



The Scottish Parliament
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 28 May 2024



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Contents

Introduction	1
Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament	2
No points raised	3
Annexe	4

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 28 May, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
 - Sheriff (Removal from Office) Order 2024 (SSI 2024/148).
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.

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

Sheriff (Removal from Office) Order 2024 (SSI 2024/148)

4. The Order is made under [section 25](#) of the Courts Reform (Scotland) Act 2014 ("the 2014 Act"). It removes an individual from the office of Sheriff.
5. The Order is made by the First Minister.
6. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 2010 Act"), instruments subject to the negative procedure must be laid at least 28 counting days before they come into force. The instrument breaches this requirement as it was laid on 21 May 2024 and comes into force on 7 June 2024.
7. As required by the 2010 Act, the Scottish Government wrote to the Presiding Officer setting out its reasons for breaching the 28 day rule. This letter is set out in full in the annexe.
8. The lead committee for this instrument is the Criminal Justice Committee.
9. **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.**

No points raised

Criminal Justice Committee

Bail and Release from Custody (Scotland) Act 2023 (Commencement No. 1) Regulations 2024 (SSI 2024/145 (C.13))

Education, Children and Young People

Teachers' Pension Scheme (Scotland) Amendment Regulations 2024 (SSI 2024/147)

Rural Affairs and Islands Committee

Seed (Fees) (Scotland) Amendment Regulations 2024 (SSI 2024/146)

Social Justice and Social Security Committee

Proposed Revised Social Security Charter (SG/2024/96)

Annexe

Sheriff (Removal from Office) Order 2024 (SSI 2024/148)

On 21 May 2024, the Scottish Government wrote to the Presiding Officer:

The Sheriff (Removal from Office) Order 2024 has today been made by the First Minister under section 25(2) of the Courts Reform (Scotland) Act 2014, and is also to be laid in the Scottish Parliament today.

This instrument is subject to negative procedure, and is due to come into force on 7 June 2024.

Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to this procedure must be laid before the Scottish Parliament at least 28 days before they are to come into force. The laying of this instrument does not comply with this requirement, and I am writing to explain why this approach has been taken in this case, in accordance with section 31(3) of that Act.

The instrument is being made following a report from an independent tribunal constituted under section 21 of the Courts Reform (Scotland) Act 2014 to report into Sheriff John Albert Brown's fitness for office. The tribunal unanimously reported that the sheriff was unfit to hold judicial office by reason of misbehaviour. On 26 April 2024, the First Minister laid that report before the Scottish Parliament, in accordance with section 24(2) of that Act. Under section 25(1) of that Act, the First Minister may remove that individual from office by order if a tribunal has reported to the First Minister that an individual is unfit to hold office by reason of inability, neglect or misbehaviour, and that report has been laid before Parliament. Following a period of two weeks in which the sheriff was invited to make representations to the First Minister, and due consideration of those representations, the First Minister has made the order to have the sheriff removed from office.

The Scottish Government considers that the order to remove the sheriff from judicial office should come into effect as soon as reasonably possible. Given the nature and gravity of the tribunal's findings, we consider that there is an imperative to remove the office holder in order to maintain public trust and confidence in the due administration of justice in our courts. This matter has taken some time, with a new tribunal having to be appointed following a successful judicial review, questions asked by MSPs and public awareness and media comment on the fact that the sheriff has remained suspended on full pay throughout. Now that the tribunal's report has been laid before the Scottish Parliament, and in light of its findings that the sheriff is unfit to hold that office, we consider that the sheriff should not continue to hold that office, or continue to be paid the associated salary for any longer than absolutely necessary. We have also taken account of the fact that the sheriff may elect to resign from office shortly in light of the tribunal's findings. It is nonetheless considered appropriate taking account of the report to have the sheriff formally removed in light of the considerations of public confidence noted above.

It is therefore considered that the order should be made as a matter of urgency. Rather than seeking to bring the Order into force immediately, the date of Friday 7 June 2024 has been chosen as the earliest date by which this could reasonably be achieved while ensuring that there is an opportunity for Parliament to consider. The Government is keenly aware of the importance of the 28 day rule to ensure due scrutiny of statutory instruments can take place, but considers that taking into account all the circumstances in this case

there are good grounds to breach that rule in this case in order to ensure swift action is taken.

