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Delegated Powers and Law Reform Committee

# Annual Report 2015-16



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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



**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

**Note: The membership of the Committee changed during the period covered by this report, as follows:**

Richard Baker (Labour, North East Scotland) from 2 September 2015 until 11 January 2016; Lesley Brennan (Labour, North East Scotland) from 19 January 2016; Margaret McCulloch (Labour, Central Scotland) until 2 September 2015.



# Introduction

1. This Report covers the work of the Committee during the parliamentary year from 11 May 2015 to 23 March 2016. The Committee has scrutinised a large number of bills and Scottish statutory instruments this year, reporting to subject committees and the Parliament on issues such as the scope of delegated powers and whether delegated powers are within vires, as well as on detailed drafting issues.
2. The Committee also considered its second Scottish Law Commission (SLC) bill, completing its consideration of the Succession (Scotland) Bill in January 2016. The Bill was passed at Stage 3 later that month.
3. The Committee's remit was changed in October 2015, on the recommendation of the SPPA Committee, to allow it to consider consolidation bills. The Committee began its consideration of the Bankruptcy (Scotland) Bill in November 2015. The Bill will be debated at Stage 3 on 22 March 2016.

## Bills

4. In addition to SLC and consolidation bills, the Committee considers delegated powers provisions in Scottish Government, Members', Committee and Private bills. Over the reporting period, the Committee has considered and reported on the following twenty-three bills at Stage 1:

- Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill;
- Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill;
- Education (Scotland) Bill;
- Inquiries into Deaths (Scotland) Bill;
- Interests of Members of the Scottish Parliament (Amendment) Bill;
- Pentland Hills Regional Park Boundary Bill;
- Succession (Scotland) Bill;
- Community Justice (Scotland) Bill;
- Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill;
- Land Reform (Scotland) Bill;
- Higher Education Governance (Scotland) Bill;
- Footway Parking and Double Parking (Scotland) Bill;
- Scottish Fiscal Commission Bill;
- Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill;
- Abusive Behaviour and Sexual Harm (Scotland) Bill;
- Criminal Verdicts (Scotland) Bill;
- Lobbying (Scotland) Bill;
- Private Housing (Tenancies) (Scotland) Bill;
- Bankruptcy (Scotland) Bill;
- Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill;
- Burial and Cremation (Scotland) Bill;



- Budget (Scotland) (No.5) Bill;
  - Land and Buildings Transaction Tax (Amendment) (Scotland) Bill.
5. The Committee also considered and reported on the following twenty bills as amended at Stage 2:
- Community Empowerment (Scotland) Bill;
  - Air Weapons and Licensing (Scotland) Bill;
  - Mental Health (Scotland) Bill;
  - Prisoners (Control of Release) (Scotland) Bill;
  - British Sign Language (Scotland) Bill;
  - Human Trafficking and Exploitation (Scotland) Bill;
  - Criminal Justice (Scotland) Bill;
  - Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill;
  - Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill;
  - Apologies (Scotland) Bill;
  - Education (Scotland) Bill;
  - Carers (Scotland) Bill;
  - Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill;
  - Lobbying (Scotland) Bill;
  - Land and Buildings Transaction Tax (Amendment) (Scotland) Bill;
  - Higher Education Governance (Scotland) Bill;
  - Private Housing (Tenancies) (Scotland) Bill;
  - Land Reform (Scotland) Bill;
  - Burial and Cremation (Scotland) Bill;
  - Abusive Behaviour and Sexual Harm (Scotland) Bill.
6. The majority of the bills considered by the Committee were Scottish Government bills and, as with previous years, the recommendations of the Committee on those

bills have led to a number of changes by the Scottish Government to relevant provisions. Through its scrutiny process, the Committee also aims to ensure that the correct balance between primary and secondary legislation is maintained.

7. The Committee also considered two supplementary Legislative Consent Memorandums (LCMs). These are Westminster bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters. The two LCMs considered by the Committee were in connection with the:
  - Enterprise Bill (UK Parliament legislation);
  - Scotland Bill 2015-16 (UK Parliament legislation).

## Subordinate Legislation

8. The Committee has considered a high volume of instruments this year, working to tight timescales to produce 82 reports over the reporting year. During the parliamentary year, the Committee published 33 statutory instrument reports, reporting on 323 Scottish statutory instruments in total.
9. Of the instruments considered, 66 were subject to affirmative procedure, 186 to negative procedure, and 69 were not subject to any parliamentary procedure.
10. In addition to the instruments outlined above, the Committee also considered two provisional-affirmative instruments.
11. The Committee published three quarterly reports which recorded the Committee's scrutiny of instruments during the first three quarters of this parliamentary year.

## Equalities

12. The Committee considers equalities issues which can arise under the European Convention on Human Rights and under Community law. It is part of the Committee's remit to draw the attention of lead committees and the Parliament to any instrument, or bill that, in its opinion, fails to comply with any such requirement.
13. The Committee also scrutinises drafting practice and so points out, for example, failure to use gender neutral language in instruments. This the Committee did in respect of the Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2015 (SSI 2015/424) when the Lord President's Private Office was advised by way of a 'Minor Points' letter that it would have been possible to have used gender neutral drafting by referring to "the sheriff" in place of "he".
14. In the course of its scrutiny of the Bankruptcy (Scotland) Bill, the Committee had an appreciation of the fact that the use of abbreviations can be used as a legitimate drafting tool in order to deal with the challenges raised by gender neutral drafting.

## Meetings

15. The Committee met 34 times during the parliamentary year. Of these meetings, none were entirely in private and 24 included items in private.
16. The main reason for taking business in private was to consider draft reports.
17. On 15 December 2015, the Committee took evidence from the Minister for Parliamentary Business on a range of issues including the Committee's analysis of instruments that had been laid during the previous parliamentary year.
18. All the Committee's meetings have been held in Edinburgh.

