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

Delegated powers in the Leases (Automatic Continuation etc.) (Scotland) Bill at Stage 1



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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



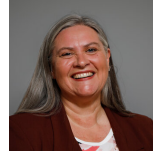
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Roz McCall
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and Unionist Party



Katy Clark
Scottish Labour

Introduction

1. At its meeting on 18 February 2025ⁱ, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated power contained in the [Leases \(Automatic Continuation etc.\) \(Scotland\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

ⁱ Stuart McMillan MSP and Katy Clark MSP submitted their apologies for this meeting.

Overview of the Bill

3. This Scottish Government Bill was introduced on 11 December 2024.
4. The Delegated Powers and Law Reform Committee has been designated as the lead committee given its remit includes looking at certain Bills which are based on reports from the Scottish Law Commission (“Commission”).
5. The Bill implements the Commission’s recommendations on the law of lease termination, contained in the [Report on Aspects of Leases: Termination](#).
6. The stated purpose of the Bill is to modernise and clarify the law around how certain leases can continue automatically past their termination date, and other procedural elements related to ending leases.
7. The current law of lease termination is governed by the common law (principally developed by the decisions of the courts) doctrine of “tacit relocation”. The default position is that leases will automatically repeat unless the parties to the lease take steps to stop that happening.
8. This Bill proposes to reform the law in this area and replace it with a statutory rule of “automatic continuation”.

Delegated powers

9. The Bill confers two powers to make subordinate legislation on the Scottish Ministers.
10. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”). It sets out the reasons for taking the delegated powers in the Bill and the procedure chosen.

Review of relevant powers

Section 33: Ancillary provision

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative procedure if making textual amendments to an Act but otherwise negative

Provision

11. Section 33 provides that the Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Bill.
12. The Bill, if enacted in this form, will allow regulations made under this section to be subject to the negative procedure, unless they add to, replace or omit any part of the text of an Act in which case they are subject to the affirmative procedure.

Committee consideration

13. The DPM states this is to allow flexibility when implementing the Bill or otherwise to address any unforeseen circumstances which may arise.
14. This power is similar in terms to other ancillary powers that the Committee has scrutinised in most Bills. The extent of the power is restricted as it can only be used for the purposes of giving full effect to the Bill as enacted and any provision made under it. The power allows issues of an ancillary nature which may arise to be dealt with effectively by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which the Committee considers would not be an effective use of either the Parliament's time or the Scottish Government's resources.
15. If the power is exercised to make regulations that seek to amend primary legislation, then the affirmative procedure applies. The negative procedure will apply where no modifications to primary legislation are included in the regulations.

16. **The Committee finds the power acceptable in principle and is content with the specified parliamentary procedures which are dependent on whether or not the power is exercised to amend primary legislation.**

Section 35(2) to (4): Commencement

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

17. Section 35(2) to (4) provides that the Scottish Ministers may by regulations appoint days on which provisions of the Bill will come into force other than sections 32, 33, 35 and 36 which come into force on the day after Royal Assent. Regulations under section 35 may include transitional, transitory or saving provision and may make different provision for different purposes.

Committee consideration

18. The DPM explains that the Scottish Ministers consider it appropriate to bring the substantive provisions of the Bill into force at a date that they consider suitable. The DPM adds that the coming into force of the Bill's substantive provisions will have implications for parties involved in commercial leases.
19. It is standard to take a power at the end of a Bill to commence those sections of the Bill where provision has not been made in the Bill for commencement. This allows the Scottish Ministers to appoint the day on which those sections are to be commenced.
20. It is also standard that commencement regulations are laid before the Parliament but not subject to further parliamentary procedure.

21. **The Committee is content with the power in principle, and that it is not subject to any parliamentary procedure.**

