

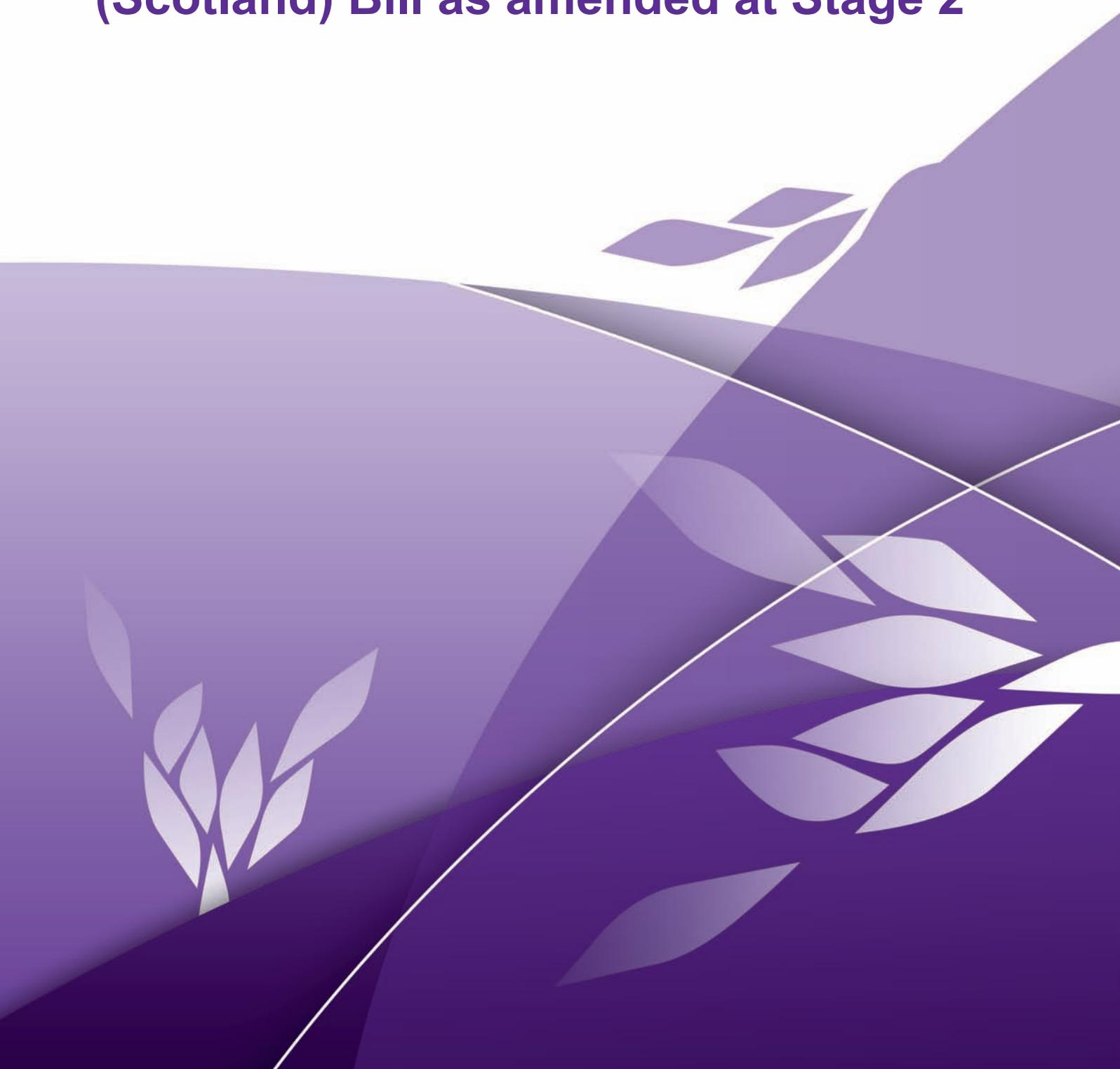


The Scottish Parliament
Pàrlamaid na h-Alba

Published 17th March 2016
SP Paper 956
27th Report, 2016 (Session 4)
Web

Delegated Powers and Law Reform Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill as amended at Stage 2



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk/documents

For information on the Scottish Parliament contact Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@scottish.parliament.uk

© Parliamentary copyright. Scottish Parliamentary Corporate Body

The Scottish Parliament' copyright policy can be found on the website –
www.scottish.parliament.uk

Contents

Introduction	1
Delegated Powers Provisions	2
Recommendations	3

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



DPLR.Committee@scottish.parliament.uk



0131 348 5175



Follow the Scottish Parliament @ScotParl

Committee Membership



Convener
Nigel Don
Scottish National Party



Deputy Convener
John Mason
Scottish National Party



Lesley Brennan
Scottish Labour



John Scott
Scottish Conservative
and Unionist Party



Stewart Stevenson
Scottish National Party

Introduction

1. At its meeting on 17 March 2016 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Abusive Behaviour and Sexual Harm (Scotland) Bill as amended at Stage 2 (“the Bill”)¹. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. The Bill was introduced by the Cabinet Secretary for Justice, Michael Matheson MSP, on 8 October 2015.
3. In broad outline, the Bill—
 - Provides for a new “domestic abuse aggravator”, that an offence may be aggravated by involving abuse of a person’s partner or ex-partner (section 1);
 - Provides a new offence for the non-consensual sharing of private, intimate images- often called “revenge porn” (sections 2 to 4);
 - Contains provision to enable courts to make a non-harassment order, in cases where the court is satisfied that a person harassed another, but there is no criminal conviction owing to the mental or physical condition of the accused person (section 5);
 - Requires juries in sexual offence cases to be given specific directions on certain matters, as to how to consider the evidence (section 6);
 - Contains provision for child sexual offences which are committed in England and Wales by Scottish residents to be capable of being prosecuted in Scotland (sections 7 and 8);
 - Reforms the system of civil orders that are available to protect persons from those who have committed, or may commit, sex offences (sections 9 to 38).
4. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill².
5. The Committee previously reported on the delegated powers provisions in this Bill at Stage 1 in its 68th report of 2015³.

Delegated Powers Provisions

6. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.
7. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the following new or substantially amended delegated powers provisions:
 - Section 10(6) – Making of order on dealing with person for offence
 - Section 11(2B) – Making of order against qualifying offender on application to sheriff
 - Section 26(5) – Making of order
 - Section 29(7) – Variation, renewal and discharge

Recommendations

8. The Committee's comments and recommendations on the remaining delegated power in the Bill (as amended) are detailed below.

Section 19(8) – Variation, renewal and discharge

Power conferred on:	the Court of Session or the High Court of Justiciary (as the case may be)
Power exercisable by:	rules of court (act of sederunt or act of adjournal, (as the case may be)
Parliamentary procedure:	laid, no further procedure

Provision

9. Section 19 provides the court which is hearing the matter with powers to vary, renew or discharge a sexual harm prevention order ("SHPO"). This may follow an application either by the person against whom the order has effect, by the Chief Constable, or where the order has been made under section 10 on dealing with a person for an offence, by the prosecutor.
10. Section 19(7) has been amended at Stage 2 to provide that a hearing must be held, if either the subject of the order, the Chief Constable or (for orders imposed under section 10) the prosecutor gives notice that they wish a hearing to take place.
11. Section 19(8) provides for a delegated power. This enables rules of court to provide for the time limit within which the person against whom the order has effect, or the chief constable, or the prosecutor (as the case may be) may give notice to the sheriff of their wish for a hearing to take place.

Comment

12. The Committee is content with this power in principle, and with the parliamentary procedure which is applied to the rules of court. The Committee notes however that there is a drafting error in the provisions, as further explained in paragraphs 14 and 15 below.
- 13. The Committee finds that the power in section 19(8) is acceptable in principle, and is content that the rules of court would be laid, but not subject to further procedure.**
- 14. The Committee notes that this power has been drafted to relate to the time period for giving notice to the sheriff of a wish for a hearing to be held, before the sheriff determines the application. The first line of section 19(7) also refers to "a sheriff". However in accordance with section 19(1) and (3), the court which hears an application for variation, renewal or discharge of a**

Delegated Powers and Law Reform Committee

Abusive Behaviour and Sexual Harm (Scotland) Bill as amended at Stage 2, 27th Report,
2016 (Session 4)

sexual harm prevention order may be the “appropriate court”, being either the High Court of Justiciary or a sheriff, depending on the proceedings.

- 15. The Committee notes that the Scottish Government has lodged amendments at Stage 3 so that section 19(7) and (8) would refer to an application made to, and notice to, the “appropriate court”, instead of to a sheriff only.**

¹ Abusive Behaviour and Sexual Harm (Scotland) Bill, as amended at Stage 2 (SP Bill 81A, Session 4 (2016)) is available at the following website:

[http://www.scottish.parliament.uk/S4_Bills/Abusive%20Behaviour%20and%20Sexual%20Harm%20\(Scotland\)%20Bill/SPBill81AS042016.pdf](http://www.scottish.parliament.uk/S4_Bills/Abusive%20Behaviour%20and%20Sexual%20Harm%20(Scotland)%20Bill/SPBill81AS042016.pdf). [accessed March 2016]

² Abusive Behaviour and Sexual Harm (Scotland) Bill. Supplementary Delegated Powers Memorandum (SP Bill 81A-DPM, Session 4 (2016)) is available at the following website:

[http://www.scottish.parliament.uk/S4_Bills/Abusive%20Behaviour%20and%20Sexual%20Harm%20\(Scotland\)%20Bill/SPBill81ADPMS042016.pdf](http://www.scottish.parliament.uk/S4_Bills/Abusive%20Behaviour%20and%20Sexual%20Harm%20(Scotland)%20Bill/SPBill81ADPMS042016.pdf) [accessed March 2016]

³ Delegated Powers and Law Reform Committee. 68th Report, 2015 (Session 4). *Abusive Behaviour and Sexual Harm (Scotland) Bill at Stage 1* (SP Paper 829) is available at the following website:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/93918.aspx> [accessed [accessed March 2016]

