



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Martin Whitfield MSP,
Convener, Standards, Procedures and Public Appointments Committee

Email only

7 May 2025

Dear Martin,

SSIs that stem from Scottish Law Commission Bills

The Delegated Powers and Law Reform (DPLR) Committee agreed at its meeting on 22 April to write to the Standards, Procedures and Public Appointments (SPPA) Committee about the above issue.

Background

As you may be aware, in 2013, the Parliament agreed new rules which saw the remit of the then Subordinate Legislation Committee expanded to allow it to consider certain Scottish Law Commission (SLC) Bills. To take account of its expanded remit, it was renamed the Delegated Powers and Law Reform Committee.

The background to these rule changes are set out in the 2013 SPPA Committee report on [Implementing Scottish Law Commission Reports](#).

In Session 6 so far, the DPLR Committee has been designated as lead committee for four SLC bills:

- Moveable Transactions (Scotland) Bill: became an Act, 13 June 2023;
- Trusts and Succession (Scotland) Bill: became an Act, 30 January 2024;
- Judicial Factors (Scotland) Bill: became an Act 27 January 2025;
- Leases (Automatic Continuation etc.) (Scotland) Bill: introduced, 11 December 2024: currently at Stage 1.

Of course, the DPLR Committee retains its original function, namely the scrutiny of subordinate legislation.

Contact: Delegated Powers and Law Reform Committee, The Scottish Parliament, Edinburgh, EH99 1SP.

Email: dplr.committee@parliament.scot.

We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

As part of this, when an SSI is laid before Parliament, it is first considered by the DPLR Committee for technical and legal accuracy. The DPLR Committee then reports its conclusions to a lead committee. The lead committee then considers the policy merits of the instrument (with the exception of a small number of ‘no procedure’ instruments, though there is no procedural barrier to these being considered).

[Standing Orders rule 10.2.1](#) states that “the lead committee is the committee within whose remit the subject matter of the instrument falls.”

Issue

At its meeting on 7 January 2025, the DPLR Committee considered four instruments laid under the Moveable Transactions (Scotland) Act 2023. In this instance, the parent Act was one the Committee had scrutinised as lead committee.

The Committee [reported](#) its conclusions on the instruments to the lead committee, the Economy and Fair Work (“EFW”) Committee. While the EFW Committee is the appropriate committee from a policy perspective, and the Session 5 Economy Committee had undertaken some work in relation to moveable transactions and the SLC’s report, the current EFW Committee did not scrutinise the Moveable Transactions (Scotland) Bill.

The DPLR Committee understands, in a general sense, the rationale for the lead committee for an instrument being the committee “within whose remit the subject matter of the instrument falls”, so it can consider the wider policy implications of an instrument.

However, Members of the DPLR Committee felt it might be beneficial if Standing Orders allowed a degree of discretion to allow the DPLR Committee to conduct lead committee scrutiny, from a policy perspective, of future subordinate legislation made under Acts which the Committee has led on, if that made sense in the circumstances.

Further considerations

The Committee suggests that if a change were to be implemented to allow DPLR to conduct lead committee scrutiny of certain instruments, its policy scrutiny would take place entirely separately to technical scrutiny. That would mean scrutiny would happen on separate days under separate agenda items.

It also suggests that discretion to allow the DPLR Committee to conduct lead committee scrutiny of SSIs should also be time limited. While this would be a matter for the SPPA Committee, the DPLR Committee suggests a period of “the remainder of the relevant parliamentary session”.

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It makes this suggestion to ensure that, for example, subordinate legislation made in 10, 20 or 100 years' time relating to Judicial Factors under the Judicial Factors (Scotland) Act 2025 makes its way appropriately to a committee considering issues relating to justice, rather than a future iteration of the DPLR Committee, which would not be expected to retain any policy expertise in relation to that subject.

The Committee also noted that a subject committee would also be able to still conduct some scrutiny if it were lead committee for an SSI, as foreseen by [rule 10.2.2](#), which states:

“Where the subject matter of the instrument falls within the remit of more than one committee, the Parliament may, on a motion of the Parliamentary Bureau designate one committee to be the lead committee. Copies of the instrument or draft instrument shall be sent to the other committees which may also consider the instrument or draft instrument and make any recommendations they consider necessary to the lead committee by a date specified in the business programme.”

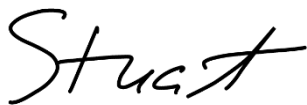
It should also be noted that scrutiny of resultant subordinate legislation is not discussed in the SPPA Committee report on [Implementing Scottish Law Commission Reports](#).

Request

The Committee asks the Standards, Procedures and Public Appointments Committee to consider allowing it to conduct lead committee scrutiny of subordinate legislation laid under Acts for which it was lead committee, and to recommend necessary changes to Standing Orders.

I would be happy to discuss this issue further, should you have any questions.

Yours sincerely



Stuart McMillan MSP
Convener