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Pàrlamaid na h-Alba

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

## **Defamation and Malicious Publication (Scotland) Bill: Stage 1**



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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**  
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Scottish Conservative  
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**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Tom Arthur**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Mary Fee**  
Scottish Labour

# Introduction

1. At its meeting on 4 February 2020, the Delegated Powers and Law Reform Committee considered the delegated powers in the Defamation and Malicious Publication (Scotland) Bill ("the Bill") at Stage 1.<sup>i</sup>
2. The Committee submits this report to the lead Committee for the Bill, the Justice Committee, under Rule 9.6.2 of the Standing Orders.
3. The Scottish Government has provided the Parliament with a memorandum on the delegated powers provisions in the Bill.<sup>ii</sup>

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<sup>i</sup> Defamation and Malicious Publication (Scotland) Bill, as introduced.

<sup>ii</sup> Defamation and Malicious Publication (Scotland) Bill, Delegated Powers Memorandum.

## Bill Overview

4. This Scottish Government Bill was introduced by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 2 December 2019. The lead committee is the Justice Committee.
5. The Policy Memorandum prepared by the Scottish Government states that the overarching policy objectives of the Bill are to modernise and simplify the law of defamation (and the related action of malicious publication) in Scotland in order to:
  - strike a more appropriate balance between freedom of expression and the protection of individual reputation; and
  - clarify the law and improve its accessibility.<sup>iii</sup>
6. The Bill will place certain key elements of Scots common law on a statutory basis. At the same time, the Bill replaces and restates, in one place, elements of the existing statutory provisions.

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<sup>iii</sup> Defamation and Malicious Publication (Scotland) Bill, Policy Memorandum

## Delegated Powers

7. The Committee considered each of the delegated powers in the Bill. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:

- Section 2(6) – Prohibition on public authorities bringing proceedings
- Section 3(6) – Restriction on proceedings against secondary publishers
- Section 4(1) – Power to specify persons to be treated as publishers
- Section 34(1) – Provision of information society services
- Section 38(1) – Ancillary provision
- Section 39(2) – Commencement
- Schedule, paragraph 17(1) – Reports and Summaries etc. by Scottish Ministers' designees

8. The Committee therefore reports that it is content with the delegated powers provisions contained in the Bill.



