



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 8 November 2023  
SP Paper 465  
66th Report, 2023 (Session 6)

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

## **Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 7 November 2023**

**Published in Scotland by the Scottish Parliamentary Corporate Body.**

---

All documents are available on the Scottish  
Parliament website at:  
[http://www.parliament.scot/abouttheparliament/  
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact  
Public Information on:  
Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

# Contents

<b>Introduction</b>	<b>1</b>
<b>Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament</b>	<b>2</b>
<b>No points raised</b>	<b>4</b>

# 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.



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party



**Mercedes Villalba**  
Scottish Labour

# Introduction

1. At its meeting on 7 November, the Committee<sup>i</sup> considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
  - [Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(SSI 2023/Draft\)](#)
2. The Committee's recommendations in relation to this instrument are set out in the next section of this report.
3. The Committee also determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

---

<sup>i</sup> Mercedes Villalba MSP submitted apologies for this meeting.

# Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament

## [Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(SSI 2023/Draft\)](#)

4. The instrument is made under the Retained EU Law (Revocation and Reform) Act 2023 (“the 2023 Act”). The purpose of the 2023 Act, in general, is to revoke certain retained EU law, to make provision relating to the interpretation of retained EU law and to enable the restatement, replacement and updating of retained EU law.
5. Section 5 of the 2023 Act changes the terminology of “retained EU law” to “assimilated law”. It also changes associated terms from “retained EU” (or “retained”) to “assimilated”, for example “retained EU case law” becomes “assimilated case law”. This change applies from the end of 2023. Section 5(4) provides that, where these terms exist in legislation, they are to be read at all times after the end of 2023 as references to the thing by its “assimilated” name. This is known as a “gloss” which in effect updates the statute book without making textual amendments. The Scottish Government explains in its Policy Note that it has nonetheless chosen to make textual amendments in order that the statute book is easier to read. The present instrument makes those amendments. The same approach is also being taken by the UK Government, which has laid an equivalent instrument.
6. Accordingly, the present instrument updates various pieces of primary and secondary legislation to replace the terminology of “retained EU law” and associated expressions with “assimilated law” and associated expressions.
7. Paragraph 3 of [schedule 1](#) of the instrument would amend the Freedom of Information (Scotland) Act 2002 (“FOI(S)A”) by changing “EU obligation” to “assimilated obligation” in two places: in FOI(S)A sections 26 and 45. This would change the references straight from “EU obligation” to “assimilated obligation”, skipping the step of amending them to “retained EU obligation”.
8. The instrument is made under section 19(1) of the 2023 Act, which enables the Scottish Ministers to make any provision they consider appropriate in consequence of that Act. The power enables the modification of any enactment, including primary legislation.
9. In [correspondence with the Scottish Government](#), the Committee queried paragraph 3 of schedule 1 of the instrument. The Committee noted that these references to “EU obligation” appeared not to have been updated previously to “retained EU obligation” and asked why the Scottish Government considered that the power in section 19 of the 2023 Act enabled this amendment to be made.
10. In its response, the [Scottish Government confirmed](#) that the references to “EU obligation” in these sections have not been updated to “retained EU obligation”. The Scottish Government advised that this change could have been made following enactment of the European Union (Withdrawal) Act 2018 (“EUWA”), but it did not

say why that was not done.

11. The Committee notes that there was formerly a specific power for changing references to “EU...” to “retained EU...” (such as changing “EU obligation” to “retained EU obligation”). This was the “deficiency-correcting” power in EUWA. The UK Parliament delegated that power only for a limited period of time, and provided for it to expire last year, on 31 December 2022. The UK Parliament also delegated a general power in EUWA to make such provision as is considered appropriate in consequence of that Act. That power still exists, but is available only to UK Ministers. The Committee notes that its predecessor committee, in its first [report on the Legislative Consent Memorandum on the European Union \(Withdrawal\) Bill](#) recommended that further thought be given to conferring this general consequential power also on the Scottish Ministers.
12. The Scottish Government indicated in its response to the Committee’s questions that it considers the amendments to FOI(S)A to be in consequence, in particular, of the establishment of “assimilated obligation” as a defined term within the body of assimilated law, including for the purposes of statutory interpretation, by sections 5 and schedule 2 of the 2023 Act.
13. The Committee notes that the term “EU obligation” in FOI(S)A is no longer a defined term, the definition (in the European Communities Act 1972) having been repealed on IP Completion Day, at the end of 2020. Accordingly it is unclear what those references currently mean, and it is not beyond doubt whether the new definition of “assimilated obligation” (with reference to “assimilated law”) encompasses them.
14. It appears to the Committee that the provision in question may be addressing a failure to have updated these sections in consequence of the EU Withdrawal Act 2018, rather than making provision that is properly in consequence of the 2023 Act.
15. There appears to be room for doubt that the provision in question is envisaged by and within the limits of the enabling power.
16. The lead committee for this instrument is the Constitution, Europe, External Affairs and Culture Committee.
17. The Committee draws the instrument to the attention of the Parliament on reporting ground (e), in that there appears to be a doubt whether paragraph 3 of schedule 1 is intra vires.



# No points raised

## Economy and Fair Work Committee

Public Procurement (Agreement on Government Procurement) (Thresholds) (Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/300)

## Education, Children and Young People Committee

Colleges of Further Education and Regional Strategic Bodies (Membership of Boards) (Scotland) Order 2023 (SSI 2023/Draft)

## Rural Affairs and Islands Committee

Quality Meat Scotland (Amendment) Order 2023 (SSI 2023/Draft)

Rural Support (Simplification and Improvement) (Scotland) Regulations 2023 (SSI 2023/308)

