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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 26 September 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.



[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 26 September, the Committee considered the following instruments under its remit and agreed to not draw them to the attention of the Parliament.

## **No points raised**

### Criminal Justice Committee

International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2023 (SSI 2023/Draft)

Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension and Expiry of Temporary Justice Measures) Regulations 2023 (SSI 2023/Draft)

### Equalities, Human Right and Civil Justice Committee

Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 4) Regulations 2023 (SSI 2023/Draft)

### Health, Social Care and Sport Committee

Health and Care Professions Council (Miscellaneous Amendment) Rules Order of Council 2023 (SI 2023/995)

### Net Zero, Energy and Transport Committee

Transport (Scotland) Act 2019 Amendment Regulations 2023 (SSI 2023/Draft)

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023 (SI 2023/Draft)

Road Traffic (Permitted Parking Area and Special Parking Area) (North Ayrshire Council) Designation Order 2023 (SSI 2023/249)

- A copy of the correspondence can be found in the Annex.

### Rural Affairs and Islands Committee

Hunting with Dogs (Scotland) Act 2023 (Commencement) Regulations 2023 (SSI 2023/262 (C.21))

### Social Justice and Social Security Committee

Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (SSI 2023/Draft)

Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023 (SSI 2023/258)

# Annex

## **Road Traffic (Permitted Parking Area and Special Parking Area) (North Ayrshire Council) Designation Order 2023 (SSI 2023/249)**

On 14 September 2023, the Committee asked the Scottish Government:

Article 4 of the instrument applies provisions of the Road Traffic Act 1991, subject to the modifications that are listed in schedule 2.

Paragraph 4 of schedule 2 modifies section 72 of the 1991 Act, with paragraph 4(3) omitting sub-sections (2) and (3). Paragraph 5 modifies section 73 of the 1991 Act, with paragraph 5(2) omitting (among others) sub-section (3).

Paragraph 5(3) of schedule 2 then inserts sub-section (3A) into section 73 of the 1991 Act after sub-section (3). The modified section 73(3A)(b) refers to sections 72(2) and 73(3), but both of these have been omitted as explained above. Are these references to sections 72(2) and 73(3) intentional? Please confirm whether any corrective action is proposed, and if so, what action and when.

On 19 September 2023, the Scottish Government responded:

The references to sections 72(2) and 73(3) of the Road Traffic Act 1991 (“the 1991 Act”) are intentional and, that being so, no corrective action is needed.

Prior to 1 April 2020, under the 1991 Act, appeals on decisions by local authorities in respect of decriminalised parking regimes were heard by parking adjudicators. Adjudicators were appointed by the traffic commissioner, with the consent of the Lord Advocate.

In 2014, section 27(1) of the Tribunals (Scotland) Act 2014 gave effect to Part 1 of schedule 1 of that Act which listed tribunals from which the functions and members were to be transferred to the Scottish Tribunals by way of regulations made under section 28 (transfer-in of functions) and section 29 (transfer-in of members). The parking adjudicators are a listed tribunal.

The functions exercisable by a parking adjudicator (sections 72(2), 73(3) and paragraph 5(2) of schedule 6 of the 1991 Act) were transferred to the First-tier Tribunal for Scotland by the First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020/95 (“the 2020 Regulations”). Section 72(2) provided for how parking adjudicators should determine appeals and section 73(3) provided for the appointment of parking adjudicators. Following their transfer to the First-tier Tribunal, these functions under the 1991 Act no longer require to be applied and modified for individual decriminalised parking areas because the relevant functions are subsumed into the general statutory framework regulating that Tribunal (see, for example, the amendments made by paragraph 1(3)(c)(i) of schedule 2 of the 2020 Regulations).

However, provision is required to ensure that the Council in a decriminalised parking area (in this case North Ayrshire Council) is responsible for the costs incurred by the Scottish Courts and Tribunals Service in carrying out the functions of the First-tier Tribunal which were transferred under the 2020 Regulations. This is achieved by section 73(3A) of the 1991 Act which in effect provides that North Ayrshire Council are responsible for meeting

the costs to the Scottish Courts and Tribunals Service of exercising those transferred functions.



