



The Scottish Parliament  
Pàrlamaid na h-Alba

# **Delegated Powers and Law Reform Committee**

## **33rd Report, 2013 (Session 4)**

### **Annual Report 2012-13**

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## **Delegated Powers and Law Reform Committee**

### **Remit and membership**

#### **Remit:**

1. 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.

#### **Membership:**

Christian Allard  
Nigel Don (Convener)  
Mike MacKenzie  
Hanzala Malik  
John Pentland  
John Scott  
Stewart Stevenson (Deputy Convener)

**Committee Clerking Team:**

**Clerk to the Committee**

Euan Donald

**Assistant Clerk**

Elizabeth White

**Support Manager**

Daren Pratt



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### **Membership**

#### **Membership:**

Chic Brodie (until 18 September 2012)

Nigel Don (Convener)

James Dornan (Deputy Convener) (until 18 September 2012)

Jim Eadie (from 30 October 2012)

Mike MacKenzie

Hanzala Malik (from 27 June 2012)

Michael McMahon (until 27 June 2012)

Stuart McMillan (from 18 September 2012 to 30 October 2012)

John Pentland

John Scott

Stewart Stevenson (Deputy Convener) (from 18 September 2012)

#### **Committee Clerking Team:**

Clerk to the Committee

Euan Donald

Assistant Clerk

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The Committee reports to the Parliament as follows—

### Introduction

1. This Report covers the work of the Committee during the parliamentary year from 11 May 2012 to 10 May 2013. The Committee has scrutinised a 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.

### Bills

2. 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 thirteen Bills at Stage 1:

Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill;  
 Social Care (Self-directed Support) (Scotland) Bill;  
 Scottish Civil Justice Council and Criminal Legal Assistance Bill;  
 Freedom of Information (Amendment) (Scotland) Bill;  
 Water Resources (Scotland) Bill;  
 High Hedges (Scotland) Bill;  
 Aquaculture and Fisheries (Scotland) Bill;  
 Post-16 Education (Scotland) Bill;  
 Forth Road Bridge Bill;  
 Budget (Scotland) (No.2) Bill;  
 Land and Buildings Transaction Tax (Scotland) Bill;  
 Scottish Independence Referendum (Franchise) Bill;  
 Victims and Witnesses (Scotland) Bill.

3. The Committee also considered and reported on the following nine Bills as amended at Stage 2:

Alcohol (Minimum Pricing) (Scotland) Bill;  
Land Registration etc. (Scotland) Bill;  
Police and Fire Reform (Scotland) Bill;  
Social Care (Self-directed Support) (Scotland) Bill;  
Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill;  
Freedom of Information (Amendment) (Scotland) Bill;  
Water Resources (Scotland) Bill;  
High Hedges (Scotland) Bill;  
Aquaculture and Fisheries (Scotland) Bill.

4. With the exception of the High Hedges (Scotland) Bill, all of the Bills were Scottish Government Bills and, as with previous years, the recommendations of the Committee on 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.

5. The Committee has also considered eight 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 eight LCMs considered by the Committee were on:

Electoral Registration and Administration Bill (UK Parliament legislation);  
Local Government Finance Bill (UK Parliament legislation);  
Crime and Courts Bill (UK Parliament legislation);  
Prisons (Interference with Wireless Telegraphy) Bill (UK Parliament legislation);  
Growth and Infrastructure Bill (UK Parliament legislation);  
Marine Navigation (No 2) Bill (UK Parliament legislation);  
Energy Bill 2012-13 (UK Parliament legislation); and  
Public Service Pensions Bill (UK Parliament legislation).

6. The Committee also gave consideration to three Public Body Consent Memorandums (PBCMs). These relate to draft orders made under sections 1 to 5 of the Public Bodies Act 2011 which would fall within the Scottish Parliament's legislative competence. The three PBCMs considered by the Committee were on:

Public Bodies (Abolition of British Shipbuilders) Order [2013] [draft];  
Public Bodies (Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order [2013] [draft];  
Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order [2013] [draft].

## **Subordinate Legislation**

7. The Committee has continued to work to tight timescales in its consideration of subordinate legislation, producing 66 reports over the reporting year. During the parliamentary year, the Committee published 32 statutory instrument reports, reporting on 284 Scottish statutory instruments in total.

8. Of the instruments considered, 47 were subject to affirmative procedure, 175 to negative procedure, and 58 were not subject to any Parliamentary procedure.

9. In addition to the instruments outlined above, the Committee also considered two super-affirmative instruments and two draft instruments not subject to any parliamentary procedure.

10. The Committee published three quarterly reports which recorded the Committee's scrutiny of instruments during the first three quarters of this parliamentary year.

## **Equalities**

11. 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 that, in its opinion, fails to comply with any such requirement.

12. It is also within the Committee's remit to report any instrument on the grounds of an unusual or unexpected use of a power which raises equalities issues.

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 when reporting the National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013 for an inadvertent use of non-gender neutral drafting.

## **Meetings**

14. The Committee met 32 times during the parliamentary year. Of these meetings, none were entirely in private and 15 included items in private.

15. The main reason for taking business in private was to consider draft reports.

All the Committee's meetings have been held in Edinburgh



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