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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 2018-19**



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# Contents

<b>Introduction</b>	<b>1</b>
Membership Changes	1
<b>Bills</b>	<b>2</b>
Legislative Consent Memorandums/UK withdrawal from the EU	3
<b>Subordinate Legislation</b>	<b>4</b>
<b>Law Reform</b>	<b>6</b>
<b>Meetings</b>	<b>7</b>
Equalities	7
Business conducted	7

# 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



**Mary Fee**  
Scottish Labour



**Alison Harris**  
Scottish Conservative  
and Unionist Party

# Introduction

1. This Report covers the work of the Committee during the parliamentary year from 12 May 2018 to 11 May 2019. The Committee has scrutinised Scottish statutory instruments this year, as well as delegated powers provisions within several bills.

## Delegated Powers and Law Reform Committee: current membership



Members of the Committee: Back Row: Alison Harris and Tom Arthur. Front Row: Stuart McMillan (Deputy Convener), Graham Simpson (Convener) and Mary Fee.

## Membership Changes

2. Previous Members of the Committee during the reporting year:

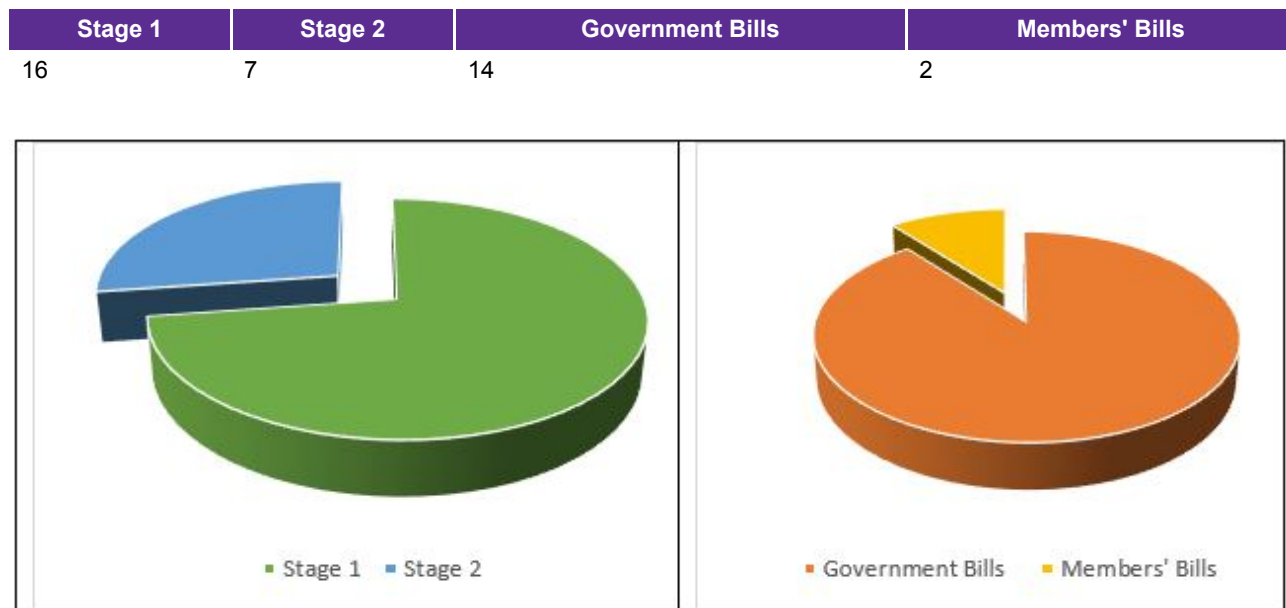
Neil Findlay (from 9 January 2018 to 1 November 2018)

# Bills

3. In addition to Scottish Law Commission bills, the Committee considers delegated powers provisions in Scottish Government and Members' 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 16 bills at Stage 1:
  - Age of Criminal Responsibility (Scotland) Bill
  - Budget (Scotland) (No.3) Bill
  - Census (Amendment) (Scotland) Bill
  - Children (Equal Protection from Assault) (Scotland) Bill
  - Climate Change (Emissions Reduction Targets) (Scotland) Bill
  - Damages (Investment Returns and Periodical Payments) (Scotland) Bill
  - Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill
  - Health and Care Staffing (Scotland) Bill
  - Human Tissue (Authorisation) (Scotland) Bill
  - Management of Offenders (Scotland) Bill
  - Non-Domestic Rates (Scotland) Bill
  - Restricted Roads (20mph Limit) (Scotland) Bill
  - Scottish National Investment Bank Bill
  - South of Scotland Enterprise Bill
  - Transport (Scotland) Bill
  - Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill
5. The Committee also considered and reported on the following seven bills after Stage 2:
  - Age of Criminal Responsibility (Scotland) Bill
  - Health and Care (Staffing) (Scotland) Bill
  - Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill
  - Housing (Amendment) (Scotland) Bill
  - Islands (Scotland) Bill

- Planning (Scotland) Bill
- Scottish Crown Estate Bill

### Primary Legislation



6. The majority of the 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 appropriate balance between primary and secondary legislation within bills is maintained.

## Legislative Consent Memorandums/UK withdrawal from the EU

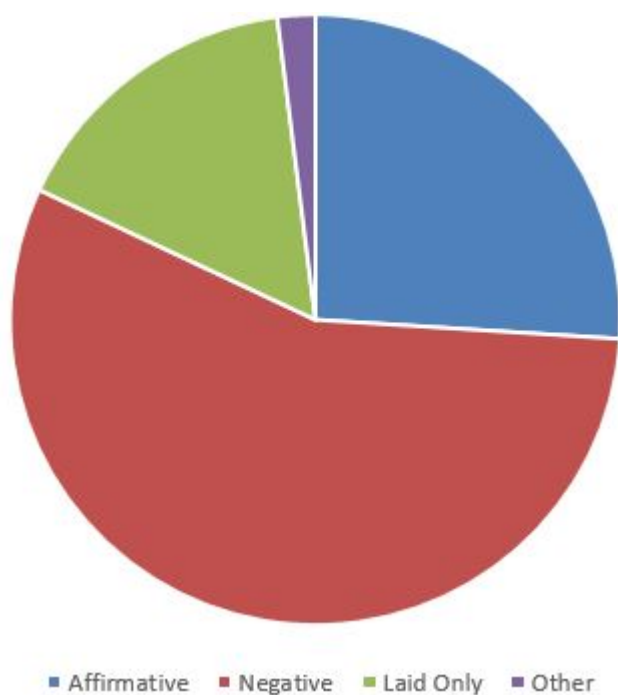
7. The Committee considered and reported on five Legislative Consent Memorandums (LCM). LCMs are related to UK Parliament bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters. The LCMs considered and reported on by the Committee were:
- Counter Terrorism and Border Security Bill
  - Fisheries Bill
  - Immigration and Social Security Coordination Bill
  - Offensive Weapons Bill
  - Trade Bill
8. The Committee took evidence from George Hollingbery MP, Minister of State for Trade Policy and Michael Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations to inform its report on the LCM in relation to the Trade Bill.



## Subordinate Legislation

9. The Committee considered 31 instruments laid under the European Union (Withdrawal) Act 2018 (“the 2018 Act”). These instruments were considered in terms of the protocol agreed with the Scottish Government and approved by the Committee. The protocol required each instrument laid under the 2018 Act to be considered in terms of the scrutiny procedure attached to the instrument by the Government and the Government’s assessment of the instrument’s significance in terms of policy impact.
10. The Committee challenged the Scottish Government’s categorisation of three Brexit-related Scottish Statutory instruments. For two instruments, the Committee recommended that the categorisation be raised, in one case from Medium to High significance and in another case from Low to Medium significance. In the case of one instrument, the Committee recommended that the categorisation be lowered from Medium to Low significance.<sup>i</sup>
11. The Committee considered a significant number of instruments this year, working to tight timescales to produce 35 reports covering 242 Scottish statutory instruments.
12. Of the instruments considered, 62 were subject to affirmative procedure, 136 to negative procedure, and 39 were not subject to any parliamentary procedure.
13. In addition to the instruments outlined above, the Committee also considered, two provisional affirmative instruments, a code of practice, one document laid for consultation, and one document subject to approval.

### SSIs Considered between 12 May 2018 and 11 May 2019



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<sup>i</sup> These instruments were considered at the Committee’s meetings on 29 January and 26 February 2019.

14. The Committee also published three quarterly reports which recorded the Committee's scrutiny of instruments during the first 9 months of this parliamentary year.

## Law Reform

15. The Committee completed its consideration of the Prescription (Scotland) Bill. This was the fourth 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 Bill received Royal Assent on 18 December 2018.
16. The Committee has also agreed to undertake some work in relation to the criteria for designating a bill as an SLC bill. This followed a visit to the Scottish Law Commission in November 2018 where the Committee met with the Chair and Commissioners and learnt more about its history and current work. (Lady Paton has now taken over the Chair of the SLC from Lord Pentland)

### Committee members visit the Scottish Law Commission



From left to right: Graham Simpson MSP (Convener), Stuart McMillan MSP (Deputy Convener), Lord Pentland (Chair of the SLC), Mary Fee MSP, and Tom Arthur MSP.

# Meetings

## Equalities

17. 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.

## Business conducted

18. The Committee met 36 times during the parliamentary year. Of these meetings, none were entirely in private, but all 36 meetings included items in private.
19. The main reasons for taking business in private were to consider the Committee's approach to delegated powers in bills or to consider oral evidence heard earlier in the meeting.
20. All the Committee's meetings have been held in Edinburgh.
21. The Committee produced a total of 65 reports.



