a majority must vote in favour. For Section 76 bills before the NCOP, each provincial delegation has a vote and five provinces must vote in favour for it to be passed. When the NCOP votes on a Section 75 bill, every individual delegate has a vote, at least a third must be present, and a majority of those present must vote in favour for it to be passed. Each delegation votes in accordance with the mandate it has received from its legislature.

Constitutional amendments

These require special majorities:

- changes to the basic values of the Constitution require 75% of the National Assembly and six provinces in the NCOP to agree
- changes to the Bill of Rights require two-thirds of the Assembly and six provinces in the NCOP to agree

- if the bill affects the NCOP; the boundaries, powers, functions or institutions of the provinces; or a provision specifically dealing with a provincial matter, two thirds of the Assembly and six provinces must agree
- any other amendment only requires two-thirds of the National Assembly to agree

At least 30 days before it is introduced, a Section 74 bill must be published in the Government Gazette for public comment and submitted to the provincial legislatures for their views. Bills which require NCOP approval must also be submitted for debate in the NCOP. Comments from the public and the provincial legislatures must be tabled together with the bill. If the bill affects specific provinces, it must be approved by the relevant provincial legislatures before the NCOP may pass it.

Ordinary bills not affecting provinces

Once a Section 75 bill has been passed by the National Assembly, it is referred to the NCOP. If the NCOP amends the bill or rejects it, it goes back to the Assembly which may pass the bill again, with or without amendments, and send it for the President's assent. In other words, the Assembly can pass a Section 75 bill even if the NCOP disagrees.

Ordinary bills affecting provinces

The NCOP and the National Assembly both consider Section 76 bills. If they cannot agree, the dispute is referred to the Mediation Committee. If the committee is unable to secure agreement on Section 76 bills introduced in the National Assembly within 30 days, the bill may be passed by the National Assembly with a two-thirds majority and sent to the President. If the committee cannot broker an agreement on bills which have been introduced in the NCOP, the bill lapses.

Signing the bill into law

If the President is not sure a bill may be constitutional, he or she may refer it back to the National Assembly for reconsideration. If the bill affects the provinces, it must also be considered by the NCOP as well. If a reconsidered bill takes the President's reservations into account he or she may sign it or refer it to the Constitutional Court. If the court decides the bill is constitutional, the President must sign it.