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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

Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 9 May 2023



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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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Introduction

1. At its meeting on 9 Mayⁱ, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
 - International Organisations (Immunities and Privileges) (Scotland) Amendment Order 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.

ⁱ Oliver Mundell MSP submitted apologies for this meeting.

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

International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2023(SS1 2023/Draft)

4. This Order amends existing legislation to grant immunities and privileges, insofar as they are within devolved competence, to certain persons working with the International Criminal Police Organization - INTERPOL.
5. The Order states that the term "Member Country" has the meaning it has in the Constitution of INTERPOL. However, this term does not appear in INTERPOL's Constitution. It does appear in the Agreement between the UK and INTERPOL, which is referred to in the Order.
6. In response to a query from the Committee, the Scottish Government advised that the use of the term "Member Country" was intentional; that it has been used for consistency with the terms of the Agreement and with the related UK statutory instrument; and that this term has evolved into general use by INTERPOL.
7. The Committee considers nonetheless that the meaning of the term in the instrument could be clearer given that the instrument defines the term by reference to a document in which the term does not appear.
8. A copy of the correspondence can be found in the **Annex**.
9. The lead committee for this instrument is the Criminal Justice Committee.
10. **The Committee draws the instrument to the attention of the Parliament on reporting ground (h) on account that the meaning of the term "Member Country" could be clearer.**

No points raised

Criminal Justice Committee

Police Negotiating Board for Scotland (Constitution, Arbitration and Qualifying Cases) Regulations 2023 (SSI 2023/Draft).

Discontinuance of Cornton Vale Prison (Scotland) Order 2023 (SSI 2023/132)

Health, Social Care and Sport Committee

Health and Care (Staffing) (Scotland) Act 2019 (Commencement No. 1) Regulations 2023 (SSI 2023/131 (C.12))

Annex

International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2023 (SSI 2023/Draft)

On 27 April, the Committee asked the Scottish Government:

Paragraph 1(2) of new Schedule 20 (which is inserted into the principal Order by article 2(2) of the draft Order) provides that for the purposes of that schedule the term “Member Country” has the meaning it has in the Constitution of the Organisation. However, the term “Member Country” is not defined in, and does not appear in, the Constitution of the Organisation. Is this an error? We note that the term “Member Country” does appear in the Agreement referred to in article 1(2)(b) of the Order.

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 2 May 2023, the Scottish Government responded:

The drafting of paragraph 1(2) of schedule 20 was intentional, to follow closely the structure of the interpretative provision in Article 2.2 of the Host Agreement implemented by the Order. The Host Agreement seeks to pull through a number of terms from Interpol’s institutional/constitutional framework including, in addition to the term “Member Country”, the terms “General Assembly” and Executive Committee.

Article 2.2 defines the term “Member Countries” by reference to the Constitution of the Organisation, in the same terms as paragraph 1(2). Unlike the other terms, “Member Country” is unique in that the two words are not specifically used together as a single term in the text of the Constitution as originally drafted back in the 1950s but provision is made for the concept in Article 4. “Member Country” is the term used more generally within [Interpol](#), but also in the template treaty on which the Agreement was based), and in 2017 the INTERPOL General Assembly adopted a resolution clarifying the meaning of relevant provisions on membership within the Constitution, in particular, clarifying that the “Member” of Interpol is the relevant Member Country (also confirming that country in this context means ‘State’): see [process for membership of INTERPOL](#). The General Assembly made up of Member Countries has also approved the text of the Agreement which specifically ties the meaning of ‘Member Country’ to the Constitution as done in the Order.

We consider it is therefore clear from the terms of Article 2.2 and the Constitution that the reference to “Member Country” in the Order is to a country which has delegated a body in accordance with Article 4 of the Constitution.

Lastly, we would highlight that the aim is to implement the Host Agreement consistently across the UKⁱⁱ.

ii cf. the relative UK Order- [The International Criminal Police Organisation \(Immunities and Privileges\) Order 2023](#)

