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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 16 April 2024**



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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



**Foyso Choudhury**  
Scottish Labour



**Tim Eagle**  
Scottish Conservative  
and Unionist Party



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 16 April<sup>i</sup>, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
  - Scottish Local Government Elections Amendment (Denmark) Regulations 2024 (SSI 2024/101)
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.

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<sup>i</sup> Alexander Stewart MSP substituted for Tim Eagle MSP

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

## Scottish Local Government Elections Amendment (Denmark) Regulations 2024 (SSI 2024/101)

4. The instrument is made under a power in the Local Government (Scotland) Act 1973 ("the 1973 Act").
5. It adds Denmark to the list of countries whose citizens are eligible to stand for election as members of a local authority in Scotland if they have leave to enter or remain in the UK. This implements an international agreement between the UK and Denmark on reciprocal rights to stand in elections.
6. The 1973 Act requires the Scottish Government to make regulations to add a country to this list when:
  - the UK becomes party to a relevant treaty; and
  - the requirements for approval of the Treaty by the UK Parliament have been met.
7. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument breaches this requirement as it was laid on 26 March 2024 and came into force on 7 May 2024.
8. The Scottish Government wrote to the Presiding Officer stating that the breach had occurred as it could not lawfully make regulations to implement the Treaty until after the UK Parliament completed its scrutiny process, which ended on 25 March. A copy of the correspondence can be found in the Annex.
9. The Treaty is expected to come into force on 7 May, at which point the provision in the instrument must be in place to comply with the UK's international obligations.
10. The lead committee for this instrument is the Standards, Procedures and Public Appointments Committee.
11. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
12. **The Committee is content with the explanation provided by the Scottish Government for the failure to comply with the laying requirements.**

# No points raised

## Equalities, Human Rights and Civil Justice Committee

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (National Security Prevention and Investigation) 2024 (SSI 2024/84)

## Net Zero, Energy and Transport Committee

Transport Partnerships (Transfer of Functions) (Scotland) Order 2024 (SSI 2024/Draft)

## Rural Affairs and Islands Committee

Sea Fisheries (Remote Electronic Monitoring and Regulation of Scallop Fishing) (Scotland) Regulations 2024 (SSI 2024/Draft)

Avian Influenza (Preventive Measures) (Scotland) Amendment Order 2024 (SSI 2024/87)



# Annex

## Scottish Local Government Elections Amendment (Denmark) Regulations 2024 (SSI 2024/101)

On 26 March 2024, the Scottish Government wrote to the Presiding Officer:

The Scottish Local Government Elections Amendment (Denmark) Regulations 2024, SSI 2024/101 was made by the Scottish Ministers under powers conferred by paragraph 2 of schedule 6A of the Local Government (Scotland) Act 1973 on 26 March 2024. It is being laid before the Scottish Parliament today, 26 March and comes into force on 7 May 2024.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. To meet the requirements of section 31(3) that Act, this letter explains why.

### Reason for non-compliance

Schedule 6A of the Local Government (Scotland) Act 1973 requires Scottish Ministers to bring regulations adding a country to the list in Schedule 6A where:

- (a) the United Kingdom and the country intend to become parties to a relevant treaty, and
- (b) section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) applies in relation to the relevant treaty and the requirements of that section have been met such that the relevant treaty may be ratified.

The Scottish Local Government Elections Amendment (Denmark) Regulations 2024 amend the Local Government (Scotland) Act 1973 to add Denmark to the list of countries in schedule 6A of that Act for the purposes of candidacy rights in Scottish local government elections.

The Regulations seek to give full effect in Scotland to the bilateral treaty signed by the UK Government with the Denmark seeking to ensure that Danish nationals living in the UK and UK nationals living in Denmark can exercise voting and candidacy rights in local elections. The Agreement, done at Copenhagen on 8 February, between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other, was laid before the [UK Parliament on 20 February 2024](#) under section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification).

The [treaty](#) completed its 21-day scrutiny process on 25 March and is expected to come into force on 7 May.

Paragraph 2(b) of schedule 6A of the Local Government (Scotland) Act 1973 means that the power in paragraph 1 of schedule 6A cannot be exercised until after the UK Parliament completed its scrutiny process on 25 March 2024. As a result, and in order for these Regulations to implement the treaty in respect of Scottish local government elections by 7 May 2024, the 28-day period has not been met in this instance.

