



The Scottish Parliament
Pàrlamaid na h-Alba

Published 30 May 2023
SP Paper 377
34th Report, 2023 (Session 6)

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

Delegated Powers and Law Reform Committee Annual Report 2022-23



Published in Scotland by the Scottish Parliamentary Corporate Body.

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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



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. This Report covers the work of the Committee during the parliamentary year from 13 May 2022 to 12 May 2023. The Committee scrutinises Scottish Statutory Instruments ('SSIs'), delegated powers provisions within bills at Stage 1 and after Stage 2, as well as delegated powers provisions within UK bills which confer powers on Ministers to make subordinate legislation within devolved competence.

Committee Members



Membership changes

2. There were four membership changes in the reporting year:

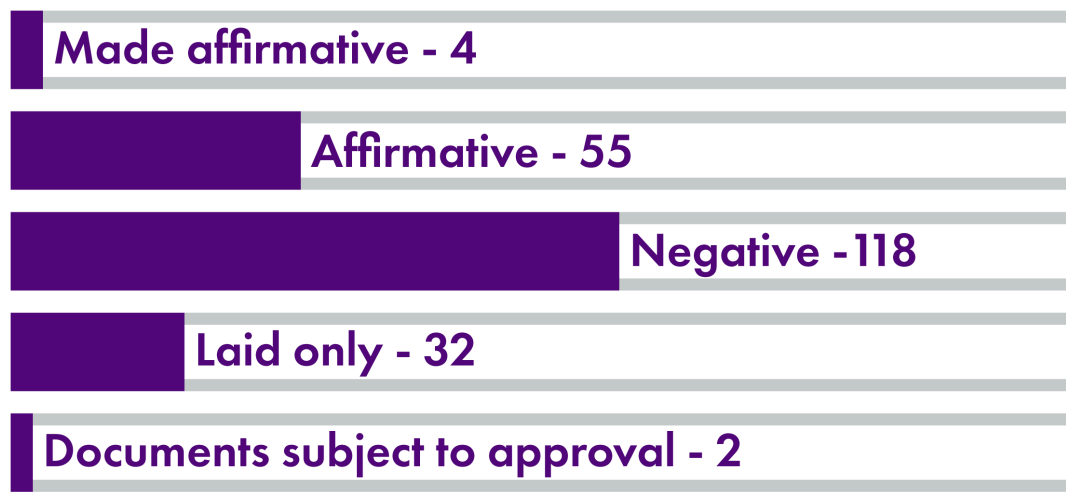
- Craig Hoy left the Committee on 25 May 2022 and was replaced by Jeremy Balfour;
- Graham Simpson left the Committee on 22 September 2022 and was replaced by Oliver Mundell;
- Paul Sweeney left the Committee on 19 January 2023 and was replaced by Carol Mochan; and
- Carol Mochan left the Committee on 25 April 2023 and was replaced by Mercedes Villalba.

Subordinate Legislation

3. The Committee considered 222 SSIs during this parliamentary yearⁱ; a decrease of 50% when compared to the number of SSIs considered in the 2021-22 parliamentary year period.
4. 209 of these instruments were laid by the Scottish Government and 13 by the Lord President's Private Office.
5. In relation to the 209 instruments laid by the Scottish Government:
 - 4 were subject to made affirmative procedure;
 - 55 were subject to affirmative procedure;
 - 118 were subject to negative procedure;
 - 30 were not subject to any parliamentary procedure (Laid only); and
 - 2 document subject to approval.
6. Working to tight timescales, the Committee produced 34 SSI reports.

SSIs laid by the Scottish Government

Total SSIs laid by the Scottish Government - 211



ⁱ Total as of 12 May 2023

Bills

Introduction

7. 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.
8. 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.
9. Over the reporting period, the Committee considered and reported on 10 bills at Stage 1:
 - [Moveable Transactions \(Scotland\) Bill](#)
 - [Patient Safety Commissioner for Scotland Bill](#)
 - [Stage 1 Report on the Moveable Transactions \(Scotland\) Bill](#)
 - [Disabled Children and Young People \(Transitions to Adulthood\) \(Scotland\) Bill](#)
 - [Bail and Release from Custody \(Scotland\) Bill](#)
 - [Trusts and Succession \(Scotland\) Bill](#)
 - [Budget \(Scotland\) \(No.2\) Bill](#)
 - [National Care Service \(Scotland\) Bill](#)
 - [Charities \(Regulation and Administration\) \(Scotland\) Bill](#)
 - [Children \(Care and Justice\) \(Scotland\) Bill](#)
10. The Committee also considered and reported on four bills after Stage 2:
 - [Good Food Nation \(Scotland\) Bill](#)
 - [Fireworks and Pyrotechnic Articles \(Scotland\) Bill](#)
 - [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill](#)
 - [Delegated powers provisions in the Moveable Transactions \(Scotland\) Bill](#)

Legislative Consent Memorandums

Introduction

11. 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.
12. At its meeting on [Tuesday 22 November 2022](#), the Committee's position in relation to powers in UK bills conferred on UK Ministers in devolved areas, in general terms, was changed to:
 - a. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
 - b. Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
 - c. If such powers contain a requirement for the Scottish Ministers' consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers' consent decision. The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers' consent and may suggest matters for the lead committee to consider.
 - d. As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the SI Protocol 2 where the power is within the scope of that protocol.
13. The Committee considered and reported on 14 LCM's :
 - [Online Safety Bill](#)
 - [Trade \(Australia and New Zealand\) Bill](#)
 - [Procurement Bill](#)
 - [UK Infrastructure Bank Bill](#)
 - [UK Northern Ireland Protocol Bill](#)
 - [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)
 - [Levelling Up and Regeneration Bill](#)
 - [Public Order Bill](#)
 - [UK Infrastructure Bank Bill \(Supplementary\)](#)
 - [Retained EU Law \(Revocation and Reform\) Bill](#)
 - [Shark Fins Bill](#)
 - [Energy Bill](#)

- [Procurement Bill \(Supplementary\)](#)
- [Powers of Attorney Bill](#)

Primary legislation

Moveable Transactions (Scotland) Bill

14. The [Bill](#) was introduced on 25 May 2022 by Keith Brown MSP, who at that time was the Cabinet Secretary for Justice. Tom Arthur MSP, Minister for Community Wealth and Public Finance, was the lead minister on the Bill.
15. The purpose of the Bill is to modernise the law of Scotland in relation to transactions concerning moveable property (referred to as the law of moveable transactions).
16. The Committee heard from the Scottish Law Commission, academics, the legal profession, consumer and money advice stakeholders, financial and business representatives, Registers of Scotland and, the then Minister for Public Finance, Planning and Community Wealth, Tom Arthur MSP.
17. The Committee's [Stage 1 report](#), including detailed recommendations, was published on 2 December 2022; the Stage 1 Chamber debate was held on 13 December 2022.
18. Stage 2 of the Bill was considered by the Committee on 21 March 2023. Stage 3 took place in the Chamber on 4 May 2023. A number of the recommendations made by the Committee in its Stage 1 Report were included in the final Bill.

Trusts and Succession (Scotland) Bill

19. The [Bill](#) was introduced on 22 November 2022. It aims to change the law in relation to two areas:
 - trusts: how they are administered and managed; and
 - succession: who has the right to inherit and in what order when someone dies without a will.
20. As part of its scrutiny of the Bill, the Committee heard evidence from the Scottish Law Commission, the Scottish Government Bill team, and legal academics within the reporting period covered by this report. It has also heard from legal practitioners, users of Trusts, and will hear from the Minister for Victims and Community Safety, Siobhian Brown MSP at its meeting on 6 June 2023.

European Union (Withdrawal) Act 2018

Instruments considered under the European Union (Withdrawal) Act 2018

21. The [SSI Protocol](#) was designed to ensure that SSIs laid by the Scottish Government under the European Union (Withdrawal) Act 2018 ('the 2018 Act'), to fix legislative deficiencies stemming from the UK leaving the EU, received the right level of careful scrutiny.
22. The Committee [recommended](#), along with the Constitution, Europe, External Affairs and Culture Committee and the Conveners Group, that the SSI protocol be discontinued. The Minister for Parliamentary Business [responded](#) and agreed to this change.

Meetings

23. The Committee met 34 times during the parliamentary year.
24. Of these meetings, none were entirely in private and three were entirely in public, leaving 31 meetings with some items in public and some in private. 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.
25. During the parliamentary year, the Committee held two evidence sessions with George Adam MSP, Minister for Parliamentary Business on the work of the Committee.

Statistics on Meetings, Reports and SSIs



Committee meetings



Reports published



SSIs considered

Equalities

26. It is part of the Committee's remit to consider whether legislation is compatible with Convention Rights as set out in the Humans Rights Act 1998. The Committee will draw the attention of the lead committees and the parliament to any instrument that, in its opinion, may not be compatible with those rights.

