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Delegated Powers and Law Reform Committee
Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh
Lagh

Delegated Powers and Law Reform
Committee Annual Report 2017-18



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Committee Membership



Convener
Graham Simpson
Scottish Conservative
and Unionist Party



Deputy Convener
Stuart McMillan
Scottish National Party



Tom Arthur
Scottish National Party



Neil Findlay
Scottish Labour



Alison Harris
Scottish Conservative
and Unionist Party

Introduction

1. This report covers the work of the Delegated Powers and Law Reform Committee during the parliamentary year from 12 May 2017 to 11 May 2018. The Committee has scrutinised a number of Scottish statutory instruments this year, as well as delegated powers provisions within several bills.

Delegated Powers and Law Reform Committee



Source: Scottish Parliament

2. The Committee completed its consideration of the Contract (Third Party Rights) (Scotland) Bill. This was the third Scottish Law Commission (SLC) bill to be introduced since the remit of its predecessor committee was changed to allow for the consideration of such bills in June 2013. The Committee has also begun considering the Prescription (Scotland) Bill - another SLC bill which was introduced on 8 February 2018.

Membership Changes

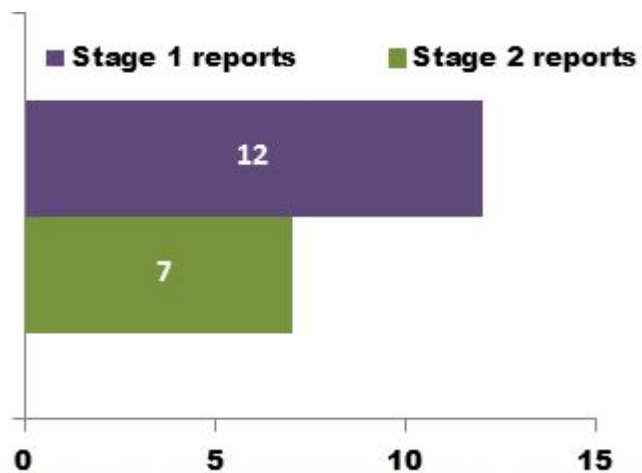
Previous Members of the Committee during the reporting year:

- John Scott (Convener) (from 8 June 2016 – 29 June 2017)
- Monica Lennon (from 8 September 2016 – 9 January 2018)
- David Torrance (from 8 June 2016 - 19 April 2018)

Bills

3. In addition to SLC bills, the Committee considers delegated powers provisions in Scottish Government, Members', Committee and Private bills. It then reports to subject committees and the Parliament on issues such as the scope of delegated powers and whether delegated powers are within vires.
4. Over the reporting period, the Committee has considered and reported on the following twelve bills at Stage 1:
 - Wild Animals in Travelling Circuses (Scotland) Bill;
 - Forestry and Land Management (Scotland) Bill;
 - Gender Representation on Public Boards (Scotland) Bill;
 - Children and Young People (Information Sharing) (Scotland) Bill;
 - Social Security (Scotland) Bill;
 - Islands (Scotland) Bill;
 - Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill;
 - Housing (Amendment) (Scotland) Bill;
 - Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill;
 - Budget (Scotland) (No.2) Bill;
 - Planning (Scotland) Bill; and
 - Scottish Crown Estate Bill.
5. The Committee also reported on the following seven bills after Stage 2:
 - Seat Belts on School Transport (Scotland) Bill;
 - Child Poverty (Scotland) Bill;
 - Wild Animals in Travelling Circuses (Scotland) Bill;
 - Forestry and Land Management (Scotland) Bill;
 - Gender Representation on Public Boards (Scotland) Bill;
 - Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill; and
 - Social Security (Scotland) Bill.

Number of Bills reported on at Stages 1 and 2



Source: Scottish Parliament

6. The majority of bills considered by the Committee during the reporting period were Scottish Government bills and, as with previous years, it is hoped that the recommendations of the Committee on those bills will lead to a number of changes by the Scottish Government to relevant provisions. Through its scrutiny process, the Committee also aims to ensure that the correct balance between primary and secondary legislation within bills is maintained.

Legislative Consent Memorandums/UK withdrawal from the EU

7. The Committee considered and reported on one Legislative Consent memorandum (LCM). LCMs are related to UK Parliament bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters. The LCM considered was in connection with the European Union (Withdrawal) Bill with the Committee publishing its report on the LCM on 17 November 2017 after taking oral evidence from Scottish and UK Ministers as well as academics.

Professor Stephen Tierney, University of Edinburgh



Source: Scottish Parliament

8. The Committee also considered and reported on a supplementary LCM relating to the European Union (Withdrawal) Bill after taking oral evidence from the Minister for UK Negotiations on Scotland's Place in Europe, the Secretary of State for Scotland and the Minister for the Constitution.
9. Following the introduction of the Scottish Government's UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill on 21 March 2018, there was a requirement on the part of the Committee to scrutinise the delegated powers provisions within the Bill.
10. Again, oral evidence was taken from the Minister for UK Negotiations on Scotland's Place in Europe. This gave rise to the Committee writing to the Presiding Officer ahead of the debates on the Bill at Stages 1 and 3 to draw the Parliament's attention to issues arising in relation to particular delegated powers in the Bill. This was done on account of there being no time for the Committee to produce a report to the lead committee, as would be the norm.

Michael Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe

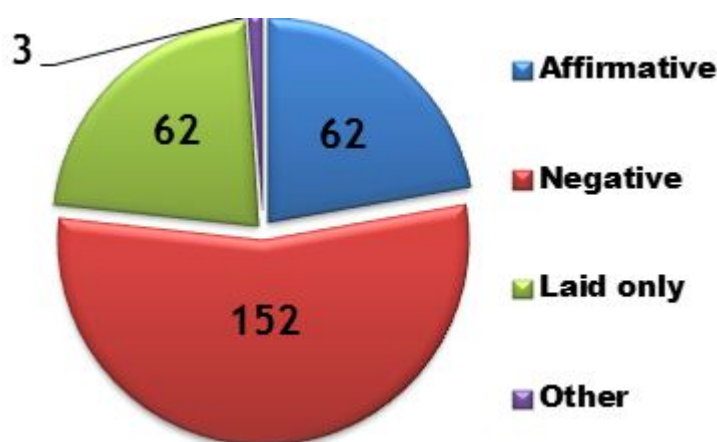


Source: Scottish Parliament

Subordinate Legislation

11. The Committee has considered a high volume of instruments this year, working to tight timescales to produce 33 reports over the reporting year specifically on statutory instruments. In total, the Committee reported on 279 Scottish statutory instruments.
12. Of the instruments considered, 62 were subject to affirmative procedure, 152 to negative procedure, and 62 were not subject to any parliamentary procedure.
13. In addition to the instruments outlined above, the Committee also considered two super-affirmative instruments and one document laid for approval.

SSIs considered by parliamentary procedure



Source: Scottish Parliament



Reports published

Source: Scottish Parliament

14. The Committee also published three quarterly reports which recorded the Committee's scrutiny of instruments during the first nine months of this parliamentary year.

Equalities

15. The Committee considers equalities issues which can arise under the European Convention on Human Rights (ECHR) and under Community law. It is part of the Committee's remit to draw the attention of lead committees and the parliament to any instrument or bill that, in its opinion, fails to comply with any such requirement.
16. In November 2017, the Committee considered a proposed draft Order prepared by the Scottish Government in response to issues of ECHR incompatibility identified by the court in the case of P v the Scottish Ministers. The Committee ultimately concluded that the proposed changes were capable of being operated compatibly with ECHR rights, and particularly with Article 8.
17. The Committee also scrutinises drafting practice and so points out, for example, failure to use gender neutral language in instruments. On occasion, the Committee has had cause to write to both the Scottish Government and the Lord President's Private Office to remind them of the requirement to frame provisions in gender neutral terms.

Meetings

18. The Committee met 37 times during the parliamentary year. Of these meetings, none were entirely in private and 31 included items in private.
19. The main reasons for taking business in private were to consider draft reports or to consider oral evidence heard earlier in the meeting.
20. All the Committee's meetings have been held in Edinburgh.

Committee Meeting



Source: Scottish Parliament



Source: Scottish Parliament

