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Delegated Powers and Law Reform Committee

Annual report of the Delegated Powers and Law Reform Committee 2023-24



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Contents

Introduction	1
Meetings	2
Legislation	3
Bills	3
Subordinate legislation	5
Legislative Consent Memorandums	5
Highlighted scrutiny	7
Equal opportunities	8

Delegated Powers and Law Reform Committee

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;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(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



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Scottish Conservative
and Unionist Party



Oliver Mundell
Scottish Conservative
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Introduction

1. This Report covers the work of the Committee during the parliamentary year from 13 May 2023 to 12 May 2024. 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.
2. There were 4 membership changes in the reporting year:

Members

- Mercedes Villalba MSP left the Committee on 16 November 2023 and was replaced by Colin Smyth MSP.
- Colin Smyth MSP left the Committee on 31 January 2024 and was replaced by Foyso Choudhury MSP.
- Jeremy Balfour MSP left the Committee on 21 March 2024 and was replaced by Tim Eagle MSP.

Substitute Members

- Maurice Golden MSP left the Committee on 29 June 2023 and was replaced by Alexander Stewart MSP.

Meetings

3. The Committee met 35 times during the parliamentary year, all of those meetings included a mixture of public and private items.

Legislation

Bills

4. 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 whether a power should be delegated, the scope of delegated powers and whether parliamentary procedures that would apply to subordinate legislation brought under the power would offer the appropriate level of scrutiny.
5. Through its scrutiny process, the Committee aims to ensure that the appropriate balance is struck in Bills between primary and secondary legislation. That is, between the provision being set out in full in the Bill itself or the Bill conferring a power on Ministers to make the provision in subordinate legislation. The Committee also aims to ensure that the Parliament will have appropriate scrutiny of subordinate legislation made under powers conferred by the Bill.
6. Over the reporting period, the Committee considered and reported on 18 bills at Stage 1-
 - Bankruptcy and Diligence (Scotland) Bill
 - Wildlife Management and Muirburn (Scotland) Bill
 - Regulation of Legal Services (Scotland) Bill
 - Visitor Levy (Scotland) Bill
 - Welfare of Dogs (Scotland) Bill
 - Circular Economy (Scotland) Bill
 - Victims, Witnesses, and Justice Reform (Scotland) Bill
 - Scottish Employment Injuries Advisory Council Bill
 - Abortion Services (Safe Access Zones) (Scotland) Bill
 - Police (Ethics, Conduct and Scrutiny) (Scotland) Bill
 - Agriculture and Rural Communities (Scotland) Bill
 - Judicial Factors (Scotland) Bill
 - Housing (Cladding Remediation) (Scotland) Bill
 - Budget (Scotland) (No. 3) Bill
 - Social Security (Amendment) (Scotland) Bill
 - Scottish Languages Bill
 - Aggregates Tax and Devolved Taxes Administration (Scotland) Bill

- Scottish Elections (Representation and Reform) Bill
7. The Committee also considered and reported on 7 bills after Stage 2-
- Bail and Release from Custody (Scotland) Bill after Stage 2
 - Charities (Regulation and Administration) (Scotland) Bill after Stage 2
 - Trusts and Succession (Scotland) Bill after Stage 2
 - Wildlife Management and Muirburn (Scotland) Bill after Stage 2
 - Children (Care and Justice) (Scotland) Bill after Stage 2
 - Visitor Levy (Scotland) Bill after Stage 2
 - Bankruptcy and Diligence (Scotland) Bill after Stage 2

Scottish Law Commission Bills

8. The Committee also considers certain Scottish Law Commission ('SLC') bills and is the lead committee considering all aspects of the bill, including the policy.
9. Over the reporting period, the Committee considered the following SLC bills.

Trusts and Succession(Scotland) Bill

10. The [Bill](#) was introduced on 22 November 2022. Its purpose is 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.

As part of its scrutiny of the Bill, the Committee heard evidence from the SLC, the Scottish Government Bill team, legal academics, legal practitioners and users of Trusts. For its final evidence session, the Committee heard from the Minister for Victims and Community Safety, Siobhian Brown MSP.

The Committee's [Stage 1 report](#) was published on 15 September 2023. The Stage 1 Chamber debate was held on 28 September 2023.

Stage 2 of the Bill was considered by the Committee on 14 November 2023. Stage 3 took place in the Chamber on 20 December 2023.

Judicial Factors Bill

11. The [Bill](#) was introduced on 5 December 2023 and aims to reform the existing law associated with judicial factors.

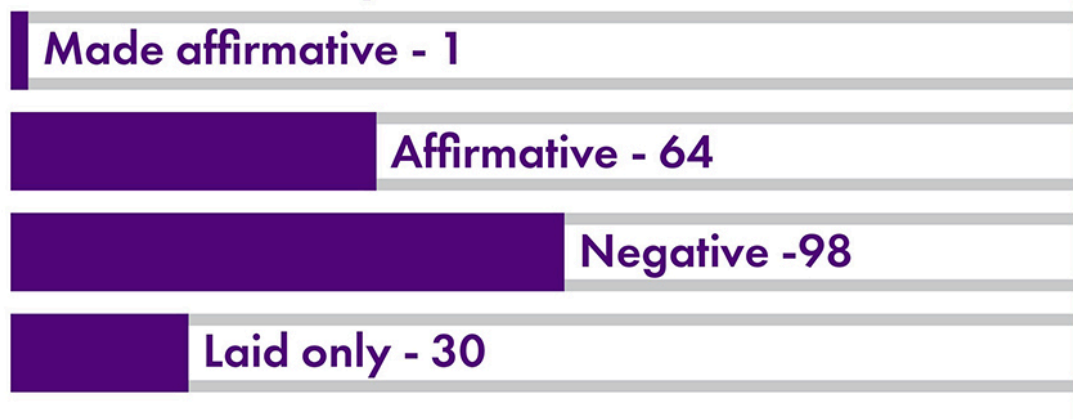
A judicial factor is a person appointed by the court to manage property which is not being properly managed, or would not otherwise be properly managed. At present, most individuals appointed are legal and financial professionals.

As part of its scrutiny of the Bill, the Committee heard evidence from the SLC and the Scottish Government Bill team. It has also heard from academics, legal practitioners, the organisation Missing People and the Scottish Courts and Tribunal Service. Finally, the Committee heard from the Minister for Victims and Community Safety, Siobhian Brown MSP at its meeting on 7 May 2024. It is anticipated that the next stages of the Bill will complete in the next parliamentary year.

Subordinate legislation

12. The Committee considered 203 SSIs during this parliamentary year and 4 Documents subject to parliamentary control.
13. 193 of these instruments were laid by the Scottish Government and 10 by the Lord President's Private Office.
14. In relation to the 193 SSIs laid by the Scottish Government:
 - 1 was subject to made affirmative procedure;
 - 64 were subject to affirmative procedure;
 - 98 were subject to negative procedure; and
 - 30 were not subject to any parliamentary procedure (Laid only).

Total SSIs laid by the Scottish Government - 193



15. The Committee produced 35 Subordinate Legislation reports.

Legislative Consent Memorandums

16. Legislative Consent Memorandums ('LCMs') relate to consent for UK Parliament bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters.

17. The Committee considered and reported on 16 LCM's. A breakdown is provided below:

LCMs

- Economic Crime and Corporate Transparency Bill (UK Parliament legislation)
- Data Protection and Digital Information (No.2) Bill (UK Parliament legislation)
- Economic Activities of Public Bodies (Overseas Matters) Bill (UK Parliament legislation)
- Energy Bill (UK Parliament legislation)
- Animal Welfare (Livestock Exports) Bill (UK Parliament legislation)
- Investigatory Powers (Amendment) Bill (UK Parliament legislation)
- Automated Vehicles Bill (UK Parliament legislation)
- Victims and Prisoners Bill (UK Parliament legislation)

Supplementary LCM's

- Electronic Trade Documents Bill (UK Parliament legislation)
- Economic Crime and Corporate Transparency Bill (UK Parliament legislation)
- Data Protection and Digital Information (No2) Bill (UK Parliament legislation)
- Levelling-up and Regeneration Bill (UK Parliament legislation)
- Criminal Justice Bill (UK Parliament legislation)
- Automated Vehicles Bill (UK Parliament legislation)
- Data Protection and Digital Information Bill (UK Parliament legislation)
- Retained EU Law (Revocation and Reform) Bill

Highlighted scrutiny

Regulation of legal services

18. The Committee took oral evidence on the Bill and worked closely with stakeholders and the Equalities, Human Rights and Civil Justice Committee to make recommendations in relation to the delegated powers which the Scottish Government has accepted and which is expected to lead to significant alternations to the Bill.

Trusts and Succession (Scotland) Bill

19. The Committee managed to successfully influence the Bill at Stages 1 and 2, with amendments including clarifying the ability of trustees to make ethical, social and governance-based investments.

Minister for Parliamentary Business

20. The Committee held two further bi-annual meetings with the former Minister for Parliamentary Business, George Adam MSP, as part of its ongoing commitment to scrutinising and pushing for the Scottish Government to maintain high standards for matters within the remit of the Committee.

Equal opportunities

21. 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.
22. The Committee is keen to ensure that it hears from a diverse range of people when taking evidence. It asks witnesses to fill out diversity questionnaires following appearance at the Committee.

