



The Scottish Parliament  
Pàrlamaid na h-Alba

## DELEGATED POWERS AND LAW REFORM COMMITTEE

### AGENDA

4th Meeting, 2016 (Session 4)

Tuesday 26 January 2016

The Committee will meet at 11.15 am in the Adam Smith Room (CR5).

1. **Declaration of interests:** Lesley Brennan will be invited to declare any relevant interests.
2. **Decision on taking business in private:** The Committee will decide whether to take item 8 in private.
3. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Freedom of Information \(Scotland\) Act 2002 \(Designation of Persons as Scottish Public Authorities\) Order 2016 \[draft\];](#)  
[Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2016 \[draft\];](#)  
[Equality Act 2010 \(Specific Duties\) \(Scotland\) Amendment Regulations 2016 \[draft\];](#)  
[Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment \(No. 2\) Order 2016 \[draft\];](#)  
[Kinship Care Assistance \(Scotland\) Order 2016 \[draft\];](#)  
[Children and Young People \(Scotland\) Act 2014 \(Modification of Schedules 2 and 3\) Order 2016 \[draft\];](#)  
[National Health Service \(Scotland\) Act 1978 \(Independent Clinic\) Amendment Order 2016 \[draft\];](#)  
[Air Quality \(Scotland\) Amendment Regulations 2016 \[draft\];](#)  
[Reservoirs \(Enforcement etc.\) \(Scotland\) Order 2016 \[draft\];](#)  
[Children and Young People \(Scotland\) Act 2014 \(Part 4 and Part 5 Complaints\) Order 2016 \[draft\];](#)  
[Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2016 \[draft\];](#)  
[Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \[draft\];](#)  
[Public Services Reform \(Social Work Complaints Procedure\) \(Scotland\) Order 2016 \[draft\];](#)  
[Letting Agent Code of Practice \(Scotland\) Regulations 2016 \[draft\];](#)  
[Pharmacy \(Premises Standards, Information Obligations, etc.\) Order 2016 \[draft\].](#)

4. **Instruments subject to negative procedure:** The Committee will consider the following—

[Sea Fish \(Prohibited Methods of Fishing\) \(Firth of Clyde\) Order 2016 \(SSI 2016/12\);](#)  
[Public Bodies \(Joint Working\) \(Prescribed Health Board Functions\) \(Scotland\) Amendment Regulations 2016 \(SSI 2016/15\);](#)  
[Named Persons \(Training, Qualifications, Experience and Position\) \(Scotland\) Order 2016 \(SSI 2016/16\);](#)  
[Child's Plan \(Scotland\) Order 2016 \(SSI 2016/17\);](#)  
[Fireworks \(Scotland\) Amendment Regulations 2016 \(SSI 2016/18\);](#)  
[Water Environment \(Remedial Measures\) \(Scotland\) Regulations 2016 \(SSI 2016/19\);](#)  
[National Assistance \(Sums for Personal Requirements\) \(Scotland\) Regulations 2016 \(SSI 2016/23\);](#)  
[Products Containing Meat etc. \(Scotland\) Amendment Regulations 2016 \(SSI 2016/24\);](#)  
[National Assistance \(Assessment of Resources\) Amendment \(Scotland\) Regulations 2016 \(SSI 2016/25\);](#)  
[Healthcare Improvement Scotland \(Fees\) Regulations 2016 \(SSI 2016/26\);](#)  
[Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Prescribed Purposes for Consideration of Suitability\) Regulations 2016 \(SSI 2016/27\).](#)

5. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[Scottish Parliament Elections \(Regional Returning Officers and Constituency Returning Officers\) Order 2016 \(SSI 2016/9\);](#)  
[Serious Crime Act 2015 \(Commencement No. 1 and Saving Provision\) \(Scotland\) Regulations 2016 \(SSI 2016/11 \(C.1\)\);](#)  
[Courts Reform \(Scotland\) Act 2014 \(Commencement No. 6 and Transitional Provisions\) Order 2016 \(SSI 2016/13 \(C.2\)\);](#)  
[Water Resources \(Scotland\) Act 2013 \(Commencement No. 3\) Order 2016 \(SSI 2016/14 \(C.3\)\);](#)  
[Public Services Reform \(Scotland\) Act 2010 \(Commencement No. 7\) Order 2016 \(SSI 2016/22 \(C.4\)\).](#)

6. **Education (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.
7. **Succession (Scotland) Bill:** The Committee will take evidence on the Bill in advance of Stage 3 from—

Jill Clark, Head of Civil Law Reform Unit; Neel Mojee, Solicitor, Scottish Government Legal Directorate, Scottish Government; Caroline Drummond, Commissioner, Scottish Law Commission; Charles Garland, Project Manager, Scottish Law Commission; Jane MacDonald, Head of Policy and Legislation Branch, Scottish Courts and Tribunal Service;

and then from—

John Kerrigan, Partner, Morisons LLP, Member of the Law Society of Scotland; Eilidh Scobbie, Private Client Partner, Burnett & Reid LLP; Dr Dot Reid, Senior Lecturer in Private Law, University of Glasgow;

and then from—

Paul Wheelhouse, Minister for Community Safety and Legal Affairs; Jill Clark, Head of Civil Law Reform Unit; Neel Mojee, Solicitor, Scottish Government Legal Directorate, Scottish Government.

8. **Succession (Scotland) Bill:** The Committee will consider the evidence it has heard.

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The papers for this meeting are as follows—

**Agenda Items 3, 4 and 5**

Briefing on Instruments (private)

DPLR/S4/16/4/1(P)

**Agenda Item 5**

Instrument Responses

DPLR/S4/16/4/2

**Agenda Item 6**

[Education \(Scotland\) Bill - as amended](#)

[Education \(Scotland\) Bill - Supplementary Delegated Powers Memorandum](#)

Briefing Paper (private)

DPLR/S4/16/4/3(P)

**Agenda Items 7 and 8**

[Succession \(Scotland\) Bill - as amended](#)

Briefing Paper (private)

DPLR/S4/16/4/4(P)

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**Instrument Responses**

**INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE**

**Scottish Parliament Elections (Regional Returning Officers and Constituency Returning Officers) Order 2016 (SSI 2016/9)**

**On 14 January 2016, the Scottish Government was asked:**

1. Please explain which enabling power is relied on to make article 5, which revokes the Scottish Parliament (Constituency Returning Officers) Order 2011 (“the 2011 Order”). Is it section 113(1A) and (4) of the Scotland Act 1998 (“the 1998 Act”), or another power?
2. If the power which is relied on to make article 5 is not cited in the preamble, what is the effect of the omission, given that it does not add the usual reference to “all other powers enabling them to do so”?
3. Please explain why article 5 is properly made despite the prohibition contained in section 113(6) of the 1998 Act, and given that—
  - (a) that subsection provides that a power to modify enactments does not (unless otherwise stated) extend to making modifications of the 1998 Act or subordinate legislation under it,
  - (b) by section 126 of the 1998 Act, “modify” includes repeal, and
  - (c) the 2011 Order was made under provision in the Scottish Parliament (Elections etc.) Order 2010, which Order is subordinate legislation made under the 1998 Act?

**The Scottish Government responded as follows:**

1. Article 5 is made in exercise of the power in article 14(b) of the Scottish Parliament (Elections etc.) Order 2015 (“the 2015 Order”) which enables the Scottish Ministers in an order made under article 14 to “vary, amend or revoke any previous such order”. The 2011 Order is in our view a “previous such order” in light of the fact that the 2015 Order repeals and re-enacts, with modifications, the Scottish Parliament (Elections etc.) Order 2010 and section 17 of the Interpretation Act 1978 therefore produces the result that the 2011 Order is to be treated as having effect as if made under the 2015 Order.
2. Article 14(b) of the 2015 Order is cited in the preamble.
3. In light of our responses to questions 1 and 2, the Scottish Government does not view the terms of section 113(6) of the 1998 Act as of relevance.