

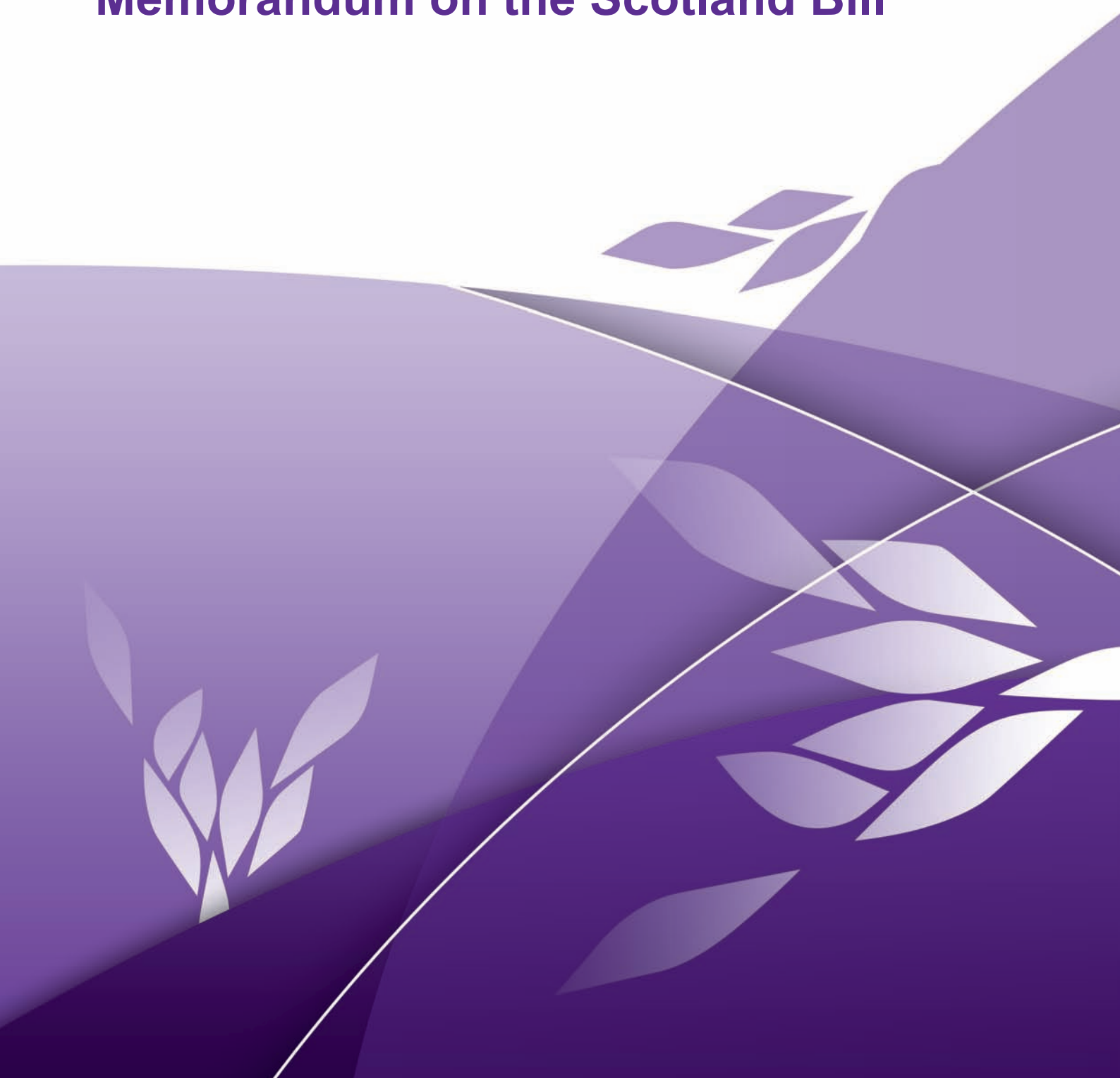


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Delegated Powers and Law Reform Committee

# Supplementary Legislative Consent Memorandum on the Scotland Bill



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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—

- 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; and
- 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; and
- i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.



[scottish.parliament.uk/delegated-powers](http://scottish.parliament.uk/delegated-powers)



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## Committee Membership



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Scottish Labour



**John Scott**  
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and Unionist Party



**Stewart Stevenson**  
Scottish National Party



# Introduction

1. At its meeting 8 March 2016, the Committee considered the provisions in the Scotland Bill (UK Parliament legislation) (“the Bill”)<sup>1</sup> that confer powers to make subordinate legislation on the Scottish Ministers.
2. The Bill was introduced to the House of Commons. It had its report stage in the House of Lords on 29 February 2016. The long title of the Bill states that it will amend the Scotland Act 1998 and make provision about the functions of the Scottish Ministers, and for connected purposes.
3. The majority of the provisions in the Bill set out the powers that are being transferred to the Scottish Parliament and/or the Scottish Ministers. In particular the Bill amends the Scotland Act 1998 and alters the devolved and reserved responsibilities between the administrations. The Bill also includes provisions as to the constitutional relationship of the Scottish Parliament and the Scottish Government within the United Kingdom’s constitutional arrangements.
4. The draft legislative consent motion, which will be lodged by the Deputy First Minister and Cabinet Secretary for Finance, Constitution & Economy, is:
  - ” That the Parliament notes the agreement on a fiscal framework for the Scotland Bill published by the Scottish and UK Governments on 25 February 2016, and agrees that the Scotland Bill, introduced in the House of Commons on 28 May 2015, as amended, should be considered by the UK Parliament.
5. The lead Committee in respect of this legislative consent motion and the Supplementary Legislative Consent Memorandum lodged by the Scottish Government (“LCM”)<sup>2</sup> is the Devolution (Further Powers) Committee.
6. The LCM was considered by the Committee under Rule 9B.3.6. The Committee is required to consider, and may report to the lead committee on, any provision in a Bill which is subject to a legislative consent memorandum which confers power on the Scottish Ministers to make subordinate legislation. In relation to an LCM for UK Parliament legislation, the Committee’s role is to report to the lead Committee considering the Bill, as to whether it considers it to be appropriate in principle for powers to be delegated to the Scottish Ministers, whether the terms of the power are appropriately drawn, and whether the level of scrutiny applied to the exercise of powers is appropriate.

## Delegated Powers Provisions

7. This report refers to clauses and Schedules in the Bill which confer powers on the Scottish Ministers to make subordinate legislation, as set out below.
8. There is no delegated powers memorandum available for the Committee's consideration, but this is normal for UK Bills.
9. The Committee has considered the Bill as amended on report in the House of Lords. It reports that it does not need to draw the attention of the lead Committee to the delegated powers provisions listed below, and that it is content with the parliamentary procedure which the powers are subject to:
  - Clause 4 – Power to make provision about elections
  - Clause 5 – Timing of elections
  - Clause 6 – Electoral registration: the digital service
  - Clause 23(5) – Benefits for maternity, funeral and heating expenses
  - Clause 29 – Universal credit: costs of claimants who rent accommodation
  - Clause 30 – Universal credit: persons to whom, and time when, paid
  - Clauses 41 to 43 and Schedule 2 – Roads
  - Clause 47(6) to (9) and (16) – Onshore petroleum: consequential amendments
  - Clause 51(4) and (5) – Gaming machines on licensed betting premises
  - Clause 57(3) – Fuel poverty support schemes
  - Clause 58 – Energy company obligations
  - Clause 61(7), (8) and (17) to (19) – Offshore renewable energy installations
  - Clause 61(13) and (14) – Renewable energy installations - power to make regulations in relation to decommissioning programmes.
10. There are also two clauses which contain technical provision which have effect to confer powers on the Scottish Ministers to make subordinate legislation, although the clauses do not specify in terms that the Scottish Ministers have particular powers to make regulations or an order. The Committee reports that it does not need to draw the attention of the lead Committee to the following clauses, and notes that these clauses transfer to the Scottish Ministers powers to make subordinate legislation:
  - Clause 32 – Functions exercisable within devolved competence



- Clause 50 – Functions exercisable within devolved competence: consumer advocacy and advice.

## Recommendations

11. The Committee's comments and recommendations on the remaining delegated powers in the Bill are detailed below.

### **Clause 7 – Expenditure in connection with elections**

<b>Powers conferred on:</b>	<b>The Scottish Ministers</b>
<b>Exercised by:</b>	<b>Order and regulations (various powers)</b>
<b>Procedure:</b>	<b>Affirmative, negative and no procedure (various powers)</b>

#### *Provisions*

12. Clause 7 inserts three new sections into the Political Parties, Elections and Referendums Act 2000 ("PPERA"), to transfer to the Scottish Ministers powers currently exercised by the Secretary of State in relation to controlled expenditure and campaign expenditure at elections to the Scottish Parliament, which are not combined with elections that are reserved.
13. By virtue of clause 7(6) to (10), certain powers of the Secretary of State under section 155 of PERA are transferred, enabling the Scottish Ministers to vary certain sums which are specified in various provisions of Part 5 or 6 of that Act. Accordingly the Secretary of State will cease to have the power to vary the relevant sums for campaign expenditure and controlled expenditure, relating to elections to the Scottish Parliament, and this power will transfer to the Scottish Ministers.

#### *Clause 7(14)*

14. The Committee has a specific recommendation in relation to clause 7(14) of the Bill. Clause 7(14) contains a procedural provision to specify the parliamentary procedure which applies, were the Scottish Ministers to make an order under section 155(2)(a) of PERA.
15. As applied to the Scottish Ministers, section 155(2)(a) would enable an order where the Ministers consider it expedient to vary any of the sums specified in various provisions of PERA (as referred to in paragraph 12 above) in consequence of changes in the value of money. Currently the Secretary of State can exercise this power by an order which is not subject to affirmative or negative procedure.
16. Clause 7(14) makes provision so that an order made by the Scottish Ministers under section 155(2)(a) above would be subject to the procedure prescribed by section 30(3) and (4) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA"). Section 30(3) and (4) prescribes the procedure which applies to

instruments which were – before ILRA – known as “local instruments”. The instrument, although in the form of a Scottish statutory instrument, would not be laid before the Parliament, nor subject to procedure. Where that procedure applies to an instrument, it is not considered by the Committee or a subject Committee of the Parliament, and the instrument does not appear in the Business Bulletin of the Parliament.

17. The Committee considers that the power specified in section 155(2)(a) is a power of general, rather than local, application. The Committee considers that it would not be a consistent approach to apply section 30(3) and (4) of ILRA to this power. Section 30(3) and (4) has no equivalent in relation to instruments made by the Secretary of State. It appears to the Committee that any order to be made by the Scottish Ministers under section 155(2)(a) should be laid before the Parliament but not subject to further procedure, in accordance with section 30(2) of ILRA.
18. Were an order to be laid but not subject to further procedure, then it appears to the Committee that that may be the nearest suitable equivalent to the procedure which currently applies to the exercise of the power by the Secretary of State. This would also mean that the order would be considered by the Committee, and would appear in the Business Bulletin.
19. **The Committee therefore recommends to the Devolution (Further Powers) Committee that in relation to clause 7(14) of the Bill, the power conferred upon the Scottish Ministers by virtue of section 155(2)(a) of the Political Parties, Elections and Referendums Act 2000 should be subject to the following procedure. The order should be laid before Parliament and not subject to further procedure, in accordance with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
20. **That procedure ought to apply, in place of the order being excepted from laying in terms of section 30(4) of Interpretation and Legislative Reform (Scotland) Act 2010 as clause 7(14) proposes.**

#### **Clause 38– Public sector duty regarding socio-economic inequalities**

<b>Power conferred on:</b>	<b>The Scottish Ministers</b>
<b>Exercised by:</b>	<b>Order</b>
<b>Procedure:</b>	<b>Not laid, no procedure</b>

#### *Provisions*

21. This clause sets out the arrangements for the commencement and implementation of Part 1 of the Equality Act 2010 in Scotland (socio-economic inequalities), which the clause amends. Part 1, which will enable the Scottish Ministers to impose socio-economic duties on public bodies exercising devolved functions, is already

devolved, but there has not to date been an available mechanism for Scottish Ministers to commence the provision as it related to those bodies.

22. Sub-clause (9) amends section 216 of the Equality Act 2010 (“the 2010 Act”), to provide that the Scottish Ministers may commence the relevant provisions of Part 1 by order, on a day of their choosing.

*Comments*

23. Sub-clause (10) makes provision for the procedure which applies to the commencement order. It adds the commencement power (in section 216(4) of the 2010 Act) to the list of provisions described in section 30(4) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”), to which the procedure for “local instruments” applies as explained above. The commencement order would not be laid before the Parliament, nor subject to procedure. As a result, the order would not be considered by the Committee or a subject Committee of the Parliament, and the order would not appear in the Business Bulletin.
24. The Committee considers that the application of section 30(3) and (4) of ILRA would be inconsistent with the procedure that normally applies to commencement orders or regulations made by the Scottish Ministers – that the instrument is laid before Parliament, but not subject to further procedure. The Committee sees no reason why the procedure which normally applies should not apply to this commencement power.
25. **The Committee therefore recommends to the Devolution (Further Powers) Committee that in relation to clause 38(10), the powers conferred upon the Scottish Ministers to commence certain provisions of Part 1 of the Equality Act 2010 should be subject to the procedure which normally applies to a commencement order. The order should be laid before Parliament and not subject to further procedure, in accordance with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
26. **That procedure ought to apply, in place of the order being excepted from laying in terms of section 30(4) of the Interpretation and Legislative Reform (Scotland) Act 2010 as clause 38(10) proposes.**

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<sup>1</sup> Scotland Bill [as amended on Report] is available at the following website:

[http://www.publications.parliament.uk/pa/bills/lbill/2015-2016/0100/lbill\\_2015-20160100\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/lbill/2015-2016/0100/lbill_2015-20160100_en_1.htm)

[accessed March 2016]

<sup>2</sup> Scotland Bill Supplementary Legislative Consent Memorandum is available at the following website:

<http://www.scottish.parliament.uk/LegislativeConsentMemoranda/ScotlandBillLCM010316.pdf>

[accessed March 2016]

