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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 2020-21



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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.



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Committee Membership



Convener
Bill Bowman
Scottish Conservative
and Unionist Party



Mary Fee
Scottish Labour



Gil Paterson
Scottish National Party



Joe FitzPatrick
Scottish National Party



Michelle Ballantyne
Reform UK

Introduction

1. This Report covers the work of the Committee during the parliamentary year from 12 May 2020 to 24 March 2021. The Committee continues to scrutinise Scottish Statutory Instruments ('SSIs'), delegated powers provisions within bills at Stage 1 and after Stage 2 as well as UK bills which contains provisions conferring on the Scottish Ministers powers to make subordinate legislation.



Membership changes

2. Previous Members of the Committee during the reporting year:
 - Gordon Lindhurst (from 25 February to 25 August 2020); and
 - Stuart McMillan (from 14 June 2016 to to 22 December 2020).
3. The Committee is extremely thankful for the contributions of Gordon and Stuart to the work of the Committee.

Bills

Introduction

4. 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 parliamentary procedure that would apply to subordinate legislation brought under the power would offer the appropriate level of scrutiny.
5. Through its scrutiny process, the Committee aims to ensure that the appropriate balance between primary and secondary legislation within bills is maintained and that the Parliament will have appropriate scrutiny of subordinate legislation.

Bills considered by the Committee

6. Over the reporting period, the Committee considered and reported on **21** bills at Stage 1:
 - Civil Partnership (Scotland) Bill
 - Hate Crime and Public Order (Scotland) Bill
 - Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill
 - Scottish Parliament (Assistance for Political Parties) Bill
 - Social Security Administration and Tribunal Membership (Scotland) Bill
 - Tied Pubs (Scotland) Bill
 - Travelling Funfairs (Licensing) (Scotland) Bill
 - Dogs (Protection of Livestock) (Amendment) (Scotland) Bill
 - Domestic Abuse (Protection) (Scotland) Bill
 - Heat Networks (Scotland) Bill
 - Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill
 - Post-mortem Examinations (Defence Time Limits) (Scotland) Bill
 - Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill
 - Travelling Funfairs (Licensing) (Scotland) Bill
 - UK Withdrawal from the European Union (Continuity) (Scotland) Bill:
 - Welfare of Dogs (Scotland) Bill
 - Budget (Scotland) (No.5) Bill
 - Culpable Homicide (Scotland) Bill

- Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill
- European Charter of Local Self-Government (Incorporation) (Scotland) Bill
- The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

7. The Committee also considered and reported on **13** bills after Stage 2:

- Animals and Wildlife (Penalties, Protections and Powers) Bill
- Children (Scotland) Bill
- Civil Partnership (Scotland) Bill
- Period Products (Free Provision) (Scotland) Bill
- Defamation and Malicious Publication (Scotland) Bill
- Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill
- Heat Networks (Scotland) Bill
- UK Withdrawal from the European Union (Continuity) (Scotland) Bill
- Hate Crime and Public Order (Scotland) Bill
- Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill
- European Charter of Local Self-Government (Incorporation) (Scotland) Bill
- United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill
- Dogs (Protection of Livestock) (Amendment) (Scotland) Bill


Legislative Consent Memorandums

Introduction

8. Legislative Consent Memorandums ('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.
9. The Committee considered and reported on **nine** LCM's :
- Agriculture Bill
 - Private International Law (Implementation of Agreements) Bill
 - Corporate Insolvency and Governance Bill
 - Environment Bill
 - Fisheries Bill

- Immigration and Social Security Co-ordination (EU Withdrawal) Bill
- Trade Bill
- Internal Market Bill
- Covert Human Intelligence Sources (Criminal Conduct) Bill

COVID-19 legislation

10. In March 2020 (during the previous parliamentary year) the Committee considered the powers to make subordinate legislation conferred on Scottish Ministers in the UK Coronavirus Bill (now Coronavirus Act 2020). Shortly afterwards the Scottish Parliament considered the Coronavirus (Scotland) Bill. This was deemed an Emergency Bill, and all stages of the Bill were considered on 1 April 2020.
11. The subsequent Coronavirus (Scotland) (No.2) Billⁱ was also designated as an Emergency Bill, given the extent of the delegated powers in the proposed legislation the Committee was keen to consider whether there were any issues which it should highlight to the COVID-19 Committee ahead of its report on the Bill. It therefore wrote to both the COVID-19 Committee and the Cabinet Secretary for Government Business and Constitutional Relations with its findings. The Committee recommended that:
 ...it would be beneficial in the interests of effective scrutiny if the Scottish Government would review and report to the Scottish Parliament on all subordinate legislation made in response to the Coronavirus emergency, as if it were made under provisions of the Scottish Coronavirus Act or this Bill.
12. A subsequent amendment to the Bill led to a requirement for Scottish Ministers to report on the status of certain provisions. The Committee has since considered **four** reports on 'The Coronavirus Acts: Report to Scottish Parliament'. It has written to the COVID-19 Committee with its findings on each of these reports.
13. Also, in part because of suggestions made by the Committee, a Minister also provides details of each coronavirus SSI considered in the Chamber prior to the motion being considered by Parliament.

Law Reform

14. The Committee published its report on its review of the Presiding Officer's determination to identify a Scottish Law Commission Bill as defined in Rule 9.17A of Standing Orders in November 2020ⁱⁱ.
15. In December 2020, the Presiding Officer invited the Standards, Procedures and Public Appointments Committee ('SPPA Committee') to examine the findings of the

ⁱ [Correspondence from Delegated Powers and Law Reform Committee to COVID-19 Committee on the Coronavirus \(Scotland\) \(No.2\) Bill](#)

ⁱⁱ [DPLR Committee Report on its review of the Presiding Officer's determination to identify a Scottish Law Commission Bill](#)

Committee's reviewⁱⁱⁱ .

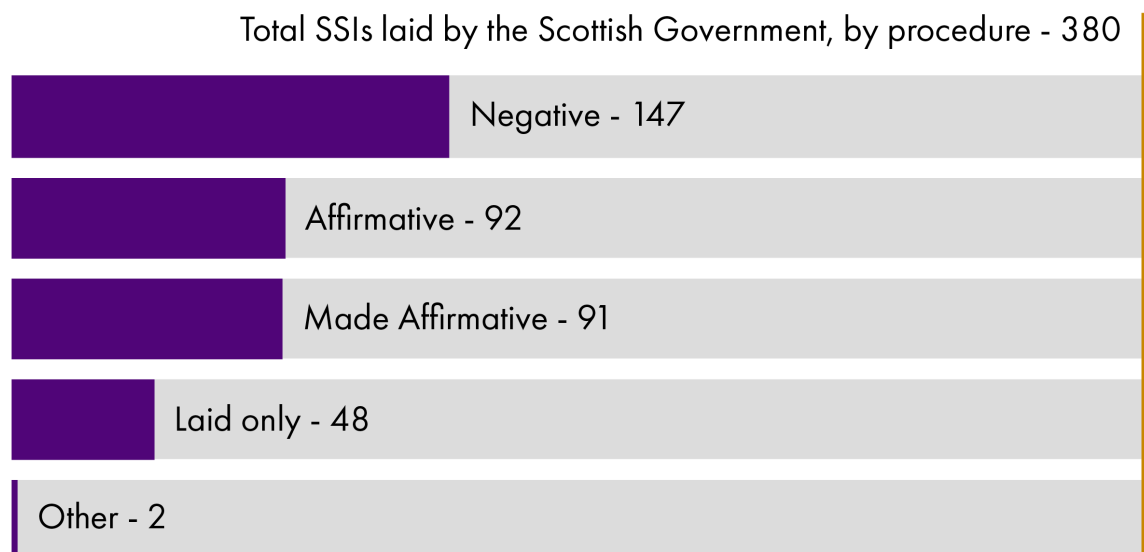
16. The Convener gave evidence to the SPPA Committee on 14 January 2021. It then wrote to the Presiding Officer to confirm that it was content with the revised determination^{iv} .

iii [Correspondence from the Presiding Officer to the SPPA Committee](#)

iv [Correspondence from the SPPA Committee to the Presiding Officer](#)

Subordinate Legislation

17. The Committee considered **394** SSIs during this parliamentary year^v; a rise in **34%** of SSIs considered in the 2019-20 parliamentary year period.
18. Working to tight timescales, the Committee also produced **36** SSI reports.
19. **380** of these instruments were laid by the Scottish Government and **14** by the Lord President's Private Office.
20. In relation to the **380** instruments laid by the Scottish Government:
 - **92** were subject to affirmative procedure;
 - **91** were subject to made affirmative procedure (the reason for the rise is due to the requirement for made affirmative instruments during the pandemic so as to allow the Government to respond quickly to the many challenges presented by coronavirus);
 - **147** were subject to negative procedure;
 - **48** were not subject to any parliamentary procedure (Laid only); and
 - **2** instruments/document subject to approval.



21. The significant rise in the number of SSIs considered in this parliamentary year is primarily due to instruments laid in relation to the UK leaving the EU and those laid in response to the coronavirus.

Instruments considered under the European Union (Withdrawal) Act 2018

22. The Committee considered **28** instruments laid under schedule 2 of the European Union (Withdrawal) Act 2018 ("the 2018 Act"). These instruments were considered

^v Total as at 19 March 2021

in terms of the protocol agreed with the Scottish Government and approved by the Committee. The protocol requires each instrument laid under schedule 2 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.

23. Of these 28 instruments, the Committee was content in all cases with the procedure chosen by the Scottish Government. On one occasion, the Committee recommended that the Scottish Government's categorisation of an instrument be raised from Medium to High significance.

Meetings

24. The Committee met **36** times during the parliamentary year.
25. As a result of the coronavirus pandemic:
- **25** of these meetings were held as 'hybrid meetings'. Some Members participated in the meeting in person in the Scottish Parliament and others participated remotely via the 'bluejeans' online platform; and
 - **11** meetings were held wholly virtually via 'bluejeans'.
26. Of these meetings, **none** were entirely in private and **five** were entirely in public. The main reasons for taking business in private were to consider the Committee's approach to delegated powers in bills, to consider draft reports or to consider oral evidence heard earlier in the meeting.



27. The Committee held **one** evidence session during this Parliamentary year:
- Graeme Dey MSP, Minister for Parliamentary Business and Veterans on the work of the Committee in the parliamentary year 2019-20 (29 September 2020).
28. The Committee published a total of **76** reports over this parliamentary year.



Equalities

29. The Committee considers equalities issues which can arise under the European Convention on Human Rights 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 that, in its opinion, fails to comply with any such requirement.

Gender Diversity Information

30. Of the 6 witnesses who appeared before the Committee, **3** were female and **3** were male. These witnesses were made up from the evidence session with the Minister for Parliamentary Business and Veterans as identified in the previous section, and the officials who accompanied him.

