



The Scottish Parliament
Pàrlamaid na h-Alba

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

AGENDA

5th Meeting, 2016 (Session 4)

Thursday 25 February 2016

The Committee will meet at 9.30 am in the David Livingstone Room (CR6).

1. **Delegated Powers procedures:** The Committee will consider correspondence on the procedures for Delegated Powers.
2. **Inquiry into procedures for considering legislation (in private):** The Committee will consider a draft report and draft Standing Order Rule Changes.
3. **Inquiry into procedures for considering legislation (in private):** The Committee will consider a note by the Clerk.
4. **Legacy paper (in private):** The Committee will consider issues for a draft legacy paper.

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The papers for this meeting are as follows—

Agenda item 1

Note by the clerk

SPPA/S4/16/5/1

Agenda item 2

PRIVATE PAPER

SPPA/S4/16/5/2 (P)

Agenda item 3

PRIVATE PAPER

SPPA/S4/16/5/3 (P)

Agenda item 4

PRIVATE PAPER

SPPA/S4/16/5/4 (P)

Standards, Procedures and Public Appointments Committee

5th Meeting 2016 (Session 4), Thursday 25 February 2016

Statutory instruments laid under an incorrect procedure

Introduction

1. The Committee recently considered a letter from the Delegated Powers and Law Reform Committee (DPLR) about an order which was incorrectly laid by the Scottish Government under the negative procedure. It should have been laid under the affirmative procedure.

Background

2. The DPLR Committee asked the SPPA Committee to consider whether any new procedures are required to deal with these circumstances, should they arise again.

3. It is very unusual for such an error to occur. The DPLR Committee considered that the normal practice in such circumstances would be to revoke the provisions, to remove them from the statute book.

4. However the Scottish Government's view was that there is nothing to revoke, given that the order is of no effect as it was laid under the wrong procedure. The Government has removed the instrument from the legislation.gov.uk website and laid a new order under the correct procedure.

5. The DPLR Committee considered, however, that some confusion may still arise as the order had been laid, considered by the Committee and remained before the Parliament for 40 days.

Action by SPPA Committee

6. The Committee discussed this issue [at its meeting on 28 January 2016](#).

7. The general view of the Committee was that it would be desirable for the issue raised by the DPLR Committee to be resolved. Some suggestions were made at the meeting including creating a new procedure to revoke instruments laid under the wrong procedure or requiring a statement to be made in the Parliament or the Business Bulletin to explain what happened to the instrument.

8. The Committee agreed to write to the Minister for Parliamentary Business to draw his attention to the Official Report of the meeting and invite his comments. The letter to the Minister can be found at annexe A.

9. The Minister has now written to the Committee in response.

10. In his letter the Minister proposes that an announcement could be placed in section H of the Business Bulletin to clarify what happened to the instrument during

its parliamentary scrutiny. A copy of the Minister's letter, and the suggested wording of the Business Bulletin announcement, can be found at annexe B.

Recommendation

11. The Committee is invited to consider its response to the proposal made in the Minister's letter. If the Committee supported the Minister's proposal, the clerks could take forward the necessary arrangements to make this announcement in the Business Bulletin.

**Standards, Procedures and Public Appointments Committee
February 2016**

ANNEXE A: LETTER FROM CONVENER TO MINISTER, 3 February 2016

Dear Joe

At its meeting on 28 January 2016 the Standards, Procedures and Public Appointments Committee considered a letter from the DPLR Committee about an order incorrectly laid under the negative procedure.

I attach as an annexe a copy of this letter, plus the relevant extract from the Official Report of the SPPA Committee meeting.

I would be grateful for your comments on the matters discussed by the Committee. I would also be interested in any suggestions you might have for a mechanism to address the issues raised by the DPLR Committee.

It would be helpful to receive an early response to this letter, in order to enable the Committee to consider this issue again before dissolution if this is required.

Yours sincerely

Stewart Stevenson MSP

ANNEXE B: LETTER FROM MINISTER TO CONVENER, 3 February 2016

Dear Stewart

I see in the draft Official Report of your meeting on 28 January that you have received a letter from the Delegated Powers and Law Reform Committee concerning statutory instrument procedures.

I note that this resulted from an instrument which Scottish Ministers inadvertently laid under the negative procedure rather than the affirmative procedure and which was therefore was not in fact a Scottish Statutory Instrument. As a result, it could not be revoked, nor could it be proceed as an affirmative instrument. The legal situation was resolved and the desired policy outcome delivered by immediately laying a laid-only commencement order and a negative procedure instrument, delivering that outcome through an alternative means. The erroneous instrument has not been published on legislation.gov.uk nor will it be printed in the bound volume of legislation, so in practical terms it does not exist.

I note your concerns that the Business Bulletin recorded the laying of this erroneous instrument and that there has been no parliamentary resolution of this anomalous situation.

To remedy this I propose the notice below as suggested text for publication in Section H of the Business Bulletin to formally finalise Parliament's consideration.

I am copying this to Nigel Don MSP, Convener of the Delegated Powers and Law Reform Committee for information.

I hope that this will resolve this concern.

Joe Fitzpartrick MSP

PROPOSED NOTICE

**MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005
(COMMENCEMENT NO.8 AND CONSEQUENTIAL PROVISIONS) ORDER 2015**

Scottish Ministers give notice-

- 1) That the above Order was purportedly made on 18 November 2015 and was laid before the Parliament as an instrument subject to the negative resolution procedure on 20 November 2015
- 2) That the Scottish Government accept, in accordance with section 22(2) of the Management of Offenders etc. (Scotland) Act 2005, that such an Order ought to have been a Scottish Statutory Instrument laid in draft under the affirmative resolution procedure

3) In particular, that the Order made under section 22(2) of that Act was not validly made in accordance with section 22(4) of that Act which provides that it is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament

4) Accordingly that the instrument purportedly made and laid as set out above and not being an instrument laid before and approved by the Parliament was not a Scottish Statutory Instrument and had no legal effect.